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047830	185A14
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047844	185B02
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047867	320C10
047876	299C07
047880	320C12
047885	74C13
047888	262G03
047896	185B03
047911	299C08
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048010	185B05
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048169	439D05
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048254	347E05	048671	163G03
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048255	439F14	048674	185C12
048256	439G01	048691	17A13
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048267	261G04	048703	272G07
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048277	369F12	048738	107F04
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048411	185C04	048819	105E09
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048992	185D07
048993	140F12
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049004	128E14
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049152	164A03
049159	17B01
049163	185D14
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049187	70B04
049189	120E11
049192	50G09
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049206	440A07
049209	440G14
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049309	440A10
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049455	207E13	049662	185E11
049457	347F06	049667	347G04
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049466	347F07	049674	320E02
049473	299D04	049677	283A05
049479	207E14	049679	320E03
049480	369G10	049681	299D11
049482	17B03	049683	122B06
049485	140F14	049690	347G06
049494	61C04	049691	347G08
049507	68G09	049692	347G10
049508	347F08	049696	227E07
049509	227E04	049697	49F03
049511	347F09	049698	135E13
049518	299D05	049705	66F08
049527	207F01	049707	65G09
049529	207F04	049708	347G13
049535	320E01	049710	207F08
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049540	299D07	049725	348A03
049543	185E05	049727	250B12
049545	347F11	049758	69D12
049549	105D12	049761	348A05
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049560	299D09	049769	185E13
049565	282G10	049772	37B11
049574	70F12	049773	440A12
049583	185E07	049776	37B13
049591	282G12	049784	348A07
049597	1C01	049784	348A08
049602	283A03	049786	348A10
049607	347G01	049790	60E01
049608	250B09	049790	185F02
049619	207F06	049818	164A07
049620	347G03	049827	283A07
049625	70E03	049847	272G14
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049633	1C02	049854	107F13
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049900	348A12	050018	440C14
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049925	185F04	050034	440D06
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049934	281G03	050035	440D07
049943	136A14	050039	440D08
049944	207F11	050040	440D09
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049955	440A14	050048	440D13
049958	440B02	050056	440E01
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049972	440B12	050066	148B10
049976	440B13	050067	348B07
049978	440B14	050067	370A09
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049981	440C02	050069	185F05
049983	131A03	050070	440E08
049985	71B02	050072	151B10
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049992	440C07	050078	440E10
049992	508B04	050079	440E12
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049996	440C09	050083	440E14
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050454	348B09
050642	440F05
050713	411B05
051100	164A08
051101	440F07
051102	70B03
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051106	440F08
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051129	440G06
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051136	273A03
051138	440G09
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051143	440G11
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051151	76A07
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051165	441A07
051166	207F13
051168	185F08
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051178	441A10
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051201	441B08
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051204	207G01
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051278	61A11
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051286	227E10
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051309	299E02
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051444	70D01	051606	441E11
051457	441C06	051608	320F01
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051468	75D13	051614	42A03
051476	121E03	051618	164A14
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051485	273A10	051631	1D04
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051507	122B04	051637	105D14
051508	441C12	051652	283B07
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051519	441D02	051654	441F01
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051528	411B07	051658	67F11
051528	441D07	051672	411B08
051530	250D04	051673	185G02
051533	441D08	051678	320F06
051535	441D10	051682	273A14
051536	370A11	051689	370A13
051537	207G03	051691	250D09
051539	317C12	051692	1D06
051541	67F01	051695	273B01
051543	441D12	051699	250D11
051547	185F12	051705	70B12
051549	250D05	051708	116B12
051551	441E01	051711	1D07
051560	441E03	051721	441F03
051563	441E05	051727	441F06
051565	283A10	051734	283A14
051568	441E06	051735	185G04
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052072	442C05
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052084	442C10
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052103	442D04
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052146	442E03
052147	442E05
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052168	299E11
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052174	348C04
052176	411B10
052176	442F06
052177	442F07
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052207	443A09
052208	443A10
052209	443A12
052210	59A12
052211	164B13
052214	443A13
052219	443B01
052220	261G13
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052234	443B08
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052256	106D09
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052381	186B12
052387	121G14
052387	227G06
052387	227G08
052390	283B07
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052409	164C13
052410	273B09
052419	105E05
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052737	87C09
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052747	17E01
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052755	299G04
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053131	227G12	053243	164E01
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053139	443D01	053249	121C03
053142	411C03	053251	138G06
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053145	370C13	053253	250F09
053147	17E10	053256	283C01
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053156	508B13	053264	208C02
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053160	1G02	053274	443E04
053160	67A07	053278	2A09
053161	1G04	053279	321A05
053162	186D08	053281	443E05
053163	443D07	053284	17E12
053164	1G06	053285	17E14
053165	1G08	053286	17F02
053165	69E07	053287	62F04
053166	1G10	053288	508C03
053167	2A03	053289	131E04
053168	443D08	053291	2A11
053173	140G05	053293	2A12
053181	81D06	053294	2A13
053181	186D10	053295	17F04
053182	443D10	053303	17F07
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053346	186D11	053575	17G03
053359	155D02	053579	66E01
053362	42E03	053580	443F12
053363	127E07	053586	443F13
053461	114C11	053592	2B05
053468	443E08	053595	370D03
053472	283C03	053597	273D09
053473	273D07	053600	17G05
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053476	300A03	053611	17G06
053477	164E03	053613	17G07
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053492	116D13	053637	164E07
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053507	443E13	053648	451B12
053511	208C05	053651	273D10
053515	17F11	053654	120A08
053518	443F01	053660	321A09
053519	443F03	053663	122B01
053522	443F05	053667	508C09
053523	443F06	053671	250F13
053524	208C06	053673	300A11
053525	17F14	053676	370D08
053526	300A04	053677	186E01
053527	17G01	053679	508C01
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053533	443F07	053680	68E08
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053554	496B01	053709	250G03
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053769	247A04
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053777	273E02
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053892	158B14
053894	443G07
053895	18A08
053896	443G09
053901	300B01
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053998	186F08
054002	443G11
054004	370D14
054005	103F10
054006	411C13
054010	18B01
054014	564A10
054015	300B03
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054131	321C02
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054137	116B09
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054141	228A14
054148	300B09
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054152	370E02
054154	208D09
054156	496B02
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054163	164F09
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054225	18B09
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054247	508D09
054248	427B09
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054317	478A08
054320	228B08
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054324	227G02
054328	2D03
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054332	186G05
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054335	59E07
054336	427B10
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054347	411D03
054348	208E03
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054357	370E05
054359	393C12
054374	42E06
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054385	250G11
054386	18C03
054390	48G03
054390	48G05
054390	52G07
054391	66D12
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054395	131A13
054396	151C03
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054409	102A03
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054417	300C03
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054452	273E08
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054455	451C10
054456	186G12
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054463	393C13
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054492	300C07
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054530	529A10
054534	496B02
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054536	300C08
054537	273E10
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054593	411D11
054595	273E12
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054598	208E06
054599	321C08
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054605	564A12
054606	451C13
054607	427C02
054608	496B04
054609	2E03
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054612	2E07
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054658	130G14
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054669	370E14
054671	18D09
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054676	2E12
054680	411E01
054684	411E03
054686	159D12
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054694	317D08
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054701	2E14
054705	411E05
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054726	393D04
054727	208E08
054728	2F01
054729	2F02
054730	2F05
054731	151F09
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054737	18E01
054738	18F02
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054751	49F01
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054756	109G13
054762	2F11
054763	2F12
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054769	564A13
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054776	147D14
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054778	18F07
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054784	508E01
054788	262B04
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054792	187A07
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054794	300C12
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054799	321C10
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054807	18F12
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054813	394A03
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054822	37C01
054824	55B03
054826	251A05
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054831	69F09
054836	246B02
054836	251A08
054839	411E07
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054846	119E09
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054889	187A08
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054895	69E13
054904	3A03
054911	18G06
054912	19A03
054914	42E05
054914	44A12
054915	126B13
054916	3A05
054916	3A08
054917	3A10
054918	50C03
054920	19A06
054920	187A12
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054926	105D04
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054930	19A08
054931	49C04
054933	3B04
054941	3B06
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054948	3B08
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054952	187A14
054954	102C02
054954	151G02
054956	3B10
054958	164G11
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054960	187B03
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054988	187B05
054989	3C05
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056231	412A05	056318	21C13
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056253	412A10	056343	4G02
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056277	4E10	056376	5A04
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056705	251C07	056777	7D02
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057056	529B07
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057065	22C12
057067	9A05
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057274	508F10
057277	23C05
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057293	50F11
057294	23C12
057295	23C13
057296	43A08
057297	262C05
057298	43A10
057298	105D06
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057355	23D13
057356	83E14
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057373	23E04
057374	78E03
057375	63E06
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057533	56B04
057534	508F11
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057554	64A04
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057559	188C03
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057562	188C05
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057673	451F10
057677	86C14
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057681	44E07
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057845	86D03
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057850	412B08
057851	88B11
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057859	393E13
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057873	61G04
057874	47E08
057875	50E13
057876	84D03
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057878	109G06
057883	300F01
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057887	300F02
057890	451G02
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057897	283E09
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057905	427D04
057906	85A12
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058051	208G10
058052	412B10
058058	135F11
058059	300F07
058060	508G04
058061	508G06
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058066	262C10
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058080	496B11
058087	393G14
058090	60D08
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058093	536A06
058107	529B08
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058278	300F10
058279	209A03
058281	393F14
058283	412C11
058285	412C12
058286	427D08
058287	496B12
058288	209A13
058289	105B10
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058355	188E09	058466	251D13
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058365	509A08	058478	23F05
058366	60B11	058484	9E04
058367	188E11	058485	251E03
058369	151B04	058489	451G07
058371	371B05	058491	228D13
058373	151G14	058493	268E01
058375	393G04	058494	135C02
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058376	188E13	058497	112B08
058386	209B06	058498	23F09
058387	53B08	058498	188F08
058389	278D10	058503	62D07
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058534	23G07
058536	23G08
058540	451G09
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058542	43B04
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058547	23G12
058549	76B13
058550	24A03
058551	24A05
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058565	228E06
058567	24A07
058569	371B09
058570	83C03
058571	24A09
058572	509A13
058574	24A11
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058638	487C06
058639	40D12
058640	24B12
058641	24B14
058643	281G05
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058645	44E10
058646	393G09
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058678	412D05	058801	509B08
058680	43C03	058803	56C12
058680	107F11	058804	64C14
058681	188F10	058808	64C13
058682	105C12	058810	274B02
058684	300G09	058811	496C02
058685	545C09	058813	509B10
058686	64D04	058814	509D11
058687	188F12	058818	478B06
058689	44E13	058818	487C10
058690	262D04	058822	64C11
058691	509B03	058823	509B13
058697	393G12	058832	55E09
058698	451G10	058837	56B10
058699	563A09	058839	274B03
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058705	371B11	058845	61D13
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058741	509B06	058863	62E10
058744	56B11	058864	24C02
058746	65E07	058865	55C12
058748	487C08	058866	321G09
058770	141B11	058867	509B14
058771	188G02	058868	55E07
058772	151A04	058869	122A07
058777	40E06	058876	62E09
058778	412D06	058879	274B04
058779	40E07	058880	48D02
058780	274A14	058881	48D08
058788	509B07	058882	55G02
058790	64D02	058883	228F01

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058888	221G05
058890	48D06
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058895	141C01
058897	412D07
058898	50D03
058900	487C13
058901	135F12
058902	545C11
058906	103G02
058907	509C02
058912	281G06
058913	62E08
058914	80D11
058921	65B06
058922	78G05
058924	120C10
058925	251E06
058926	321G10
058929	103G04
058930	47C01
058930	53E02
058932	103G08
058934	114G11
058939	509C04
058940	394A06
058941	147F13
058942	321G12
058944	121G12
058945	317E03
058950	105F12
058953	61E12
058955	56C10
058958	47B13
058959	529C04
058960	47B11
058962	80B06
058965	84D09
058965	86G04
058968	509C07
058970	321G13
058975	61D12
058976	300G12

DOCUMENT ID	MICROFICHE PAGE/FRAME
058978	451G11
058984	48D04
058989	283F04
058992	1[illegible]G08
058996	274E05
059001	371C02
059002	24C06
059004	322A03
059006	251E08
059008	24C11
059009	24D01
059015	262D07
059016/059495	37F01
059018	24D02
059024	32E14
059026	24D04
059035	24D05
059038	322A05
059040	24D06
059045	24D08
059045	188G10
059046	7[illegible]1
059047	371C05
059048	24D09
059054	32F02
059058	496C03
059060	101D08
059063	59B07
059069	24D10
059077	251E10
059080	120E04
059085	24D11
059086	371C06
059089	79E03
059091	32F04
059099	451G14
059103	371C07
059108	32F06
059109	121F12
059114	394A10
059116	32F08
059117	300G13
059120	115C12
059121	24D13

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059122	32E07
059123	32F10
059124	371C08
059125	32F12
059129	24E01
059130	32F14
059131	32G02
059133	150A11
059137	283F05
059140	32G04
059141	165F14
059144	79A12
059147	24E02
059148	24E03
059150	251E12
059152	24E05
059155	496C05
059157	32G05
059158	24E07
059160	209C03
059161	412C03
059164	394A11
059165	24E09
059166	32E09
059171	32G07
059172	24E11
059175	209C05
059176	209C06
059178	24E14
059180	188G11
059182	32G09
059183	32G11
059184	86G02
059187	24F03
059189	188A03
059190	251E13
059191	251F01
059192	496C06
059195	33A03
059196	412D09
059199	24F05
059208	24F09
059212	24F10
059213	106D08

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059216	33A05
059221	37F04
059222	165G02
059223	24F12
059225	33A07
059227	24F13
059228	24G01
059229	33A08
059233	394A13
059236	33A10
059240	188G12
059241	116C07
059243	32E11
059244	24G03
059245	33A11
059248	251F02
059250	24G06
059252	322A07
059255	24G09
059256	25A03
059260	43C05
059263	251F03
059267	25A08
059275	33A12
059276	228E13
059277	9E06
059278	228F03
059280	209C07
059281	33A14
059282	33B02
059283	33B04
059287	283F09
059292	25A10
059300	32D14
059302	33B07
059307	25A11
059309	33B09
059311	25A12
059312	209C09
059319	33B11
059323	44F01
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059331	43C08	059434	25D09
059335	33C01	059435	25D11
059340	33C03	059436	25D14
059341	33C04	059438	25E01
059344	25B02	059440	25E02
059345	251F05	059441	251F10
059346	33C05	059442	25E04
059348	33C09	059443	9E08
059353	37F08	059444	25E05
059355	9E07	059446	25E07
059359	121F10	059449	25E08
059362	25B03	059450	25E10
059364	33C10	059451	25E12
059365	25B04	059453	25E14
059367	301A03	059454	74G01
059370	25B05	059455	25F02
059371	37G02	059456	43C10
059374	25B06	059457	51D03
059375	33C12	059457	251F12
059376	25B08	059458	25F03
059377	25B09	059459	509C09
059380	25B10	059461	25F05
059380	33C14	059468	25F06
059383	25B12	059469	25F07
059388	25B13	059470	25F10
059389	33D02	059471	25F13
059390	131G10	059473	25G01
059391	33D04	059475	37G06
059392	33D06	059477	25G02
059398	33D08	059478	147G03
059399	25B14	059479	25G03
059403	25C01	059480	25E07
059409	33D10	059481	25G09
059410	25C02	059482	26A03
059411	33D11	059483	209C10
059414	25C04	059484	26A08
059419	25C10	059487	26A09
059421	33D14	059488	26A12
059422	33E01	059490	9E09
059423	25D03	059491	26A13
059425	25D04	059492	26B03
059426	25D06	059494	26B05
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059500	106G09	059580	26F04
059501	26B07	059582	509C10
059503	26B08	059583	26F05
059504	9E10	059584	26F07
059505	26B10	059587	26F08
059506	26B13	059589	26F09
059507	26B14	059590	26F10
059509	26C01	059591	54C07
059514	26C04	059594	26F11
059516	26C05	059596	26F13
059517	37G08	059597	26F14
059518	79D14	059598	26G02
059521	26C06	059600	452A03
059522	26C07	059601	26G04
059525	37G12	059602	26G07
059526	26C09	059603	74B04
059532	26C10	059608	50G06
059533	26C12	059609	251G01
059534	38A03	059610	26G08
059536	26C13	059611	51A13
059540	26D01	059613	26G09
059542	26D03	059614	26G10
059546	26D08	059619	26G13
059548	26D09	059626	27A03
059549	26D11	059627	27A05
059550	26D12	059632	27A07
059552	26D13	059637	27A09
059553	26E01	059639	27A10
059555	26E02	059645	60G11
059558	86A05	059646	27A11
059560	26E03	059647	137B13
059561	26E04	059648	27A12
059562	54E11	059649	141C03
059564	90B11	059650	27A13
059565	26E07	059653	27A14
059567	50B11	059656	27B01
059570	26E09	059657	27B02
059571	25E11	059665	27B03
059572	9E11	059667	289A03
059573	26E12	059668	40E09
059574	26F02	059669	43C14
059575	26F03	059671	27B04

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059673	27B11
059678	27B13
059680	27B14
059681	40E13
059682	262D09
059685	27C04
059686	371C11
059691	57B08
059692	27C06
059693	247A07
059695	88G07
059697	27C07
059698	58D01
059700	27C09
059702	126F08
059703	27C12
059708	27C14
059714	27D01
059715	40F02
059716	27D04
059717	34F07
059718	274B07
059719	27D06
059721	27D09
059722	51B07
059723	27D10
059724	40F06
059729	27D12
059731	74D13
059733	27D13
059735	27E01
059736	74D04
059738	27E06
059739	36F08
059740	27E07
059741	27E10
059742	27E11
059744	27E14
059746	63C11
059748	79D06
059751	27F05
059752	38A13
059756	44F02

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059757	509C12
059758	188F14
059761	43D04
059762	27F07
059763	27F09
059764	51C13
059766	27F13
059767	62E05
059768	27G02
059771	27G03
059772	38B04
059775	63G04
059777	27G06
059779	27G08
059780	27G10
059781	38B06
059782	147G04
059783	28A03
059784	28A06
059785	28A07
059786	146G05
059787	147G06
059788	28A10
059789	28A11
059790	147G07
059793	74C03
059793	189A07
059794	43D07
059795	509C14
059796	52G06
059796	188G07
059797	28A12
059801	28A13
059802	48E08
059803	28B03
059805	28B06
059808	28B07
059814	28B10
059815	58C12
059818	28B11
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059820	63G01
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059855	28C14
059857	43D13
059858	44F08
059862	28D04
059864	38B10
059867	28D07
059870	51A11
059871	40A03
059872	251G03
059873	28D10
059876	28D14
059879	115C03
059882	115C01
059883	28E03
059887	28E06
059888	44F12
059889	40A08
059891	28E10
059894	54D01
059895	43E02
059896	79G13
059898	38B13
059899	28E13
059901	63D01
059906	52G03
059907	28F02
059908	58C09
059909	40F12
059910	28E10
059911	452A04
059914	28F06
059919	63F11
059922	38C05
059923	209C11
059924	111C03
059926	28F09
059927	371D03
059929	34A03
059932	141C04

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059941	209C12
059942	189A10
059947	38C10
059948	38C13
059949	209C14
059951	34A06
059951	41F07
059953	74F11
059955	52F08
059957	48B14
059958	47B03
059964	44G01
059965	40A09
059972	38D03
059973	50B03
059977	301A05
059978	317E04
059981	54E07
059982	125E07
059982	133F09
059983	165G04
059984	43E05
059987	165G06
059990	51E06
059992	64C07
059993	38D06
059996	79D02
060001	51C08
060005	54E04
060007	63E02
060008	74A11
060015	80B09
060016	87D12
060017	86F14
060018	86A03
060019	87D10
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060039	52F05
060040	38D09
060044	62E02
060046	189A12
060052	274B08
060054	63B07
060054	63B08
060063	74F09
060065	110F07
060068	79A10
060085	90B08
060102	50A14
060118	394B01
060120	108F11
060122	43E08
060132	44G07
060139	371D05
060140	141C07
060142	251G07
060145	251G10
060172	189A13
060185	251G12
060189	123E04
060193	209D04
060194	509D02
060198	412D10
060202/060203	165G11
060203	165G11
060205	78A14
060208	553A11
060214	109G03
060218	189B01
060222	553A13
060223	63D14
060224	189B04
060232	79C14
060233	51C02
060242	47B01
060251	74A07
060251	74A09
060252	62D12

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060261	48A10
060263	74D11
060265	50A11
060267	63D12
060268	496C07
060269	74F07
060271	64C06
060272	371D07
060283	79B09
060294	48E13
060295	394B02
060298	74A03
060299	412D11
060303	74F05
060304	322A09
060305	209D07
060315	141C09
060319	371D09
060326	371D10
060327	110A12
060328	47A06
060328	56C06
060328	116A07
060334	87A03
060338	75B09
060339	79B12
060342	79G10
060349	47A11
060352	509D04
060359	74F02
060381	75B06
060384	79A07
060390	84G12
060408	101D11
060410	87D04
060413	110F06
060418	79B14
060419	126B01
060428	110B01
060431	209D09
060436	86F01
060437	80D10
060438	130D05
060442	88G11

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060447	209D11
060448	79G08
060450	123D09
060452	110F03
060453	252A03
060456	166A03
060458	100B03
060460	51A07
060465	83A03
060472	74E05
060473	79C02
060486	83A05
060489	80A11
060501	80D08
060502	79G06
060504	173E07
060517	74E13
060525	100C04
060530	79C04
060541	252A05
060565	123E01
060566	209E01
060570	228F05
060576	283F10
060582	209E03
060583	88G05
060587	82G03
060593	80D05
060617	252A07
060620	109F14
060621	209E06
060623	87G06
060626	301A07
060633	189B06
060643	88F14
060644	110B05
060647	110F14
060649	110F01
060651	88F10
060653	209E13
060654	371D11
060664	83A07
060670	137F06
060674	152A03

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060676	131B10
060680	110C13
060690	110E13
060691	509D08
060692	113G01
060699	126D06
060701	152D10
060702	109G02
060710	115E05
060714	133F11
060716	100E13
060717	221F10
060723	412E01
060728	118A05
060734	252A11
060737	100B04
060738	88F08
060743	252A08
060744	487C14
060746	156E02
060747	371E01
060748	189B07
060752	108F09
060761	109F11
060762	107C11
060765	274B09
060766	228F07
060769	166A07
060771	107B14
060773	106C04
060780	125A14
060781	108A07
060781	189B08
060789	126E07
060802	136B07
060803	166A09
060810	165A08
060812	156D05
060816	110G12
060817	118F09
060817	129F09
060818	86E04
060819	100C06
060823	100B08

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060826	412E03	060929	125A05
060833	141C11	060932	123F06
060836	125D07	060934	317E05
060838	136B10	060938	100C10
060840	125E02	060939	125B05
060841	209F02	060942	123E11
060846	190D09	060943	137F08
060847	136B12	060944	133F14
060851	189B11	060945	100B14
060853	209F04	060948	100C13
060861	126B04	060953	114F02
060862	100C08	060956	127A07
060867	101B14	060959	529C05
060869	148E06	060960	100F11
060870	228F11	060962	126G03
060873	189B12	060964	152F13
060875	132B02	060965	147G08
060879	108A06	060969	100C02
060880	166A12	060972	125D05
060881	166A13	060973	125E05
060883	141C13	060974	123E12
060884	166A14	060975	100C14
060887	132B05	060976	127B12
060888	132B08	060979	132C01
060890	141D02	060980	138D04
060892	189C05	060982	166B02
060893	125G11	060983	115G05
060896/060400	101D11	060986	322A14
060899	189C06	060990	209F05
060901	127A03	060993	100A12
060904	132B11	060994	141D03
060905	166B01	060998	137F10
060906	136C01	061000	108D07
060907	371E03	061001	108F04
060909	452A07	061005	87G14
060910	301A09	061006	55G03
060912	322A11	061007	301A11
060920	101D06	061008	79G02
060921	189C08	061009	63F06
060923	119G03	061010	46F06
060924	118G06	061011	86G08
060926	137C12	061012	69E09
060927	100B10	061015	87E13

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061019	135C04
061021	51A03
061023	83C01
061026	64C04
061027	79C11
061028	126A08
061028	189C10
061029	51F14
061029	123C07
061029	189D01
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061040	283F12
061049	209F09
061050	104D05
061059	[illegible]C02
061060	[illegible]D05
061062	63A06
061062	189D08
061066	63D05
061067	51G11
061069	58G12
061077	322B01
061078	88D08
061079	209F12
061085	56A13
061087	47C10
061088	75A03
061089	87C10
061091	412E04
061094	141D04
1099	371E05
061103	189D12
061104	47C08
061105	84C02
061107	73F08
061109	47C03
061115	101F01
061116	82E13
061117	80A13
061118	158C14
061119	152C10
061129	50C14
061131	141D12
061139	75B01
061139	189E02
061141	86B04
061143	89C01
061144	82E10
061149	74E09
061150	95F05
061151	48A08
061153	106C13
061154	110C05
061155	274B12
061156	130A03
061157	88A04
061158	86E09
061159	394B08
061160	61G10
061166	412E05
061167	322B03
061169	209F14
061170	189E07
061173	46B07
061176	371E09
061179	452A10
061187	79F06
061195	79B04
061196	148E08
061197	78D08
061197	189E09
061199	156G04
061200	108B10
061203	107B06
061204	81A09
061205	252A13
061208	274C02
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061649	142A09	061756	142B10
061653	142B01	061757	252C09
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062854	123B13	062970	167G12
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062861	123F13	062982	143A08
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062894	125A04	062996	136E10
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064112	452D10
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064196	143C11
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064198	413A03
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064217	168B01
064220	143E09
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064228	192A06
064235	192A08
064240	156E10
064242	159F08
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064274	133C07
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064279	143D01
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065267	253A03	065413	212A03
065268	173G10	065415	212A06
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065336	225B08	065451	274E04
065337	230D08	065452	230E02
065342	194F11	065454	230E03
065349	427G05	065455	212B10
065352	317F09	065455	230E01
065354	194G01	065457	212B12
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065643	212F13
065644	231A06
065645	212F14
065646	212G01
065649	212G05
065650	372C03
065651	284C01
065652	212G07
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065792	322G06	065884	231E08
065793	231C13	065885	231E10
065794	231C14	065888	213D09
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299868	144G09	301549	446F12
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606876	352B06	607016	352D13
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606908	221B01	607030	352F10
606916	239A05	607033	309D14
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607330	129D11
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607362	468F10
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607401	353D09
607404	309E04
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607407	91A11
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607455	119D13
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607607	449G04	607726	450A03
607608	353E07	607728	449G14
607612	239B04	607730	398A09
607614	449G06	607730	450A05
607626	449G08	607738	239B10
607627	449G09	607743	103B03
607628	120C13	607744	239B12
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607768	331B09	607841	180B03
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607782	155E04	607891	239C02
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607799	450C08	607908	354A11
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607802	450C10	607914	202A11
607803	91A14	607918	239C04
607805	450C11	607926	121A03
607806	331B11	607927	450F11
607806	450C13	607928	450F13
607808	450D02	607933	450G02
607809	239B14	607943	145D07
607811	450D04	607944	77G11
607812	422E05	607947	77G09
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607813	450D08	607951	450G06
607815	91A07	607954	331C05
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607817	180B01	607957	450G11
607821	450D09	607963	468F10
607823	450D11	607965	450G13
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608245	355A10
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608420	355C09
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608431	150G02
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608437	355C14
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608444	202A13
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608522	469D13	608778	331G03
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608530	221B11	608798	145F01
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608539	291A12	608813	221C01
608540	309F01	608820	467E01
608541	309F02	608823	77F12
608542	309F03	608826	239D05
608544	469F04	608829	484E03
608559	469F06	608833	467E04
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608563	469F09	608852	515G10
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608569	469F11	608883	58F11
608570	469F12	608891	239D08
608573	291A13	608898	331G06
608577	331G01	608912	239D10
608593	102B02	608914	202B03
608598	77F08	608928	291B01
608605	47G12	608943	77F11
608613	331G02	608944	145F02
608617	309F04	608951	239D12
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608639	31C13	608975	77F10
608649	111C13	608976	268C14
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608662	145D14	608979	331G07
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609063	145F06
609072	239E06
609074	239E08
609075	309F08
609078	469E04
609103	309F09
609107	31D05
609109	239E10
609116	239E11
609152	145F08
609180	484E05
609185	309F11
609188	291B03
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609211	221C09
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609227	180C07
609234	309G04
609253	239E13
609256	484E07
609260	35C12
609266	469F13
609287	221C10
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609444	291B10
609447	309G09
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609453	309G10
609463	268D02
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609654	559D12	609877	506A07
609657	310[illegible]04	609878	310B01
609664	422E07	609884	239G10
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609669	310A06	609890	422E11
609670	484E10	609891	291C06
609671	310A07	609891	355E13
609671	310A09	609894	221D10
609675	202B10	609900	506A08
609675	202B11	609901	239G12
609677	506A05	609904	221D13
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609681	559E01	609913	240A03
609691	129E03	609931	83A09
609695	145G11	609934	240A07
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609758	278F11	609960	310B04
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609823	310A13	610101	180D01
609834	180C13	610105	355F03
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610138	550G01	610473	484F13
610139	422E14	610475	431F07
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610159	291C11	610502	368A03
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610163	506A13	610511	368A07
610164	484F01	610520	368A09
610173	221E11	610525	368A11
610175	550G04	610534	559E05
610182	278F13	610535	202B12
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610196	559E03	610603	398B04
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610211	240C01	610836	368A13
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610298	484F08	611133	398C10
610307	484F09	611148	398C13
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650073	332E12
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650077	180D04
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650084	291D05
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706772	120A12	707233	135A06
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707057	151D01	707471	468B11
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712498	506D10	712973	424A10
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808463	552A03
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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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809094	524C01	809374	520E01
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PCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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812649	562C04	813162	562F13
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RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OFFICE OF REGULATIONS AND RULI

DATE 01/07/86

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813385	563A12	813769	568F12
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813680	568F08	814217	569B14
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815082	573E14
815109	576G04
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THE DEPARTMENT OF THE TREASURY

BUREAU OF CUSTOMS

WASHINGTON, D.C.

NOV 13 1972

REFER TO

MCB 483.52 L
020956

020956

Dear

Your letter of June 1, 1972, further concerns the tariff classification of your paper product known as Storalene. Based upon the information which you gave us in your letter of November 30, 1971, and samples submitted with that letter, Storalene sample No. 1a if produced on the usual conventional type of complete papermaking machine was classified under the provision for other papers not specially provided for, weighing over 9 but not over 18 pounds per ream (432,000 square inches), not impregnated, not coated, not surface-colored, not lined, not printed, and not decorated, in item 252.79, Tariff Schedules of the United States (TSUS), presently dutiable at the rate of 0.5 cent per pound plus 2 percent ad valorem.

You now state that Storalene is based on woodpulp and short rayon fibers and is made on a papermaking machine; before the web enters the drying end, it is saturated with a binder which usually is latex. This binding agent is said to completely penetrate the sheet. You suggest tariff classification under the provision for other papers not specially provided for, impregnated, coated, or both, but not otherwise treated, in item 254.80, TSUS, presently dutiable at the rate of 1 cent per pound plus 2 percent ad valorem.

When a binder such as latex is applied while the web is being formed on the papermaking machine, or if the binder is blended in the furnish from which the paper is formed on the paper making machine, the resultant paper if represented by tne submitted samples is classifiable under the provision for other papers weighing over 18 pounds per ream, not impregnated, in item 252.90, TSUS, and dutiable at the rate of 10 percent ad valorem.

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When the binding agent is applied to the web of paper after the web is formed on the papermaking machine, before the web enters the dryer of the machine, the binding agent saturates the web. The resultant paper is classifiable under the provision for other papers, not specially provided for, impregnated, coated, or both, but not otherwise treated, in item 254.80, TSUS, and dutiable at the rate of 1 cent per pound plus 2 percent ad valorem.

Storalene represented by the submitted samples is classifiable according to the method whereby the binding agent is applied, either in item 252.90, TSUS, or in item 254.80, TSUS.

The ruling contained in Bureau letter MCB 483.52, February 28, 1972, is hereby modified to be in agreement with the ruling expressed in this letter.

Sincerely yours,

James M. O'Neil

ACTING Director
Division of
Classification and Value

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

640.30

MAY 05 1975

REFER TO
CLA-2:R:CV:MA
037037 WIS

Dear Mr.

In your letters dated October 23, 1974 and February 18, 1975, you inquire as to the tariff status of various containers. We assume that the containers are products of a country entitled to column 1 rates of duty.

The containers are described and classifiable as follows: Item (A) is a three sided steel container with an open top. The importer states that Item (A) can only be used for transporting compressed air tanks. If Item (A) is chiefly used for transporting compressed air tanks, it would be classifiable under the provision for containers chiefly used for transporting, other, in item 640.30, Tariff Schedules of the United States (TSUS), with duty at a rate of 5 percent ad valorem. However, if Item (A) is not chiefly used as forementioned, then item 657.20, TSUS, would be applicable with duty at a rate of 9.5 percent ad valorem.

Item (B) is a four sided steel container with a door for inserting a drum, and a hasp for a padlock. The importer states that Item (B) is not normally transported anywhere, but rather, it holds the drum until the drum is filled and removed from the container. If Item (B) is chiefly used as forementioned then it would be classifiable under the provision for articles of iron or steel, not coated or plated with precious metal, other articles, other, in item 657.20, TSUS, with duty at a rate of 9.5 percent ad valorem.

Item (C) is a four sided steel container. It is equipped with a foot/skid attachment which permits the container to be raised for dumping. It is not stated as to whether the container has a mechanical lifting device as a integral part of the container. If Item (C) does have a mechanical

TO THE

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REPLY TO COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

lifting device as an integral part, then it would be classifiable under the provision for lifting, handling, machinery, in item 664.10, TSUS, with duty at the rate of 5 percent ad valorem. However, if Item (C) does not contain a mechanical lifting device, then item 657.20, TSUS, would be applicable with duty at a rate of 9.5 percent ad valorem.

Sincerely yours,

Arthur P. Schaffner
For Salvatore E. Caramagno
Director
Classification and Value Division

037037

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: JUL 19 1976

FILE: CLA-2:R:CV:MC
045639 BS

TO : District Director of Customs
Minneapolis, Minnesota 55401

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 38/76, concerning the tariff classification of "Gold stamps".

This is in reply to Internal Advice Request No. 38/76, initiated by [redacted] on behalf of [redacted] St. Paul, Minnesota, concerning the tariff classification of 23-karat gold "postage stamps" issued under the authority of the Island of Staffa, Scotland. A sample "stamp", "first day cover", promotional literature, and Catalogue of British Local Stamps were submitted. Although not specifically marked on the "stamps", the country of origin is indicated to be the United Kingdom.

The submitted sample "stamps" (the single mint "stamp" and the cancelled stamp on the "first day cover") are relatively flat rectangles of metallic, gold-colored foil, stated to be of 23-karat gold, and backed with an adhesive coating which in turn is protected by a release paper. The samples are "pressure sensitive" as defined in Headnote 2, Subpart A, Part 13, Schedule 7, Tariff Schedules of the United States (TSUS). The articles measure approximately 2 inches by 1-1/2 inches by .007 inch (including the paper backing). The backing paper is approximately .0025 inch thick. The articles, including backing paper, weigh approximately .3409 gram and are perforated at approximately 10 perforations per inch (8 perforations per 2 centimeters).

The "stamps" have been embossed to indicate that they are "postage" of "STAFFA SCOTLAND", are of "23K GOLD", and are of 6 pounds face value (approximately $11.00). Dominating the center of each "stamp" is an embossed design. One design is stated to be the seal of New Jersey; the other, of Pennsylvania. No ink or other processes commonly used in the printing industry were employed in the creation of the "stamps".

It is the contention of the inquirer that the submitted samples are classifiable either under the provision for postage and revenue stamps, cancelled or not cancelled, and Government stamped envelopes and postal cards bearing

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paperboard not specially provided for, in item 256.90, TSUS. Had the prints in that decision been manufactured by using a printing process they would have been classified under one of the more specific provisions for printed matter. Although we have found no recent court cases stating that embossing is not a form of printing, the above evidence reasonably suggests that embossing is not a form of printing included within Headnote 1, Part 5, Schedule 2, TSUS.

In T.D. 66-17(ii), 101 Treas. Dec. 59 (1966), and in Headquarters letters 035992LXL dated December 19, 1974, 039287 dated April 11, 1975, 039904 dated June 10, 1975, and 043824LXL dated February 4, 1976, we ruled that metal replicas of postage stamps, which were issued by a recognized government and which may have been of interest to collectors, were classifiable under the provision for articles of gold, including rolled gold, in item 656.10, TSUS. The articles in those cases were not constructed and had no provisions for attaching them to mail, and could not be construed as constituting postage in any sense. Although different in some respects from the merchandise involved in the above-cited cases, it is our opinion that the similarities in construction (as stamped metal objects) and function (as collector's items) of the submitted merchandise to the replicas previously ruled upon do not alter the nature or the classification of the merchandise. In this regard, please note that all materials with pressure sensitive backing are not classifiable under the provision for pressure sensitive sheets, strips, tapes, monograms, and other pressure sensitive flat shapes or forms, in item 790.55, TSUS. (See ORR 289/71 classifying sheets of pressure sensitive cork wall panelling under the provision for articles not specially provided for, of cork, in item 220.50, TSUS, and Headquarters letter 018509, SP511.4 dated March 10, 1972, in which pressure sensitive, printed paper labels were found classifiable under the provision for printed paper labels, not printed in whole or in part by a lithographic process, in item 274.35, TSUS.)

The submitted "stamps" were neither issued nor have they been recognized by a government. They are not and never were intended to be used as postage. They are classifiable under the provision for articles of gold, including rolled gold, in item 656.10, TSUS.

You may furnish the inquirer with a copy of this memorandum.

Salvatore E. Caramagno

Salvatore E. Caramagno

[redacted]

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685.90

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 2 1976

REFER TO

CLA-2:R:CV:MA
047377 NM

047377

Dear

In your letter of August 25, 1976, you inquire as to the dutiable status of heating units and control units for saunas. Descriptive literature was submitted for examination.

The descriptive literature indicates that Tylo sauna heating units consist of metal box containers that hold rocks which are heated by an electric element. If imported separately or if imported with a control panel, the sauna heating unit is classifiable as other furnaces, heaters, and ovens, and parts thereof, in item 684.40, Tariff Schedules of the United States (TSUS), and dutiable at the column 1 rate of 5 percent ad valorem and the column 2 rate of 35 percent ad valorem.

If imported separately, the electric control panels are probably classifiable as control panels, in item 685.90, TSUS, and dutiable at the column 1 rate of 8.5 percent ad valorem and the column 2 rate of 35 percent ad valorem. In order for us to provide you with a binding ruling as to the dutiable status of these panels, you should furnish us a full and complete description of the control panels in their condition as imported into the United States.

Articles manufactured in designated beneficiary developing countries which are classifiable in items 684.40 and 685.90, TSUS, are entitled to duty-free entry provided they otherwise qualify for this preferential status in accordance with regulations promulgated by the Secretary of the Treasury pursuant to the Generalized System of Preferences. Enclosed is a copy of General Headnote 3, TSUS, which lists those countries that are designated beneficiary developing countries and those countries whose products are dutiable at column 2 rates.

Sincerely yours,

Salvatore E. Caramagno
Director
Classification and Value Division

Enclosure

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NOV [illegible] 1976

CLA-2:F:CV:RA
047388 EB

047388

Area Director, Classification and Value
New York Seaport, New York 10048

Director, Classification and Value Division

Internal Advice Request No. 38/76, concerning the tariff classification of "Gold Stamps"

This is in reply to your memorandum dated August 26, 1976, by the Assistant Area Director, Classification and Value, New York Seaport, New York, concerning the tariff classification of 23-karat gold "postage stamps" issued under the authority of the Island of Staffa, Scotland. Two sample "stamps" and "first day cover" were submitted. Although not specifically marked on the stamps, the country of origin is indicated to be the United Kingdom.

The submitted sample stamps are pressure sensitive rectangles of metal, stated to be 23-karat gold, and backed with an adhesive coating which in turn is protected by a release paper. Headnote 2, Subpart A, Part 13, Schedule 7, Tariff Schedules of the United States (TSUS), states that, "the term pressure-sensitive as used in items 740.50 and 740.55 refers to articles which have an adhesive coating on one or both surfaces that will adhere to other surfaces upon the application of pressure only."

The samples measure approximately 2 inches by 1-1/2 inches by .007 inches (including the paper backing). The backing paper is perforated at approximately 10 perforations per inch. A laboratory analysis determined that the stamp weighed 0.351 grams and its composition by weight to be as follows:

adhesive	13.0%
paper backing	34.1%
paper (w/backing and gold removed)	38.7%
gold	10.0%

Information received from the Minneapolis field office indicates the samples constitute part of a commemorative set consisting of 41 stamps, of which approximately half do not fit the definition of pressure sensitive. The stamps have been enclosed to indicate that they are "postage" of "Staffa Scotland," are of "23-Karat Gold "and

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are of 6 pounds face value (approximately $11). Dominating the center of each stamp is an embossed design which includes the 13 original colonies, 23 flags of various nations, a Betsy Ross stamp, mothers' day stamp, fathers' day stamp, half-dollar stamp and Independence Hall stamp. No ink or other processes commonly used in the printing industry were employed in the creation of the stamps.

In a prior Internal Advice 38/76, date July 19, 1976, this office determined that the commemorative stamps presently under consideration were not classifiable under the provision for postage and revenue stamps, cancelled or not cancelled, in item 274.40, TSUS, and subject to duty-free entry; but were properly classifiable as articles of precious metal, gold, in item 656.10, TSUS, and dutiable at a rate of 20 percent ad valorem.

You contend that this merchandise is classifiable under the provision for sheets, strips, tapes, stencils, monograms, and other flat shapes or forms, which are pressure sensitive, with or without protective liners, in item 790.55, TSUS, and dutiable at a rate of 10 percent ad valorem.

The mere fact that the subject stamps possess the characteristic of being pressure sensitive is not, in and of itself, sufficient to warrant classification in item 790.55 ,TSUS. This office in several previous rulings has held that certain pressure sensitive articles were more appropriately classifiable under other provisions of the tariff schedules.

In Headquarters' letter 039287 C, dated April 11, 1975, it was determined that precious metal replicas of Olympic Commemorative stamps issued under the authority of the Canadian Government were properly classifiable under the provision for articles of precious metal, of gold, in item 656.10, TSUS, and dutiable at a rate of 20 percent ad valorem. A similar result was reached in Headquarters' letters 039404 IML, dated February 4, 1976.

In Headquarters' letter 014300 C, dated November 19, 1971, it was determined that certain pressure sensitive square decorative pieces of vinyl plastic, which were approximately 11-1/2 inches square and having a surface embossed with sixteen 2-1/2-inch squares, simulating a mosaic design were classifiable under the provision for wall coverings of plastics, not specially provided for, with or without applied adhesive, in item 772.70, TSUS.

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047388

Area Director, New York Seaport

In a decision abstracted as T.D. 66-14(11), eighteen karat gold replicas of Winston Churchill commemorative stamps were held classifiable under the provision for articles of precious metal gold, including rolled gold, in item 656.10, TSUS, and dutiable at a rate of 20 percent ad valorem.

Further, the subject embossed stamps are not flat shapes or forms, which are pressure sensitive, as set forth in item 790.55, TSUS. In United Mineral & Chemical Corp. v. United States, 63 Cust. Ct. 522, C.D. 3946 (1969), the Customs Court held that polyurethane plastic foam laminated to double-faced pressure sensitive polyvinyl chloride tape covered with a protective liner and having a sponge thickness from 1/8 inches to 3/8 inches would be excluded from classification in item 790.55, TSUS, since it was not flat within the intendment of that provision. The rationale for this decision was based on the fact that the article under consideration had a highly irregular surface, with depressions and elevations. In the Court's opinion the article, although pressure sensitive, did not possess the quality of flatness contemplated by Congress in the enactment of item 790.55, TSUS.

A similar result was reached by the Customs Court in Pedtro, Inc. v. United States, 69 Cust. Ct. 219, C.D. 4397 (1972), where certain pressure sensitive reflectors having a convex reflecting surface were excluded from classification in item 790.55, TSUS.

The explanatory notes of the Tariff Classification Study, to Schedule 7, Part 13, indicates that item 790.55, TSUS, was intended to specifically cover certain flat pressure sensitive tapes which prior to the enactment of 790.55, TSUS, were classifiable according to component material of chief value.

Websters' New World Dictionary, 2nd College Edition (1972), defines embossed as, "to carve, raise, or print (a design, etc.) so that it is raised above the surface; raised in relief." The stamps are pressure sensitive as defined by headnote 2, Subpart A, Part 13, Schedule 7, TSUS; but, are not flat shapes or forms as set forth in item 790.55, TSUS.

Based on the above we adhere to our original position that these stamps are classifiable as articles of precious metal, gold, in item 656.10, TSUS, and dutiable at a rate of 20 percent ad valorem.

[redacted]

"Signature"

Salvatore F. Cerra, Jr.

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DEPARTMENT OF THE TREASURY-U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-18-

047388

JUN 12 1973

R:CV:S DAL
055545

Dear

This office has reconsidered its ruling of April 21, 1973 in the above-referenced matter and has concluded that a modification of that ruling is necessary.

In your letter of March 20, 1973, you indicate that your company is engaged in the assembly of video display terminals in Hong Kong, and that this assembly operation involves the fabrication of several printed circuit boards which are subsequently assembled with a CRT unit, power supply, cable assembly, keyboard unit, various other components and external housing. This operation produces a finished video display terminal suitable for use in various office machine applications. Focusing on the manufacture of the printed circuit boards, you state that the operations performed in Hong Kong by your company are virtually identical to those performed by the inquirer in an earlier ruling issued by this office (CLA-2-R:CV:S, 047150 RG):

1. A raw fiber glass or plastic sheet of foreign origin will be printed in Hong Kong with the required circuit diagram.

2. This sheet will be etched, cleaned and lacquered with an anti-solder resistant material, and will then be punched so that individual circuit board cases of the required sizes are formed. Holes will also be punched through the bases.

3. Electronic transistors, resistors, capacitors and diodes of foreign origin will then be "stuffed" into the pre-punched holes in the base and soldered in position. Excess leads will be cut off, and the formation of the circuit board will be complete.

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In our ruling of April 21, we clarified our earlier decision (i.e. 047150 RG) and held that:

> the printed circuit board is a "material produced in the beneficiary developing country (BDC)" for GSP purposes, and that its value (which consists of the value of its components--including those electronic components sourced outside Hong Kong) may be considered in determining whether the video display terminal you intend to export to the United States meets the 35 percent criteria established by the Generalized System of Preferences. (Emphasis added).

In T.D. 76-100 the Customs Service took the position that "/a/rticles produced by the joining and fitting together of components are not considered substantially transformed constituent material." Clearly, the stuffing of electronic components into prepunched holes would fit within this description, and for this reason we are compelled to reconsider our earlier decision and conclude that the electronic components sourced outside Hong Kong are not substantially transformed constituent materials of the video display terminal and that their value may not, therefore, be utilized in determining whether the GSP-imposed 35 percent test has been met. However, the imported sheets which are printed, etched, cleaned, lacquered and punched into circuit board bases are "substantially transformed constituent materials" used in the production of the video display terminal, hence, their cost value is properly includable in determining whether the 35 percent criterion has been satisfied.

Sincerely yours,

Paul L. Cinquegrana

for Salvatore R. Camarano
Director
Classification and Value Division

Enclosure

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[redacted]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

14 JUN 1979

REFER TO
R:CV:S DAL
055566

This is in reference to your letter of May 4, 1978, in which you requested a ruling as to the applicability of the Generalized System of Preferences (GSP) to stuffed, printed circuit boards produced in a beneficiary developing country (BDC). As you noted in your letter, the fact situation in this case closely resembles that which appeared in two earlier rulings issued by this office (CLA-2-R:CV:S, 047150 RG, January 18, 1977; R:CV:S DAL, 055545, April 21, 1978):

1. A raw fiber glass or plastic sheet of foreign origin is printed in Hong Kong with the required circuit diagram.

2. The sheet is then etched, cleaned, lacquered, and punched into individual circuit board bases of the required size. Holes are punched through the bases.

3. Electronic components consisting of an integrated circuit, resistors and capacitors are "stuffed" into the prepunched holes in the base, contact clips are attached and all are soldered into position. Excess leads are cut off the components. A Liquid Crystal Display (LCD) is attached to the board via a metal frame and screws. Alternatively, the LCD may be attached by a metal frame and twist tabs Most of the components that are attached to the board are not of Hong Kong origin.

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REPLY TO COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

4. Assembly of the completed calculator now begins. First, the keys are inserted into the top housing. Next, the lens, spring and battery clip are placed in the housing. The keyboard insulator and conductive rubber dome are laid over the keys. The circuit board is inserted into the top case and attached with 4 screws. Finally, the batteries are inserted and the backplate is attached with 2 screws.

In order for an article to be eligible for duty-free treatment under GSP, the sum of (1) the cost or value of materials produced in a BDC, and (2) the direct costs of processing operations must equal or exceed 35 percent of the appraised value of the article. If the materials used to produce the eligible article are not wholly the growth, product or manufacture of the BDC, they must undergo a substantial transformation in order that they may be considered as having been "produced in the BDC" for GSP purposes. These substantially transformed constituent materials must then be used to produce the eligible article which is subsequently exported to the United States before they can be included within the 35 percent criterion set by the GSP. The question presented in this case is whether the stuffed, printed circuit board qualified as a "substantially transformed constituent material" produced in the BDC such that its cost or value is properly includable within the GSP-imposed 35 percent requirement.

Having analyzed the production processes involved in this case, we conclude that the imported sheets which are printed, etched, cleaned, lacquered and punched into circuit board bases are "substantially transformed constituent materials" used in the production of the calculators. Accordingly, their cost or value is to be considered in determining whether the 35 percent criterion has been satisfied. However, the value of the electronic components (of foreign origin) which are stuffed into the circuit board bases may not be included in the 35 percent requirement since they are not considered substantially transformed constituent materials of the calculators.

In T.D. 76-100 this office took the position that "/a/rticles produced by the joining and fitting together of

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components are not considered substantially transformed constituent materials." Since the stuffing of the electronic components into the printed circuit board bases is a "joining" operation, the circuit board with electronic components does not qualify as a "material" produced in Hong Kong for GSP purposes. Essentially, the imported electronic components have not been substantially transformed, and are therefore not properly includable in the 35 percent test.

Sincerely yours,

Paul G. Clarke

Salvatore E. Carmagno
Director
Classification & Value Division

Enclosure

055586

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FEB 16 1978

CLA-2:R:CV:MA
056064 LXL

Dear Mr.

In your letter of December 20, 1977, you inquire as to the tariff status of a pad of polyurethane made in Mexico. The pads are further designated as a RF-4 Elastomer Unit.

The pad is made of a tough polyurethane material sandwiched between and bonded to a pair of 10 gauge, 6-1/2" diameter, steel plates. The blueprint illustrates a pulley like object, 1.708. inches thick with an indentation in the middle of one of the plates and a corresponding projection on the other steel plate. The article weighs 3.56 pounds. You state that ten of the parts are placed in series with the friction elements within a railroad draft gear. The series of pads act as a powerful 200,000 pound spring. The draft gear plays an essential role in coupling operations of a train.

If the pads are used as parts of draft gear chiefly used on passenger, baggage, mail, freight and other cars which are not self-propelled, they are classifiable under the provision for other parts of cars provided for in item 690.15, in item 690.35, Tariff Schedules of the United States (TSUS) and dutiable at the rate of 9 percent ad valorem.

Sincerely yours,

[Signed Arthur P. Schiffrin]
for Salvatore E. Caramagno
Director
Classification and Value Division

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SIGN AND DATE	U						
SURNAME							

DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

MAR 30 1978

CLA-2:R:CV:MA
056152 JB

Dear Mr.

Your inquiry of January 16, 1978, requested the tariff classification of certain rail vehicles manufactured in West Germany.

Two different cars, a muck haulage car and a concrete remixer car, were described. Both cars are industrial railroad cars. Neither is a self-propelled unit. They are designed to be moved by a locomotive and have a coupling system so they can be coupled together to form a train. Both vehicles are mounted on two four-wheel bogies. The muck hauler comes equipped with an automatic emptying system on board.

These industrial railroad cars would be classifiable as railroad and railway rolling stock: passenger, baggage, mail, freight and other cars, not self-propelled, under item 690.15, Tariff Schedules of the United States (TSUS), dutiable at the rate of 18 percent ad valorem.

Sincerely yours,

Salvatore E. Caramagno
Director
Classification and Value Division

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CODE AND DATE							
SURNAME							

FEB 07 1979

CLA-2:R:CV:MSP
058855 LB

058855

Dear

In your letter of January 22, 1979, you refer to your submission on behalf of regarding the tariff classification of a transformer-rectifier unit and a control panel with a reactance coil entered at Champlain, New York.

You state that the port is withholding liquidations on several entries on which refunds under item 807, Tariff Schedules of the United States (TSUS), are due. You indicate that your client will accept classification of the control panel under item 685.90, TSUS.

On November 7, 1978, file 058436, this office ruled that the switchgear cubicle, with primary reactance coil, was classifiable under the provision for control panels in item 685.90. It is assumed that no problem is involved with the transformer-rectifying apparatus portion of the shipments.

Sincerely,

(Signed) R. X. ARNOLD

Salvatore E. Caramagno
Director
Classification and Value Division

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

CIS-2:R:CV:MC
NOV 5 1979 061738 RC

The Honorable
Richard G. Lugar
United States Senate
Washington, D.C. 20510

Dear Senator Lugar:

With your letter of October 19, 1979, you enclosed a letter from concerning the rate of duty on Di Basic Lead Phthalate. questions the tariff classification of this product in item 403.60, Tariff Schedules of the United States (TSUS).

Item 403.60, TSUS, covers:

> Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure, not provided for in subpart B or C of this part:
> Other:
> Other

According to , Di Basic Lead Phthalate, formed from a reaction between phthalic anhydride and lead oxide, has a final analysis of about 80 percent lead oxide and 20 percent phthalic anhydride. Phthalic anhydride is a benzenoid specifically provided for by name in Schedule 4, Part 1 ("Benzenoid Chemicals and Products") of the Tariff Schedules, in item 403.08, TSUS. Since Di Basic Lead Phthalate is a compound composed of benzenoid ingredients, Customs is directed by statute to classify the product in Schedule 4, Part 1, as set out in Schedule 4, Part 1, Headnote 1:

> 1. Except as specifically set forth in the headnotes to other parts of this schedule, all products described in this part shall be classified hereunder even if more specifically described elsewhere in this schedule.

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Hence, Di Basic Lead Phthalate is a benzenoid product properly classifiable in item 403.60, TSUS, dutiable at the rate of 1.7 cents per pound plus 12.5 percent ad valorem.

The U.S. Customs Service has no authority as an administrative agency to alter the benzenoid statutory provisions, this being primarily a legislative matter. If you would like to pursue this matter further, you might contact the Office of the Special Representative for Trade Negotiations, 1800 G Street, N.W., Washington, D.C. 20506.

If we can be of further assistance to you, please feel free to call on us.

Sincerely,

(Signed) John R. Thorne

John R. Thorne
Special Assisstant to the Commissioner
(Congressional Affairs)

Enclosures

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[redacted]

AUG 0 1 1980

CLA-2:RRUCSC
063884 RK

063884

Dear

In your letter of July 18, 1980, you asked for a further explanation of the styling of girls' knit top garments which you propose to assemble in a foreign country from component parts and materials of United States origin. This was the subject of a previous letter dated June 19, 1980, under file No. 063798.

It was previously stated that the knit tops, which are assembled abroad from domestic components pre-cut to size and pattern shape and exported rolls of reinforcing cotton fabric, elastic, and picot-edged material, would qualify for allowances from the payment of duty under the assembly provisions of item 807.00, Tariff Schedules of the United States (TSUS).

The picot-edged ruffle material, consisting of one-inch wide matching knit fabric with small threadlike loops forming an ornamental edging is exported in roll form, cut to proper length, and merely sewn to the garment to form the ruffled collar. This foreign assembly process qualifies the imported garment for item 807.00 tariff treatment. Similarly, garments sewn with either picot-edged ruffle or binding material, or both, would also qualify for item 807.00 tariff relief.

With respect to classification, however, duty is assessed under item 807.00, TSUS, on the difference between the total value of the imported merchandise and the cost or value of the exported components. Upon entry into the United States, imported garments that are considered ornamented are assessed with duty at the rate for ornamented wearing apparel, subject to the partial exemption from duty under item 807.00, TSUS. Or, stated another way, classification of the imported garments is subject to the duty assessed on the difference between the value of ornamented wearing apparel and the value of the exported components of United States origin under item 807.00, TSUS. As stated in the literature submitted with your letter, the garments are ornamented for tariff classification purposes by virtue of the ruffle at the neck.

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In these circumstances, garments imported with picot-edged ruffles at the collar are subject to the rates of duty for ornamented wearing apparel, while garments with only binding material around the neck opening are not. In both cases, the assembly provisions of item 807.00, TSUS, remain applicable.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief
Special Classification Branch

Enclosure

063884

Rec:
6/19/80
063798

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NDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

CLA-2 CO:R:CV:G
065545 BB

26 JAN 1981

[redacted]

Dear [redacted]

This is in response to your letter of October 30, 1980, requesting the tariff classification of certain aluminum carbody shells manufactured by [redacted] (Your file 50-2).

The shells in question comprise the sidewalls, end bulkheads, roofs and underframes of not self-propelled railway passenger cars. The shells have only been prime coated. After importation the wheel assemblies, couplers, brake system and all interior details are added. The value of the imported carbody is estimated to be 25%-35% of the value of the finished railway car.

The classification issue is whether these carbodies constitute parts of railway cars or whether they are substantially complete so as to constitute unfinished railway cars.

Applying the criteria for making this determination enunciated in Daisy-Heddon, Div. Victor Comptometer Corp. v. United States, 66 Cust. Ct. 97, C.A.D. 1228 (1979), and in light of Headquarters Ruling Letters

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(HRL) 062842 dated November 20, 1979, and HRL 043520 dated March 31, 1976, we conclude these carbodies are parts of railway cars.

Accordingly, the subject merchandise is properly classifiable under the provision for parts of not self-propelled railway passenger cars in item 690.35, Tariff Schedules of the United States (TSUS), dutiable, as products of Canada, at the column 1 rate of 8.1 percent ad valorem.

Sincerely,

(Signed Arthur P. Schifflin

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

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SURNAME							

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 190 (11-15-73)

11 FEB 1981

CLA-2 CO:R:CV:G
065831 JLV

065831

Chief, Duty Assessment Branch 1/11
New York Seaport

Director, Classification & Value Division
Headquarters

Classification of wire cut to length

In your memorandum of December 4, 1980, (Your file CLA-2-06-SCD-11-CST-18,437), you requested classification of Headquarters' position on the classification of cut wire in view of Section 20 of Public Law 96-467, October 17,1980. Section 20 amended Headnote 3(i) to subpart B of part 2 of schedule 6, TSUS, by striking out "cut to length." The legislative history indicates that the primary purpose for the change was to ensure that certain small diameter cold finished steel bar would be classified as bar rather than as wire.

The issue is whether wire products cut to length, other than the small diameter cold finished steel bar, are now precluded from classification under the provisions for wire.

It is our opinion that the amended headnote language must control. The term "wire" is defined for tariff classification purposes in headnote 3(i) of subpart B, part2, schedule 6, TSUS. The language is clear and should be applied as such. We note that the court in Overton & Co. v. United States, C.D. 4875 (1980), stated the statutory definitions for "bars" and "shapes" were determinative of the scope of the tariff provisions for such articles. The statutory provision for "wire" is similarly controlling.

The legislative history for section 20 of P.L. 96-467 indicates that the primary concern was to make certain that cold finished steel bars were classified under the provision for bars which carries a significantly higher rate of duty. On page S13661 of the Congressional Record, September 26, 1980, it was stated:

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***This provision would provide for a change in definition of steel wire so as to exclude the "cut to length" products, mainly of cold finished steel, from that definition.

It was also acknowledged in House Report No. 96-566 on H.R. 4309 (the original bill to change headnote 3(1)) that wire is usually shipped in coils whereas the small diameter cold finished steel bars are shipped cut to length.

It appears, therefore, that the Congress was aware that cut to length products other than steel bars would be affected. No attempt, however, was made to differentiate between these products. In view of this, we believe that wire, cut to length, is now precluded from classification as wire. Such wire would be classifiable under the appropriate provision for bar, or, if the wire does not fit the definition for bar, then it would be classifiable under the provision for angles, shapes, and sections.

The cut to length wire products would not be classifiable as either parts or as articles of metal unless it could be determined that they are processed to the degree that they are dedicated to the making of a specific article. Avins Industrial Products Co. v. United State, 62 C.C.P.A. 83, C.A.D. 1150 915 F.5), is controlling on this issue.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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AND DATE						
SURNAME						

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-5-73)

JAN 0 4 1982

067633

CLA-2:CO:R:CV:S
067633 KW

Chief, Customs Information Exchange
United States Customs Service
6 World Trade Center
New York, New York 10048

Dear Sir:

Customs Form 6431, dated March 24, 1980, relates to a difference of opinion concerning the classification of certain elevator controllers, made in Canada by and imported through the port of Buffalo, New York under entry No. 309958 of February 15, 1980.

FACTS:

The merchandise in question consists of elevator controllers with common relay panels whose primary function is to start and stop the elevators and to control their acceleration and deceleration. They are essentially electrical in operation and will be automatically monitored by computerized circuitry to permit normal functioning.

ISSUE:

Whether the controllers are classifiable as control panels under item 685.90, Tariff Schedules of the United States (TSUS), or as parts of elevators under item 664.10, TSUS.

LAW AND ANALYSIS:

It is suggested that the processing of data to accomplish the switching operations by relay panels and the changing of speed may be sufficient to render the apparatus more than a control panel. This identical issue was the

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subject of our ruling dated June 28, 1979 (061411), which covered a difference case involving elevator controllers made in Canada and apparently operating in the same manner as the subject devices. In that case we held that the controller units came within the description of control panels and this specific provision would prevail over the provision for parts of elevators in view of General Headnote 10(ij), TSUS. We do not believe that the presence of computerized circuitry is sufficient to remove these automatic controllers from the description of control panels.

HOLDING:

In view of the foregoing, we are of the opinion that the subject elevator controller units should be classifiable under the provision for control panels in item 685.90, TSUS, at the then existing rate of 8.1 percent ad valorem.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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067633

JUL 2 7 1982

CLA-2:CO:R:CV:S
067786 SC

067786

Dear

In your letter of April 29, 1982, you request information regarding the tariff status of various mini timers made by the in Japan.

You state that these devices have various applications such as controlling cookers, lights, etc. The sample HRT submitted consists of a relay, several capacitors, a potentiometer, 5 resistors, and 2 transistors, all mounted on a circuit board attached to an 8-prong base and enclosed in a plastic case.

Timers of this description, which do not contain watch or clock movements with moving parts, are classifiable under the provision in item 685.90, Tariff Schedules of the United States, for electrical apparatus for making or breaking electrical circuits and dutiable at the column 1 rate of 7.3 percent ad valorem.

Sincerely,

(Signed) R. X. ARNOLD
Russell Arnold
Chief, Special
Classification Branch

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SURNAME

21 MAY 1981

CLA-2 CO:R:CV:G
068030 BF

068030

[redacted]

Dear [redacted]

This is in response to your letter of December 10, 1980, concerning the tariff classification of metallicized polyester film strips and sheets.

The polyester in spool form consists of single filaments which are 0.014 inch or 0.01 inch in width and priced from $3.30 to $7.75 per pound. Schedule 3, Part 1, Subpart E, Headnote 3(b), Tariff Schedules of the United States (TSUS), defines monofilaments as "single filaments*** whether flat, oval, round, or any other cross sectional configuration, which are not over 0.06 inch in maximum cross sectional dimension." Therefore, these items would all be considered monofilaments. Further, U.S. Customs has determined that the samples are 60.1, 74.2, and 63.9 denier respectively.

Therefore, these articles would be classified under the provision for monofilaments (in continuous form), with or without twist, whether known as monofils, artificial straw, yarns, or by any other name, not over 150 denier, valued over 80 cents per pound, in item 309.03, TSUS, dutiable at the rate of 25 percent ad valorem.

The sample of the polyester film in silver, light and the dark gold, and green, measuring approximately 510 milimeters in width, would be classifiable under the provision for films, strips, sheets, wholly or almost wholly of plastics, not of cellulosic plastics, flexible, other, other, of polyester, in item 771.43, TSUS, dutiable at the rate of 5.6 percent ad valorem for merchandise entered on January 1, 1981, or later.

This merchandise would be subject to duty-free entry under the Generalized System of Preferences if all requirements are met.

Sincerely,

[redacted]

(Signed) A. P. SCHIFFLER

Harvey B. Fox
Director, Classification
and Value Divison

CODE AND DATE							C4
SURNAME							
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17 JUL 1981

CLA-2 CO:R:CV:G
068230 JH

068230

District Director of Customs
Blaine, Washington 98230

Dear Sir:

Re: Application for Further Review of Protest No. 3004900025O, Filed October 30, 1979, Concerning the Classification of Liquid Sodium Chlorate

FACTS:

The imported sodium chlorate is said to be converted by the importer to chlorine dioxide. Sodium chlorate is said to be obtained by an electrolytic process from sodium chloride. It is contended that the conversion is not complete and, as a result, this sodium chlorate solution contains sodium chloride as an impurity.

ISSUE:

Whether the sodium chlorate-sodium chloride solution is to be considered a mixture of two or more inorganic compounds in item 423.96, or whether the sodium chloride in the solution is to be regarded as an impurity, and the sodium chlorate classified as such in item 420.08, Tariff Schedules of the United States (TSUS).

LAW AND ANALYSIS:

A sample of the importation was described by a Customs laboratory as being a yellow liquid containing 77 percent sodium chlorate and 8 percent sodium chloride by weight.

It is contended that the sodium chloride is an impurity, the result of incomplete conversion in the production of sodium chlorate. A decision,

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it is alleged, involving similar merchandise was the subject of Internal Advice 23/76 dated October 4, 1976, (044231). At issue in that case was the classification of two bulk chemicals-sodium chlorate and sodium chloride- which were shipped in railroad cars. The two chemicals were separately placed in the car, layered on top of each other, not mechanically mixed, with some mixing taking place however, due to the loading and shifting in the railroad car. It was concluded that no mixture had in fact been accomplished, but that commingling did result, with the importation dutiable at the rate for sodium chlorate in item 420.88, TSUS.

It is understood that in producing sodium chlorate from sodium chloride by electrolysis, the process may be carried to completion with only trace amounts of sodium chloride resulting; or it may be stopped at any given point with a solution containing known percentages of sodium chlorate and sodium chloride. Far from being an impurity, sodium chloride acts as a reducing agent in the production of chlorine dioxide. In this connection, it is understood that sodium chloride content is adjusted by the producer according to the purchaser's specifications. In fact, while the amount of sodium chloride in the solution may be determined by electrolysis, sodium chloride is often added to the sodium chlorate solution. Accordingly, this sodium chlorate solution is not similar to the situation described in I.A. 23/76, rather this is a purposeful mixture. It is obvious that the sodium chloride is not an impurity but a desired component of the solution.

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082280

This importation is classifiable as a mixture of two or more inorganic compounds in item 423.96, TSUS.

You are directed to deny the protest in full.

A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

The protest file is enclosed herewith.

Sincerely,

(Signed Arthur P. Schifflin

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

[redacted]

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CODE AND DATE	[redacted]					C7
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06 MAR 1981

CLA-2 CO:R:CV:G
068237 JH

068237

[redacted]

Dear

Your letter of January 2, 1981, concerns the dutiable status of an anhydrous sodium metasilicate-sodium tripolyphosphate mixture, and an anhydrous sodium metasilicate-caustic soda mixture. The mixtures are intended to be used as a base for detergents.

Mixtures of the type described are classifiable under the provision for mixtures of two or more inorganic compounds in item 423.96, TSUS, dutiable at the rate of 3.8% ad valorem.

It should be noted that as there has been a finding of dumping on sodium metasilicate, an importer may be required to post a cash deposit equivalent to 60% of the ad valorem rate (F.O.B. foreign port).

Sincerely,

(Signed) A. P. SCHIFFLIN
Arthur P. Schifflin
Chief, General
Classification Branch

[redacted]

CODE AND DATE	[redacted]						
SURNAME	[redacted]						CB
CODE AND DATE	[redacted]						
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

CLA-2 CO:R:CV:G
068883 JH

JAN 30 1982

[redacted]

Dear [redacted]

This is in reference to your inquiry concerning the tariff status of certain potassium and sodium silicate compounds, products of Switzerland.

The products are said to be used as binders in the production of welding rods.

Inobond V 533 is said to be a water solution containing a mixture of potassium and lithium silicate, and is classifiable under the provision for mixtures of two or more inorganic compounds in item 423.96, Tariff Schedules of the United States, TSUS. The rate of duty is 3.1 percent ad valorem.

Potassium silicates 3306, 3417, 3918, 3919, 4009 and 4044 are said to be water solutions of potassium silicate. These products are classifiable under the provision for other potassium compounds in item 420.36, TSUS, the rate of duty is 3.7 percent ad valorem.

Sodium silicate 4011 and 4513 are described as water solutions of sodium silicate. They are classifiable under the provision for sodium silicates in item 421.34, TSUS. The rate of duty is 1.1 percent ad valorem. No sample was submitted for sodium silicate 4006 but it is presumed to be similar in composition as the other sodium compounds, and if such is the case, it would be similarly classified.

Sincerely,

[redacted]

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

068883

MAR 03 1982

CLA-2 CO:R:CV:G
069420 JH

069420

Dear

This is in reference to your submission on the classification of three hydrocarbon solvents, products of Tolu Sol 20, V.M. and P. Naphtha and Sol Mineral Spirits.

V. M. and P. Naphtha, Sol and Tolu Sol 20 are said to be produced from crude oil which is distilled into gas oil in a crude distillation unit. The gas oil is hydrotreated and hydrocracked. Hydrocracking is described as converting heavy hydrocarbons into lighter grade gasoline feedstock by catalytic reaction in the presence of hydrogen. The three above main products are distilled from this intermediate resultant product. This process of manufacture is claimed not to add any benzenoids to the end products, nor does it enhance the benzenoids already present in the three products.

As the method of manufacture does not produce any additional benzenoids and the products conform to the specifications for petroleum naphtha, V. M. and P. Naphtha, Sol (Mineral Spirits) and Tolu Sol 20 are all classifiable under the provision for naphtha in item 475.35, Tariff Schedules of the United States.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

070108

3 SEP 1982

CLA-2 CO:R:CV:G
070108 TJB

[redacted]

Dear [redacted]

We are in receipt of your letter of May 10, 1982 regarding the tariff classification of synthetic rubber soling sheets. Inasmuch as a sample of the merchandise has not been submitted for examination, it would be inappropriate to issue a tariff classification ruling. However, we believe that we can address your concerns over a difference of opinion you have with certain Boston, U.S. Customs Service officials regarding the proper tariff classification of the synthetic rubber soling sheets.

You describe the merchandise as synthetic rubber soling sheets of over 0.009 inch in thickness. You contend that proper tariff classification should be under item 771.4350, Tariff Schedules of the United States (TSUS). U.S. Customs at Boston holds that the merchandise is classifiable under item 771.4100, TSUS. The rates of duty are 5.3 percent and 6 percent respectively. We believe that the tariff classification assigned by the port of Boston is correct. Item 771.41, TSUS is a very specifically worded provision of the tariff schedules and limited in its scope. In situations where articles of merchandise are specifically provided for in a tariff provision, in this instance item 771.41, TSUS, classification of the merchandise is governed by the specific provision.

You have described the merchandise as flexible, synthetic rubber soling sheets, not in rolls, over 0.009 inch thick, not of cellulostic material; of a material other than polyester, polyvinyl chloride, polyethylene or polypropylene. Clearly, and judging by your submitted description, this is merchandise provided for in item 771.41, TSUS, as it meets the criterion established in this provision to such an extent that classification under any other, general provision is precluded. If the rubber were in the form of rolls, classification under item 771.43, TSUS, would apply.

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The last paragraph of your letter indicates a misunderstanding of the history of the tariff items in question. As can be readily gleaned by examination of the attached pages from the History of the Tariff Schedules of the United States Annotated, United States International Trade Commission publication 1192, prior to January 1, 1980, all film, strips, and sheets, which are flexible and not comprised of cellulosic materials were classified under item 771.42, TSUS. A change was effected January 1, 1980, but not owing to ambiguous wording of the tariff schedules as intimated in your letter. The change was a result of a conscious effort by participating negotiators during the Tokyo Round.

Sincerely,

Arthur P. Schifflin
Chief
General Classification Branch

enclosures

[redacted]

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070108

DEC 0 1 1982

CLA-2 CO:R:CV:S
071035 FF

071035

Dear Sir:

This ruling is in response to the Application for Further Review of Protest No. 3801-2-001055, dated July 16, 1982.

ISSUE:

The question presented is whether a transceiver head for a microwave motion detector device is properly classifiable under the provision covering other cooking stoves and ranges, and parts thereof, in item 684.28, Tariff Schedules of the United States (TSUS), or under the provision covering electrical apparatus for making or breaking electrical circuits, and parts thereof, in item 685.90, TSUS.

FACTS:

The transceiver head in question is a sensing device, consisting of a zinc end with two diodes, which emits a microwave frequency and receives its own echo. When someone intrudes and interferes with the reception of the echo, the transceiver head sends a signal which is relayed to activate an alarm. The transceiver head is to be housed in an enclosure which also contains a circuit board to power the transceiver, a relay, and an alarm circuit.

LAW AND ANALYSIS:

The present record does not contain any information which would support the importer's claim that the product in question constitutes a part of a cooking stove or range. Rather, the importer specifically

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states that the transceiver head is a component part of a microwave motion detector device which is marketed to the security industry. Therefore, there is no basis for classifying this article in item 684.28, TSUS.

Although the file indicates that consideration was also given to the possibility of classifying this article under the provision for burglar alarms and other electrical sound or visual signaling apparatus, and parts thereof, in item 685.70, TSUS, we do not believe that this would be the correct classification. Notwithstanding the fact that the transceiver head is to be used in a burglar alarm or similar apparatus, its specific function is to send a signal to the relay, thus activating an electrical circuit which triggers the alarm. We therefore believe that the transceiver is more specifically described under the provision for electrical apparatus for making or breaking electrical circuits, and parts thereof, in item 685.90, TSUS.

CONCLUSION:

Accordingly, the transceiver head was properly classified in item 685.90, TSUS. The protest should therefore be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant. The protest file is enclosed.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

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071035

15 OCT 1983

CLA-2 CO:R:CV:VS
071304 EM

071304

[redacted]

Dear [redacted]

In your letter of April 21, 1983, on behalf of [redacted] you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to a fabric that is exported for flocking in Canada from component materials of United States origin.

A sample finished flocked fabric and aggregate component fabric and flocking material were submitted. Component nylon flocking fibers are exported to Canada in very short minute lengths in huge quantities of 50-pound bags. Base fabric is also exported in 1,000-yard rolls that are about 59 inches wide and adhesive in the form of a liquid resin compound is exported in 480-pound drums.

The foreign operations consist of applying the resinous adhesive compound over the fabric and depositing the fibers over the adhesive-treated layer of fabric, using an electrostatic method of application along with a mechanical beating action which is not further explained. The resin-bonded flock-dotted fabric is cured in an oven to harden the resin and give substance to the unified mass. The final product is cut into 125-yard rolls for ease and convenience of materials handling for return shipment to the United States.

With respect to articles assembled abroad, item 807.00, TSUS, applies only to fabricated United States components that are designed to be fitted together with other components in an assembly process, with no other operations performed thereon except the attachment of the components to form the imported merchandise.

On the basis that the fibers are exported in a loose condition and further subjected to a mechanical beating process before being deposited on the adhesive-treated fabric, this described operation appears to be more in the nature of a manufacturing process than an assembly. There is no physical fitting together of identifiable components in the sense required for a genuine assembly. The sample submitted appears to be the result of combining myriad quantities of minute fibers to produce a velvety cloth.

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071304

In clarifying assembly operations under item 807.00 of the Technical Amendments Act of 1964, it was stated in H.R. Report No. 1728, 88th Cong., 2nd Sess., Page 46, that "* * * Item 807.00 would apply with respect to components of types which are designed to be fitted together with other components and would not apply to chemical products, food ingredients, liquids, gases, powders, etc."

In this respect, since the described nylon flocking material is not the type of acceptable component that can enter into an assembly, no allowances can be made under item 807.00, TSUS, for any of the exported materials in the absence of an acceptable assembly having been performed abroad.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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CODE AND DATE	[redacted]						
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[redacted] AND CLEARANCE Form 100 (11-15-73)

CLA-2 CO:R:CV:G
073264 DW

NOV 25 1983

[redacted]

Dear [redacted]

073264

In your letter dated September 28, 1983, you indicate that you disagree with a portion of our ruling letter 070216 dated August 9, 1983, concerning the determination that the warp knit female half of a closure device does not have fast edges. That determination resulted in our finding that the subject merchandise was not classifiable under the provisions for narrow fabrics. In addition, you request information on the criteria used to determine whether a fabric has fast edges.

Another sample of the identical merchandise has been submitted for our review. It is under twelve inches in width and is of a man-made warp knit construction that has been brushed or napped on one side and coated with a plastic resin material on the opposite side. We have submitted the sample to the Customs laboratory for further analysis. In a report dated October 24, 1983, the laboratory found that the sample does not have fast edges for tariff purposes.

The determination was based on the definition of the term "narrow fabrics" in Headnote 2(a)(i), Subpart A, Part 4, Schedule 3, Tariff Schedules of the United States (TSUS), as woven or knit fabrics, not over 12 inches in width, with fast edges (that is, with both edges made or treated to prevent the fabric from unraveling, by means of selvages, stitching, gumming, fusing, or simple hemming).

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[redacted]

Although the edges of the submitted sample do not unravel, they are not considered to be fast. In order for certain merchandise to be classifiable as a narrow fabric it must be under 12 inches in width and the edges of the sample fabric must be treated by one or more of the named processes to prevent unraveling. In the instant situation, one side of the submitted sample has been coated with a plastic resin material.

Copies of the laboratory reports dated June 20, 1983, and October 24, 1983, are enclosed for your reference.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

073264

[redacted]

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUL 27 1984

CLA-2 CO:R:CV:G
074450 JH
809425

074450

Dear

This is in reference to your letter of May 2, 1984, concerning the classification of a product which you believe is chiefly used as a motor fuel within the meaning of Headnote 2(D), Part 10, Schedule 4, TSUS. It is understood that the product may be produced in the Philippines, Singapore, or South Korea.

The chemical composition is given as:

Component	Percent
Aromatics	39.64
Paraffins	52.73
Monocycloparaffins	7.63

The aromatic content is broken down as:

	Percent
Benzene	0.84
Toluene	4.32
Xylene	5.37
C-9 Aromatics	21.76
C-10 Aromatics	6.14
Endanes and Tetralines	1.21

The properties listed were:
Antiknock Index (R&M) - 87.8
Reid Vapor Pressure - 10.0
Distillation Temperatures - 10 percent at 140°F etc.
Gravity 55°.8 API

You note that the total aromatic distribution of the petroleum derivation exceeds 25 percent, but that no one aromatic (including dutiable benzenoids) exceeds the limitation. Accordingly, you request an interpretation of the Headnote 1, Part 10, exception to the benzenoid rule.

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Headnote 1 states that any product described in Part 10 (petroleum) and Part 1 (benzenoid) is classifiable in Part 1, except for motor fuel, lubricating oils and greases, and fuel oils "containing by weight not over 25 percent of any product described in said Part 1." Customs interprets "any product" as meaning any one product listed, so that it would not be the total of Part 1 chemicals listed which would control, but the total of a particular chemical present. Since in your example none of the components listed exceeds the 25 percent limitation, the product would not be classifiable in Part 1, if, in fact, it is chiefly used as a motor fuel. If this is the chief use, it would be classifiable in item 475.25, TSUS.

Sincerely,

Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

075176

REFER TO

8 OCT 1985

CLA-2 CO:R:CV:G
075176 DW

Mr. Timothy J. Murray
Johnson Camping, Inc.
P. O. Box 966
Binghamton, New York 13902

Dear Mr. Murray:

Your letter dated September 17, 1984, requested the tariff classification of a screenhouse from Korea.

The submitted illustration depicts a screenhouse that measures approximately eleven feet six inches by twelve feet six inches. It has screen walls composed of man-made fibers. Polyester fabric across the mid-section provides protection from the rain. The screenhouse will be imported without poles.

Several labels will be attached to the screenhouse. A decal made of plastic material bearing the printed word "Eureka" will be placed on the polyester fabric by means of heat transfer. The second label composed of a woven textile material is inscribed with the words "Spinnaker by Eureka" in fancy lettering together with a pictorial design of a sail surrounded by a border. The third sample is a woven textile label that features a border surrounding the word "Eureka." All the labels will be visible on the screenhouse.

The question whether a decorative label ornaments a certain article is governed in general by the case law on ornamentation. The test that has been developed to determine if a feature named in Headnote 3 constitutes ornamentation is whether that feature can be considered primarily decorative rather than functional. Blairmoor Knitwear Corp. v. United States, 60 Cust. Ct. 388, C.D. 3396 (1968). Equally well-settled in determining whether a label constitutes ornamentation is Customs position that it is basically a subjective judgment which must be made by considering the overall effect of the label on the individual article.

Recently, the Customs Service addressed the question of whether a decorative label ornaments a car cover in Headquarters Ruling Letter 076579 dated August 28, 1985. In finding that the car cover was not ornamented for tariff purposes, we noted that the label in issue must ornament the car cover in an accepted trade sense and stated:

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> In those instances where we lack information regarding whether certain features ornament the fabric or article in an accepted trade sense, the Customs Service follows the principle expressed in Excelsior Import Associates, Inc. v. United States, 66 CCPA 1, C.A.D. 1212 (1978), that in the absence of evidence by the importer concerning whether the garment was ornamented in an accepted trade sense, the fact that consumers regard a certain feature as enhancing a garment is determinative.
>
> * * * *
>
> No evidence has been presented on the status in the trade of car covers with labels. If the presence of a decorative label on a car cover is considered by the trade to ornament such merchandise, we would probably consider the subject car cover to be ornamented for tariff purposes.
>
> Nor has evidence been presented that consumers regard the label as enhancing the car cover. In our opinion, a consumer when viewing the subject car cover which is an industrial product would not consider the label to embellish the appearance of the car cover. That is to say there may be certain industrial products which by their very nature are not capable of being ornamented for tariff purposes.

Like the label on the car cover, the subject labels neither have been demonstrated to ornament the screenhouse in an accepted trade sense, nor have they been shown to be regarded by consumers as enhancing the screenhouse.

The three decorative labels do not ornament the screenhouse. The screenhouse is classifiable under the provision for other articles not specially provided for, not ornamented, of man-made fibers in item 389.62, TSUS, with duty at the rate of 8 cents per pound plus 11 percent ad valorem.

We are not willing to say that no decorative label will ever ornament a screenhouse. A label must be judged on the basis of the particular facts

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075176

in each case. Certain highly decorative labels may represent a disproportionate amount of the surface area of the article they are claimed to ornament and may be regarded as ornamentation for tariff purposes.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Divison

075176

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FEB 15 1985

CLA-2 CO:R:CV:G
075200 JH

District Director of Customs
San Francisco, California 94111

Dear Sir:

Re: Decision on the Application for Further Review of Protest 2809-4-000460, on the Classification of C-Reactive Protein, a Product of the United Kingdom

C-Reactive Protein (CRP) is said to be derived from human pleural fluid from the cavity between the lungs and the thoracic cavity. CRP concentrated serum is derived from human blood, and/or human ascites fluid from the abdominal cavity. The imported product is said to be of 99 percent purity and to be imported in a buffer solution. It is used as a component in certain diagnostic kits.

In the technical literature, CRP is described as a "homogeneous acute phase protein", apparently because it is present in the serum of patients in the acute stages of bacterial and viral infections, collagen diseases, and other inflammatory processes. The presence of CRP has been found to be the most sensitive index of rheumatic activity in the absence of unrelated inflammatory processes.

The importer claims that the product is classifiable as an analogous biological product in item 437.76, TSUS, because it is used as an aid in diagnosis and is derived from a biological source. Customs asserts that the product is not a human blood fraction, nor analogous to viruses, serums, vaccines, toxins, or anti-toxins. Customs, therefore, classified it as a mixture in item 430.20, TSUS, with a duty rate applicable to the component classifiable in item 425.52.

CRP is a specific protein which has been described technically as a serum antigen. An antigen is a substance, usually protein or carbohydrate, that stimulates the production of antibodies. Antigens include toxins, enzymes, and certain constituents of blood corpuscles or of other cells. Therefore, CRP, if not a toxin, is a toxin-like substance, since it stimulates the production of anti-bodies. CRP appears to exist in the same form in vivo and in vitro, and, therefore, there is no indication that it is a mixture of proteins. More specifically, CRP is an analogous biological product, a toxin-like substance which is classifiable in item 437.76, TSUS.

You are directed to allow the protest in full.

075200

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A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

That portion of the original protest file submitted is hereby returned.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

[redacted]

075200

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DEPARTMENT OF THE TREASURY - U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

25 OCT 1985

REFER TO
CLA-2:CO:R:CV:G
075294 JCH

075294

District Director of Customs
300 S. Ferry Street
Terminal Island
San Pedro, California 90731

Dear Madam:

Re: Decision on Application for Further Review of Protest No. 27043003580

The above-captioned protest and application for further review were filed against the tariff classification of certain toy figures which were the subject of entry No. 83-297141-7 filed at your port in 1983. This merchandise was made in Hong Kong. Our decision follows:

ISSUE:

The merchandise was entered under the provision for toy figures of animate objects in item 737.40, Tariff Schedules of the United States (TSUS). Classification under that provision would allow for an exemption from duty under the Generalized System of Preferences (GSP). However, the merchandise was classified by Customs under the provision for toy figures of inanimate objects in item 737.49, TSUS, which excludes products of Hong Kong from the GSP exemption. The 1983 column 1 rate of duty under that provision was 12.3 percent ad valorem. The main issue thereby raised by this rate advancement is whether the new definition enacted in 1983 for inanimate objects in Headnote 3, Subpart E, Part 5, Schedule 7, TSUS, which changed the coverage of the provision to toys, not specially provided for, in item 737.95, TSUS, also changed

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the scope of the provisions for toy figures of animate objects under which counsel for the protestant claims the instant merchandise was always previously classified.

FACTS:

The toy figures in question are generally referred to as fantasy figures and, more specifically, depict a winged horse and a two-headed dragon.

LAW AND ANALYSIS:

Legislation amending the TSUS of January 12, 1983, Pub. L. 97-446, section 113, 96 Stat. 2329, added the above-cited headnote to explain the coverage of new provisions which were also added covering toy figures of inanimate objects. These provisions were specific breakouts under a new superior heading for merchandise which previously had been classified in the basket toy provision in item 737.95.

The new headnote, in pertinent part, defines toy figures of inanimate objects as those which are "predominantly non-earthly in character" or which "possess features which are a hybrid of features of more than one animate object." These descriptions were generally intended to conform to preexisting Customs classification practices thereby making no duty rate changes, except with respect to certain merchandise for which temporary exemptions from duty were established in Schedule 9, TSUS, and which are not pertinent to the instant merchandise.

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075394

The preexisting Customs position was explained in several lengthy decisions of a complex nature for which the few lines of the new Headnote 3 could hardly be regarded as a complete summation. In those decisions, the typical reference to non-earthly or alien creatures was in the context of imaginary extraterrestrial creatures depicting specific personalities in contemporary science fiction. The configuration of the instant merchandise, by contrast, draws on classical mythological prototypes which although also imaginary are more analogous to real life creatures.

For example, the instant dragons, in common with the earliest depictions from archeological artifacts to those which St. George had to contend with in the paintings of Raphael, clearly show their genesis in earthly reptilian forms. They represent an undifferentiated type of reptile which we should regard as earthly in the same sense that we recognized certain undifferentiated subhuman primates as representing animate objects in our decision in C.S.D. 81-236, 15 Cust. Bull. 1202 (1981), and in our so-called Star Wars decision cited therein. Accordingly, it is our opinion that an undifferentiated type of reptile, even though referred to as a dragon, should receive no less favorable duty treatment than an undifferentiated type of subhuman primate, and that the new headnote definition was not intended to alter that

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D14

075294

result. Therefore, we find that dragons, as a rule, will not usually be found to be regarded as predominantly non-earthly.

Nor do we find that an extra head should have any duty rate consequences. An extra head would in the biological analogy be regarded as a mutation, and would not be regarded as a hybridization.

We also find that a winged horse is not a hybridization as contemplated by the headnote definition. The types of figures to which we applied the term "hybrid" in our preexisting decisions were those which were composed of parts representing different earthly creatures. For example, they typically included the head of one species on the torso of another species. In C.S.D. 81-236, supra, we specifically separated a winged figure from hybrid articles, and classified it as a toy figure of an animate object. Our rationale for doing so was that the wings were subsidiary to the other anatomical characteristics of the figure. While we acknowledged that a winged creature was not the same as one without wings, we held that the wings did not detract from the otherwise humanoid character of the toy figure. The same can be said for the instant winged figure which although not actually a horse is nonetheless predominantly horse-like and earthly in spite of the wings.

In other words, if anatomical features of one species are simply added to the otherwise anatomically complete figure of

E1

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075294

another species, that does not necessarily constitute a hybridization. For example, we would not expect that a devil figure would be regarded any less humanoid or doll-like because of a tail appended to the otherwise anatomically complete figure. However, we would agree that there are situations when the wings of a bird when added to the anatomical parts of other species would constitute a hybridization. Such an instance would be when the wings were a substitution for the homologous parts of another species to which the wings are attached to form a composite figure. But the winged horses at issue have both wings and front legs. They are not a composite of parts of different species, but rather a complete version of one species to which the wings have merely been added. The wings, in these circumstances, are, in a sense, merely supernumerary, and do not, in our opinion, constitute a hybridization.

HOLDING:

For the foregoing reasons, we find that the instant two-headed dragons and winged horses do not constitute either predominantly non-earthly creatures or hybrid creatures within the meaning of Headnote 3, Subpart E, Part 5, Schedule 7, TSUS, and that, insofar as this protest is concerned, that headnote does not operate to change the classification of merchandise previously classified under the provision for toy figures of animate objects in item 737.40, TSUS. Accordingly,

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you are instructed to allow the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

075294

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 18 1985

REFER TO

CLA-2 CO:R:CV:G
075411 EMS

075411

Roberta Liberman
Executive Vice President
Michele
M & L Distribution Co., Inc.
P.O. Box 113
Mountain Lakes, New Jersey 07046

Dear Ms. Liberman:

This is in response to your letter dated December 14, 1984, concerning the appropriate tariff classification of five garments of which you provided samples. A conference to discuss this matter was held on September 6, 1985.

The five garments submitted with your inquiry include: style Nos. 5313 and 5314, which are ornamented with embroidery, style No. 5307, a "Heart pattern" garment with no style number, and a "Strawberry pattern" garment also with no style number. Style No. 5307, the "Heart pattern" and "Strawberry pattern" garments are not ornamented. All of the samples provided are knit. Style Nos. 5313 and 5314 are composed of 60 percent polyester and 40 percent cotton. The remaining three garments, style No. 5307, the "Heart pattern" and the "Strawberry pattern," are composed of 60 percent cotton and 40 percent polyester. All of the submitted samples have curved hems and are approximately 35 inches to 36 inches in length. Style No. 5313 has a front placket with no buttons and short sleeves and the neckline and sleeves are finished with narrow lace fabric. Style No. 5314 has a "V" neck with capping and short sleeves with capping. Style No. 5307 has a two-button front placket, a rib knit band at the neck and short sleeves with a rib knit band. The "Heart pattern" and "Strawberry pattern" styles have round necklines and short sleeves which are finished with rib knit bands.

You claim that these garments are most appropriately considered sleepwear for tariff classification purposes since they are solely used as sleepwear, are marketed only as sleepwear and your firm is exclusively a sleepwear manufacturer. Our New York office has taken the position that these garments should be classified as shirts since they belong to the large class of merchandise known as knit shirts which are chiefly used as shirts. The apparent basis of this position is the association of the subject garments with a recent fashion trend known as the "big shirt" look.

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In order to resolve this question, it is necessary to determine the class or kind of merchandise to which these garments belong and the chief use of such class or kind of merchandise. In support of your proposed classification, you have provided us with detailed information comparing your sleepshirt to a garment which was considered by Customs in Internal Advice No. 126/84 dated July 8, 1985, file No. 075328, to be shirts. Additionally, you conducted a survey of retailers to determine their views as to the commercial designation of your garments. The completed questionnaires were provided to Customs. Finally, marketing information as to garments similar to those involved in your inquiry was also provided.

Based on an examination of the samples and on the information that you provided, it is our view that these garments belong to the class or kind of merchandise known as sleepwear and are chiefly used as sleepwear. Furthermore, it is our view that the garments under consideration are distinguishable from garments associated with the "big shirt" look. You pointed out in your September 20, 1985, submission numerous physical differences between the subject garments and the big shirt knit garment, which was the subject of file No. 075328, the totality of which leads us to the conclusion that the garments under inquiry are sleepwear. For example, your garments measure approximately 15 inches from shoulder seam to shoulder seam in size small, and are graded up approximately three quarters of an inch in medium and again in large. In contrast, the big shirt knit garment measures approximately 27 inches from shoulder seam to shoulder seam. The hemline, neck band and sleeve cuff of the instant garments are finished with a ribbed cotton/polyester capping which is sewn with a tight needle stitch and tack stitching. On the other hand, the big shirt garment's hemline, neck band and sleeve cuff are finished by turning and stitching the edges. Furthermore, the subject garments are in chief value of cotton or in chief value synthetic fabric constructed by an interlock stitch of a low yield circular knit. This low yield circular knit is utilized in order to obtain an opaqueness in the fabric which is designed to maximize modesty and prevent a "shadow effect" when the garment is worn. The "big shirt" knit garments in contrast utilize a 100 percent cotton or chief value cotton jersey knit fabric with a high yield circular knit. This results in a garment that is sheerer than the instant merchandise. We also note that the garments under consideration have curved hemlines which is not a feature of the "big shirt" style in knit garments.

In view of the foregoing, style No. 5307 and the "Heart Pattern" and "Strawberry Pattern" styles, which are not considered ornamented for tariff classification purposes, are classifiable under a provision covering non-ornamented cotton sleepwear in item 384.3420, Tariff Schedules of the

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United States (TSUS) (category 351), dutiable at the rate of 12.3 percent ad valorem. Styles Nos. 5313 and 5314 are classifiable under the provision covering ornamented sleepwear of man-made fibers in item 384.2225, TSUS, (category 651), dutiable at the rate of 31.2 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

24 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
075444 TLL

075444

George R. Tuttle, Esq.
3 Embarcadero Center
Suite 1260
San Francisco, California 94111

Dear Mr. Tuttle:

We have reviewed your request for reconsideration of Headquarters letter 072714 dated December 1, 1983, and believe for reasons herein indicated that that decision was correct.

Items 184.20 and 184.85, Tariff Schedules of the United States (TSUS), are the provisions in controversy. Item 184.20 provides for Beet pulp, dried and item 184.85 is a basket provision for animal feeds, and ingredients therefor, not specially provided for.

Your argument is essentially that we did not understand the facts and the product is different than we thought. Furthermore, the product is considered to be a dried beet pulp in the trade and that application of the "more than" principle would be inappropriate.

In Headquarters Ruling 072714 JH, dated December 1, 1983, we stated:

> Item 184.20, TSUS, covers beet pulp, dried and it is believed that the provision is limited to a particular condition of beet pulp. It is understood that the product is the residue remaining after the extraction of the sugar from the beet. This residue is subject to further processing by pressing and drying, and it is at this stage that it meets the definition of the product described in item 184.20, TSUS. However, in addition, the importation in question is moisturized, pelletized, and contains 14 percent sugar. In view of the addition of the molasses, the pelletizing beet pulp is more than the dried beet pulp provided for in item 184.20, TSUS, and becomes an "other" animal feed classifiable in item 184.85, TSUS.

You argue, based on the description contained on pages 4 and 5 of your submission, that the beet pellets are not moisturized and that "beet molasses" is not added to the beet pulp.

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It seems to us that the key question is whether "beet pulp, dried" and "dried molasses beet pulp" are the same product. You suggest they are. We think otherwise. Your argument that dried pulp with molasses is the same as dried beet pulp is based in large part on the following language set forth in USITC Publication 841 entitled "Animal Feeds and Animal Feed Ingredients" dated July 1984:

Descriptions and Uses

> Dried beet pulp is a bulky, low protein by-product of beet sugar production. It is used primarily as livestock feed. It serves as a complement to the grain rations fed to beef and dairy cattle and sheep.
>
> In its original state the beet pulp is moist and prone to spoilage within a short time. Thus, although some beet pulp is utilized moist, most is dried so as to both facilitate handling and increase storage life. Palatability to livestock is improved through the addition of beet molasses, at which time the product is marketed as dried molasses beet pulp.

You point out this language is virtually identical to the language in the 1965 edition of the Summaries of Trade and Tariff Information on item 184.20 and that since the reference to dried molasses beet pulp is contained in the section for the publication describing dried pulp, it is considered to be dried beet pulp. We disagree. The above-quoted language can just as easily be interpreted to indicate that dried molasses beet pulp is a separate commodity. In fact, page 16 of your submission states "the merchandise exported by Alberta Sugar Company to the U.S. is certified as "Western Molasses Beet Pulp."

Additional support for this point can be found in the 1929 Summary of Tariff Information. Dried beet pulp was added to paragraph 730 as part of the Tariff Act of 1922. On page 1214 of the 1929 Summary of Tariff Information, the United States Tariff Commission, in discussing experience with the new provision stated. "Statistics as to the production of dried beet pulp and dried molasses pulp, malt products, and brewers' grains are meager" (emphasis added). A clear indication that at a time close to the enactment of this tariff provision dried beet pulp and dried molasses beet pulp were considered to be different products; hence, the separate reference in the current Summaries of Trade and Tariff Information.

Essentially, it is our position that the difference between the two products continues to exist today and is well recognized in domestic and international trade.

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In this regard, your attention is directed to Beets & Meat, Maynard & Knaus (Through the Leaves Press 1959), page 78, TABLE, entitled "Digestible Nutrient Table of Fattening Feeds" which lists "Beet Pulp dried" and "Beet Pulp dried molasses" as separate carbohydrate feeds. In addition, TABLE 11, "Calcium and Phosphorus Content of Feeds" found on page 10 of the Appendix contains separate listings for "Beet Pulp (dry)" and "Beet Pulp, Molasses (dry)." These charts are cited for the proposition that within the domestic feed community there is support for the point that dried beet pulp and dried molasses beet pulp are two different products.

Support for this point internationally may be found in the Explanatory Notes to the Customs Cooperation Council Nomenclature (CCCN). Heading 23.03 provides for the classification of beet pulp; however, the Explanatory Notes specifically state:

> Beet pulp is the residue which remains after the sugar has been extracted from the root of the sugar beet. This pulp is classified in the present heading whether wet or dried, but if with added molasses, or otherwise prepared as animal food, it falls in heading 23.07 (animal feeds).

Thus, this explanatory note serves as an example that molasses and dried beet pulp are considered to be different products internationally.

For the above reasons, we must adhere to the decision reached in 072714.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

075444

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 28 1985

REFER TO

CLA-2 CO:R:CV:G
075493 JEH

075493

Your letter of August 14, 1985, on behalf of your client, requests the tariff classification of gold chain in continuous lengths from Mexico and whether these chains are entitled to duty-free entry under the Generalized System of Preferences (GSP).

has advised the National Import Specialist that 14K gold chains will be imported in lengths that vary from 6 feet to 20 feet.

Gold chain in continuous lengths is classifiable under the provision for rope, curb, cable, chain, and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths, * * *, suitable for use in the manufacture of articles provided for in this subpart; of precious metals, in item 740.70, Tariff Schedules of the United States, and dutiable at the rate of 9.5 percent ad valorem.

The next issue to be resolved is whether the manufacturing operations performed in Mexico entitle these gold chains to duty-free entry under the Generalized System of Preferences. You state that your client intends to commence the following operation in its Mexico plant:

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Under the above procedures, the conversion of the gold wire from the United States into links produces an intermediate article of commerce and then the making of the gold chain constitutes a second substantial transformation of the materials into another new and different article of commerce. Therefore, if the value of the gold wire plus the direct cost of processing operations performed in Mexico total at least 35 percent of the appraised value of the finished pieces as they are imported into the United States, they will be eligible for duty-free entry under the GSP if all other applicable requirements are met.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 28 1985

REFER TO

CLA-2 CO:R:CV:G
075510 JLV
810902 NY

075510

Mr. Y. Hatanaka
Sumitomo Corporation of America
345 Park Avenue
New York, New York 10154

Dear Mr. Hatanaka:

In your letter of June 27, 1984, you requested a classification ruling on a certain product imported by Sumitomo Corporation of America. The imported product is described by you as galvanized steel wire strand that has been flooded with asphalt. It is your position that the imported product is classifiable under the provision for strand covered with textile or other non-metallic material, in item 642.18, Tariff Schedules of the United States (TSUS).

The wire strand is used in the assembly of a cable for communications purposes. It is combined with communication wires in one of two ways: by covering with a single plastic extrusion over the wire strand and the communication wires, or by covering with a two-part plastic extrusion that separates the strand and the communication wires. The wire strand provides, in both cases, support for the communication wires. Although the asphalt may be utilized as a lubricant, no reasons were given as to why this strand was offered with or without asphalt flooding.

Tariff provisions are to be construed in their entirety. Unless otherwise indicated, the terms used in a section of the tariff law are to be construed in such a manner that they have the same meaning. In Schedule 6, Part 3, Subpart B, TSUS, the term "covered," is used to describe articles in items 642.18, 642.96, and 642.97. It is our opinion that the term is used in the same manner for each of these tariff provisions. Construction does not permit consideration of a rough coating of substances, such as asphalt, as a covering. Browning Metals Corp. v. United States, 85 Cust. Ct. 57, C.D. 4871 (1980). We distinguish, for example, the term "coated" as used in the superior language to items 642.90 642.91, and 642.93 from the term "covered" as used in items 642.96 and 642.97, as well as the provision in issue, item 642.18, TSUS.

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Therefore, galvanized wire strand, asphalt flooded, is properly classifiable as wire strand not covered with textile or other non-metallic material, in item 642.11, TSUS.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

015510

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 12 1985

REFER TO
CLA-2:CO:R:CV:G
075530 JLV
811331/806272

075530

Mr. John T. Conley
Scan Web of North America, Inc.
65 Woodridge Circle
New Canaan, Connecticut 06840

Dear Mr. Conley:

In our letter of October 31, 1985 (file 075530), we ruled on the classification of an in-line machine used to form a pulp article. This letter corrects a statement made in the first paragraph on page two of the October 31, 1985, letter, and amends the ruling.

The in-line machinery, in its condition as imported, is an unfinished machine for making pulp up into articles. Therefore, our statement that "...the in-line machinery, i.e., the forming section, the binder spraying section, and the reel section are each classifiable as machines for making cellulosic pulp up into articles, in item 668.02 ...." should be changed to read "...the in-line machinery is an unfinished machine classifiable as a machine for making cellulosic pulp up into articles in item 668.02...."

If, however, each section of the in-line machinery is imported separately, the forming section and the reel section are classifiable as parts of machines for making cellulosic pulp up into articles in item 668.07, TSUS, dutiable at 3.5 percent ad valorem (1985), and the spraying section is classifiable under the provision for other mechanical appliances for spraying liquids in item 662.50, TSUS, and dutiable at 4 percent ad valorem (1985).

Our letter of October 31, 1985 (file 075530), is amended in accordance with the conclusions in this letter.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

E14

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 31 1985

REFER TO

CLA-2 CO:R:CV:G
075530 JLV
811331/806272 NY

075530

Mr. John T. Conley
Scan Web of North America, Inc.
65 Woodridge Circle
New Canaan, Connecticut 06840

Dear Mr. Conley:

In your letter of October 24, 1984, you requested a ruling on the tariff classification of certain machinery and equipment to be used in an air forming process. The equipment is a product of Denmark.

The merchandise will consist of a hammermill, blower, and in-line machinery consisting of a forming section, a binder spraying section, and a reel. The drying section, which is located after the binder spraying section, will be purchased domestically. The hammermill will be used to break up rolls of wood pulp into individual pulp fibers. The blower, located next to the hammermill, will then blow the pulp fibers into the forming section. The forming section, which is located in a separate area of the mill, is composed of two perforated rotating drums, a moving wire belt, and a vacuum box. In the forming section the fibers will be pulled from the drums onto the moving belt in order to form a continuous sheet or web. This web will then be carried by the moving belt through the spraying section where a latex emulsion will be sprayed on the web in order to bind the fibers together. After drying, the web will be rolled onto the reel. The forming section, spraying section, and roll-up section, together with the domestically purchased dryer, are designed as an in-line section.

Air forming is a process for transporting and depositing fibers to form a continuous sheet or web. It is a process which does not use a wet suspension in order to form a sheet or web.

Although the machinery in issue could be redesigned to produce a non-woven textile fabric, as designed and imported it is not capable of such use and, therefore, it is not classifiable under the provision for machines for making non-woven fabrics. In this case, the machinery is capable of using only pulp fibers of 3-5 millimeters in length which have been digested in the processing operation. Therefore, we distinguish the facts in this case from those in the ruling letter of May 29, 1984 (file 073555), in which it was held that a product, composed of cellulose and polyester fibers in excess of 4 milimeters in length that were not digested in the manufacturing process, was non-woven material rather than paper.

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The web produced on the in-line machinery in issue is an article of pulp. The in-line machinery is dedicated for this use and is not capable of producing non-woven material. Therefore, the in-line machinery, i.e., the forming section, the binder spraying section, and the reel section are each classifiable as machines for making cellulosic pulp up into articles, in item 668.02, Tariff Schedules of the United States (TSUS), and dutiable at 2.8 percent ad valorem (1985).

The hammermill and the blower are distinct machines and are not classifiable as an entirety, nor are they classifiable as an entirety with the in-line section. The hammermill, used to fiberize the pulp, is of the same class or kind of hammermills that are classifiable under the provision for machines for making cellulosic pulp in item 668.00, TSUS, dutiable at 0.9 percent ad valorem (1985). The blower is specifically provided for under the eo nomine provision for blowers in item 661.06, TSUS, and dutiable at 5.3 percent ad valorem (1985).

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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075520

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

12 NOV 1985

REFER TO

CLA-2:CO:CV:R:G
075580 JLV

075580

Mr. D. K. Ward
PowerFlow, Inc.
1639 Bailey Avenue
Buffalo, New York 14240

Dear Mr. Ward:

In your letter of January 16, 1985, you requested a ruling on the tariff classification of certain products designed for use on motor vehicles.

The merchandise consists of license plate frames, window shades, and gateguards. The license plate frames are made from acrylic or similar plastic material in Canada. The window shades are made from stainless steel or plated steel in Hong Kong. They are designed to be mounted over the exterior of a window on a vehicle's door, and are said to deflect rain and reduce window fogging. The gateguards are made of extruded aluminum, chrome-plated steel, or stainless steel in Canada, Hong Kong, or Taiwan. They are designed to be attached to the top edge of pick-up truck tailgates in order to protect them from dents and paint damage.

Although these products are designed for use on motor vehicles, they are not "parts" for tariff purposes because they are not necessary for the safe and efficient operation of motor vehicles. They are more properly considered to be accessories.

The license plate frames are classified under the provision for other articles not specially provided for, of plastics, in item 774.55, Tariff Schedules of the United States (TSUS), and dutiable at 6.1 percent ad valorem if products of Canada. The window shades and the gateguards, whether of stainless steel, chrome-plated steel, or aluminum, are classified under the provision for fittings and mountings designed for motor vehicles, in item 647.01, TSUS, and dutiable at 3.3 percent ad valorem, if products of Hong Kong, Taiwan, or Canada. However, as products of Hong Kong or Taiwan, these two articles may be eligible for duty-free entry under the Generalized System of Preferences (GSP), upon compliance with the applicable regulations, copy enclosed.

MAY BE RELEASED TO THE

Pursuant to Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), the license plate frames, window shades, and gateguards must be permanently, conspicuously, and legibly marked to indicate the English name of the country of origin of the articles. No exception from the individual marking of the articles can be granted because we cannot agree that the nature of the articles or their manufacturing process do not admit such marking.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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085510

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

25 OCT 1985

CLA-2:CO:R:CV:G
075581 TLL

075581

Paul Anderson, Esq.
Sonnenberg, Anderson & O'Donell
Attorneys at Law
One North La Salle Street
Suite 3015
Chicago, Illinois 60602

Dear Mr. Anderson:

This is in reply to your letters dated January 10, 1985 and October 2, 1985, requesting reconsideration of New York Ruling Letter (NYRL) 807543 dated January 13, 1984, regarding the classification of four yogurt products under item 118.10, Tariff Schedules of the United States (TSUS), as yogurt and other fermented milk.

The imported merchandise was described in the NYRL as being:

> The production of the product, described briefly in your letter, begins with the innoculation with yogurt bacteria of a mixture (with a butterfat content of from 2.6 to 2.8 percent) of whole milk, condensed milk, and cream to make the yogurt. After the yogurt has been manufactured, sugar, pectin, carrageenan, starch, and citric acid are blended into it. The mixture is heated, homogenized, and further heated to destroy any viable microorganisms remaining in the product. Finally, fruit, which has been heat processed and cooked, is added to the mixture, which is then aseptically packed in five ounce tins by the Dole machine.

Your submission of January 10, 1985, describes the imported product to be:

> The subject merchandise is a yogurt-based product, to which fruit, sugar, starch, pectin, carrageenan, and citric acid have been added. The composition of the finished product by percentages, in terms of value, is as follows: dairy ingredients, 63.5%; fruits, 30.6%, sugar, .8%; starch, .178%; pectin, .0536%; carrageenan,

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.037%; citric acid, .001% and water, 4.8304%. The perentage breakdown by weight is as follows: dairy ingredients, 82.593%; fruits, 10%; sugar, 5.67%; pectin, carrageenan and citric acid, 0.657%; and starch, 1.081%.

This shelf-stable product is produced by taking a yogurt base and adding fruit, sugar, starch, pectin, carrageenan and citric acid. It is processed in three steps: first, milk having 13.8% total milk solids and 3.3% butterfat is obtained by mixing whole milk, evaporated skim milk, lo-heat skim milk powder and cream. The milk is then pasteurized, cooled to 110°F and innoculated with yogurt bacteria. When the PH drops to the proper level, the yogurt is cooled. Second, a blend of dry ingredients, i.e., carrageenan, citric acid, pectin, starch and sugar, are added to the yogurt. The ingredients are mixed until blended into the yogurt. The base is then cooled to 50°F or below. As a last step, the yogurt-bases product is then heated, homogenized and further heat-treated to destroy the viable microorganisms, and then cooled. This heat-treating process is a new process and one which added unique shelf-stable characteristics to the finished product so as to distinguish it from ordinary yogurt.

Once the merchandise is subjected to this heat-treating process and fruit has been added, it is aseptically packed in teflon-coated containers so that any and all live bacteria cultures are eliminated from the product. The effect of this heat treatment upon the merchandise is to yield a product that is wholly shelf-stable and remains fresh and edible for an indefinite period of time. Ordinary yogurt would, under usual circumstances, last only forty-eight hours before spoilage. It is important to note that live bacteria is the catalyst in ordinary yogurt, without which the product would merely be milk. The bacteria provides taste and contributes to texture in its degradation process in the yogurt, and in this regard, ordinary yogurt has a very short time span within which it must be consumed. The subject merchandise has no such limitation on consumption, has a slightly different taste and texture and is not perishable.

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We have carefully reviewed your request for reconsideration and conclude for the following reasons that NYRL 807543 is correct.

Item 118.10, TSUS, the provision in controversy, provides for the classification of yogurt and other fermented milk. As such, item 118.10, TSUS, is an eo nomine provision.

It is basic customs law that an eo nomine designation, without limitation or a shown contrary legislative intent, judicial decision, or administrative practice, and without proof of commercial designation, will include all forms of the article. Nootka Packing Co. v. United States, 22 CCPA 464, T.D. 47464 (1935); Crosse & Blackwell Co. v. United States, 36 CCPA 33, C.A.D. 393 (1948) and cases cited; T. M. Duche & Sons, Inc. et al. v. United States, 44 CCPA 60, C.A.D. 638 (1957).

The basic thrust of your argument for reconsideration is based on the premise that, in order to be considered a yogurt, a product must contain live yogurt bacteria. Since the product in question does not contain live yogurt bacteria (it has been heat treated), it cannot be treated as a yogurt, and should be treated as a pudding classified under item 182.20, TSUS, or as an edible preparation under item 183.05, TSUS. In support of this position, you have presented statements and articles from several experts generally stating that in order to be a true yogurt, viable (live) organisms must be present. While this line of testimony may be germane to the question of whether a yogurt purist would consider a product to be a true yogurt, we do not believe it is controlling to the question of whether the product may legally be considered a yogurt.

The label on the submitted sample identifies in bold print the product to be imported as a yogurt followed by the parenthetical phrase "(HEAT-TREATED AFTER CULTURING)". The word "yogurt" on the label is both larger and in bolder print than anything else which appears on the label.

This label is in accord with the applicable Food and Drug Administration Regulation 31 CFR 131.200, which provides:

> (a) Description. Yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph (b) of this section with a characterizing bacterial culture

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185510

that contains the lactic acid-producing bacteria, Lactobacillus bulgaricus and Streptococcus thermophilus. One or more of the other optional ingredients specified in paragraph (c) of this section may also be added. When one or more of the ingredients specified in paragraph (c)(1) of this section are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Yogurt, before the addition of bulky flavors, contains not less than 3.25 percent milkfat and not less than 8.25 perent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture and bulky flavoring material. To extend the shelf life of the food, yogurt may be heat treated after culturing is completed, to destroy viable microrganisms. (Emphasis added).

This definiton does not require that the product have a live culture. In fact, by specifically permitting heat treating after culturing, the FDA has acknowledged that live bacteria does not have to be present for a product to be considered a yogurt.

We believe that while Customs is not required to follow the FDA definition of yogurt, that definition accurately reflects the common and commercial identity of what is or may be a yogurt. Products have to meet this definition of a yogurt in order to be sold as a yogurt. The fact that the label states the product is a yogurt is further evidence of the commercial identity of the product. This is in accord with the fundamental theory of Customs jurisprudence that an imported article should be classified according to its true commercial character. Computime, Inc., v. United States, Appeal No. 85-1050, appearing on page 27 of the October 2, 1985 Customs Bulletin.

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You cited a number of technical definitions in support of your position. Even assuming arguendo that the imported product does not meet these technical definitions of yogurt, we do not believe that those definitions are controlling.

Tariff acts are not drafted in terms of science, but in the terms of commerce, which is presumptively that in common use, and, in the absence of a contrary legislative intent, tariff terms are not to be construed according to their scientific meaning, where that meaning differs from the common or commercial meaning. §52.5 Sturm, Customs Law and Administration 34 (1984).

In any event, a number of the definitions state that yogurt is eaten for health or diet purposes; however, it has been said, "[Y]ogurt in developed countries is used as desserts, between meal snacks, complete lunches, and diet foods. Many people eat yogurt because they like it or feel it favorably affects their health, and others cherish it for its value as a conversation piece at cocktail parties." See Frank Kosikowski, Cheese and Fermented Milk 71. Consequently, we do not believe that the marketing of the product as a dessert precludes it from being considered a yogurt for tariff purposes.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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185581

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

075593

REFER TO

25 SEP 1985

CLA-2:CO:R:CV:G
075593 jlj

District Director of Customs
Second & Chestnut Streets
Philadelphia, Pennsylvania 19106

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1101-3-000073

This protest was filed against your decision in the liquidation on February 18, 1983, of entry No. 82-356860-6, dated August 27, 1982, covering a shipment of ladies' blouses produced in Hong Kong.

This ruling concerns whether certain piping on the instant merchandise constitutes ornamentation or not.

FACTS:

The instant merchandise is Ship'n Shore's polyester woven ladies' blouse style 105303 with "disappearing piping" sewn into part of the seam between the blouse and its sleeves. This blouse is constructed in an unusual manner. The armhole of a blouse is ordinarily cut on a curve. In this instance, the seam comes to a point midway between the top of the sleeve and the bottom of the sleeve. The piping is inserted in the upper half of the armhole seam on the front and rear panels.

Counsel for the protestant claims that the piping does not constitute ornamentation and that the blouse should be classified under the provision for other women's, girls' or infants' wearing apparel, not ornamented, of man-made fibers, not knit, other, in item 383.90, Tariff Schedules of the United States (TSUS).

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The Philadelphia import specialist believes that the piping constitutes ornamentation. She classified and liquidated the entry under the provision for other women's, girls' or infants' wearing apparel, ornamented, of man-made fibers, not knit, blouses, in item 383.22, TSUS.

ISSUE:

Does the piping constitute ornamentation?

LAW AND ANALYSIS:

Counsel for the protestant claims that the piping does not constitute ornamentation. She argues that at the shoulder area there are two or possibly three seams and that the piping runs the length of one of those seams. She cites Customs Headquarters Ruling Letter (HRL) 060888 of January 30, 1980, and HRL 068888 of October 9, 1981, in support of her position.

HRL 060888 states that there is an established and uniform practice of not considering piping to be ornamentation if it is sewn into a seam, if it extends less than 1/4 inch beyond the surface of the fabric, and if it is inserted along the entire length of the seam. HRL 060888 also states that Customs has chosen to narrowly construe this exception to ornamentation.

HRL 068888 also discusses piping and the narrowly construed practice. It quotes the American Heritage Dictionary of the English Language definition of a seam as "a line of junction formed by sewing together two pieces of material along their margins." Following this definition,

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there are two armhole seams on each arm of the blouse in question: the seam formed by sewing the sleeve to the front piece of the blouse and the seam formed by sewing the sleeve to the back piece of the blouse. The instant piping does not run the full length of either seam; it runs only part of the way down both seams.

The piping does not meet the exception to ornamentation set forth in HRL 060888 and 068888 because it does not run the full length of the seams it is attached to. The piping therefore constitutes ornamentation, and the blouse is ornamented. The blouse is properly classified in item 383.22, TSUS.

HOLDING:

The piping constitutes ornamentation, and the instant merchandise is ornamented. The blouses, style 105303, are classified in item 383.22, TSUS.

The protest should be denied in full. A copy of this decision letter should be sent to the protestant along with the CF 19, Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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075593

F12

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

075596

DATE: OCT 16 1985

FILE: CLA-2:CO:R:CV:G
075596 jlj

TO : Area Director of Customs
JFK Airport
Jamaica, New York 11430

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 13/85 Concerning the Correct Classification of "Baby Zoo" Stickers

The request for Internal Advice was initiated by a letter dated December 12, 1984, from Munford Page Hall II, Esquire, of Baker & McKenzie, representing the importer, Panini U.S.A., 645 Madison Avenue, New York, New York 10022.

FACTS:

The merchandise at issue is printed paper "Baby Zoo" stickers measuring 2-1/2 inches by 3-1/2 inches in sheets of six stickers. The stickers have an adhesive surface which is covered with a protective liner.

After importation, the sheets of stickers are inserted and stapled together with printed pages and posters into a book called "Hot Dog." The stickers are inserted sideways within the front and back covers of the book, two stickers on one side, four on the other. The sheet is perforated so that the stickers can be torn off. One sheet goes into each book. The sheets of stickers are never sold separately at retail in their imported form.

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Counsel for the importer claims that the "Baby Zoo" stickers should be classified under the provision for printed matter not specifically provided for, suitable for use in the production of such books as would themselves be free of duty, in item 274.73, Tariff Schedules of the United States (TSUS). The import specialist at JFK Airport believes that the stickers are classifiable under the provision for sheets, strips, tapes, stencils, monograms and other flat shapes or forms, all the foregoing articles which are pressure sensitive, with or without protective liners, and whether or not in rolls, in item 790.55, TSUS.

ISSUE:

Are the "Baby Zoo" stickers classifiable in item 274.73, TSUS, or in item 790.55, TSUS?

LAW AND ANALYSIS:

The "Baby Zoo" stickers are pressure sensitive. "Pressure sensitive" refers to articles which have an adhesive coating on one or both surfaces which will adhere to other surfaces upon the application of pressure only.

Counsel for the importer claims that the stickers are classifiable under the provision for printed matter not specially provided for, suitable for use in the production of such books as would themselves be duty free, in item 274.73, TSUS. He claims that the stickers are parts of books which

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would be classified under the provision for toy books, including coloring books and books the only reading matter in which consists of letters, numerals or descriptive words, in item 737.52, TSUS. He cites New York letter 804395, dated November 10, 1982, in support of his argument.

Counsel also argues that, while the stickers have adhesive on one side and are pressure sensitive, the imported item -- i.e., the sticker sheet comprised of the stickers plus a protective liner -- is not pressure sensitive, therefore the item cannot be classified in item 790.55, TSUS.

Finally, counsel argues that similar merchandise was classified in item 274.73, TSUS, in New York letter 810045, dated July 16, 1984.

To begin with, counsel misunderstands item 790.55, TSUS. The "Baby Zoo" pictorial animal stickers have an adhesive coating on one side. They will adhere to other surfaces upon the application of pressure only. Each sheet of stickers has a protective liner with which it is imported. The protective liners are intended to protect the pressure sensitive side of the stickers. It is not a requirement of item 790.55, TSUS, that the protective liner be coated with an adhesive or that the protective liner be pressure sensitive. The fact that the stickers themselves are pressure sensitive is enough to

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satisfy the requirements of item 790.55, TSUS.

New York letter 804395 is distinguishable because the "Deputy Dawg" books which were the subject of that ruling were classifiable under the provision for toy books in item 737.52, TSUS. The "Hot Dog" books in the instant case would not be classifiable under the provision for toy books because toy books are books which have very little textual matter other than letters, numbers or descriptive words. "Hot Dog" contains stories as well as puzzles and games. It would not qualify for classification under the toy book provision.

New York letter 810045 classified gummed stamp "signatures" which were intended to be used within "Hello Kitty's Stamp Fun" in item 274.73, TSUS. "Signatures," however, are printed sheets which can be folded in such a way that they form two or more pages of a book. The instant merchandise is not inserted into "Hot Dog" in such a way that it forms two or more pages in the book. Furthermore, it is evident upon reading "Hot Dog" that the stickers have no meaning and no place within the context of the book and are clearly meant to be torn from the book to be used elsewhere.

General headnote 10(c), TSUS, states that "...an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it...." General Headnote 10(c)(ii),

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TSUS, states that "...comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading..." In essence, this means that item 790.55, TSUS, which is a superior heading, must be compared to the superior heading of item 274.73, TSUS. The superior heading of item 274.73, TSUS, reads "printed matter not specially provided for." While the stickers are printed, they are much more specifically provided for by the language of item 790.55, TSUS, as flat shapes or forms, all the foregoing articles which are pressure sensitive, with or without protective liners.

In Customs Headquarters Ruling Letter (HRL) 072087 of February 18, 1983, a similar classification difference was discussed. In that case, pressure sensitive printed labels were at issue. The tariff provisions discussed were other printed matter not specially provided for, other, other, in item 274.90, TSUS, and other flat shapes or forms, pressure sensitive, in item 790.55, TSUS. In HRL 072087, we concluded that the pressure sensitive element was the characteristic feature which removed the labels from the provision for printed material.

In other decisions, Customs has also classified printed matter in a pressure sensitive condition in item 790,55, TSUS.

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See New York letter 809994 of July 27, 1984; New York letter 800480 of May 11, 1981; New York letter 805888 of May 20, 1983; Treasury Decision 56516(143) of 1965; Legal Determination 3611-297 of May 9, 1978; ORR Ruling 73-0178; and ORR Ruling 347-70.

We find that the "Baby Zoo" stickers are more specifically provided for under the provision for other flat shapes and forms, pressure sensitive, with or without protective liners, in item 790.55, TSUS.

HOLDING:

The "Baby Zoo" stickers are classifiable in item 790.55, TSUS. The inquirer should be notified of this decision.

Arthur P. Hoffman
For Harvey B. Fox

075596

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

23 SEP 1985

REFER TO

CLA-2:CO:R:CV:G
075659 jlj

075659

District Director of Customs
P.O. Box 2112
San Juan
Puerto Rico 00903

Dear Sir:

Re: Decision on Application for Further Review of
Protest Nos. 4909-2-000174 and 4909-2-000175

These protests were filed against your decisions in the liquidations of seven entries covering shipments of women's T-shirts produced in Malaysia.

This ruling concerns whether a certain trademark logo constitutes ornamentation or not.

FACTS:

The merchandise at issue is women's T-shirts, 60 percent cotton and 40 percent polyester, with front and back yoke sleeves, with the trademark "Racket" in block letters on the left sleeves.

The protestant's broker claims that the trademark does not constitute ornamentation and that the T-shirts are classifiable under the provision for other women's, girls' or infants' wearing apparel, not ornamented, of cotton, knit, blouses, shirts and sweaters, in item 383.27, Tariff Schedules of the United States (TSUS).

The San Juan import specialist believes that the trademark constitutes ornamentation. The T-shirts were liquidated under the provision for other women's, girls' or infants' wearing apparel, ornamented, of cotton, other, knit, blouses, shirts, sweaters, coats, suits, trousers, slacks and shorts, in item 383.02, TSUS.

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ISSUE:

Does the trademark logo "Racket" constitute ornamentation?

LAW AND ANALYSIS:

The rectangular label with the logo "Racket" measures 1 1/2 inches by 1/2 inch. The label is black with silver letters 1/4 inch high, with the exception of the letter R, which is 3/8 inch high and extends above and below the other letters. The letters are formed by use of thick and thin lines, creating a stylized effect.

In order to constitute ornamentation, a feature on a garment must serve a primarily decorative rather than a utilitarian function. Blairmoor Knitwear Corp. v. United States, 60 Cust. Ct. 388, C. D. 3386 (1968). If the label serves primarily to adorn, embellish, decorate or enhance the wearing apparel, then it must be considered ornamentation for tariff purposes. An exception has been made for relatively small, rectangular labels which contain only plain writing or plain block printing in an orderly arrangement. This exception is very narrowly construed, however, with labels excluded from consideration under the exception if anything has been done to the label which enhances its appearance and, consequently, the garment to which it is affixed. See Customs Headquarters

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Ruling Letter (HRL) 072384 of April 15, 1983.

In HRL 041260 of February 27, 1976, general guidelines were developed to be applied when considering the decorative impact of labels. HRL 041260 states that "If there is an obvious attempt to attract a viewer's attention to a label by the use of varying sized letters on the label...then that label may constitute ornamentation." Letters with a stylized appearance which is obviously meant to enhance the appearance of a label would also create a decorative effect, thus constituting ornamentation. See HRL 075434 of August 27, 1985.

The protestant's broker claims that the trademark logo "Racket" which is on the left sleeve of the imported T-shirts does not constitute ornamentation. He claims that the differences in size of the lettering are not sufficient to attract attention. He also claims that the enlarged R is basically the same as the other lettering and that it does not decorate the T-shirts.

The instant label is composed of highly stylized letters with thick and thin lines. It is clearly not made of plain block letters. This stylization adds a degree of embellishment not found in plain block lettering. Furthermore, the R does stand out because of its size, extending above and below the other letters.

075659

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The logo "Racket" does constitue ornamention. The T-shirts are classifiable in item 383.02, TSUS.

HOLDING:

The trademark "Racket" constitutes ornamentation. The T-shirts are classifiable in item 383.02, TSUS.

The protest should be denied in full. A copy of this decision should be sent to the protestant along with your CF 19 Notice of Action.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

075659

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV - 6 1985

REFER TO

CLA-2:CO:R:CV:G
075671 JLV
812162 NY

075671

Mr. Toshiaki Furuta
Nissho Iwai American Corporation
1211 Aveune of the Americas
New York, New York 10036

Dear Mr. Furuta:

In your letter of January 16, 1985, you requested a ruling on the tariff classification of a product described as "heat pipe".

The merchandise consists of a heat pipe, available in various shapes and sizes, that has application in household appliances, industrial machinery, power transmission equipment, electrical components, and numerous other articles in which heat transfer is necessary. The heat pipe is a closed copper pipe containing a mesh wick or similar capillary structure on the inner wall, and a small amount of evaporative medium (a working fluid, such as water or freon). It operates on a simple heat transfer principle by which the working fluid vaporizes at the heat-in section (absorption of latent heat), movement of vapor to the low-temperature section, condensation of the vapor (discharge of latent heat), and flow-back of the condensate by capillary action to the heat-in section. There are six standard sizes within a range of 6.35 mm to 22.33 mm in outside diameter, and each of the six standard sizes are in lengths of 151 mm to 500 mm. Special sizes and shapes are available on request.

The diversity of uses for a "heat pipe" and the lack of specific information on chief use of each size and shape of heat pipe preclude classification as a part of any specific article. General Headnote 10(ij), Tariff Schedules of the United States (TSUS). The heat pipes can be used to make heat sinks for electronic equipment, to recover industrial waste heat, to cool motors by removing heat generated by a rotor, and for numerous other less common but increasingly significant uses.

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Furthermore, the information presented is not sufficient for us to determine whether or not these heat pipes are chiefly used as parts of machinery for purposes of item 680.39, TSUS. Therefore, it is our conclusion that a general purpose heat pipe is classifiable under the provision for articles of copper (other than alloys of copper) in item 657.30, TSUS, and dutiable at 7.6 percent ad valorem. This ruling does not address the classification of specially-designed heat pipes that are chiefly or solely used on specific articles.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

1 NOV 1985

REFER TO
CLA-2 CO:R:CV:G
075780 EMS

075780

Duncan A. Nixon, Esq.
Sharretts, Paley, Carter & Blauvelt
80 Broad Street
New York, New York 10004

Dear Mr. Duncan:

This is in response to your letter dated February 25, 1985, requesting reconsideration of New York Ruling Letter 810842 dated October 17, 1984, concerning the tariff classification of a lady's jacket from Hong Kong. A sample was transmitted to this office under cover of your letter dated September 20, 1985. In addition, a conference with Richard Belanger of your Washington, D.C., office was held on October 1, 1985, to discuss this matter.

The sample is a lady's woven jacket which is in chief value of cotton. It has a full front buttoned opening which extends to include the waistband; long sleeves with buttoned cuffs; and a pointed collar. The sleeves, fronts, and back are formed by sections of fabric having been pieced together. The back of the waistband is elasticized, and the back of the garment features an expandable pleat. A placket, extending from the upper edge of the waistband to the lower edge of the neckline is covered by a textile section which covers the buttons. A pocket with a pleat and a buttoned flap closure is located on each front of the jacket. An epaulet is located on each of the padded shoulders of the unlined jacket. The epaulets are formed by strips of fabric which extend from the shoulder seam to the collar seam passing through a textile loop where they are secured by a button.

The question presented is whether functional epaulets on an unlined jacket should be considered ornamentation for tariff classification purposes. In Headquarters Ruling Letter (HRL) dated December 7, 1983, file No. 072034, we stated that "functional epaulets (epaulets which may be opened and closed) on coats and nontailored jackets have a functional capability which, absent unusual construction of those epaulets, outweigh the decorative effect which they impart to the garment" and ruled that the shoulder straps at issue did not constitute ornamentation. In HRL dated January 4, 1984, file No. 073507, a lined lightweight jacket with epaulets was also considered by Customs to be nonornamented.

In Pistol Fashions v. United States, 5 CIT 284 (1983), the court considered the ornamentation question with regard to double textile loops to epaulets. The court there stated:

> It is functional capability, together with the appropriateness of that function to the garment, which determines whether or not a feature is

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functional. Ferriswheel v. United States, 68 CCPA 21, C.A.D. 1260, 644 F. 2d 865 (1981). The two loops have the functional capability of giving the raincoat a neat appearance by holding the epaulet more firmly and flatter to the shoulder. This is evident both from the testimony presented and from the sample itself. Such a function is appropriate to the garment.

In conclusion this court finds that the double loop feature on the merchandise in issue imparts no more than an incidental decorative effect and that it does have a functionality which is primary to any ornamental effect.

5 CIT at 286.

It has been suggested by our New York office that the reasoning expressed in HRL 072034 and 073507 should not be extended to unlined jackets. That is, they would consider functional epaulets on unlined jackets to constitute ornamentation. We cannot distinguish the unlined garments involved in this ruling request from the lined garments involved in the previous rulings. The epaulets and loops on the jackets under consideration are primarily functional. Any decorative effect imparted by these features is merely incidental. The epaulets are capable of holding camera straps, binocular case straps, handbag straps, and similar type straps. The fact that these jackets are unlined does not necessarily mean that the features in question are inappropriate to the garment. The single loop holding down the epaulets serves to make the epaulets lie flat to give a neater appearance, and to reinforce the button feature.

In view of the foregoing, the jackets under consideration are classifiable under the provision for other women's wearing apparel, not ornamented, of cotton, not knit, valued over $4.00 each in item 384.3777, TSUS, (Category 335) dutiable at the rate of 8 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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085780

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

23 SEP 1985

REFER TO

CLA-2:CO:R:CV:G
075794 jlj

075794

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of
Protest No. 3801-4-001949

This protest was filed against your decision in the liquidation on August 3, 1984, of entry No. 84-645060, dated February 3, 1984, covering natural kraft paper rolls laminated with foil produced in Canada.

This ruling concerns the correct tariff classification of this product.

FACTS:

The merchandise at issue is rolls of kraft paper laminated with aluminum foil. Each roll measures 48 7/8 inches wide and 1500 feet in length. The kraft paper is laminated with an aluminum foil matte. This material is used as a base layer on flat industrial commercial roofs, in conjunction with other insulating components.

The protestant's broker claims that this material is paperbacked foil and should have been classified under the provision for base metal foil (whether or not embossed, cut to shape, perforated, etched, coated, printed, colored, decorated, or backed with paper or equivalent backing) not

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over 0.006 inch in thickness (excluding any coating or backing), backed, whether or not cut to shape, other, other foil, in item 644.42, Tariff Schedules of the United States (TSUS).

The Detroit import specialist contends that this material is more than foil, even paperbacked foil. He liquidated the entry under the provision for other articles of paper, not specially provided for, in item 256.90, TSUS, citing ORR Ruling 223-70, dated March 12, 1970, in support of his position.

ISSUE:

Is this material more than paperbacked aluminum foil?

LAW AND ANALYSIS:

The protestant's broker claims that the material meets the requirements of item 644.42, TSUS, because it is paperbacked foil, the foil portion of which measures 0.000285 inch in thickness. He claims that the merchandise is classifiable accordingly.

The submitted sample is composed of a layer of aluminum foil laminated to several layers of paper, resulting in a product which is relatively rigid and substantial in strength. It is in chief value of kraft paper according to the value breakdown provided by the protestant.

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In ORR Ruling 223-70, similar merchandise was classified. In that letter we stated "...that merchandise of this class or kind is more than foil backed with paper or its equivalent." We concluded that "...the proper provisions must be applied in accordance with the component material of chief value."

In Customs Headquarters Ruling Letter 073352 of December 16, 1983, we considered whether foam backed foil insulation could be classified in item 644.42, TSUS. We stated there that "...foam backed foil insulation containing various layers of rigid material cannot be considered aluminum foil because only a small portion of the product is made of foil." We concluded that the foil insulation was properly classified according to its component of chief value.

Finally, in HRL 029863 of May 9, 1974, we stated with regard to a similar tariff provision that "Item 644.36, TSUS, does not apply as the backing appears to be more than paper or an equivalent and is not the flexible type of backing contemplated by item 644.36, TSUS."

Looking at the composition of the instant merchandise, we conclude from an examination of the sample that the merchandise is more than foil backed with paper. The type of backing contemplated by the superior heading for item 644.42, TSUS, is of a type which supports the foil and remains flexible. The instant merchandise is relatively inflexible.

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075794

Inasmuch as the material is not classifiable in item 644.42, TSUS, it must be classified according to its component of chief value. Its component of chief value is paper, therefore it is classifiable as an article of paper not specially provided for, in item 256.90, TSUS.

HOLDING:

The instant merchandise is classifiable in item 256.90, TSUS. The protest should be denied in full. A copy of this decision should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

Arthur P. Schiffelin
Chief, General
Classification Branch

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A6

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

075818

DATE: 24 OCT 1985

FILE: CLA-2:CO:R:CV:G
075818 JGB

TO : District Director of Customs
127 North Water Street
Ogdensburg, New York 13669

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 120/84 - Classification of Swellex Bolts

This is in response to your request for internal advice made at the request of the importer, Atlas Copco North America, Wayne, New Jersey. It concerns the classification of a device, trademarked Swellex, to hold or secure bearing plates to the roof of a tunnel.

ISSUE:

Whether the instant merchandise is a bolt or an article of iron or steel, n.s.p.f.

FACTS:

The importer entered the merchandise claiming the classification to be under item 646.54, Tariff Schedules of the United States (TSUS), the provision for bolts of iron or steel. You reclassified the merchandise as other articles of iron or steel, not coated or plated with precious metal, n.s.p.f., in item 657.25, TSUS.

The merchandise is designed to secure bearing plates on the roof of tunnels and mines. It is referred to by the manufacturer in descriptive literature as a "SWELLEX system" that "consists of the 'bolt', an installation rod with chuck and a high pressure water pump." The "bolt" is a steel tube

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originally having an outer diameter of 41 mm and a wall thickness of 2 mm. The tube has been mechanically reshaped to an outer diameter of 25.5 mm. The device is used by inserting the longitudinally compressed tube into a pre-drilled hole and injecting high pressure water through the bushing at the end. This action expands the tube to near original size and grips the tube against the irregularities of the drill hole.

The Swellex System provides a substitute to the solid bolts that may be used in roofs of mines and tunnels.

LAW AND ANALYSIS:

The counsel for the importer has argued that the instant merchandise is a bolt and fits the common definition of that term, in that it is in the shape of a pin or a rod and is designed to hold something in place. To support this position, counsel relies on the decision in A. L. Liebman & Son, Inc. v. United States, 65 Cust. Ct. 85, C.D. 4059 (1970).

In Liebman, the Customs Court rejected Custom's position that a bolt should operate to fasten and attach things together and work with threads and a nut. The bolt is to be more broadly construed with the aid of the common meaning or definition found in dictionaries.

You have correctly noted that the instant merchandise does not in your opinion present the form of bolt, because it is not a pin or rod, but rather is a hollow tube, both before and after insertion. There is no dispute that the device

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fastens and substitutes for the function of traditional mine roof bolts. However, we must recognize your claim that pins or rods are solid and not hollow, and bolts do not within their common meaning inflate with water to assume a new shape. Therefore, the claim that the Swellex system is described by the broad meaning of the term bolt must be rejected because it is not a solid pin or rod and performs in ways to distinguish it from pins and rods.

HOLDING:

The instant merchandise, the subject of entry 84-128806 at Champlain - Rouses Point, should be classified in item 657.25, as articles of iron or steel, since it is not more specifically described in the provision for bolts or elsewhere.

A copy of this decision should be sent to counsel for the importer, Jack D. Mlawski, Esq., Barnes, Richardson & Colburn, 475 Park Avenue South, New York, New York 10016.

Arthur P. Schaffner
for Harvey B. Fox

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015818

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

075861

28 OCT 1985

REFER TO

CLA-2:CO:R:CV:G
075861 jlj

Duncan A Nixon, Esquire
Sharretts, Paley, Carter & Blauvelt
80 Broad Street
New York, New York 10004

Dear Mr. Nixon:

You requested a tariff classification concerning a men's shirt, Style 2125, for your client, M. Rubin & Sons, Inc. You submitted a sample shirt along with your request.

Style 2125 is a pullover men's woven shirt in chief value of man-made fibers. It will be manufactured in Taiwan. It has short sleeves, two pockets with zipper closures on the front and a knit waistband. The shirt has a zippered opening extending approximately half way down its front. Inserted into the seams of the front yokes are two pieces of fabric which give the shirt a U-neck "layered look" and partially conceal the zippered opening. The opening for the head on the shirt fastens together by means of three snap closures.

You argue that by providing warmth the "layered look" serves a significant purpose with respect to the character and construction of the garment, therefore the "layered look" is primarily functional. You quote from United States v. Endicott Johnson Corporation, 67 C.C.P.A. 47, C.A.D. 1242 (1980), which dealt with stitching on shoe uppers, to the effect that a feature which serves a significant purpose with regards to the character or construction of an article is functional and not merely ornamental.

We do not agree with your contention that the "layered look" on this shirt is functional. The garment is not designed primarily to be worn in cooler weather. It has short sleeves and is made predominantly of lightweight fabric. The fabric forming the "layered look" is of the same lightweight construction. Its capacity for providing warmth is negligible. The fact that the layered inserts are of a different material makes them stand out and has a decorative effect. The primary function of the "layered look" fabric is to decorate the shirt.

Inasmuch as the "layered look" is primarily decorative in nature, the shirt is classifiable under the provision for

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ornamented men's woven shirts of man-made fibers, in item 381.31 (formerly item 379.31), Tariff Schedules of the United States, dutiable at the rate of 34.2 percent *ad valorem*.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

8 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
075864 JGH
810900

075864

Mr. Stephen C. Pred
ICD Groups Inc.
641 Lexington Avenue
New York, New York 10022

Dear Mr. Pred:

This is in reference to your petition for reconsideration of a ruling issued December 27, 1984, by the New York Region in which titanium diboride made in West Germany and in powder form was classified under the provision for titanium alloys in unwrought form in item 629.14, Tariff Schedules of the United States (TSUS). The current column 1 rate of duty required under this provision is 16 percent ad valorem.

You refer to titanium diboride as an inert ceramic compound and do not believe that it is a metal alloy, because the nature of the bonds between the subparticles are not easily labeled. Therefore, it is your opinion that the product is classifiable under the specific provision for titanium compounds in item 422.30, TSUS.

It is understood that titanium diboride is an extremely hard material with a very high melting point, and it is used as a metallurgical additive, as a replacement for diamond dust in grinding/polishing materials, as a base material for cermets (ceramic-metal composite materials), and as a protective coating for metals in high temperature applications.

Under Headnote 2(a), Part 2, Schedule 6, TSUS, alloys are defined in pertinent part as "metallic substances consisting of two or more metals, or of one or more metals and one or more non-metals, intimately united, usually by having been fused together * * *." It is our position that the provision for alloys consisting of intimately united metals includes combinations of metals which are regarded as compounds, but a compound of a metal and a non-metal in a powder or other amorphous form would not be regarded as an alloy. While the information in support of your petition reflects the general scientific view presently held and held before the 1960's that boron is a non-metal, the TSUS reflects an intervening different view in its inclusion among base metals of boron in Headnote 2(b), Schedule 6, TSUS. Accordingly, regarding boron as a metal is a statutory requirement and must prevail against the weight of contrary scientific authority.

It should be also noted that titanium diboride exhibits the properties of a "metallic substance," such as electrical conductivity, hardness, etc. While we do not dispute that the merchandie is nevertheless also encompassed under item 422.30, Headnote 1(iii), Schedule 4, TSUS, where

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that item appears, specifically excludes merchandise classifiable in Part 2, Schedule 6, where item 629.14 appears, thereby requiring that the latter provision prevail. In this connection, adverse trade results which you contend may ensue from this conclusion cannot be taken into consideration in making tariff classification determinations.

Therefore, taking into consideration the cited headnote requirements as well as the characteristics and uses of titanium diboride other than those of a non-metallic nature, the tariff classification decision at issue is affirmed.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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075861

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 17 1985

REFER TO
CLA-2 CO:R:CV:G
075897 JAS

District Director of Customs
610 South Canal Street
Chicago, Illinois 60607

Dear Sir:

This is our decision on Application for Further Review of Protest No. 3901-4-000116, concerning entry 880662, dated November 21, 1979, liquidated on November 14, 1983. At issue is the classification of certain AL 544 leaf chain from Japan. Background materials and briefs from counsel representing the importer/protestant were submitted.

FACTS:

Leaf chain is constructed from interlaced heat treated steel link plates. Pins of case-hardened steel with the ends riveted are used to connect the links without the use of bushings and rollers. Leaf chain is not usually applied in endless strands because it has no teeth to engage with a sprocket. Force is applied to the ends of this chain through clevises or other means of attachment through the chain pins. Changes of direction are usually made over sheaves or rollers.

Leaf chain is used where a strong, flexible linkage with little elastic stretch, and a resulting positive action is required. It is made specifically for tension linkage applications, and is used, for example, with pipe vises to grip round or irregularly shaped objects, with garage door opening devices, to anchor offshore drilling platforms which move in heavy seas, and as counterweights. However, the overwhelming use of leaf chain appears to be on the hydraulic lift mechanism of industrial forklift

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trucks. In this application, linear motion is not continuous in one direction, that is, the chain must move back and forth. Fixed at the ends with clevises, the chain passes over sheaves on the hydraulically activated platen to multiply the travel of the fork. More simply stated, one end of the chain is anchored to the lift truck while the second end is wound over a sheave and fixed to the forks. As the hydraulic cylinder moves, the chain, which is unable to move itself, raises or lowers the forks.

Counsel maintains in briefs, dated March 1 and March 19, 1985, that the proper classification is under the tariff provision for other chain or chains of iron or steel used for the transmission of power, and parts thereof, in item 652.18, TSUS. The instant entry was liquidated, however, under the provision for other chain and chains of base metal, in item 652.35, Tariff Schedules of the United States (TSUS), under the authority of Internal Advice 61/79, dated November 13, 1980 (061269). This decision defined the scope of the provisions for chain or chains used for the transmission of power. Such chain was stated to be made of several pieces of metal connected by rivets, bolts, or steel screws, and so formed as to engage with the teeth of a sprocket wheel.

ISSUE:

Does the instant leaf chain belong to that class or kind of chain or chains chiefly used to transmit power?

LAW AND ANALYSIS:

Initially, counsel maintains that statistical suffix 10, for leaf chain, under item 652.18, TSUS, results in an established and uniform practice to classify leaf chain thereunder, within the meaning of section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)). We are therefore precluded, in counsel's opinion, from publishing a decision

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classifying such leaf chain in item 652.35, TSUS, without invoking relevant change of practice procedures. As counsel readily admits, statistical suffixes have no legal significance in resolving tariff classification issues. Under section 315(d) of the Tariff Act, a so-called "practice" must be both established and uniform. There is no evidence of record to support the contention that a significant number of entries of leaf chain have uniformly, over a period of time, been liquidated at one or more ports under item 652.18.

As to the issue of classification in item 652.18, I.A. 61/79, in tracing the legislative history of the various chain provisions back to the Tariff Act of 1909, concluded that in the enactment of paragraph 329, Tariff Act of 1930, Congress provided for chains according to their structural makeup and whether the chain was of a type that ran over a spocket (i.e., transmits power). It was further concluded that in the enactment of the TSUS no substantive changes were contemplated or made. Counsel maintains, however, that the express language of item 652.18, chain or chains used for the transmission of power, and parts thereof, other, is clear and unambiguous on its face. In such circumstances, it is concluded, resort to legislative history is improper. Nevertheless, in its March 19 brief, at p. 5, counsel argues that Congressional intent at the time the TSUS provision was enacted is controlling.

It is uncontroverted that the provision in item 652.18 is one governed by use. We must therefore determine whether or not leaf chain belongs to that class or kind of chain chiefly used to transmit power. The overwhelming use of leaf chain, as previously described, is with industrial type lift trucks. We must therefore determine whether its use in this manner is a power transmitting application. The obvious argument in this regard is that the chain transmits power from the truck's hydraulic

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cylinder to the forks, causing them to raise or lower. Counsel maintains that the common meaning of the term "transmission of power," refers to a mechanical transmission of power in which energy in the form of motion is transmitted along the length of the chain, and is thereby transferred to some object connected to the chain, which object is thereby moved. It is our opinion that this type chain transmits power only in the most narrow and technical sense. Because it is attached to the forks and to the truck itself, it is our opinion that this chain receives or utilizes the power from the hydraulic cylinder rather than transmits it. It is the chain itself which raises or lowers the forks. This is a tension linkage application, not a power transmission application.

The major application of drive or power transmission chains is on construction equipment and the stationary drives of certain types of processing equipment. Mechanical shovels, for example, normally use chain throughout their power trains from engine to shovel mechanism. Crane crawler drives and truck mixer drives are other typical applications of drive chains in the construction equipment field. These are made of several pieces of steel, comprising pins, bushings and plates hooked to a motor. Running over a sprocket these chains transmit mechanical energy from the motor, through the chain to power another working member. In such application the chain makes any number of revolutions to transmit the power to a receiver then, theoretically, returns "empty" to take on another "load" of power. Tension linkage applications, as are believed to be involved here, evidence an oscillating or back and forth motion and only a few pitches in the total chain articulate. In the fork lift example, the chain, in our opinion, does not transmit power to the forks. The chain and fork assembly constitute an integral unit which is acted upon directly by the source of power.

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The evidence of record supports the conclusion that leaf chain is overwhelmingly used for tension linkage applications to hoist or move a load slowly or intermittently over a short distance, or to hold or position the load in place when not moving. In applications of this kind, the chain generally moves back and forth rather than continuously in one direction. Use of leaf chain in this manner precludes it from belonging to that class or kind of chain chiefly used to transmit power.

HOLDING:

The AL 544 leaf chain is properly classifiable under the tariff provision for other chain or chains of base metal, in item 652.35, TSUS.

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to satisfy the notice requirements of section 174.30(a), Customs Regulations as amended by T.D. 80-271.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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076589

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

075907

24 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
075907 jlj
812529

Mr. Stephen M. Zelman
Siegel, Mandel & Davidson, P.C.
One Whitehall Street
New York, New York 10004

Dear Mr. Zelman:

You requested a tariff classification covering cotton footwear uppers from the Dominican Republic for your client, Carter Footwear Inc. You submitted a sample upper along with your letter.

The submitted sample is a cotton footwear upper, Style No. 9980. It is similar to the moccasin-type boat shoe. The toe area is a moccasin-type design created by a ridge with a cord sewn on the underside. A collar of the same material as the rest of the upper runs around the top and ends at the tongue closure area. There are three pairs of eyelets in the tongue area for closure purposes. In addition, there are eight eyelets running along the collar horizontally and completely around it. A textile flat braid shoe lacing passes through these eyelets and is stitched to the interior of an overlay.

The issue is whether the shoe lacing around the collar constitutes ornamentation or not. You believe that the upper is not ornamented and should be classified under the provision for articles not specially provided for, of textile materials, other articles, not ornamented, of cotton, other, in item 386.50, Tariff Schedules of the United States (TSUS).

You claim that United States v. Endicott Johnson Corp. (Endicott Johnson), 67 CCPA 47, C.A.D. 1242 (1980), is controlling. In Endicott Johnson, the court stated that stitching without a proven function is not per se ornamental; it must be shown to have more than an incidental decorative effect. The Endicott Johnson court held not only that the stitching was functional but that it was not ornamented because it presented the same appearance as the rest of the stitching on the sneaker upper.

You contend that the conspicuousness of the lacing on the instant upper is determined by color, as was the white stitching on the white sneaker in Endicott Johnson. You believe that the instant lacing is neither eye-catching nor conspicuous and that it imparts no more than an incidental decorative effect.

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In addition, you claim that the lacing serves the functional purpose of distributing stress along the area in which the foot is put into the shoe and that the lacing reinforces the back of the shoe. You contend that the lacing is primarily functional rather than ornamental because of these functions.

We do not agree that Endicott Johnson is applicable to the instant merchandise. We do not believe that the conspicuousness of lacing is dependent upon color as was the case with the white stitching on white canvas sneakers. In this case the lacing, which passes in and out of grommeted eyelets, is much more substantial than stitching and is very conspicuous.

In addition, we do not believe the lacing is functional. It does not provide support around the collar, and the heel counter, rather than the lacing, reinforces the back of the shoe. Laces are defined in Webster's Third New International Dictionary as a cord or string used for drawing together two edges (as in a shoe) or to confine or compress by tightening the laces. In this case the lace performs none of these functions. It is stitched in place and is merely a fashion trend derived from the moccasin-type boat shoe.

The term "ornamented" does not embrace all the features listed in Headnote 3, Schedule 3, TSUS, but only those features, including braid, which primarily serve to adorn, embellish, decorate or enhance. Where a functional purpose served by one of those features is only incidental to the decorative effect created, that feature will cause the article to be classified as ornamented. See Blairmoor Knitwear Corp. v. United States, 60 Cust. Ct. 388, C.D. 3396 (1968). We believe that the functional strength of the lace is practically nonexistent and is merely incidental to the decorative effect it creates. Accordingly, the lacing constitutes ornamentation for tariff purposes.

New York letter 811060 of December 4, 1984, dealt with the same issue involved here and found that the footwear upper was ornamented because the lacing was nonfunctional.

The submitted sample is classifiable under the provision for articles not specially provided for, of textile materials, ornamented, of cotton, in item 386.04, TSUS, dutiable at the rate of 28 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 16 1985

REFER TO

CLA-2:CO:R:CV:G
075929 JCH
812591

075929

Mr. James J. Kelly
BDP International Inc.
P.O. Box 202
Essington, Pennsylvania 19029

Dear Mr. Kelly:

This is in further response to your letters of February 18, 1985, and August 2, 1985, concerning the tariff classification of merchandise designated Minute Volumeters 2000, 2000k and 3000 to be imported by North American Drager. This merchandise is a product of West Germany.

The merchandise, variously referred to as volumeters, spirometers and respirometers, measure both inhaled and exhaled air volume for what are referred to in the submitted brochures as "numerous applications." These include measurements during anesthesia, control of spontaneous respiration postoperatively, in controlled and assisted ventilation applications, and in vital capacity determinations. The merchandise is mechanical with no electrical parts.

Since the foregoing does not establish that of these uses anesthesiology applications constitute the major use, the merchandise is classifiable under the provision for medical instruments and apparatus, other than those more specifically provided for, in item 709.27, Tariff Schedules of the United States. The current column 1 rate of duty required under that provision is 10.4 percent ad valorem.

Sincerely,

Arthur P. Scheffler

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 10 1985

REFER TO
CLA-2 CO:R:CV:G
075959 c

075959

Louis S. Shoichet, Esq.
Siegel, Mandell & Davidson, P.C.
Counselors at Law
One Whitehall Street
New York, New York 10004

Dear Mr. Shoichet:

In a letter dated April 2, 1985, written on behalf of Dynamic Classics, Ltd., you inquired as to the tariff classification of certain soft sided luggage produced in Korea.

The merchandise involved consists of various sized standard rectangular shaped soft sided luggage made of leather and man-made fiber materials. A representative sample, style No. 2202-3, was submitted for examination. This sample is an expandable canvas carry-on bag measuring 21 inches by 13 inches by 8 inches when closed. In its expanded condition the 8 inch gusset extends to 14 inches. The bag is constructed with full zipper closures, webbed fabric carrying handles, webbed fabric shoulder strap and includes the following leather components.

(1) Two top sections on both the front and back of the bag. Each measures 21 inches by 2.5 inches.

(2) One strip on each end gusset which measures 6 inches by 2.5 inches.

(3) Two handle grips each measuring 5.25 inches by 1.5 inches.

(4) Eight strap tabs each measuring 5.25 inches by 1 inch.

(5) Two pieces of "D" ring holders each measuring 3 inches by 1.5 inches.

(6) Two half-oval tabs at the zipper ends measuring 1.5 inches by 1.25 inches.

We cannot advise you as to the dutiable status of those styles where neither samples nor complete component material breakdowns by value have been submitted. Consequently, our response will be directed to the sample before us.

It should be noted that the value breakdown submitted is not complete in that it does not reflect component costs at a point prior to final assembly.

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The issue to be resolved is whether the value of the leather components is to be disregarded in determinig the component material of chief value of the sample carry-on bag.

It is your view that the costs of the leather components must be included in determining the component material of chief value of the bag. Further, you maintain that in accord with the cost breakdowns submitted the various styles are in chief value of leather requiring their classification under the provision for other luggage of leather in item 706.13, Tariff Schedules of the United States (TSUS), with duty at the rate of 8.5 percent ad valorem.

Schedule 3, Headnote 3(c), TSUS, provides that "applique work, beads, bugles, spangles, bullions, and other forms of nontextile ornamentation applied to a textile fabric or other textile materials shall be disregarded in determining the component material of chief value of such fabric or other article."

It has been contended that certain of the leather components are not primarily functional but rather are decorative since the decorative nature of the trim transcends the functional use.

It is our view that none of the leather components constitutes ornamentation for the following reasons:

(1) The two pieces of leather, 6 inches by 2.5 inches, which cover a seam are in the form of straight strips which are not appliques and do not constitute ornamentation for tariff purposes. See United States v. Hamburger Levine Co., T.D. 34382 (1914); Alfred Kohlbert Paint v. United States, T.D. 49394 (1938).

(2) The two top sections which are cut to a curved shape are not similar to the vinyl overlay on the back of a glove which this office held to be ornamentation in Headquarters Ruling letter (HRL) 075477/811034 dated February 4, 1985. This construction is not an overlay since it is sewn to and not over the textile material. It should be noted that if these sections were removed we would not have a complete bag.

(3) The handle grips of leather measuring 5.25 inches by 1.5 inches are in strip form and do not constitute ornamentation for tariff purposes.

(4) The two half-oval tabs at the zipper ends are functional rather than ornamental because they complete the zipper.

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(5) The eight strap tabs sewn in pairs to plastic D rings are primarily functional and do not constitute ornamentation. In HRL No. 075175 c of December 6, 1984, and HRL No. 075392 of January 17, 1985, this office held that the amount of braid present on braided D-ring strap attachments was not significant because it did not really change or affect the nature of the articles. These rulings are not relevant because the issue therein was whether the presence of the braided strap attachments really changed or affected the nature of the articles whereas the issue here is the functionality of the eight strap tabs.

In view of foregoing the sample bag is classifiable, if in chief value of leather, under the provision for other luggage of leather in item 706.13, TSUS, and dutiable at the rate of 8.5 percent ad valorem.

If the sample is in chief value of textile materials, it would be classifiable under the provision for luggage of other textile materials in item 706.4152, TSUS, and dutiable at the rate of 20 percent ad valorem. The applicable textile quota category number is 670. Luggage produced in Korea is currently subject to textile quota restraints.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

075959

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

10 OCT 1985

REFER TO

CLA-2:CO:R:CV:G
076015 c

076015

District Director of Customs
610 S. Canal Street
Chicago, Illinois 60607

Dear Sir:

Re: Application for Further Review of Protest No. 3901-4-000654

This protest was filed against your decisions in the liquidation on March 2, 1984, of entry No. 84-525565 dated January 3, 1984, and in the liquidation on March 9, 1984, of entry No. 84-525566 dated January 3, 1984, covering shipments of vinyl cases for manicure sets produced in Hong Kong.

FACTS:

The merchandise involved consists of vinyl cases for men's manicure sets and printed floral "purse portable" manicure cases. Samples have been submitted by counsel for the protestant. The carry case for the men's manicure set measures approximately 4-1/4 inches by 3-1/4 inches in a folded condition. The printed floral case is a tri-fold snap case which is similar in size and use as a key case. It is constructed of a clear PVC sheeting over a clear PVC coated printed fabric.

The above described merchandise was classified in liquidation under the provision for other flat goods of other material in item 706.61, Tariff Schedules of the United States (TSUS), with duty at the rate of 20 percent ad valorem.

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The protestant claims that the cases are properly classifiable under the provision for containers of rubber or plastics, with or without their closures, chiefly used for the packing, transporting, or marketing of merchandise in item 772.20, TSUS, and entitled to free entry under the Generalized System of Preferences (GSP).

In support of its claim the protestant cites New York Ruling letter (NYRL) No. 808288 dated February 22, 1984, holding that PVC pouches with inserts to hold various manicure instruments are classifiable under item 772.20, TSUS.

The protestant also states that samples of the subject merchandise were provided to our New York office along with a request for a non-binding ruling dated December 28, 1983. A copy of customs Form 4313 (non-binding ruling) dated January 10, 1985, has been submitted to us by the protestant. That form indicates an opinion that the vinyl pouches used for the packaging of manicure sets are classifiable under item 772.20, TSUS.

ISSUE:

1. Were the subject cases in fact covered by NYRL 808288 dated February 22, 1984?

2. Are the cases chiefly used for the packing, transporting or marketing of merchandise?

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LAW AND ANALYSIS:

Based on information provided by our New York office and counsel for the protestant we conclude that the subject cases were in fact covered by NYRL 808288 dated February 22, 1984. Therefore, following that ruling the merchandise which is the subject of this protest is classifiable under the provision for containers of rubber or plastics, with or without their closures, chiefly used for the packing, transporting, or marketing of merchandise in item 772.20, TSUS, and entitled to free entry under the GSP.

After a review of the matter it is our position that the result reached in NYRL 808288 is erroneous. In order to be classified under item 772.20, TSUS, it must be shown that the manicure cases are chiefly used for the packing, transporting, or marketing of merchandise. The chief use of an article is that use which exceeds all other uses combined.

When used by consumers the instant cases will be used as flat goods presumably carried on the person in the purse or pocket. They are not chiefly used as containers for packing, transporting, or marketing of merchandise and therefore classification under item 772.20, TSUS, is precluded.

It is now our position that the vinyl cases in issue should be classified under the provision for other flat goods of other material in item 706.61, TSUS, with duty at the rate of 20 percent ad valorem.

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In accord with section 177.9(d), Customs Regulations, NYRL 808288 dated February 27, 1984, is hereby revoked. Merchandise of the type covered by this decision entered or withdrawn from warehouse for consumption after the date of this letter will be classified under item 706.61, TSUS.

HOLDING:

The protest should be allowed. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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076015

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

076078

REFER TO

25 OCT 1985

CIA-2 CO:R:CV:G
076078 jlj
802556

Mr. John F. McManus
Deputy Manager, Customs Duty Team
C. Itoh & Co. (America) Inc.
335 Madison Avenue
New York, New York 10017

Dear Mr. McManus:

You asked us to ascertain whether New York letter 802556 dated May 11, 1982, had been modified or revoked. You included a copy of New York letter 802556 with your letter.

That letter classified Cordley, a plastic substitute for leather, under the provision for film, strips, sheets, wholly or almost wholly of rubber or plastics, not of cellulosic plastics, flexible, other, in item 771.43, Tariff Schedules of the United States (TSUS). Cordley is composed of a polyester fiber web layer, a foamed polyuethane layer and a layer of unexpanded polyurethane.

Following H.R. 3398, Tariff and Trade Act of 1984 (Public Law 98-573), effective November 14, 1984, the new Headnote 2 to Part 12, Schedule 7, TSUS, was added to the tariff schedules. Headnote 2 reads as follows: "This part does not cover fabrics, coated or filled, or laminated, with rubber or plastics provided for in Part 4C of Schedule 3." Inasmuch as Cordley is a fabric coated with plastics, Headnote 2 would apply to it.

It is our view that the legislation adding Headnote 2 to the tariff schedules revoked all prior rulings (including New York letter 802556) covering the subject matter (i.e., plastic and textile in a combination producing imitation leather).

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

C1

THIS DOCUMENT MAY BE RELEASED TO THE

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

04 NOV 1985

CLA-2:CO:R:CV:G
076153 EMS
812506

076153

Mr. Larry Perla
Fathom Dive Suits
6500 South Orange Avenue
Orlando, Florida 32809

Dear Mr. Perla:

Your letter dated December 13, 1984, to our New York office concerning the appropriate tariff classification of a scuba diving accessory known as a weight stabilizer has been referred to this office for direct reply to you. A sample was forwarded along with your request.

The weight stabilizer is a belt that fits around the waist of a scuba diver. The belt has compartments with a flap closure secured by velcro. Weights are to be placed in these compartments. The belt has a velcro closure with a rectangular textile label on the outside of the closure. The label ornaments the belt in accordance with Schedule 3, Headnote 3, Tariff Schedules of the United States (TSUS). The three layer laminated fabric consists of a middle layer of neoprene rubber sandwiched between two layers of knit fabric. The knit fabric is made from 100 percent man-made fibers.

The weight belt counteracts the buoyancy of the human body and air tanks. Additionally, it serves a safety function. When the diver becomes disoriented so that he is unable to distinguish between the surface and the bottom the diver feels the pull of gravity on the weight belt to regain his orientation.

Headnote 1 of Schedule 7, Part 5, Subpart D provides that "this subpart covers equipment for indoor or outdoor games, sports, gymnastics, or athletics." The weight belt falls within this headnote since it is a necessary requisite for the sport of scuba diving. As noted above, it serves a safety function as well as counteracts buoyancy. However, Headnote 1(v) excludes "other wearing apparel, other than specially designed protective articles such as, but not limited to, gloves, shoulder pads, leg guards, and chest protectors." While the instant weight stabilizers are both

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"equipment" and "designed for use" for the sport of scuba diving, they are not protective as the exemplars in Headnote 1(v). Thus, for purposes of Schedule 7 these weight stabilizers are excluded as non-protective "wearing apparel".

On the other hand, these weight stabilizers cannot be considered "wearing apparel" for purposes of Schedule 3. The Customs Court has long held that the term "wearing apparel" as used in Schedule 3 covers articles worn for decency, comfort or adornment. Antonio Pompeo v. United States, 40 Cust. Ct. 362, C.D. 2006 (1958). Accordingly, the instant merchandise is not "wearing apparel" as contemplated in Schedule 3.

It is our view that the weight stabilizer subject to your inquiry is most appropriately classified under the provision for man-made textile materials, not specially provided for, ornamented in item 386.1343, TSUS. This is consistent with previous Headquarters rulings on pistol belts and cartridge belts.

In view of the foregoing, this merchandise is classifiable in item 386.1343, TSUS, dutiable at the rate of 15 percent ad valorem. Duty-free treatment under the Generalized System of Preferences would apply if all requirements are met. However, articles classifiable in item 386.1343, TSUS, are not eligible for duty-free treatment under the Caribbean Basin Initiative.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

076158

C3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1985

REFER TO

CLA-2:CO:R:CV:G
076168 jlj

076168

District Director of Customs
111 West Huron Street
Buffalo, New York 14202

Dear Sir:

Re: Decision on Application for Further Review of
Protest No. 0901-3-000509

This protest was filed against your decision in the liquidation on October 31, 1983, of Buffalo entry No. 83-337829-7, dated September 12, 1983, covering a shipment of Magicards produced in Canada.

This ruling covers the correct tariff classification of Magicards.

FACTS:

The merchandise at issue is plastic cards, called Magicards, imported for use by individuals such as college students as discount cards which would entitle the people to discount benefits when they purchase merchandise.

The protestant's broker claims that the Magicards are intangibles under General Headnote 5(d) of the Tariff Schedules of the United States (TSUS) and are exempt from duty.

The Buffalo import specialist believes that the Magicards should be classified as other articles of plastic, not specially provided for, in item 774.55, TSUS.

ISSUE:

Are the Magicards intangibles?

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LAW AND ANALYSIS:

The broker claims that the Magicards are similar to certain coupons covered by ORR Ruling 579-68 of August 28, 1968, which were found to be intangibles under General Headnote 5(d), TSUS.

The Buffalo import specialist argues that the coupons involved in ORR Ruling 579-68 were already redeemed for their cash value and that the discount cards will not be used in the same way. The import specialist also points to Customs Headquarters Ruling Letter (HRL) 073136 of October 25, 1983, in which personalized credit cards were found not to constitute intangibles, as evidence that the Magicards should be subject to duty.

General Headnote 5(d), TSUS, covers intangibles and states that "For the purposes of headnote 1 -- securities and similar evidences of value. . .are not articles subject to the provisions of these schedules."

The merchandise in question, the State University of New York at Buffalo Student Association Magicard, is valid in its imported condition. No endorsement nor other validation is required. This fact distinguishes the cards from the credit cards of HRL 073136 and brings them within the scope of Internal Advice 69/77

076168

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(HRL 052235 of January 31, 1978). In HRL 052235 blank traveller's checks were found to be intangibles under General Headnote 5(d), TSUS.

The essential point is that the Magicards have no intrinsic value as articles but are valuable only as evidence that certain amounts of money are owed or available. See HRL 073136 of October 25, 1983, HRL 071075 of December 14, 1982, HRL 070181 of December 3, 1982, HRL 052235 of January 31, 1978.

We find that the Magicards are intangibles under General Headnote 5(d), TSUS, and, as such, are exempt from duty.

HOLDING:

The Magicards are intangibles under General Headnote 5(d), TSUS, and are exempt from duty. The protest should be allowed in full. A copy of this ruling letter should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

076168

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 15 1985

REFER TO
CLA-2 CO:R:CV:G
076189 EMS

076189

John B. Pellegrini, Esq.
Ross & Hardies
220 East 42nd Street
20th Floor
New York, New York 10017

Dear Mr. Pellegrini:

This is in response to your letter dated May 6, 1985, concerning the appropriate tariff classification of boys' and girls' jackets to be manufactured in Korea. A representative sample was provided along with your request.

The sample is a lined, lightweight pullover garment without a full front opening. Its shell and lining are nylon. The garment has a zippered opening at the neck which extends approximately twenty percent of the length of the jacket. It also features epaulets, slash pockets in the lower front of the jacket, a pocket at the chest, and elasticized sleeve cuffs and waistband. While the sample provided does not have a hood, you indicate in your letter that some of the jackets to be imported will feature permanently attached hoods. You also indicate in your letter that the importer intends to alter these garments by creating full front openings and inserting zippers subsequent to importation.

The question raised in your ruling request is whether these garments are to be considered unfinished jackets and consequently classifiable under the provision for jackets or to be considered pullovers. Customs has recently issued two rulings on pullovers which were also to be further processed in the United States by the creation of full front openings and insertion of zippers. Headquarters Ruling Letter (HRL) dated April 25, 1985, file No. 075657, and HRL dated May 13, 1985, file No. 076157. The garments in these two rulings were not considered commercially viable garments because of the weight and construction of those garments. Both garments contained a polyester fiberfill insulation. The sample that you provided us in connection with this ruling request is distinguishable from those garments since it is a lightweight pullover with no insulation. It is our view that the instant merchandise is a commercially viable pullover garment in its condition as imported. This is supported by the extracts that you provided from the 1984 Pacific Trail Boys and Girls Catalogue and the L. L. Bean Summer 1985 Catalogue, both of which depict garments similar to the garments involved in this ruling request.

The presence of epaulets on the instant merchandise raises the question of whether epaulets on pullovers constitute ornamentation. Customs has ruled that functional epaulets, i.e., epaulets which may be opened and closed on coats and nontailored jackets do not constitute ornamentation since such epaulets have a functional capability which,

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absent unusual construction of those epaulets, outweigh the decorative effect which they impart to the garment. HRL dated December 7, 1983, file No. 072034. As pointed out in that ruling, it is the feature's functional capability, together with the appropriateness of its function to the garment, which determines whether or not a feature is functional. Ferriswheel v. United States, 68 CCPA 21, C.A.D. 1260 (1981). The epaulets on the instant merchandise do not have the capability of holding camera straps, binocular case straps, handbags straps, and similar straps. The weight of any of these items would easily rip the stitching on the loops which hold the epaulets down. In other words, such a capability is not appropriate to the lighweight pullover at hand. Thus, it is our view that the epaulets are primarily decorative warranting classification of the instant merchandise as ornamented.

In view of the foregoing, the boys' garments are classifiable under the provision for "other men's or boys' wearing apparel, ornamented: of man-made fibers: not knit: other" in item 381.9838, Tariff Schedules of the United States (TSUS) (category 659), dutiable at the rate of 31.2 percent ad valorem. The girls' garments are classifiable under the provision for "other women's, girls', or infants' wearing apparel, ornamented: of man-made fibers: not knit: other" in item 384.9405, TSUS, (category 659), dutiable at the rate 31.2 percent ad valorem. The attachment of a hood would not normally affect the classification of a garment. However, we are unable to give you a definitive answer as to the classification of the garments featuring permanently attached hoods without the provision of a sample.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076189

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

28 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
076268 jlj

District Director of Customs
2039 Federal Office Building
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3004-3-000181

This protest was filed against your decision in the liquidation on September 16, 1983, of entry No. 83-812589-8, dated September 28, 1983, covering brass etchings produced in Canada.

This ruling concerns the correct tariff classification of the brass etchings.

FACTS:

The merchandise at issue is brass etchings produced in Canada. According to the broker's description accompanying the protest, the plates are made by causing an acid to corrode the metal portion of the brass plates, which are not covered or protected by an acid-resistent covering.

The protestant's broker claims that the brass etchings are classifiable under the provision for etchings, printed not over 20 years at time of importation, other, in item 274.70, Tariff Schedules of the United States (TSUS).

The Seattle import specialist liquidated the brass etchings under the provision for articles of copper, not coated or plated with precious metal, other, in item 657.35, TSUS.

ISSUE:

Are the brass etchings made in the above described manner considered to be made by a printing process and thus eligible for classification under the provision for etchings in item 274.70, TSUS, or must they be classified in the basket provision for other copper articles in item 657.35, TSUS?

C9

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LAW AND ANALYSIS:

The merchandise in question is brass sheets with pictorial matter etched on them.

The protestant's broker claims that the brass etchings are classifiable under the provision for etchings in item 274.70, TSUS. He cites ORR Ruling 74-0170 of August 6, 1974, in support of his position.

Headnote 1 of Schedule 2, Part 5, TSUS, states that: "...this part covers only printed matter consisting essentially of textual and pictorial matter produced by any printing process...." Item 274.70, TSUS, appears within Part 5 of Schedule 2, TSUS, and Headnote 1, supra, applies to it.

The Blaine, Washington, import specialist believes that the etchings covered by item 274.70, TSUS, are limited to the prints produced by an etched plate by virtue of Headnote 1, supra. He points out that the instant articles are etched plates and not printed matter produced from plates.

The common meaning of the tariff term "printing" has been found to apply to the art or practice of impressing letters, characters, or figures on paper or other material by means of types, plates, or the like. In Perry Ryer & Co. v. United States, 28 Cust. Ct. 153, C.D. 1403 (1952) (aff'd 41 CCPA 18, C.A.D. 524 (1953)), the court had to decide whether a certain paint or lacquer depositing procedure was printing. It said:

> In this connection, it will prove instructive to examine the following definitions of the words "print" and "printing"....
>
> These definitions at once suggest that the words "print" and "printing" connote the act of stamping, impressing, or transferring letters, characters, or figures by pressure from a die, plate, type, or other device.

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The acid corrosion process by which the instant plates were made does not meet this judicially construed definition of "printing." The plates were not produced by any printing process within the meaning of Headnote 1, supra, and therefore they cannot be classified within Part 5 of Schedule 2, TSUS, in item 274.70, TSUS.

The brass etchings are properly classified as other copper articles in item 657.35, TSUS.

HOLDING:

The brass etchings are classified in item 657.35, TSUS. The protest should be denied in full. A copy of this decision should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

Arthur J. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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076268

C11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

076297

25 OCT 1985

REFER TO

CLA-2:CO:R:CV:G
076297 jlj

Ms. Angela De Gaetano,
U.S. Customs Service
Customs Information Exchange
6 World Trade Center, Room 200
New York, New York 10048

Dear Ms. De Gaetano:

A Customs Form 6431 dated September 29, 1982, received in this office on May 21, 1985, from the port of Champlain, New York, concerns entry No. 82-464350 dated September 16, 1982, covering a shipment of furniture from Canada to Art Distributors Inc., Pelham Manor, New York. This difference of opinion is listed as the ninth item on page 1 of C.I.E. N-42/75, Supplement 43, dated August, 1985.

The merchandise at issue is china hutches in chief value of wood, Item No. 1212H3. The issue presented is whether the hutches are classifiable under the provision for furniture, of wood, other than bent-wood, furniture other than chairs, in item 737.35, Tariff Schedules of the United States (TSUS), or under the provision for furniture, of wood, other than bent-wood, parts of furniture, in item 727.40, TSUS.

The sending port argues that the hutches are classifiable as wood furniture other than chairs in item 727.35, TSUS. The sending port contends that the hutches are complete units of furniture and that they are "functionally usuable" as they are. The sending port cites Internal Advice 193/75 (Customs Headquarters Ruling Letter (HRL) 041619 of November 24, 1975) in support of its position.

The replying port argues that hutches are classifiable under the provision for parts of furniture, of wood, in item 727.40, TSUS, because the hutches are not designed to be placed on the floor or the ground; they must be placed on a buffet or another piece of furniture in order to be used. The replying port agrees that the hutches are complete but argues that they are not usable as they are because they must stand on something in order to be functional. Inasmuch as the hutches are neither floor standing nor functional as they are, the replying port believes that the hutches are parts of furniture rather than furniture.

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Internal Advice 193/75 (HRL 041619) deals with sectional furniture on vertical poles. Its basic premise is that for an item to be classified as furniture it must contain all components necessary to make it usable to the ultimate consumer; neither a substantial nor an essential part of the item can be missing.

In the case of the instant merchandise, the absence of an essential part (i.e., a buffet or other piece of furniture for the hutch to stand on) precludes the classification of the hutch as furniture. It is our opinion that the hutch, being incomplete, is properly classifiable as parts of furniture in item 727.40, TSUS.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

076297

C13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 18 1985

REFER TO

CLA-2:CO:R:CV:G
076302 JAS

076302

Mr. Leo R. Dubiel
Rigidized Metals Corporation
658 Ohio Street
Buffalo, New York 14203

Dear Mr. Dubiel:

In your letter of May 6, 1985, you inquire as to the tariff classification of certain design-strengthened textured metals from the UK. Brochures were submitted.

Your company is importing stainless steel sheets which have be subjected to the so-called black INCO process, which we understand is a treatment which protects or improves the properties or appearance of the sheets. A letter from the Area Director of Customs, New York Seaport, dated May 13, 1985, confirmed the proper classification to be in item 607.90, Tariff Schedules of the United States (TSUS). You now state that a competitor is importing similar she from the UK which, in addition to the described surface t eatment, have been textured or embossed. This results in a different tariff classification and lower duty rate. Inasmuch as this places your company at a competitive disadvantage, you question the disparity in tariff treatment between the two products.

tially, we presume the steel sheets meet the Schedule 6, Part Subpart B, Headnote 2(h)(iv), TSUS, definition of stainless steel, that is, an alloy steel which contains by weight less than 1 percent of carbon and over 11.5 percent of chromium, and that they are within the Headnote 3(g), TSUS, definition of sheets, that is, flat rolled products whether or not corrugated or crimped, in coils or cut to length, under 0.1875 inch in thickness and over 12 inches in width. If so, the subject plates would be classifiable under the provision for plates and sheets of stainless steel, in item 607.90, TSUS, dutiable at the rate of 10 percent ad valorem, plus additional cumulative duties required by Headnote 4, plus further additional duties required by a temporary tariff modification in item 926.00, TSUS, currently 6 percent ad valorem.

Although the sheets you import have been subjected to a surface finishing similar to anodization, they remain classified in item 607.90, TSUS. The ANCO black processing is a treatment which protects or improves the properties or appearance of the metal sheets.

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It is permitted by Schedule 6, Part 2, Headnote 1, TSUS, as a treatment which does not thereby preclude the stainless steel sheets from classification in item 607.90, TSUS, as basic shapes and forms of steel.

However, if the surface-treated stainless steel sheets are subjected to an embossing or similar texturing process, they are processed beyond the types of treatments permitted by Schedule 6, Part 2, Headnote 1, TSUS. Furthermore, the cited definition for steel sheets provides for "flat rolled products whether or not corrugated or crimped." The textured ANCO black stainless steel sheets are not "surface treated" or "corrugated or crimped" within the meaning of the headnotes governing item 607.90, TSUS. Texturing is a process which would advance the sheets beyond the category of a basic shape or form. This is apparently the situation with respect to your competitor. Absent a more specific tariff provision for this textured product, Customs has classified these sheets under the provision for other articles of steel in item 657.25, TSUS, dutiable at rate of 6.7 percent ad valorem.

Copies of the cited headnotes and tariff provisions are enclosed for your reference.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076302

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

2 OCT 1985

CLA-2 CO:R:CV:G
076303 DW

076303

Mr. Irwin Luxenberg
Jacques Moret, Inc.
1350 Broadway
New York, New York 10018

Dear Mr. Luxenberg:

Your letter dated May 13, 1985, requests reconsideration of Internal Advice Request No. 70/84, file 074678 dated April 24, 1985, in which two-piece exercise suits were classified separately.

The merchandise in question involved style 5098, a short sleeve knit shirt with a round neck composed of 65 percent polyester and 35 percent cotton and a suspendered nylon panty with a cotton gusset inside the crotch. The two pieces are tacked together at the shoulders. The other exercise suit is style 4307, consisting of two color coordinated pieces composed of 58 percent polyester and 32 percent cotton. The upper section is a round neck sleeveless top with two narrow fabric ties extending below the waist for about eight inches. The lower section is a panty with the cotton gusset inside the crotch. The garment is worn with the ties fastened and a portion of the midriff exposed.

You contend that the traditional view of a body suit no longer applies to the subject merchandise. In your view, body suits have undergone changes in fabric and construction.

In Customs estimation, the presence of two pieces destroys the identity of the subject merchandise as a body suit. The determination that body suits are one-piece garments for tariff purposes is fully consistent with the common meaning of the term "leotard" which we regard as coequal with a body suit. A leotard is defined in various lexicons as follows:

> Leotard - 1. A snugly fitting elastic garment originally worn by dancers or acrobats. The American Heritage Dictionary, 1976.
>
> Leotard - 1. Short, close fitting without sleeves, low in neck, fitted between legs. Worn by acrobats, trapeze performers, etc.
>
> 2. Modern adaptation of the acrobat's garment, usually made of knitted wool, ankle and wrist length and high-necked, worn under jumper dress. The Fashion Dictionary, Mary Booth Picken, 1973.

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Based on the foregoing definitions which contemplate coverage of the torso by a one-piece garment, we believe the subject garments are not within the ambit of the common meaning of the term "leotard" or "body suit."

The components covering the upper body in styles 4307 and 5098 belong to a class or kind of merchandise that are bought and sold as tops or shirts. Then too, combining these tops with a panty-like garment for marketing purposes to create a fashion item does not control the garment's classification. The Customs Service follows the rule expressed in a multitude of court cases that the merchandising medium is not always determinative of the classification of goods for tariff purposes. See Borneo Sumatra Trading Company v. United States, 64 Cust. Ct. 185, C.D. 3980 (1970) and Rubenderrie and Company, Inc. v. United States, 76 Cust. Ct. 187, C.D. 4659 (1976).

Nor are these two styles classifiable as entireties, because the components of style 4307 and 5098 retain their individual identities and are not subordinated to the identity of the resulting combinations.

Furthermore, although we agree with your claim that the suspendered panty must be worn with a top, it can be worn with any top not just the top with which it is sold.

Therefore, we adhere to our decision in our response to Internal Advice Request No. 70/84 that two-piece body suits are classifiable separately for tariff purposes.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076303

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 16 1985

REFER TO
CLA-2:CO:R:CV:G
076332 EMS

076332

District Director of Customs
U.S. Customhouse
1 E. Bay Street
Savannah, Georgia 31401

Dear Sir:

Re: Decision on Application for Further Review of Protest Nos. 1703-3-000355, 1703-4-000010 and 1703-4-000038

Protest No. 1703-3-000355 was filed against your decision in the liquidations on October 7, 1983, of entry Nos. 364298 dated January 28, 1983, and 364563 dated February 25, 1983. Protest No. 1703-4-000010 was filed against your decision in the liquidations on October 21, 1983, of entry Nos. 367693 dated September 16, 1983, and 367695 also dated September 16, 1983. Protest No. 1703-4-000038 was filed against your decision in the liquidations on December 28, 1983, and December 23, 1983 of entry Nos. 367317 dated August 25, 1985, and 367803 dated September 28, 1983.

FACTS:

The merchandise involved in these Applications for Further Review consists of waist trimmers and thigh trimmers. The waist trimmer is approximately 7-3/4 inches wide and 38 inches long. The inside of the waist trimmer is foamed or expanded neoprene rubber with a 2 inch wide male velcro strip extending along the width of one side of the trimmer. The outside of the waist trimmer is a knit nylon fabric with a plush finish. This fabric appears to be bonded to the rubber surface. This fabric serves as the female velcro closure so

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that the user can fasten the velcro for any size waist. The advertising claims on the packaging of the waist trimmer consist of the following:

.One size fits all
.Trims, firms and tones the waist
.Stimulates body heat around midsection
.Helps support lower back and abdomen
.Easy to use - wear while exercising or working
.Helps improve posture
.Top grade neoprene core with nylon outer surface
.Self-adhesive velcro closure.

The thigh trimmers also consist of foamed or expanded neoprene rubber worn against the skin with a tightly knit nylon fabric bonded on the outside. However, the thigh trimmers have no velcro, but are joined by an overcast sewn side seam. The user puts the thigh trimmers on by pulling the trimmer up to the knee with the fabric on the inside, against the user's leg. The user then grasps the bottom edge of the trimmer and flips it up over the thigh so that the rubber side is against the thigh. The advertising claims for the thigh trimmers consist of the following:

.Helps trim, firm, and tone the thighs
.Stimulates body heat to help prevent muscle pulls
.Easy to use - wear while exercising or working
.Top-grade neoprene core with nylon outer surface

The waist trimmer was classified under the provision for girdles and corsets in item 376.28, Tariff Schedules of the United States (TSUS), and the thigh trimmer was classified under the provision for textile articles not specially

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provided for, of man-made fibers, in item 389.62, TSUS. At that time, no component material cost breakdown was made available to Customs. Protestant contends that the waist trimmer is not properly classifiable in item 376.28, TSUS, since this merchandise should not be considered wearing apparel for tariff classification purposes. Rather, protestant claims that the most appropriate classification for both the waist and thigh trimmers is under the provision for sports equipment in item 735.20, TSUS. Alternatively, protestant urges that the trimmers be classified according to their component material in chief value, i.e., neoprene rubber, in item 770.80, TSUS. In support of its claim that the waist and thigh trimmers are in chief value of neoprene rubber, protestant has submitted a letter dated July 8, 1985, forwarding the component material cost breakdown which was furnished by protestant's supplier of the waist and thigh trimmers.

ISSUE:

The proper classification of waist and thigh trimmers.

LAW AND ANALYSIS:

Protestant challenges the correctness of classification of the waist trimmers under the provision for corsets, girdles, brassieres, and similar body-supporting garments in item 376.28, TSUS. The first question posed is whether the waist trimmer should be considered a garment for tariff classification purposes. If it is considered a garment, the

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question raised is whether it is a similar body-supporting garment to corsets, girdles and brassieres or a body-supporting garment for men and boys.

Webster's New World Dictionary (2d College Ed., 1974) defines garment as "any article of clothing." Clothes in turn are defined as "articles, usually of cloth, designed to cover, protect, or adorn the body; wearing apparel; garments; attire." It is our view that these waist trimmers are not garments since they serve none of the functions traditionally associated with garments or clothing. Moreover, the waist trimmers at issue are not body-supporting garments similar to corsets, girdles or brassieres. First, the waist trimmers are not undergarments as are corsets, girdles or brassieres. Second, the primary function of the waist trimmer is to assist the wearer to lose inches rather than to support the body or to make the wearer appear slimmer. This is in contrast to the merchandise involved in Headquarters Ruling Letter (HRL) dated October 21, 1980, file No. 064486, which was viewed by Customs to be "primarily intended to make the wearer appear slimmer" thereby belonging "to a class of merchandise primarily used in this country in a manner similar to a girdle or corset." Finally, the waist trimmers are not body-supporting garments for men and boys since they are used by both men and women. Thus, the waist trimmer was

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076332

improperly classified under the provision for corsets, girdles, brassieres, and similar body suppporting garments in item 376.28, TSUS.

Protestant urges classification of the waist trimmers as well as the thigh trimmers as sports equipment in item 735.20, TSUS. Schedule 7, Part 5, Subpart D, Headnote 1 states that "this subpart covers equipment designed for indoor or outdoor games, sports, gymnastics, or athletics." It is our view that the waist and thigh trimmers are not "equipment designed for indoor or outdoor games, sports, gymnastics, athletics." In other words, these articles are not the type of equipment contemplated by Headnote 1. The advertising accompanying this merchandise makes clear that these trimmers are specifically designed and constructed to assist the user to lose inches. Losing weight or appearing trimmer is not one of the purposes set out in Headnote 1. The fact that these articles may be used during periods of exercise or athletic periods is irrelevant since they are not specially designed for the purposes set forth in Headnote 1. Therefore, classification in Schedule 7, Part 5, Subpart D is not appropriate.

Headnote 4(b) to Schedule 3, TSUS, provides that for purposes of the tariff schedules:

> In determining the component fibers of chief value in coated or filled, or laminated, fabrics and articles wholly or in part thereof, the coating or filling, or the nontextile laminating substances, shall be disregarded in the absence of context to the contrary.

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Applying Headnote 4(b), Schedule 3, TSUS, the neoprene rubber should be disregarded in determining the component fibers in chief value. Consequently, both the waist and thigh trimmers should be classified under the provision for knit articles in item 389.40, TSUS.

HOLDING:

In view of the foregoing, all the merchandise involved in these protests, which includes both waist and thigh trimmers, should have been classified in item 389.40, TSUS. However, it appears that the entries which included the waist trimmers may have been liquidated under a duty rate, as provided for in item 376.28, TSUS, that may be higher than actually applicable. Since item 389.40, TSUS, imposes a compound duty rate, as opposed to a straight ad valorem rate as imposed by 376.28, TSUS, we are unable to determine which provision carries the higher rate of duty. Therefore, you should allow the protests, in part, to the extent that the duty on the waist trimmers classifiable in item 389.40, TSUS, is less than the liquidated duty. However, if the liquidated duty for the waist trimmers classifiable in item 376.28, TSUS, is less than it would be when classified in item 389.40, TSUS, then the protests should be denied in whole.

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With regard to those entries which included the thigh trimmers, the liquidated duty is less than that if classified in item 389.40, TSUS. Accordingly, the protests concerning this merchandise should be denied in full.

A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1985

REFER TO
CLA-2 CO:R:CV:G
076336 JGH

076336

3-V Corporatin
9 Woodlawn Green
Suite 218
Charlotte, North Carolina 28210

Gentlemen:

The ruling of November 5, 1982 (804184), concerned your interest in importing Nofluor, a mixture of polyimadazoline, ethylene glycol and water. The product was classified as a mixture of two or more organic compounds in item 430.20, TSUS, dutiable at the rate for polyhydric alcohols in item 428.34, TSUS, of 13.1 percent ad valorem.

Recently, it has come to our attention that the product may have a benzenoid component, a condensation product from terephthalic acid and triethlenetetramine. Accordingly, if the polyimadazoline compound has a benzenoid structure, the product is classifiable under the provisions for mixtures in item 407.16, TSUS, dutiable at 1.7 cents per pound plus 13.6 percent ad valorem.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

9 OCT 1985

REFER TO

CLA-2 CO:R:CV:G
076352 DW

076352

Mr. Gilbert Donaldson
The Jennings Company
P. O. Box 10126
Savannah, Georgia 31412

Dear Mr. Donaldson:

You have requested the tariff classification of a man's shirt. A sample garment was provided along with your request dated May 10, 1985.

The submitted sample is a man's woven shirt manufactured from a fabric that is a blend of 65 percent polyester and 35 percent cotton. It has long sleeves, a breast pocket, cuffs with button closures, a full front placket opening with button closures and a finished neckband. The shirt is shipped in a polybag with a collar attached to the neckband by means of three buttons. In the polybag there is an extra collar with a collar bar. It can be fastened to the neckband by means of three buttons after the first collar is detached.

You claim that the extra collar is classifiable under the provision for other men's or boys' wearing apparel, not ornamented, of man-made fibers, not knit, other in item 381.9892, Tariff Schedules of the United States (TSUS), formerly item 379.9692, effective September 1, 1985. The category designation is 659. It is your position that collars of man-made fibers are included in category number 659, because cotton collars are classifiable under the eo nomine provision for cotton collars in item 381.57 (formerly item 379.56) designated as category number 359.

In the absence of an eo nomine provision for collars of man-made fibers, the extra collar is classifiable under the provision for other men's wearing apparel, not ornamented of man-made fibers, other in item 381.9844, TSUS, which is included in textile category 640. The collar is contained in the statistical annotation for parts of shirts.

Although the shirt may be worn without a collar, we believe that usually the shirt will be worn with one of the collars because of the buttons on the neckband. In view of General Headnote 10(h), TSUS, regarding the classification of unassembled articles as an assembled entirety, the shirt with one collar is classifiable under the provision for other men's shirts, not ornamented of man-made fibers in item 381.9535, TSUS, in category 640.

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The collar pin is classifiable separately in item 740.3800, TSUS, under the provision for jewelry and other objects of personal adornment.

Sincerely,

B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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076352

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 18 1985

FILE: CLA-2:CO:R:CV:G
076354 JAS

076354

TO : District Director of Customs
Seattle, Washington 98174

FROM : Director, Classification and Value Division

SUBJECT: Classification of the Book States of War: Whether Printing by Offset is "Lithographic" for Tariff Purposes

The subject book, imported by the Seattle Art Museum, is said to consist of reproductions of works of art with minimal text, bound together in the form of a book. You state the sample is no longer available.

The book was classified under the tariff provision for lithographs on paper: not over 0.020 inch in thickness, in item 274.60 Tariff Schedules of the United States (TSUS), dutiable at the rate of 6 cents per pound. This classification was based upon our decision in Internal Advice 178/82, dated July 11, 1983 (070778), and Protest Review Decision, dated May 5, 1983 (072090). The importer, on the other hand, maintains that the proper classification is under the provision for books not specially provided for, in item 270.25, TSUS, subject to entry free of duty. It is claimed that this book was printed by an offset process which is not "lithographic."

You cite various Dictionary of Paper definitions of "lithography" and "offset" and conclude that Customs has uniformly regarded offset printing as a type of lithography. In these circumstances, you request a ruling that offset printing is lithographic printing for tariff purposes, and that the subject book is properly classifiable in item 274.60, TSUS.

The "essentially pictorial" versus "essentially textual" criteria, and variations thereof, which have traditionally governed disputes in classification where items 270.25 and 274.60 are involved, formed the basis for the decisions of May 5 and July 11, 1983. It must be emphasized, in accordance

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with the ruling letter of April 8, 1981 (066125), quoted in our July 11, 1983 decision, that each case must be decided on its own merits. Consequently, lacking a copy of the subject book, which would allow us to view the pictorial and textual matter in context, we are unable to confirm its classification.

The provision in item 274.60 is one defined eo nomine, and includes all forms of the named article. In this connection, where a tariff phrase or term is not statutorily defined, as is the case here, it is the common meaning of that phrase or term which will normally control. In this connection, The Dictionary of Paper, 4th. Ed. (1980), published by the American Paper Institute, Inc., defines the term LITHOGRAPHY as follows:

> The original meaning of lithography was based on the affinity of a greasy surface for printers' ink, the ink being also repelled by a damp surface. It involved the preparation of designs on a stone with a special crayon or liquid drawing medium and the production of printed impressions therefrom on a flat-bed press.

This source further defines the term OFFSET, in part, as follows:

> A technique in printing by which the ink images are transferred from the plate first to an intermediate rubber blanket and then to the material being printed. This technique, which reduces plate wear and permits printing on rougher material, is most commonly associated with lithographic printing. For this reason, the word "offset" alone is sometimes used to indicate offset lithography. (Emphasis added).

The underscored language suggests the possibility that an offset technique may be used in a non-lithographic printing process. For this reason, we cannot categorically state that

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in all instances the terms "offset" and "lithography" may be regarded for tariff purposes as interchangeable or synonomous, despite the fact that in many instances Customs has regarded this as so.

In our opinion, the importer should be given an opportunity, within a period of time you determine to be appropriate, to present evidence that the plates used to print the subject book involved a process of engraving in relief (letterpress), or one involving an image sunken below the surface (gravure), as opposed to a process of lithographic printing of the planographic (flat plane) type. In this regard, a microscopic examination of the sample book under at least ten power magnification is recommended. In the absence of such convincing evidence submitted by the importer, to include the resubmitting of the subject book, we recommend that you use the cited administrative precedents to support classification in item 274.60, being mindful that the importer still has the protest remedy in Part 174, Customs Regulations, available to him.

Arthur P. Schaffner
for Harvey B. Fox

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076354

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

076362

25 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
076362 EMS

Area Director of Customs
J.F.K. Airport Area
Cargo Bldg. 80
Jamaica, New York 11430

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005262

This protest was filed against your decision in the liquidation on January 27, 1984, of entry No. 4701-84-726935-0 dated November 4, 1983, covering a shipment of men's pullovers.

FACTS:

The merchandise involved in this application for further review consists of a man's lightweight short sleeve pullover garment. It can be worn either as outerwear or as a shirt. The garment features epaulets approximately 1 inch wide which extend from the neckline seams to the shoulder seams where the epaulets pass through loops and are fastened by snap closures at mid-shoulder.

The epaulets on these garments were considered by Customs to constitute ornamentation. Consequently, this merchandise was classified in item 379.08, Tariff Schedules of the United States (TSUS). Based on a recent court case, Europe Craft Imports, Inc. v. United States, Court No. 84-1-00111 (February 4, 1985), involving identical epaulets on a lined lightweight jacket with a full front opening, protestant claims that the epaulets do not ornament the garments in question and that such garments are properly classifiable in item 379.64, TSUS.

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ISSUE:

Whether epaulets on an unlined pullover garment constitute ornamentation.

LAW AND ANALYSIS:

Epaulets identical to the ones at issue on lightweight lined jackets have been conceded to be non-ornamental in Europe Craft Imports Inc. v. United States, supra. The Government admitted in that case "that the functionality of the epaulets in question is primary to any ornamentative nature." It is our view that it is not possible to make a distinction between the epaulets on the garments involved the Europe Craft Imports case and those involved in the instant protest since they are identical. As noted by the court, these epaulets open and close, and have the capability of holding camera straps, binocular case straps, handbag straps, and similar types of straps and articles. Furthermore, we cannot say that epaulets in question are inappropriate to this garment simply because the garment lacks a full front opening or is unlined. However, it should be noted that the appropriateness of the feature to the garment in question must be determined on a case by case basis.

HOLDING:

In view of the foregoing, the epaulets on the pullover garment involved in this protest do not constitute ornamentation. Consequently, this merchandise should have been classified in item 379.64, TSUS. Therefore, you should grant this protest in full.

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A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

This document may be released to the public

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 10 1985

FILE: CLA-2:CO:R:CV:G
076441 EMS

076441

TO : District Director of Customs
Buffalo, New York 14202

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 102/84 Concerning the Tariff Treatment of Comic Supplements for Sunday Newpapers

In your memorandum dated August 27, 1984, you requested internal advice on the tariff classification of comic supplements to Sunday newspapers. Internal Advice was initiated in response to a letter dated August 9, 1984, from Greater Buffalo Press (GBP), asking that Customs reconsider its practice of classifying imported comic supplements under the provision for other printed matter in item 274.85, Tariff Schedules of the United States (TSUS).

FACTS:

The merchandise involved in this internal advice consists of comic supplements for Sunday newspapers imported from Canada through the ports of Buffalo and Detroit. In its letter dated August 9, 1984, requesting internal advice GBP claims that while all comic supplements to Sunday newspapers have been classified over the past ten years under the provision for printed matter, not specially provided for, susceptible to authorship in item 274.85, TSUS, such merchandise is more appropriately classifiable as periodicals in item 270.63, TSUS, since comic supplements are within the scope of the term "periodicals" as set forth in Headnote 2(c),

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Schedule 2, Part 5. Also noted as supporting classification as periodicals are the Summary of Trade and Tariff Information, USITC Pub. No. 841 (1983) which mentions comic supplements for Sunday newspapers as an example of periodicals classifiable in item 270.63, TSUS, and the 1977 Census of Manufacturers, Industry Series, Commercial Print and Manifold Business Forms 27B-21, Item 27511 17, which classifies comic supplements as periodicals.

On October 29, 1984, GBP made an additional submission maintaining that this merchandise should be classified as periodicals and advancing the argument that classification otherwise would be contrary to the Florence Agreement. Additional submissions were then made by counsel for GBP on January 25, 1985, April 25, 1985, June 13, 1985, August 29, 1985 and September 4, 1985. In its submissions, counsel made numerous arguments. Most notably, counsel brought to our attention a court case, New York Daily News v. United States, 65 F. 493 (2d Cir. 1895) and argued that this case was controlling and mandated classification of this merchandise under the periodicals provision.

In response to an inquiry made by this office, the American Newspaper Publisher Association stated its position in a letter dated August 29, 1985, that comic supplements are regarded as sections of Sunday newspapers by the industry as a whole. The Association also expressed the view that comic supplements meet the tariff definiton of periodicals.

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Throughout the pendancy of this request for internal advice, Customs in New York has taken the position that this merchandise should not be considered a periodical for tariff classification purposes but is classifiable as other printed matter in item 274.85, TSUS, relying on, inter alia, Headquarters Ruling Letter (HRL) dated May 23, 1975, file No. 035595, which held that comic supplements for Sunday newspapers are classifiable in item 274.85, TSUS. Based on Kraemer & Co. v. United States, 5 Ct. Cust. App. 66, T.D. 34099 (1914) Customs has taken the position that a publication must be sold separately to be classifiable as a periodical.

ISSUE:

Whether comic supplements to Sunday newspapers should be considered periodicals for tariff classification purposes.

LAW AND ANALYSIS:

Headnote 2(c), Schedule 2, Part 5 provides that:

> [T]he term "periodicals" embraces only paper-covered or unbound publications issued regularly at stated periods, such as weekly, monthly, or quarterly, and bearing the date of issue.

As reflected in HRL 035595, Customs has not considered comic supplements to qualify as periodicals for purposes of classification in item 270.63, TSUS. Rather, we have viewed such supplements to be parts of newspapers and have classified such merchandise under the provision for other printed matter in item 274.85, TSUS, since there is no provision for parts of newspapers.

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After considering the extensive briefing by both New York Customs and GBP, we are convinced that the comic supplements at issue meet the headnote 2(c) criteria for "periodicals." These comic supplements are publications which are issued regularly at stated periods, i.e., weekly, and bear the date of issuance. Moreover, we believe that New York Daily News v. United States, supra, is dispositive of the question whether comic supplements for Sunday newspapers are "periodicals" for tariff classification purposes. In interpreting a predecessor statute */ to Headnote 2(c), the Second Circuit found that an eight-page German language pictorial paper, entitled "New York Lustige Blatter," imported to be used as a supplement to the German edition of the New York Sunday News, should be considered a periodical for tariff classification purposes. The supplement involved in the 1895 case was a "funny paper" consisting of stories, poems, selections of German humor, and other literature. It is our view that the merchandise involved in this request for internal advice is indistinguishable from that involved in New York Daily News.

As mentioned previously, Customs has taken the position that a publication must be sold separately to be classified as a "periodical." See, e.g., HRL dated September 10, 1984, file No. 074582 where Customs ruled that the Parade supplement

*/The tariff provision defining the scope of the term "periodical" that was considered in New York Daily News is substantially the same as the headnote 2(c) definition. The only significant difference between the earlier and present law, which is not relevant to the issue under consideration, is that the prior law required that the publication contain current literature of the day.

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to Sunday newspapers should not be classified as "periodicals" since the supplement was not issued separately. Upon reconsideration of this question, it is our view that this requirement of separate sale is not supported by the statute nor the case law. As noted above, the comic supplements at issue meet all the criteria specified in Headnote 2(c), Schedule 2, Part 5. To require that a publication be separately sold would read an additional requirement into the law. Moreover, neither Kraemer & Co. v. United States, supra, nor Cunard White Star, Ltd. v. United States, T.D. 49422 (Cust. Ct. 1938) which relied on Kraemer warrants such a reading of the statute. The merchandise involved in Kraemer consisted of 70,000 colored illustrations for use as pages in a magazine published in the United States. These pages bore no date nor page numbering and contained no reading matter. The statute in effect at the time defined "periodicals" as "unbound or paper-covered publications issued within six months of the time of entry, devoted to current literature of the day, or containing current literature as a predominant feature, and issued regularly at stated periods, as weekly, monthly, or quarterly, and bearing the date of issue." The court concluded that the merchandise at issue were not appropriately considered "periodicals" based on the following rationale:

> Taken alone they [the illustrations] contained no literature of the day, they bore no date of issue, nor were they intended for separate publication. It is also true that while they were peculiarly suitable for use in connection with

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> the August, 1912, number of the Studio magazine and were intended for use as part of that edition, and that similar illustrations were to appear concurrently in the English edition of the same number, nevertheless the imported illustrations were not incapable of other uses.

5 Ct. Cust. App. at 68. Thus, the court found that the illustrations at bar could not be considered periodicals since they met none of the statutory requirements. They contained no literature and bore no date of issue. It has been suggested that the acknowledgement by the court in Kraemer that the illustrations were not intended for separate publication is authority for Customs view that a publication must be sold separately in order to qualify as a periodical. We cannot agree with this interpretation of Kraemer. Rather, we believe that the court's statement merely meant that the pages were imported to be physically joined to something else. Thus, we do not believe that Kraemer changes the principle enunciated in New York Daily News. Similarly, the merchandise involved in Cunard White Star, Ltd. v. United States, supra, is distinguishable from that involved in New York Daily News and the merchandise involved in this internal advice. Relying on Kraemer, the court in Cunard White Star found that a one-time promotional insert devoted to the S.S. Queen Mary did not qualify as a periodical for tariff classification purposes.

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The conclusion that the comic supplements at issue meet the headnote 2(c) definition of "periodicals" does not necessarily mean that this merchandise is not part of a newspaper. Indeed, General Headnote 10(ij), TSUS, recognizes that parts of articles may be classified as articles in their own right. The American Newspaper Publishers Association, whose membership consists of about 1,400 daily newspapers, representing more than 90 percent of the nation's daily and Sunday newspaper circulation, states that "comic supplements are regarded as sections of the Sunday newspaper by the industry as a whole". Webster's New World Dictionary (1974) defines "section" as "a part or division of a book, newspaper, etc." Supplement is defined by that dictionary as "a separate section containing feature stories, comic strips, or the like, issued with a newspaper." Thus, we believe that a comic supplement to a Sunday newspaper is commonly and commercially known as part of a newspaper. However, in view of General Interpretive Rules 10(c) and 10(ij) this merchandise is most appropriately classifiable as periodicals in item 270.63, TSUS.

With regard to changes in practice or position, Customs regulations, 19 C.F.R. §177.10(c)(1) provides in relevant part that:

> Before the publication of a ruling which has the effect of changing a practice and which results in the assessment of a higher rate of duty, notice that the practice (or prior ruling on which the practice is based) is under review will be published in the Federal

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> Register and interested parties given an opportunity to make writen submissions with respect to the correctness of the contemplated change. The procedure will also be followed when the contemplated change in practice will result in the assessment of a lower rate of duty and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of domestic industry.

Assuming that a practice exists with regard to the classification of comic supplements, a change in that practice would result in a lowering in the rate of duty. Consequently, it would be necessary to ascertain whether the lowering of the duty rate with regard to this merchandise is of sufficient importance to involve interests of domestic industry to require publication of notice in the Federal Register. The available information indicates that classification of comic supplements for Sunday newspapers under the provision for periodicals in item 270.63, TSUS, is not of sufficient importance to involve the interests of domestic industry. The market served by GBP's Canadian subsidiary is the Great Lakes region, in which GBP's market share is substantial. Furthermore, the views of the American Newspaper Publisher Association, which represents newspapers that print their own comic supplements, was sought and the Association expressed its view that comic supplements are appropriately considered "periodicals" for tariff classification purposes.

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HOLDING:

In view of the foregoing, comic supplements to Sunday newspapers are classifiable under the provision for "periodicals" in item 270.63, TSUS. Consequently, HRL 035595 and 074582 are hereby revoked. Any additional rulings inconsistent with this advice should be modified accordingly.

You should inform the inquirer of this ruling.

Harvey B. Fox

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[redacted]

18 OCT 1985

CLA-2:CO:R:CV:G
076461 JCH

076461

Gail T. Cumins, Esq.
Attorney at Law
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, New York 1000[illegible]

Dear Ms. Cumins:

This is in response to your brief dated June 13, 1985, and attached exhibits filed on behalf of Canon Inc. in which the tariff classification of various types of lens systems which are for television cameras and which your client imports is requested. Brochures included with the exhibits depict, among others, lenses for electronic newsgathering (ENG) cameras.

It is your position that various types of motorized lens systems for ENG cameras are classifiable under the provision for parts of television cameras in item 684.90 (formerly item 685.10), Tariff Schedules of the United States (TSUS). The current column 1 rate of duty required under that provision is 4.7 percent ad valorem when the exemption from duty under the Generalized System of Preferences (GSP) is not applicable. While your contentions in support of this position are essentially a recapitulation of various arguments of the type we received from those opposing our proposed change of practice and which resulted in continuation of the practice in our notice in T.D. 85-4 published in the Federal Register on January 9, 1985 (50 FR 1044), your main disagreement is with our decision of June 20, 1984, file No. 074363. You contend that that decision, if not revoked, at least requires clarification. We held in that decision that ENG lenses were not within the practice.

[redacted]revious reconsideration of that matter date[redacted], that decision was modified, and moto[redacted] ENG cameras are now considered as within the [redacted]rdingly, any box-type lens system depicted in the submitted brochures which can only be operated remotely through electrical servomechanisms for zoom, iris and focus, whether or not such operation is manual or automatic, will be regarded as within the practice and classifiable under the provision for parts of television cameras in item 684.90. All ENG and other barrel-type lenses which are depicted in your submitted exhibits, for which there is provision for optional

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manual operation for any single parameter without the use of an electrical servomechanism, and which in their condition as imported have one or more servomechanisms attached, are similarly classifiable.

It is not clear to us from an examination of the brochures and other descriptive material presented whether the depicted lenses, if imported without any attached servomechanisms, would be properly classifiable as mounted lenses in item 708.23, TSUS. If the lenses imported in that condition are no more than lenses "fixed [mounted] in a proper backing, support or setting," then classification under item 708.23, TSUS, would be proper. Kalimar, Inc. v. United States, 66 Cust. Ct. 112, C.D. 4178 (1971); Rank Precision Industries, Inc. v. United States, 85 Cust. Ct. 34, C.D. 4866 (1980). Item 708.23, TSUS, is a GSP-eligible item currently requiring a column 1 rate of duty of 8.1 percent ad valorem for noneligible merchandise. In the event the depicted lenses, if imported without any attached servomechanisms, nevertheless include other significant electrical or mechanical components, classification of those lenses as other optical instruments or appliances under item 708.89, TSUS, would be appropriate. The latter provision is also GSP-eligible, but carries a rate of duty of 12.4 percent ad valorem for noneligible merchandise.

Sincerely,

(signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

6cc: Area Director, New York Seaport
1cc: Harvey B. Fox
JCHill:jaj:10/18/85

CODE AND DATE	10/7/85						
SURNAME	Hill						
CODE AND DATE							
SURNAME							

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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

12 NOV 1985

CLA-2:CO:R:CV:G
076469 LDD

076469

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Request for Further Review of Protest No. 3801-5-000027, dated October 3, 1984

This protest concerns the tariff classification of a turnbuckle, hook arm, hook body and barrel from Canada.

These items were held classifiable as an entirety under the provision for turnbuckles in item 646.78, Tariff Schedules of the United States (TSUS).

The protestant claims that the hook arm, body and 1/2 inch barrel are not provided for specifically in 646.78, TSUS. Rather, these items should be classified as parts of yachts or pleasure boats in item 696.15, TSUS.

As noted by the district director, HRL 046254 DB, dated October 14, 1976, provides evidence that these items are classifiable as an entirety in item 646.78, TSUS. The protestant has not submitted any descriptive literature or a sample to substantiate classification as boat parts. All that has been submitted is the entry form which is a self-serving document.

Accordingly, it is our determination that these items are classifiable in item 646.78, if imported together, or in item 657.25, if imported separately.

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This protest should, thus, be denied in full. A copy of this decision should be forwarded to the protestant along with your Form 19 Notice of Action.

Sincerely,

Arthur V Schuffler
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT - 4 1985

REFER TO

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076538

Mr. William K. Myers
Senior Buyer
C. R. Daniels, Inc.
3451 Ellicott Center Drive
Ellicott City, Maryland 21043

Dear Mr. Myers:

In a letter dated June 28, 1985, you inquired as to the dutiable status of two handbags produced in the Dominican Republic. You also ask whether the imported handbags will be eligible for duty-free treatment under the Caribbean Basin Initiative (CBI) and, if not, what conditions would have to be met in order to qualify for partial duty relief under item 807.00, Tariff Schedules of the United States (TSUS).

Style No. 1155 measures approximately 12 inches by 10-1/2 inches and has a 6 inch bottom gusset. It has double cotton web handles, a snap closure, and two exterior zipper closed pockets. The body is made of cotton canvas.

Style No. 1269 measures approximately 13 inches by 9 inches with a 5 inch bottom gusset. This bag has a top zipper closure, a small interior zippered pocket, and an adjustable cotton web shoulder strap. The body of the bag is made of cotton canvas. Leather is used to trim the top zipper, reinforce the two bottom seams, and to attach the shoulder strap to the bag.

You suggest that style No. 1155 is classifiable under the provision for other handbags, of vegetable fibers and not of pile or tufted construction: of cotton in item 706.36, TSUS, with duty at the rate of 9.2 percent ad valorem. As to style No. 1269, you maintain that it is in chief value of leather and classifiable under the provision for handbags of other leather, valued not over $20.00 each in item 706.07, TSUS, and dutiable at the rate of 10 percent ad valorem.

Based on the value information submitted, we agree that style No. 1115 is properly classifiable under item 706.36, TSUS. However, we do not agree with your suggested classification of style No. 1269 for the reason that when the total cost of all textile components are considered, those values exceed the value of the leather. The combined values of the brushed cotton canvas, ribbed cotton web, and cotton thread indicate cotton to be the textile in chief value. Consequently, style No. 1269 is also dutiable at the rate of 9.2 percent ad valorem under item 706.36, TSUS. Articles classifiable under item 706.36, TSUS, are excluded from duty free entry under the CBI.

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The assembly operations, described in attachments identified as cutting sheets, consist of cutting to proper length such components as tapes, bindings, zippers, and leather strips and merely assembling the remaining exported components together by stitching with thread to produce finished handbags.

With respect to the assembly of products abroad, item 807.00, TSUS, applies to already-fabricated United States components which are designed to be fitted together with other components in an assembly process, with no further fabrications performed thereon except for the assembly of the components to form the imported merchandise and operations considered incidental thereto. Duty is assessed on the difference between the total value of the imported merchandise and the cost or value of the exported components.

Based on the samples and information submitted, we are of the opinion that allowances may be made under item 807.00, TSUS, for the value of those components of United States origin that are exported in condition ready for the foreign process without the need for further fabrication. So long as the imported fabric is cut to pattern size-and-shape while in the United States before being exported, the component fabric would be regarded as an American product for purposes of the tariff provision. Mere dyeing, finishing, and brushing the imported fabric would not be sufficient to transform foreign made fabric into an American product.

It should be noted that a substantial transformation must result in the emergence of a new and different article having a distinct name, character, or use different from that previously imported and amounts to something more than a mere finishing of imported goods.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 17 1985

FILE: CLA-2 CO:R:CV:G
076581 c

076581

TO : District Director of Customs
312 Fore Street
Portland, Maine 04111

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 32/85 Concerning the Tariff Classification of a Child's "Zoo" Shoe

FACTS:

The child's "Zoo" shoe involved has a "partial cup sole." This term means that the outsole and a 1/2 inch high sidewall are a single piece of rubber, but the sidewall does not encircle the entire shoe. In this instance the sidewall is 5 inches long and encircles only the front third of the shoe.

The inquirer maintains that the overlap on this shoe is confined to its toe which requires classification of the shoe under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics: other: footwear having soles (or midsoles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any midsoles also being affixed exclusively to one another and to the outsole with an adhesive); valued not over $6.50 per pair in item 700.61, Tariff Schedules of the United States (TSUS), with duty at the rate of 37.5 percent ad valorem.

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It is your position that the sole on this shoe overlaps the upper other than at the toe requiring classification under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics: other: footwear with soles which overlap the upper other than at the toe or heel: other: valued over $3.00 but not over $6.50 per pair in item 700.67, TSUS, with duty at the rate of 90 cents per pair plus 37.5 percent ad valorem.

ISSUE:

Does the 1/2 inch sidewall present on the "Zoo" shoe constitute an overlap of the upper other than at the toe or heel?

LAW AND ANALYSIS:

It is our position that the sole on the sample shoe overlaps the upper other than at the toe or heel. In this context it is clear that the sidewall is part of the sole because it is part of the same molded piece of rubber as the outsole. While it is also clear that the overlap occurs only in the front third of the shoe and that it occurs only around where one's toes would be, it is not clear whether the overlap is more than "at the toe." Information before us is that the trade meaning of "toe" includes items which go much farther back in the shoe, as in a "steel toe" in safety work footwear, and items which end before the toes even begin, as in the "toe" inserted in the quick release mechanism of a ski binding. We have found only one use of the phrase "at the toe" in our trade reference. That is on page 247 of the "Manual of Shoemaking." The photo on page 249 makes it clear that, in that context, "at the toe" means only a vertical line about 1/100 inch wide at the front tip of the shoe. It is improbable that

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such an extremely restrictive definition would have been intended by Congress, but such a use of the phrase by the trade indicates that it is unlikely that the trade would also apply the phrase "at the toe" to a sidewall which is 5 inches long and also indicates that the phrase "at the toe" has no one trade meaning. A review of dictionaries also indicates that there is not one clear common meaning for "at the toe."

The Summary of Trade and Tariff Information, Rubber Footwear, USITC Publication 841, March 1981, at page 6, states in pertinent part that "items 700.61-700.63 provide for footwear that is held to the foot with the use of laces, buckles, or other fasteners and that is of cement construction, and is primarily intended to cover joggers."

In view of the expressed legislative intent that items 700.61-700.63, TSUS, cover primarily joggers, it is our position that "at the toe" means that small part of the front of the shoe which can be covered by the curl up of a flat outsole. We have never seen the overlap on a similar child's sole cover more than 2 1/2 inches of the shoe's perimeter. For this reason 2 1/2 inches will be the maximum encirclement permitted for an overlap to be only "at the toe."

HOLDING:

The child's "Zoo" shoe is dutiable at the rate of 90 cents per pair plus 37.5 percent ad valorem under item 700.67, TSUS.

You should inform the inquirer of this ruling.

Arthur P. Schaffner
For Harvey B. Fox

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: NOV 15 1985

FILE: CLA-2 CO:R:CV:G
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076582

TO : District Director of Customs
Terminal Island, San Pedro 90731

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 46/85 Concerning the Tariff Classification of Puffy 'N' Smell Stickers Manufactured in Taiwan

FACTS:

The merchandise involved consists of three dimensional stickers depicting various articles such as pineapples, cakes and small children, printed on a plastic film that is heat sealed over an inner layer of foamed polyurethane. An adhesive layer is applied to the back of the stickers and they are pre-cut, allowing each sticker to be peeled from a release paper and pressure applied to the desired surface. The foamed inner layer of the sticker contains a fragrance which is released when the Puffy 'N' Smell Sticker is scratched.

It is your opinion that the merchandise is classifiable under the provision for other articles, not specially provided for, of rubber or plastics, in item 774.55, Tariff Schedules of the United States (TSUS).

The inquirer maintains that the Puffy 'N' Smell Stickers are properly classifiable under the provision for expanded, foamed or sponge rubber or plastics, and articles not specially provided for wholly or almost wholly of such rubber or plastics: * * * flexible: of polyurethane in item 770.40, TSUS.

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ISSUE:

Are the three dimensional stickers "almost wholly of" the foamed inner layer of polyurethane plastics?

LAW AND ANALYSIS:

General Headnote 9(f)(iii), TSUS, provides that "the term 'of,' 'wholly of,' 'almost wholly of,' 'in part of, and 'containing,' when used between the description of an article, and a material * * * have the following meanings:

> (iii) 'almost wholly of' means that the essential character of the article is imparted by the named material, notwithstanding the fact that significant quantities of some other material or materials may be present; * * *."

The inquirer in support of its position cites three tests for determining the essential characteristic of an article. These tests are as follows:

> (1) The essential characteristic of an article is that characteristic which distinguishes it from other articles of the same class. In the instant case it is the puffiness and smell which distinguish these stickers from any other stickers. See HRL 064528.
>
> (2) The essential characteristic of an article is that characteristic which makes the consumer want to buy the article. See A. N. Deringer, Inc. v. United States, 66 Cust. Ct. 378, C.D. 4218 (1971). In this case it is the scented layer of expanded plastic which makes the consumer want to buy the stickers.
>
> (3) The name of an article may denote its essential characteristic. See HRL 068197. In this case the designation of the product as Puffy "N" Smell stickers denotes its essential characteristic.

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In HRL 064528 this office ruled that a women's or girl's brassiere having lace fabric was "almost wholly of lace" because the lace on the brassiere distinguishes it from other brassieres and, therefore, imparts its essential character. It was further explained in this ruling that this rationale as developed in Deringer, supra, would be followed in determining the essential character of wearing apparel in the absence of further elucidation by the court. In view of this holding we would not extend the rationale of Deringer to merchandise other than wearing apparel.

The tests cited by the inquirer for determining the essential character of an article are not relevant here for the following reasons:

(1) The puffiness and smell features of the stickers do not constitute one characteristic as claimed by the inquirer. Instead they constitute two separate and distinct characteristics.

(2) General Headnote 9(f)(iii), TSUS, requires that the essential character be imparted by the named material. The named material here is foamed plastic. The claim that the odoriferous feature of the stickers makes them almost wholly of foamed plastics is untenable. The odor is not imparted by the foamed plastics but rather by the odoriferous substance added to the foamed plastics.

(3) The puffiness attributable to the foamed plastics portion of the stickers does not constitute the essential character of the stickers. The essential character or essence of an article is that by which an article is what it fundamentally is. In this instance the pressure sensitive plastic gives the stickers their essential character. The foamed plastics makes for novel stickers but does not change the essential character of the stickers as plastic stickers designed to adhere to flat surfaces.

HOLDING:

The three dimensional stickers do not derive their essential character from the foamed plastics and consequently, are not "almost wholly" of the foamed inner layer of polyurethane plastics.

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The three dimensional stickers are classifiable under the provision for other articles, not specially provided for, of rubber or plastics in item 774.55, TSUS.

Harvey B. Fox

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

076588

DATE: NOV 12 1985

FILE: CLA-2 CO:R:CV:G
076588 JAS

TO : District Director of Customs
Chicago, Illinois 60607

FROM : Director, Classification and Value Division

SUBJECT: Cabinet Assembly, Drive Unit, Lift Assembly for the Conco-Tellus Tele-Carrier II Automatic Guided Vehicle (AGV) System; Internal Advice 53/85

FACTS:

Three imported subassemblies from Sweden, after importation, will be incorporated into a frame of United States origin to complete an automatically guided work vehicle, optionally equipped with lifting forks, flat work platform, and roller or chain conveyors. It is designed to pick up, transport, and stack palletized loads, containers and bins. The AGV rests on front swivel and rear stationary casters. It is 109.6 inches long, 41.8 inches wide, 82.7 inches high, and has a 4,000 pound maximum lifting capacity, to a height of 55 inches. Dimensions vary according to load capacity. It travels at the rate of 200 feet per minute forward and 100 feet per minute reverse. The AGV has bi-directional steering, allowing it to turn 180 degrees, and is equipped with two 48 volt batteries as a power source.

Optional system controls may involve a simple loop with no computer, a minicomputer or microcomputer, with or without administrative computer hookup. It may be preprogrammed to operate over a fixed path within a factory or warehouse adjacent to work stations or sites where pallets or loads are to be picked up and transported. Sensors in the AGV's cabinet

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assembly receive a low electrical current in the guide wire set in the floor of the building to keep the vehicle on the guide path. The AGV may also be controlled manually by a hand-held module attached to the vehicle, directed by an operator walking alongside, and can be programmed to operate off the wire as well.

Exploded drawings and technical descriptive literature accompany a brief from counsel representing the internal advice applicant. The cabinet assembly, is described as containing nearly all of the electrical components of the vehicle. These include main and auxiliary microprocessor boards, two 48 volt batteries to supply power, digital keypad and numerical display readout, and cable tree (these permit the programming of the AGV's operations). In addition, the cabinet assembly contains the hand set manual controller and is specially designed to house both the drive unit and portions of the lift assembly. In essence, the cabinet assembly is said to perform two functions: it provides power, via the two batteries, for the various driving, steering and lifting motors on the AGV, and permits the programming and controlling of all its lifting and transporting functions.

The drive unit is described as comprising a drive motor to move the AGV in forward and reverse directions, a steering motor to move the vehicle left and right, and an assemblage of gears which connect the two motors. All are attached to a mounting bracket which, in turn, is mounted to the frame of the vehicle.

The lift assembly comprises two separate components, a lift motor with gears on a common frame, and a vertically positioned lift screw, both components being part of the AGV's lifting mechanism.

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Counsel maintains that classification of these three subassemblies depends upon the classification of the AGV itself if it were to be imported as a complete, functioning unit. Under this premise, classification of the unit is claimed to be under the provision for fork-lift trucks, and other self-propelled work trucks of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, and parts of the foregoing trucks, in item 692.40, Tariff Schedules of the United States (TSUS). Under the principles of General Interpretative Rule 10(ij), TSUS, and 10(e)(i), TSUS, it is claimed, the three subassemblies under consideration would be classifiable as "parts" under item 692.40, TSUS.

Your office, on the other hand, maintains that the cabinet assembly is specially provided for as a control panel, classifiable in item 685.90, TSUS, and the drive unit under the tariff provision in item 680.49 or 680.59, TSUS, as a speed changer. You maintain, as well, that while the lift assembly may in general be regarded as part of a fork-lift truck, it is more narrowly and specifically provided for in item 664.10, TSUS, as part of lifting machinery.

ISSUE:

Are any or all of the subassemblies specially provided for, or do they constitute "more than" articles classifiable within these special provisions, so as to justify classification as "parts" in item 692.40?

LAW AND ANALYSIS:

There is some suggestion in the file that the AGV, if imported as a unit, would be more properly classifiable in item 664.10, TSUS, as other lifting, handling, loading, or unloading machinery, rather than in item 692.40, and that the various subassemblies are classifiable as parts accordingly. We believe the latter provision would control classification of the AGV, for the reasons which follow.

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Schedule 6, Part 4, Headnote 1(v), TSUS, would preclude the applicability of item 664.10 if the provision in item 692.40 can be shown to be more specific. In this regard, item 664.10 describes a species of "machinery" while item 692.40 describes a variety of "trucks" and "tractors" as well as the specific work environments in which they find utility.

Heading 87.07, Customs Cooperation Council Nomenclature (CCCN), the language of which substantially parallels that in item 692.40, and relevant explanatory notes thereunder, describe a group of mechanically propelled vehicles, among them pedestrian-controlled trucks, by their particular design features. Such features include special construction so as to make them unsuitable for transport by road or other public ways, very low operating speed, generally not to exceed 30 to 35 km/h, with a turning radius approximately equal to the length of the vehicle itself. The subject AGV appears to fall within this heading. Relevant explanatory notes under Heading 84.22, the language of which substantially parallels that in item 664.10, encompass stacking "machines" which raise and lower sacks or crates, but note that stack "trucks" of the warehouse truck type, including those steered by a walking operator, and work trucks for container handling, of the types used in factories, warehouses, dock areas or airports, are classifiable in Heading 87.07. We therefore conclude that the provision in item 692.40 more narrowly and specifically describes the AGV than does the provision in item 664.10. Note C.I.E. 1307/66, dated May 6, 1966, abstracted as T.D. 66-88(50).

In determining the classification of the cabinet subassembly, it is necessary to establish the common meaning of the term "control panel," in order to determine the applicability of item 685.90. See John V. Carr & Son, Inc. v. United States, C.D. 4411, rev'd C.A.D. 1116 (1974), in which the

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imported merchandise consisted, among other things, of a "control board" used as parts of a pulse modulation system for operating fork lift trucks. The function of the control board was to provide electrical pulses to contol the opening and closing of a solid state switch device which regulates the flow of energy to the truck's motor. Without defining "control panel" specifically, the court held that the control board was "within the common meaning of at least certain of the articles in 685.90, including particularly 'other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; *** control panels; *** and parts thereof.'" 61 CCPA at 45, 495 F.2d at 774. Accordingly, it was classified under item number 685.90.

Our response to I.A. 6/84, dated March 20, 1985 (071823), followed the Carr rationale in holding microprocesor-based programmable controllers used to control machine tools, material handling apparatus, etc., to be classifiable in item 685.90. Our Protest Review Decision dated July 19, 1985 (074827), held robot control cabinets incorporating a control panel with readouts, programming unit, floppy disc data storage unit, printed circuit boards and microprocessors, all housed in a common cabinet, to be classifiable as control panels, in item 685.90, TSUS. These decisions represent our current position and stand in contradistinction to our decision 070624 which limited the term "control panel" to articles which not only control but which also are "panels." We nevertheless view the Carr rationale to be persuasive particularly since tariff acts are made for the future as well as the present. The cabinet assembly, by its primary function and

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design, performs the basic function of controlling the AGV by making or breaking electrical circuits. It is therefore classifiable in item 685.90, TSUS.

As to classification of the drive unit, we conclude that the presence of the drive motor and steering motor, in addition to the gears which increase and reduce the speed and change direction of the AGV, makes this unit compellingly similar to the electric geared motor the subject of Servo-Tek Products Co. v. United States, C.D. 3581, aff'd. C.A.D. 969, 416 F.2d 1398 (1969). In that case, an electric motor plus gear train speed reducer was held to be more than a motor for tariff purposes because it was a unitary piece of composite machinery. Again, in the absence of a specific tariff provision to cover this particular article, the drive unit is appropriately classifiable under the parts proviso in item 692.40, assuming, of course, that it is chiefly used with the AGV. There is no evidence in the file to suggest otherwise.

Finally, the lift assembly consists of two separate articles: the lift motor and gears, mounted on a common frame, plus the lift screw which appears to connect to the lifting forks or conveyors. They both form an integral part of the AGV's lifting mechanism. Merchandise is classifiable under that tariff provision which most narrowly and specifically describes it. As such, we find that the lift motor and gears are classiifable in item 692.40, under the principles of Servo-Tek, supra. Moreover, where a particular part of an article is provided for specially, a part of that part is classifiable as such rather than as a part of the whole. Therefore, we find that the lift screw is classifiable under the provision for other parts of lifting machinery in item 664.10, TSUS. Note Korody-Colyer Corp. v. United States, 66, Cust. Ct. 337, C.D. 4212 (1971), and cases cited, and our Protest Review Decision dated November 8, 1983 (070846), copy attached.

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HOLDING:

The cabinet assembly, drive unit, and components of the lift assembly are classifiable, respectively, as indicated.

Arthur V. Schaffer
For Harvey B. Fox

Attachments

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 22 1985

FILE: CLA-2 CO:R:CV:G
076633 JCH

076633

TO : Chief, Value and Special Classification Branch

FROM : Chief, General Classification Branch

SUBJECT: Protest No. 3801-5-001221

Since the subject protest involves a valuation issue, it is being forwarded to you for the preparation of a PRD. With respect to the classification aspect of the protest, we are furnishing you for incorporation into the respective Issue, Facts, Law and Analysis and Holding paragraphs of your PRD the following suggested paragraphs.

ISSUE:

Duty was liquidated at the 1984 column 1 rate of 9.5 percent ad valorem for machine tool accessories in item 674.56, Tariff Schedules of the United States (TSUS). It is claimed the merchandise is properly dutiable at the 1984 column 1 rate of 4.2 percent ad valorem for parts of machines, not specially provided for (n.s.p.f.), in item 678.50, TSUS.

FACTS:

In the protest the merchandise is described as axis and wrist assemblies which are for industrial robots and which act as gear reducers converting hydraulic power to mechanical motion. Material submitted with the protest shows the axis assembly controls the basic swivel or waist motion of the robot on one axis. The wrist assembly is shown to augment the waist, horizontal and elbow motions with further motions on three additional axes. The descriptions of the robots in which the merchandise in question is used as parts further show that the robots are of a multipurpose type

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which before programming for their present welding functions could also be programmed to operate power tools, caulking guns, oxyacetylene torches, grinders, drills, etc.

LAW AND ANALYSIS:

The liquidated classification for the merchandise as machine tool accessories is not consistent with any of our previous positions specifically dealing with robots or other machine tool controllers. Our usual classification approach has been to regard multipurpose robots as machines, n.s.p.f.

HOLDING:

For the foregoing reasons, we regard the instant axis and wrist assemblies as classifiable under the provision for parts of machines, n.s.p.f., in item 678.50, TSUS. Therefore, (assuming the valuation claim is denied) you are instructed to deny the protest except to the extent reclassification of the merchandise as indicated above results in a partial allowance. A copy of this decision should be attached to the Form 19 Notice of Action.

Arthur P. Schifflin

Arthur P. Schifflin

Attachment

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076633

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

CLA-2 CO:R:CV:G
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076663

29 OCT 1985

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Application for Further Review of Protest No. 1001-4-018289

This is a protest against your classification of the Peter Rabbit Birthday Book, illustrations by Beatrix Potter, as blank books under item 256.58, Tariff Schedules of the United States (TSUS).

FACTS:

The so-called birthday book is extensively printed with text and pictures and consists of cut pages sewn or bound as any other book. It also contains certain lined spaces on alternative sheets for birthday listings to be filled in by the user. Blank spaces for three dates exist on each sheet. For instance, the book begins with spaces for January 1, January 2 and January 3. Opposite these blank spaces are sheets that contain illustrations printed back to back. Next to each illustration three poems appear, each bearing a date corresponding to the date left blank for birthday information. The net effect is that when you open the birthday book, a poem, an illustration and a blank space appear for each date.

The jacket for the Peter Rabbit Birthday Book states:

> The Peter Rabbit Birthday Book uses Beatrix Potter's charming illustrations of Peter Rabbit and his adventures, well loved and remembered in their own right, to bring a delightful book alive for children — or adults. There is a poem for every day of the year, with space for recording the birthdays of family and friends. A quick glance at the birthday book guarantees that you will never embarrass yourself again by remembering a friend's birthday two weeks late and will give

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The birthday book contains a title page and the back of the title page contains a copyright notice and a Library of Congress catalogue number.

The foreword to the book provides:

> Peter Rabbit Birthday Book uses Beatrix Potter's illustrations to add excitement and charm to an old custom, that of keeping a birthday book, and provides a different saying for every day of the year. While keeping a birthday book is an old-fashioned tradition, it is a tradition that fits in well with our modern life. It teaches children to be thoughtful of others by remembering the birthdays of family and friends, not just their own. It helps busy adults to keep track of the many birthdays they wish to remember.
>
> With Beatrix Potter's delightful illustrations of Peter Rabbit and his friends, the Peter Rabbit Birthday Book will make recording and remembering birthdays a pleasure.

ISSUE:

Whether the language set forth in Schedule 2, part 5, headnote 1, TSUS, stating "this part covers only printed matter consisting essentially of textual or pictorial matter" precludes classification of this item under item 270.25, TSUS.

DISCUSSION OF LAW:

Item 270.25, TSUS, provides for the duty-free entry of books not specially provided for. Item 256.58, TSUS, covers the classification for other blank books bound with a 1984 rate of 1 1/2 percent.

In Webster's New World Dictionary, Second College Edition (World Publishing Company 1972), the first definition of "essential," the key word in the question presented, is "of or constituting the intrinsic fundamental nature of something; basic; inherent." Intrinsic is defined in the same dictionary as meaning, "belonging to the real nature of a thing; not dependent on external circumstances; essential; inherent."

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In reviewing the Peter Rabbit Birthday Book, it is our opinion that the intrinsic, fundamental nature of this imported article stems from the space provided for recording and remembering birthdays. The poems and illustrations are present to aid in the marketing of the imported product. As stated in the foreword the Peter Rabbit Birthday book uses the illustrations to add excitement and charm to an old custom, that of keeping a birthday book. Thus the essential nature, the reason for the book, is keeping birthday records. The illustrations and poems are only additions or adjuncts to this feature.

HOLDING:

The Peter Rabbit Birthday Book is classified under item 256.58, TSUS. Accordingly, you are directed to deny the protest. A copy of this decision should be attached to the Form 19 Notice of Action and provided to the protestant.

Sincerely,

William P. Schaffler

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 17 1985

REFER TO
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076714

Mr. Marvin J. Ungar
Hyde Athletic Industries Inc.
Centennial Industrial Park
Centennial Drive
P. O. Box 6046
Peabody, Maine 01961

Dear Mr. Ungar:

Your letter dated June 4, 1985, addressed to our New York office concerning the dutiable status of a footwear component which will be produced in Korea or Taiwan, has been referred to us for a direct reply to you.

The sample submitted is a fabric "upper" with a leather outside back counter, toe bumper, and eyelet stay. This sample is to be used to make the style "Jazz" jogging shoes which are of a slip lasted construction. Jogging shoes of slip lasted construction are made by first stitching together the "upper." In the rear one third of the "upper" the two edges of the upper are simply stitched together. In the front two thirds of the "upper" there is a large flap of material about 3 inches wide and 5 inches long which hangs down from the right side of the "upper." The edge of this strip is then sewn to the edge of the balance of the "upper." The stitching of the edges of the upper in the rear one third of this article has been completed but not the sewing of the flap.

The issue presented is whether the sample "upper" is lasted within the purview of T.D. 79-100 or whether it is an unlasted "upper."

T.D. 79-100 was concerned with leather footwear uppers which had been lasted, i.e., have an insole or midsole and have been formed to fit the foot. That ruling did not purport to set forth an all inclusive definition of the term "lasted." In reaching a decision in that matter, Customs drew the following conclusions:

(1) The lasted leather footwear uppers have undergone substantial processing to the extent that they have been advanced beyond the stage of being forms or shapes suitable for conversion into footwear and constitute unfinished footwear.

(2) The absence of a sole or heel does not preclude classification of lasted leather footwear uppers as leather footwear. An unfinished article may be classified as the finished article when completed to the stage at which the fundamental characteristic of the finished article is apparent.

G12

(3) With respect to lasted leather footwear uppers, the essence or fundamental characteristic of the shoe is readily apparent. A lasted leather footwear upper resembles a shoe and provides a layer or two of protection between the foot and flooring.

The sample does not have the basic shape of footwear. In HRL 073078 c, dated September 22, 1983, this office ruled that sewing which closed a small slit in the bottom of an imported upper was insufficient to bring about a substantial transformation. We consider the present situation distinguishable because sewing the bottom flap closed causes the sample to attain the shape of footwear, whereas in the prior ruling, no change in appearance, shape or resemblance to finished footwear occured as a result of the sewing operation.

It is our observation that the sample is not lasted. We note that in the case of Uniroyal, Inc. v. United States, 3 CIT 220, Slip Op. 82-45 (1982), the court held that the sewing of the parts of a moccasin together was a major part of the lasting process. However, with respect to the subject article there is stitching which remains to be done. Additionally, since this is a nylon/leather upper, not an all leather upper as in most previous cases, the process of giving the shoe its final shape requires steps which are not necessary in leather moccasins. Specifically, the article will have a flat plastic back counter inserted, and then, with the article securely attached to a last, the plastic already present in the toe and in the back counter will be forced under heat and pressure into the heel and toe shapes. When the plastics cool, the article will then basically have its final shape. The attachment of the jogger bottom will not significantly affect its shape at that point.

In view of the foregoing we do not believe the sample is sufficiently advanced to be considered unfinished footwear. Consequently, it is classifiable under the provision for other articles not specially provided for, of leather in item 791.90, TSUS, and dutiable at the rate of 1 percent ad valorem or entitled to duty-free treatment under the Generalized System of Preferences, if otherwise qualified.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE

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076714

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

NOV -6 1985

REFER TO
CLA-2 CO:R:CV:G
076715 EMS

076715

Mr. Thomas M. Binger
Customs Manager
Graphics International Trading Co.
2501 McGee
P.O. Box 1566
Kansas City, Missouri 64141

Dear Mr. McGee:

Your letter dated May 6, 1985, requesting a ruling concerning the tariff classification of a textile jewelry pouch from Taiwan has been forwarded to us by our New York office for direct reply to you. A sample was provided along with your request.

The sample is a small drawstring pouch of brushed synthetic textile materials designed to contain jewelry. It measures approximately 3-1/2 inches by 2 inches.

You contend that this jewelry pouch is similar in size to a jogger's wallet which has been considered too small to be a flat good and has been classified in item 386.13, Tariff Schedules of the United States (TSUS), if ornamented, or in item 389.62, TSUS, if not ornamented.

Schedule 7, Part 1, Subpart D, Headnote 2(c) explains that the term "flat goods" covers "small flatwares designed to be carried with the person," and lists a number of exemplars that are commonly carried in this manner. The exemplars include:

> Banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles.

It is our view that the instant merchandise is not an article similar to the exemplars listed in Headnote 2(c). Rather, it appears that this merchandise is similar to the small drawstring pouch marketed with a watch which was the subject of Headquarters Ruling Letter dated February 10, 1983, file No. 070760. In that ruling, Customs rejected classification under a luggage provision in item 706.36, TSUS, and classified such merchandise under the provision for articles not specially provided for of textile materials: other articles, not ornamented: of cotton: other,

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in item 386.50, TSUS. Accordingly, this jewelry bag is classifiable under the provision for articles not specially provided for, of textile materials: other articles, not ornamented: of man-made fibers: in item 389.6270, TSUS, dutiable at the rate of 8 cents per pound plus 11 percent ad valorem. There are no textile quota restraints on articles classified in this provision.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076715

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 12 1985

REFER TO

CLA-2 CO:R:CV:G
076744 JGH

076744

Jeffrey P. Altman, Esq.
McKenna, Conner & Cuneo
1575 Eye Street, N.W.
Washington, D.C. 20005

Dear Mr. Altman:

This is in reference to your request of June 24, 1985, concerning the tariff classification of a household insecticide produced in Japan or Brazil.

The active ingredient, permethrin, a benzenoid insecticide is pelletized with azodicarbonamide, a scent, and potato starch. The pellets are placed in a cup at the top of a metal container in which container there is also calcium oxide and a paper pad, and packaged in a plastic unit. In use, water is added to the plastic unit and reacts with the calcium oxide to produce heat. The heat reacts with the pellets, releasing nitrogen gas, which blows the permethrin into the atmosphere.

The questions presented are: (1) whether the finished product is classifiable as an entirety in item 408.36; (2) whether, if the pellets containing the active ingredient were of U.S. origin, an allowance for the U.S. content is possible; (3) if the permethrin pellets are made in Brazil and sent to Japan for incorporation into the finished product, whether an allowance would be made for the value of the permethrin pellets under the GSP; and (4) whether, if an allowance under GSP would be made if pellets were shipped from Brazil to the United States and then to Japan, presumably for return to the U.S.

In view of the nature of the finished product from Japan, it would be classifiable as an entirety in item 408.36, TSUS. The rate of duty is 1 cent per pound plus 9.7 percent ad valorem.

If permethrin pellets of U.S. origin were sent to Japan and added to the container, the American Goods Returned provision, item 800.00, TSUS, would not apply, since the total finished product is more than packaging for the insecticide pellets and is considered to advance the value of the American product contrary to the specific limitations of item 800.00, TSUS.

In the case of the Brazilian-made permethrin pellets shipped directly or indirectly to Japan, the product would not qualify for GSP treatment because an eligible article must be imported directly from the beneficiary country. Importations from Japan are not eligible for GSP tariff

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treatment. Of course, if the pellets are made in and shipped from Brazil to the United States, there would be no duty on the first shipment if there is compliance with the regulations inasmuch as item 408.36, TSUS, is a GSP eligible item.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

076744

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PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 17 1985

REFER TO
CLA-2 CO:R:CV:G
076745 c

076745

Ms. Angela DeGaetano
Chief, C.I.E.
U.S. Customs Service
6 World Trade Center
New York, New York 10048

Dear Ms. DeGaetano:

A Customs Form 6431 dated May 15, 1985, received in this office on August 13, 1985, from the port of Pembina, North Dakota, concerns entry No. 85-326094-5 dated November 2, 1984, covering a shipment of acoustic panels and components manufactured by Artmet Products of Edmonton, Alberta, Canada. This difference of opinion is not listed in the list of differences published as CIE N-89/79, Suppl. No. 42 of June 1985.

The merchandise involved is described on the CF 6431 as acoustical panels and components. Divider panels or screens are included among the components.

In Headquarters Ruling letter (HRL) 060688 NL dated July 30, 1979, this office ruled that a work station consisting of acoustical divider panels, work surfaces, and wood cabinets which are imported in a dismantled condition but in complete units is classifiable under the provision for furniture, and parts thereof, not specially provided for, of wood, other than chairs in item 727.35, Tariff Schedules of the United States (TSUS). Our attention has been called to the fact that the above-cited ruling is in conflict with HRL 051940 JV dated June 14, 1977, and HRL 065376 VLC dated October 6, 1980. In HRL 051940 JV the merchandise involved consisted of desks, tables, cabinets, wall storage units and screens stated to be in chief value of wood. The conclusion reached in this ruling was that screens, whether imported separately or in combination with one or more of the named articles, are classifiable under the provision for other wood screens in item 206.67, TSUS. In HRL 065376 VLC dated October 6, 1980, the merchandise involved consisted of panels or screens in chief value of plastic or steel. The panels or screens were designed to be incorporated with shelving units, cabinets and desktops to create "work modules." This office ruled that pursuant to Schedule 7, Part 4, Subpart A, Headnote 1(v), the screens regardless of their composition were excluded from classification as furniture and are properly classifiable according to component material of chief value.

It is our opinion that the two latter cited rulings are the correct expression of the law on this matter. Consequently, the screens involved are separately classifiable under item 206.67, TSUS, if in chief value of iron or steel. That portion of HRL 060688 NL dated July 30, 1979, which is inconsistent with this ruling is revoked.

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PUBLIC _____

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A question has also arisen whether furniture such as a desk in need of a screen or divider for support would be considered furniture for tariff purposes.

The sending officer maintains that furniture, even if not free standing and in need of a screen for support, would still be furniture for tariff purposes. He points out examples such as gunracks, kitchen cabinets, and shelves, which need a wall for support are considered furniture.

In HRL 041619 dated November 24, 1975, it was stated that "a shelf or desk that could not stand alone and have utility by itself would be classifiable as a part of furniture." Also, in HRL 043860 c dated April 29, 1976, this office held that 36 inch unfinished desk units which were not free standing units in themselves and were not used independently of the free standing units (bookcase units) were classifiable as parts of furniture.

Schedule 7, Part 4, Subpart A, Headnote 1, TSUS, provides in pertinent part that "For the purposes of this subpart, the term "furniture" includes * * movable articles of utility, designed to be placed on the floor or ground * * *."

It is our interpretation of the cited headnote that a desk which is in need of a screen for support does not meet the definition of furniture because it is not "designed to be placed on the floor." For this reason and the previous precedent on this matter set out in HRL 041619 NM and HRL 043860 c, we are of the opinion that a desk in need of a screen or divider for support is properly classifiable under the provision for parts of furniture in item 727.40, TSUS.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

NOV - 8 1985

REFER TO
CLA-2:CO:R:CV:G
076746 TLL

076746

Dr. Julien Ronchaine
Agricultural Attache'
Embassy of Belgium
3330 Garfield Street, N.W.
Washington, D.C. 20008

Dear Dr. Ronchaine:

This is in reply to your letter dated August 5, 1985, requesting a tariff classification ruling on Cecemel manufactured by Nutricia in the Netherlands and shipped to the United States.

Cecemel is a chocolate flavored sterilized dairy drink. The ingredients of this chocolate milk drink are semi-skimmed milk, sugar, and cocoa. This product is treated at ultra-high temperature and it is shelf-stable. Cecemel will be shipped in ready-to-serve cans that hold 8.8 fluid ounces. The directions on the can state shake well before use.

It is our opinion that Cecemel meets all the requirements of a chocolate milk drink and would be classified under item 118.15, Tariff Schedules of the United States (TSUS). Currently, articles imported under item 118.15, TSUS, are not subject to quota.

Insofar as information regarding the Department of Agriculture and the Food and Drug Administration requirements are concerned, we suggest you contact the following offices.

United States Department of Agriculture
A.P.H.I.S. Veterinary Services
Federal Building, Room 838
Hyattsville, Maryland 20782

United States Food and Drug Administration
Division of Regulatory Guidance
HFF-314
200 C Street, S.W.
Washington, D.C. 20204

Sincerely,

Arthur P. Schaffner
For Harvey B. Fox
Director, Classification
and Value Division

19

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PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
076747 TLL
813605

04 NOV 1985

076747

William J. Maloney, Esq.
Rode & Qualey
Attorneys at Law
295 Madison Avenue
New York, New York 10017

Dear Mr. Maloney:

This is in reply to your letter dated May 6, 1985, requesting a ruling on behalf of your client, Technical Oil Products, Inc., Carlstadt, New Jersey, as to the correct tariff classification of dextrose and fructose (levulose) to be manufactured in a foreign trade zone and entered into the Customs territory of the United States.

It is the intention of Technical Oil to produce 95-99 percent pure fructose (also known as levulose) and dextrose from imported cane or beet sugar in a Foreign Trade Zone. The initial material will be in one of three possible forms: raw crystalline sugar, refined crystalline sugar, or an invert sugar syrup. The raw or refined sugar will be combined with water in order to produce syrups. These syrups will then undergo a process known as inversion by subjecting them to heat in the presence of an acid. This part of the processing will be unnecessary when an invert syrup is utilized as a starting material.

The process of inversion causes the complex cane or beet sugar syrup molecule known as sucrose ($C_{12}H_{22}O_{11} + H_2O$) to break down into the simpler constituent sugars of dextrose ($C_6H_{12}O_6$) and fructose ($C_6H_{12}O_6$). While the empirical formula for these two sugars is identical, there are substantial differences in the way each sugar is chemically bonded resulting in the physical differences between these two sugars. When the process of inversion of sucrose is taken to the maximum extent possible the resulting invert syrup will be composed of 50 percent dextrose and 50 percent fructose by weight of dissolved solids.

Upon attaining total inversion of the liquid cane or beet sucrose into a syrup equally composed of dextrose and fructose, Technical Oil will proceed to separate these two sugars. The method employed will be either ion exchange or membrane separation. In any case, the substances ultimately produced and entered from the foreign trade zone will be two separate products, dextrose and fructose in liquid form.

It is obvious that both of the produced substances retain commercial and chemical identities as sugars. It is also apparent that their origin can be traced back to a cane or beet sugar source. This would suggest

NO

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consideration for classification under items 155.20, TSUS, and 155.30, TSUS, as a sugar or syrup derived from sugar beets. However, there are also eo nomine provisions for both of these sugars in the tariff schedules. Dextrose is provided for in item 155.60, TSUS, with duty at 1.6 cents per pound, while fructose is provided for as levulose in item 493.66, TSUS, with duty at 16.3 percent ad valorem. You have argued the latter alternatives relying heavily upon Ruling 059867 of October 20, 1978.

Ruling 059867 dealt with the applicability of import fees under item 956.05, 956.15, and 957.15, TSUS, normally assessed on sugars derived from cane or beet sugar, to those sugars classifiable as dextrose under item 155.60, TSUS, and levulose (fructose) under item 493.66, TSUS. While this ruling quite correctly holds that these fees are not applicable to products classifiable under item 155.60 and 493.66, TSUS, it does not clearly settle the issue regarding tariff classification of fructose and dextrose when produced from a cane or beet sugar. This issue was specifically dealt with in the decision upon Application for Further Review of Protest 10014019404, issued on October 21, 1975. That decision held that a fructose produced in essentially the same manner as contemplated by Technical Oil was more properly classifiable under the eo nomine provision for levulose in item 493.66, TSUS, rather than as a sugar derived from cane or beet sugar provided for in Schedule 1 of the tariff schedules. While the decision did not deal directly with dextrose produced in the same manner, it would be logical to follow the same reasoning regarding the tariff classification of that product.

Accordingly, fructose produced by inversion of cane or beet sugar and separated by ion exchange or membrane separation would be classifiable under item 493.66, TSUS. Dextrose produced in the same manner would be classifiable in the named provision for that substance in item 155.60, TSUS. Of course, if the products should be determined to be less than 95-99 percent chemically pure then the product may not be covered by this ruling.

Unlike the provisions for cane or beet sugars, there are no quotas or restrictions upon the importation of products classifiable under these provisions.

We suggest you contact Mr. John Da Ponte, Executive Secretary, Foreign Trade Zones Board, U.S. Department of Commerce, Room 1519, Washington, D.C. 20230, in order to determine the permissibility of this proposed operation in a foreign trade zone.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 18 1985

REFER TO

CLA- 2-CO:CV:G
076765 C

076765

District Director of Customs
102 India Street
Boston, Massachusetts 02109

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0401-5-000020

This protest was filed against your decision in the liquidation on December 14, 1984, of entry No. 343139 dated December 29, 1985, covering a shipment of footwear manufactured in Korea.

FACTS:

Certain kids jogging shoes, stock Nos. M55866 and M55863, were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS), with duty at the rate of 12.5 percent ad valorem.

The protestant maintains that the shoes involved are classifiable under the provision for other footwear of leather for men, youths and boys in item 700.35, TSUS, and dutiable of the rate of 8.5 percent ad valorem.

ISSUE:

Are the shoes in chief value of leather as claimed by the protestant?

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Law and Analysis:

The protestant maintains that the documentation provided at the time of entry shows that the footwear was in chief value of leather. He also states that the laboratory report prepared by Customs is incorrect as to the amount of leather present in the footwear and should not have been the basis for a rate advance.

Customs laboratory Report No. 2-84-52848 states that .02750 sq. ft. of leather is present in style No. M55866. The original laboratory report was checked and it was discovered that the amount of leather present in the footwear was .2750 sq. ft.

Even if we disregard the report on style No. M55866 due to error, the laboratory report on style No. M55683 states that .2810 sq. ft. of leather is present and according to the laboratory, that shoe is the same size, child's 13, as style No. M55866 and differs only in color.

There is nothing inherently unreasonable about .2815 sq. ft. of leather being present per shoe in a child's 13 even if 57.3 percent of the exterior surface area of its upper is

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leather. The .2815 sq. ft. per shoe (.563 sq. ft. per pair) found by the laboratory in style No. 55683 is tangible evidence that the .89 sq. ft. of leather claimed to be present in the youths 13 1/2 is a gross overstatement. Therefore, we will correct the claimed material cost of $1.136 by multiplying it by .632 (.563 divided by .89). This results in a correct leather material cost of $.718. Our recomputation to determine component material of chief value for the youth's shoe is as follows:

Leather	$.718	R&P	$.90
	+ .198		+ 25
	$.916		$ 1.15

Similarly, we correct the claimed material cost for the boys' shoe from $1.144 to $.723 by also multiplying it by .632 because we assume that there is a similar overstatement in the other sizes. Our recomputation to determine component material of chief value of the boys' shoe is as follows:

Leather	$.723	R&P	$.937
	+.216		+. 25
	.939		$ 1.187

Our recomputations show that the footwear is in chief value of rubber/plastics requiring their classification under item 700.95, TSUS, as liquidated.

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Holding:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of action to be sent to the protestant.

Sincerely,

Arthur P. Schaffler

For Harvey B. Fox
Director, Classification
& Value Division

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B1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 16 1985

REFER TO

CLA-2:CO:R:CV:G
076766 DPC

076766

District Director of Customs
Boston, Massachusetts 02109

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0401-4-00398

This protest was filed against your decision in the liquidation on May 18, 1984, of entry No. 83-371661-3 dated August 19, 1983 and entry No. 84-414124-8 dated October 13, 1983.

FACTS:

The merchandise involved consists of men's cowhide split leather with nylon sport shoes manufactured in Taiwan.

This footwear was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS), with duty at the rate of 12.5 percent ad valorem.

The protestant maintains that the footwear is properly classifiable under the provision for other footwear of leather for men, youths and boys in item 700.35, TSUS, and dutiable at the rate of 8.5 percent ad valorem.

ISSUE:

Are the exterior surface areas of the footwear uppers involved over 50 percent leather?

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LAW AND ANALYSIS:

Style No. WS-5302 has an all leather upper and is in chief value of leather. Accordingly, it is dutiable at the rate of 8.5 percent ad valorem under item 700.35, TSUS.

Style Nos. WS-5348 and WS-5459 have nylon uppers and leather overlays. These styles which are similar are claimed to have over 50 percent leather on the exterior surface area of their uppers. A Customs laboratory report establishes that a contemporaneous shipment of style No. WS-5348 from the same maker has only 48.4 percent of the exterior surface area of the uppers covered by leather. Our understanding is that the protestant does not dispute the finding of the Customs laboratory.

It should be noted that the liquidation of style Nos. WS-5348 and WS-5459 under item 700.95, TSUS, was in error. These styles which were over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics should have been classified under item 700.62, TSUS, with duty at the rate of 90 cents per pair plus 20 percent ad valorem.

HOLDING:

The protest should be allowed as to style No. WS-5302.

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076766

The protest should be denied as to style Nos. WS-5348 and WS-5459.

A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

B. 7+

Harvey B. Fox
Director, Classification
and Value Division

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BY

076766

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OCT 28 1985

CLA-2 CO:R:CV:V
076769 C

076769

TO : District Director of Customs
San Diego, California 92188

FROM : Director, Classification & Value Division

SUBJECT: Internal Advice Request No. 47/85 Concerning the Tariff Classification of Unicorn and Pegasus Figures Manufactured in Korea.

FACTS:

The merchandise involved consists of eight inch high figures of a Unicorn and Pegasus. These figures are made of a combination of man-made textile materials and wool. The legs of both creatures are made of wire covered with a layer of wool. These creatures have articulated bodies with ornamented manes and tails and snap-lock plastic eyes. They are further decorated with colorful ribbons and flowers.

Counsel for the inquirer maintains that the figures are not toy figures and are properly classifiable under the provision for articles, not specially provided for, of textile materials, ornamented, other in item 386.13, Tariff Schedules of the United States, (TSUS).

Alternatively, counsel claims that the merchandise is classifiable under item 737.47 or item 737.49, TSUS, as toy figures of inanimate objects.

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It is your view that these figures are classifiable under the provision for other toy figures of inanimate objects, not having a spring mechanism in item 737.49, TSUS.

ISSUE:

Are these figures chiefly used for the amusement of children or adults?

LAW AND ANALYSIS:

Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, provides that "For the purposes of the Tariff Schedules, a "toy" is any article chiefly used for the amusement of children or adults."

Schedule 7, Part 5, Subpart E, Headnote 1, TSUS, provides that "the articles described in the provisions of this subpart (except parts) shall be classified in such provisions, whether or not such articles are more specifically provided for elsewhere in the tariff schedules ****.

General Interpretative Rule 10 (e)(i), TSUS, provides that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined,"

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It is your position noting the case of The United States v. Topps Chewing Gum Inc. 58 CCPA 157, C.A.D 1022, that the purpose of these figures is to give the same kind of enjoyment as playthings give, and also to induce the emotion of frivolity.

We concede that the sample figures by their nature possess some amusement or entertainment value. However, not all articles which amuse are classifiable as toys. The law requires that in order to be classified as a toy an article must be chiefly used in a manner so as to create a "quality of mind or emotion" best described as "frivolous entertainment." The courts have consistently drawn a distinction between toys and articles whose chief use is not for amusement but for display purposes. See Fred Bonner Corp v. United States, 57 Cust. Ct. 428, C.D. 2832 (1966), and Louis Marx & Co., Inc. v. United States, 65 Cust. Ct. 672, C.D. 4156 (1970). In these cases, usage for display purposes was found to rebut the classification of the items as toys.

Following this judicial direction we must consider those factors which distinguish toys and figures chiefly used for ornamentation, display or decoration. Can a figure be described as being comical or whimsical in appearance? Does it have a predominantly humorous quality or character to it? Does it invite touch, manipulation and the play usually associated with toy playthings? On the other hand is the

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figure essentially passive or uncomical in appearance? Does it have sufficient detail to impart a reasonably realistic appearance usually associated with shelf items? Can it stand on a flat surface? Does it lack an ability to withstand or provoke extensive manipulation? What is its commercial designation?

The Court has differentiated between articles used for ornamental, decorative, or display purposes and articles whose purpose is to give the same kind of frivolous enjoyment or trivial levity as playthings give. The Court has stated that articles which are essentially passive, uncomical, nonmanipulatable and finely finished are not classifiable as toys. In making this determination, the court has cited as evidence the manner in which the articles are sold and its examination of the samples themselves. See American Customs Brokerage Co. v. United States, 60 Cust. Ct. 23, C.D. 3246 (1968); Wilson's Customs Clearance, Inc. v. United States, 59 Cust. Ct. 36, C.D. 3061 (1967); Sports Specialties Corp. v. United States, 65 Cust. Ct. 550, C.D. 4137 (1970).

Our analysis of the samples shows that they: (1) are far less conducive to manipulation than the usual and ordinary toy figure, (2) are essentially passive in appearance and lack humorous or comical qualities, (3) are designed to stand on

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a flat surface; (4) are being marketed through other than the normal toy channels; (5) are essentially delicate shelf-like replicas of animals made partly of wire and pure wool; and (6) are potentially capable of causing injury if used in a play activity.

It is our opinion that the Unicorn and Pegasus figures which possess the characteristics enumerated above do not fall within the tariff definition for toys. These figures are of a class or kind of merchandise which have more display appeal than play value.

HOLDING:

The bodies of the sample figures, which are of different sizes, are made of tightly compressed wadding or batting of wool and man-made fibers. We consider these items to be articles of textile wadding or batting, either of wool or man-made fibers. The cost figures provided do not enable us to distinguish between the two. Classification of the sample figures would be under item 355.18, TSUS, at 10.3 percent ad valorem, if of wool, or under item 355.25, TSUS, at 4 cents per pound plus 13.3 percent ad valorem, if of man-made fibers.

The applicable textile quota category numbers are 469 (wool) or 699 (man-made fibers). As products of Korea these figures are subject to quota restraints.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

04 NOV 1985

CLA-2 CO:R:CV:G
076774 DW

REFER TO

District Director of Customs
Miami, Florida 33131

Re: Decision on Application for Further Review of Protest No. 5201-5-000044

Dear Sir:

This protest was filed against your decision in the liquidation on November 23, 1984, of entry No. 272065 dated September 20, 1984.

FACTS:

The merchandise involved in this protest consists of women's jackets manufactured from 100 percent cotton. The jackets were entered under the provision for other women's wearing apparel, not ornamented, of cotton, not knit, coats, other in item 383.34, Tariff Schedules of the United States (TSUS), but were classified by Customs as ornamented women's wearing apparel in item 383.06, TSUS, because of the presence of a tricolored decorative label that is approximately 1/2 inch x 1 7/16 inches. The label bears the printed word "FURY" in white letters outlined in blue that appear against a red background.

ISSUE:

Whether the subject label ornaments the garment.

LAW AND ANALYSIS:

Protestant claims in its supplemental submission dated August 6, 1985, that the label under consideration is composed of two colors. From its perspective, the red and blue colored yarns are woven on a white (colorless) background which remains visible. Thus, the protestant contends that the white colored yarns are not considered to be a color for purposes of the label. Then too, protestant argues that the effect imparted by the blue outline is "de minimis."

B/O

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076774

As expressed by the Customs Service in numerous rulings, it has been the general rule that for labels visible during the normal wear of the garment, the identification of the manufacturer, in itself, is not a primarily utilitarian function. Therefore, such labels normally constitute ornamentation. An exception has been carved from this general rule for relatively small, rectangular shape, identifying labels containing only plain writing or block printing in an orderly arrangement. This exception has been narrowly construed. Customs has ruled repeatedly that anything done to a label which obviously is meant to enhance the appearance of the label and, consequently, the garment upon which it appears may cause the label to constitute ornamentation.

In our opinion, this protest is governed by previous Customs rulings on tricolored labels. In Headquarters Ruling Letter 069421 dated February 10, 1982, where we found that a dark blue label containing the words ROSE HIPS JEANS in block letters with the words ROSE and JEANS in white letters juxtaposed against the middle word HIPS in red lettering constituted ornamentation, we stated:

> the use of multiple colors on a single label is a factor that contributes to the decorative appearance of the label.

Again, in HRL 073007 dated October 13, 1983, we found that the use of multiple colors on a label embellished the label and, therefore, the garment on which it is located.

Based on the foregoing rulings, it follows that the tricolored nature of the instant label embellishes the label. The prominence of the word "FURY" arises from the use of the blue yarns to outline the white letters against a red background. We believe that the tricolored arrangement is eyecatching and intended to attract a viewer's attention. Thus, the label imparts more than an incidental, decorative effect.

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HOLDING:

The merchandise was classified correctly in item 383.06, TSUS. You should deny the protest and send a copy of this letter with your Form 19 Notice of Action.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

076774

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B12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

076775

REFER TO
04 NOV 1985 CLA-2:CO:R:CV:G
076775 DW

District Director of Customs
77 S.E. 5th Street
Miami, Florida 33131

Re: Decision on Application for Further Review of Protest No. 5201-5-000146

Dear Sir:

This protest was filed against your decision in the liquidation on February 1, 1985, of entry no. 511203 dated October 23, 1984.

FACTS:

The merchandise subject to protest consists of 100 percent cotton woven jackets. The jackets were entered under the provision for other women's wearing apparel, not ornamented, of cotton, not knit, coats, in item 383.34, Tariff Schedules of the United States (TSUS), but were classified by Customs as ornamented wearing apparel in item 383.05, TSUS, because of the presence of a tricolored decorative label bearing the printed word "FURY".

ISSUE:

Whether this protest satisfies the criteria for further review in section 174.24, Customs Regulations.

LAW AND ANALYSIS:

The threshold question raised here is a procedural one and concerns whether the protest is properly before Customs Headquarters.

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Customs Form 19 used for filing the protest indicates that the protestant has not made a request for further review of the same claim with respect to the same or substantially similar merchandise. We note, however, that the issue presented by the Application for Further Review of Protest No. 5201-5-000044 is the ornamenting effect of an identical label on a similar jacket concerning the same importer. We find, therefore, this application for further review to be procedurally deficient.

HOLDING:

Further review of protest no. 5201-5-000146 should be denied because the criteria for further review in section 174.24, Customs Regulations, have not been satisfied. Action on this protest should be taken in accordance with the enclosed decision on the Application for Further Review of Protest No. 5201-5-000044.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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076775

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

1 NOV 1985

REFER TO
CLA-2:CO:R:CV:G
076789 c

076789

District Director of Customs
Second & Chestnut Streets
Philadelphia, Pennsylvania 19106

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1101-5-000089

This protest was filed against your decision in the liquidation on March 1, 1985, of Entry No. 136541 dated February 26, 1979, covering a shipment of women's nylon track shoes manufactured in Korea.

FACTS:

The women's nylon track shoes, patt Nos. CNQ7515 and CNQ8149-2W, were classified in liquidation under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics in item 700.60, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 percent ad valorem.

Pursuant to Schedule 7, Part 1, Subpart A, Headnote 3(b), TSUS, these track shoe were appraised on the American selling price of the Brooks Super Lady Villanova which was $14.40 per pair less 2 percent.

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Counsel for the protestant claims that the correct domestic prototype is the "Sunstar", the American selling, price of which was $7.65. Counsel states that for the period involved this value was used by Customs as the appropriate American selling price for "average quality" women's joggers of the type involved here.

ISSUE:

Are the imported women's track shoes more similar to the Brooks Super Lady Villanova than they are to the "Sunstar"?

LAW AND ANALYSIS:

For administrative purposes Customs presumed that shoes from certain importers were of "average quality" if their FOB'S were below a certain price. The presumption that a shoe was of "average quality" is stated to require, for exports from June 1, 1978 to March 1, 1979, that the FOB price be under $4.75. The $4.75 price is for the men's version of the shoes. All the shoes involved were womens and their FOB's were $4.88 or $5.52 so the presumption does not apply.

Even if the presumption applied to the shoes in issue, the Form 35 shows that we were individually reviewing the imports of a number of brands, including Osaga, to arrive at specific prototypes for each style. The Osaga brand was included on the list due to its advertising in and being

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evaulated by serious running magazines and due to the comparatively high prices and quality of its shoes. When we examined the two styles involved, the "Feather" and the "KT-26", it was apparent to us that they were more similar to the Brooks Super Lady Villanova that to any other shoe including the "Sunstar" STO series jogger.

Inasmuch as the protestant has not provided samples or argumentation to back up his claim that the "Sunstar" is more similar, we will not give a detailed explanation of the factors used in making our selection of the Brooks Super Lady Villanova.

Regarding the protestant's point that these shoes were made by ICC Corporation of Korea, we can confirm that this firm exported to the United States millions of cheap joggers of mediocre or low quality. However, it should be noted that ICC made some very good to excellent joggers for NIKE and others.

HOLDING:

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

C3

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076789

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 14 1985

REFER TO

CLA-2 CO:R:CV:G
076799 DW

076799

District Director of Customs
610 S. Canal Street
Chicago, Illinois 60607

Dear Sir:

Your memorandum dated July 17, 1985, referred to a request for internal advice by Boris Smoler and Sons concerning the tariff classification of a sundress with a bolero style jacket.

A copy of the importer's submission which was missing from our file was requested from a member of your staff in a telephone conversation on October 18, 1985.

The merchandise in question as depicted in the submitted catalogue excerpt consists of several styles of sundresses and coordinated bolero jackets.

Basically, the inquirer urges classification of the sundress and jacket as a single garment. It is stated that the dress and jacket are imported and packaged together and intended to be sold and used together. The inquirer believes that the increased use of air conditioning necessitated the addition of a jacket that can be worn with a sundress that has exposed arms, shoulders and neckline. The inquirer points out that the value of the bolero represents a fraction of the garment's value because less material is required to manufacture the bolero. And the inquirer notes that it has been importing this type of merchandise since 1982, as an entirety classified as a dress in item 383.48, (now item 384.49) Tariff Schedules of the United States (TSUS) under category 336. That this classification had been reviewed and concurred with is not denied by your office.

The law applicable to the classification of garments sold together as a unit has recently been changed with the enactment of the Trade and Tariff Act of 1984, Pub. L. 98-573 (approved October 30, 1984). Section 122 of the Act addresses the classification of wearing apparel by adding a Headnote 3 to Part 6 of Schedule 3, TSUS. This addition appears in the 1985 TSUS. The headnote provides that apart from certain exceptions, each garment is to be separately classified under the appropriate tariff item, even if two or more garments are imported together and designed to be sold together at retail.

The new headnote virtually eliminates the classification of two or more garments as an entirety, when they may be classified in separate items. The headnote, therefore, eliminates tests used in the past, such as

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color coordination, and constitutes a prohibition against finding entireties where two or more garments that may be worn separately are involved.

The exception to the headnote that plausibly may apply to the subject merchandise is for suits. But, Customs has never considered a dress and jacket to constitute a women's suit for tariff purposes. Thus, the involved dress and jacket do not fall within the exception.

The inquirer also may be successful on its claim if the bolero jacket is not considered to be a garment for tariff purposes. A typical definition of a garment found in The American Heritage Dictionary (1976 ed.) is "any article of clothing, especially of outer clothing such as a coat or a dress." In the same lexicon, a bolero is defined as "a short jacket, usually with no front fastening, worn by both men and women." Unquestionably, a bolero jacket is a garment for tariff purposes. It follows, necessarily, that the sundress and bolero jacket are separately classifiable.

Accordingly, assuming the merchandise is in chief value of cotton, the sundress is classifiable under the provision for other women's wearing apparel, of cotton not knit, dresses in item 383.4821 (now item 384.4921) TSUS, with two or more colors in the warp and/or filling or in item 383.4825 (now 384.4925) if the statistical suffix is other. The textile category number is 336. The jacket is classifiable under the provision for other women's wearing apparel, not ornamented of cotton, not knit, coats in item 383.3200 (now 384.3500) TSUS. The textile category number is 335.

In the future, the file should be sent to the Customs Information Exchange for processing as an Internal Advice request.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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076799

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

24 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
076854 c
814347 NY

076854

Mrs. Judy Cook
Manager, Import Dept.
Pagoda Trading Co. Inc.
44 Kimler Drive
St. Louis, Missouri 63043

Dear Mrs. Cook:

In a letter dated June 26, 1985, you inquired as to the dutiable status of certain footwear produced in Korea having uppers made of polyurethane coated nylon fabric. Swatches of the material which will be used in manufacturing the uppers have been submitted for examination.

Schedule 7, Part 1, Subpart A, Headnote 3, Tariff Schedules of the United States (TSUS), provides that "For the purposes of items 700.51 through 700.56, the rubber or plastics forming the exterior surface area specified, if supported by fabric or other material, must coat or fill the supporting material with a quantity of rubber or plastics sufficient to visibly and significantly affect the surface otherwise than by change in color, whether or not the color has been changed thereby."

Examination of the samples, one of which is uncoated, the other two of which have differing amounts of coating, reveals that the uncoated swatch weighs roughly 16.73 grams per square foot. The single coated sample and double coated sample weigh about 20.61 grams per square foot and 22.38 grams per square foot, respectively. Thus, the coatings weigh roughly 3.88 grams per square foot for the former and 5.65 grams per square foot for the latter. We do not regard this measurement as determinative in a classification question but it does provide a useful guide as to the quantity of coating involved in this particular case.

Your attention is invited to a notice published as T.D. 81-219 which interpreted the case of H. Rosenthal Co. v. United States, 81 Cust. Ct. 77, C.D. 4769 (1978). In that case the court held that the fabric from which certain coats were constructed fell within the definition of "coated or filled" in Schedule 3, Part 4, Subpart C, Headnote 2(a), TSUS. That definition which is similar to Schedule 7, Part, 1 Subpart A, Headnote 3, TSUS, requires that for a fabric to be coated or filled for tariff purposes, the coating or filling must visibly and significantly affect its surface, other than by a change in color. Specifically, Customs stated that it would consider the surface of a fabric to be visibly affected by a coating or filling if the following criteria were met:

1. The coating or filling material can be separately distinguished from the fabric by the naked eye;

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2. the coating or filling material imparts a shine, luster or glossy appearance, or a dull appearance, that is not noticeable by a casual examination; or

3. the coating or filling material has caused the fabric to have a pronounced (obvious) appearance of stiffness. In regard to the appearance of stiffness, the fabric should appear significantly more rigid than that fabric would be if not coated or filled.

It is our observation that these coatings are not discernable to the naked eye. In fact they are barely distinguishable under 10 power magnification.

We do not think that the coatings impart an obvious appearance of stiffness to the fabric. While a handling of the swatches indicates a degree of stiffness, T.D. 81-219 requires the appearance of stiffness. Inasmuch as we do not have a finished item of footwear, we cannot categorically decide on this factor. However, it is our experience that this type of material is commonly used on lined winter boots. The thick lining material causes the boots to possess a stiffness. Thus, such an item is not akin to a jacket or some other type of loose fitting garment in which an appearance of stiffness might be readily apparent. Therefore, we would study the swatches side-by-side without manipulating them. Under those conditions we do not believe the coated swatches appear stiffer than the uncoated fabric.

Although the nylon is somewhat shiny on its own, comparison of the three swatches shows a readily apparent shine added to the coated swatches by the polyurethane. A question has arisen whether there can be such a thing as a de minimis amount of shine on a fabric. We do not believe the de minimis concept is applicable here because the plastic coating has given the swatches characteristics they would not possess had the plastic coating not been added. Specifically, it appears that the plastic coating was added to increase the eye appeal and saleability of footwear having uppers of this material. See Varsity Watch Company v. United States, 34 CCPA 155, C.A.D. 359 (1947).

In view of the foregoing it is our position that the plastic coating visibly and significantly affects the surface of the coated swatches and these swatches would be considered to have an exterior surface area of plastics for tariff purposes.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 16 1985

REFER TO

CLA-2:CO:R:CV:G
076867 jlj

076867

Mr. Mick W. Blakely
C. F. Liebert, Inc.
P.O. Box L
Blaine, Washington 98230

Dear Mr. Blakely:

You inquired about the tariff classification of a framed lithographic print produced in Canada for your client, Creative Fine Art and Framing of Canada. You submitted a sample with your inquiry.

The sample consists of a lithographic print mounted and framed with decorative wood moldings. The back is sealed with paper, and a metal hanger is attached.

The lithograph and the wooden frame are separable, so they are separately classifiable. The lithograph is classifiable under the provision for lithographs on paper, not over 0.020 inch in thickness, in item 274.60, Tariff Schedules of the United States (TSUS), dutiable at the 1985 rate of 6 cents per pound. The wooden frame is classifiable under the provision for picture frames, of wood, in item 206.60, TSUS, dutiable at the 1985 rate of 6 percent ad valorem. See Customs Headquarters Ruling Letter (HRL) 060656 of November 6, 1980, HRL 063215 of August 9, 1979, HRL 038080 of March 26, 1975, and HRL 033556 of July 10, 1974. See also R.J. Godwin's Sons, Inc. v. United States, 66 Treas. Dec. 623, T. D. 47373 (1934), in which the court held lithographic prints and the frames in which they were mounted not classifiable as entireties.

Sincerely,

Arthur J. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 22 1985

REFER TO

CLA-2:CO:R:CV:G
076868 jlj
809460

076868

Dear

You asked us to affirm New York letter 809460 of May 24, 1984, in light of a new production method. New York letter 809460 had classified a certain product manufactured by your client,
under the provision for cloth-lined or reinforced paper in item 253.3500, Tariff Schedules of the United States (TSUS).

Previously you had advised Customs that the product would be manufactured in one continuous process. Now it is anticipated that the product will be made in two separate steps.

In the first step, the fiberglass mesh, which is the component of chief value, will be formed, bonding adhesive will be applied to the mesh, tissue paper will be applied to the mesh-adhesive, the mesh-adhesive-paper product will be dried, and the product will be wound on rolls.

In the second step, this product will be unwound, saturated with the polyvinyl chloride component, dried, and rewound for sale.

After consideration, we have decided that the changes in producing this product do not materially change the basic premises upon which New York letter 809460 is based. New York letter 809460 is still valid. The Bayex product is classifiable in item 253.35, TSUS.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

25 OCT 1985

REFER TO

CLA 2-CO:CV:G
076869 C

076869

Daniel A. Pinkus, Esq.
Assistant Chief Counsel
International Trade Ligitation
26 Federal Plaza
New York, New York 10007

Dear Mr. Pinkus:

Re: Coleco Industries, Inc. v. United States
Court Nos. 83-9-01261 and 83-9-01259

In a letter dated August 26, 1985, you called our attention to the case of Childcraft Education Corp. v. United States, Appeal No. 83-1428 (1984), wherein the appeals court held that certain articles known as "Teaching Typewriters", "Touch to Learn" and "Touch and Match" are not classifiable as toys under item 737.90, (currently item 737.95), Tariff Schedules of the United States (TSUS), because they are not chiefly used for the amusement of children.

You point out that Childcraft appears to negate Headquarters Ruling letter No. 069972C dated February 17, 1983, (Decision on Application for Further Review of Protest No. 1001-1-010164), holding that a product consisting of a "Magic Touch" pen and question/answer cards is chiefly used for the amusement of children and, therefore, is classifiable under the provision for other toys, not specially provided for, in item 737.95, TSUS.

You have informed us that upon recipt of a proposed stipulation from the plaintiff, you have discused this matter with National Import Specialist Stephanie Joseph. You indicate that upon a review of the samples Mrs. Joseph stated that in her opinion the merchandise involved is not chiefly used for the amusement of children but is primarily used for educational purposes, much in the same way as the "Touch and Match" articles which were the subject of Childcraft.

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Based on the result reached in Childcraft and the opinion expressed by Mrs. Joseph, it is your observation that the subject merchandise is not a toy for tariff purposes.

In the event that we agree that the merchandise is precluded from classification under item 737.95, TSUS, you pose the following questions:

(1). Is the "Magic Touch" set classifiable under item 688.45, TSUS,?

(2). Are the pens, when imported separately, classifiable under item 688.45, TSUS?

(3). Are the cards, when imported separately, classifiable under item 256.90, TSUS?

We agree that the set in issue is precluded from classification under item 737.95, TSUS, as it is not chiefly used for the amusement of children. It is our view that the "Magic Touch" set is classifiable under the provision for other electrical articles and electrical parts of articles, not specially provided for in item 688.45, TSUS. The "Magic Touch" pens, when imported separately, are also classifiable under item 688.45, TSUS. The cards, when imported separately, are classifiable under the provision for other articles of paper, not specially provided for, in item 256.90, TSUS.

Sincerely,

Arthur P Schaffer

Harvey B. Fox
Director, Classification
& Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

25 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
076886 DW
809825

076886

Mr. Michael Welch
International Manufacturing Company
8300 N. E. Underground Drive, Suite 204
Kansas City, Missouri 64141

Dear Mr. Welch:

You have inquired about the tariff classification of a car cover. A sample was provided along with the request dated June 14, 1984.

The sample car cover designed to cover an automobile is constructed from a woven fabric that is a blend of 65 percent polyester and 35 percent cotton. The cover is contained in a tote bag with carry handles and a zipper closure. An elliptical-shaped globe logo embroidered on the bag is approximately 1 1/2 inches long and 3/4 wide. Two narrow lines about 5/8 of an inch long by 1/8 of an inch wide at approximately the equator emanate from each side of the globe.

Although the sample cover does not feature the embroidered globe logo, you advised our New York office that the logo will be sewn onto a corner of the cover.

The issue raised by this request is whether the label ornaments the car cover. In order to constitute ornamentation for tariff purposes, a feature must be listed as a form of ornamentation in Schedule 3, Headnote 3, and serve a primarily decorative rather than utilitarian function.

In the case of United States v. Endicott Johnson, 67 CCPA 47, C.A.D. 1242 (1980), the court adopted a two step test to use in determining whether a feature constitutes ornamention for tariff purposes.

1. Does the feature impart no more than an incidental decorative effect? and,

2. Does the feature have a functionality which is primary to any ornamental nature?

Under the Endicott Johnson test, we believe that the logo although highly decorative is so small and insignificant when compared to the expensive car cover it is claimed to ornament that it imparts no more than an incidental decorative effect. Therefore, the globe logo does not ornament the car cover.

Accordingly, the car cover is classifiable under the provision for other articles not specially provided for, not ornamented, of man-made fibers in item 389.62, TSUS, with duty at the rate of 8 cents per pound plus 11 percent ad valorem.

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Even if the logo were enlarged on the car cover it probably would not constitute ornamentation. Recently, the Customs Service had the opportunity to consider whether a large, prominent label ornamented a car cover. In our ruling dated August 28, 1985, file No. 076579, in which we indicated that such a label must ornament the car cover in an accepted trade sense, we stated:

> In those instances where we lack information regarding whether certain features ornament the fabric or article in an accepted trade sense, the Customs Service follows the principle expressed in Excelsior Import Associates, Inc. v. United States, 66 CCPA 1, C.A.D. 1212 (1978), that in the absence of evidence by the importer concerning whether the garment was ornamented in an accepted trade sense, the fact that consumers regard a certain feature as enhancing a garment is determinative.
>
> * * * *
>
> No evidence has been presented on the status in the trade of car covers with labels. If the presence of a decorative label on a car cover is considered by the trade to ornament such merchandise, we would probably consider the subject car cover to be ornamented for tariff purposes.
>
> Nor has evidence been presented that consumers regard the label as enhancing the car cover. In our opinion, a consumer when viewing the subject car cover which is an industrial product would not consider the label to embellish the appearance of the car cover. That is to say there may be certain industrial products which by their very nature are not capable of being ornamented for tariff purposes.
>
> * * * *
>
> This office is not willing to carry this position to its extreme conclusion and say that no label will ever ornament a car cover. A label must be judged on the basis of the particular facts in each case.

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076886

We regret that we are unable to provide you with a ruling on the carrying bag. The appropriate classification for the carrying bag turns on the resolution of several issues that we are discussing with our commodity specialist in New York. Upon their resolution, we will inform you of the tariff classification of the carrying bag.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

076886

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

NOV - 8 1985

REFER TO
CLA-2 CO:R:CV:G
076894 EMS

076894

Area Director of Customs
U.S. Customs Service
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-3-012408

This protest was filed against your decision in the liquidation on June 17, 1982, of entry No. 1001-83-807509-0 dated October 15, 1982, covering a shipment of ladies' rompers.

FACTS:

The sample submitted is a lady's romper manufactured from a 100 percent woven cotton fabric. The romper features a fully elasticized waist, adjustable shoulder straps secured by D rings, elastic at the underarm portion and three patch pockets on the front, one with a button secured flap. The leg openings feature a facing turned outward forming a cuff; the cuff is stitched in place at the inseam and side seam. A tab and D ring appear at the leg edges at each side seam.

The tabs on the legs of the rompers were considered by Customs to constitute ornamentation. Consequently, the romper was classified as an ornamented garment in item 383.08, Tariff Schedules of the United States (TSUS). Protestant claims that the tab in question imparts no more than an incidental decorative effect and is functional. Consequently, protestant urges classification under a provision for non-ornamented garments in item 383.50, TSUS.

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ISSUE:

Whether tabs and D rings on ladies' rompers should be considered ornamentation for tariff classification purposes?

LAW AND ANALYSIS:

Protestant claims that a feature on a garment does not constitute ornamentation if it provides only an incidental decorative effect or if the decorative effect is outweighed by its functional capability. We agree with this summary of the law on ornamentation. See United States v. Endicott Johnson Corp., 67 CCPA 47, C.A.D. 1242 (1980), Pistol Fashions, Ltd. v. United States, 5 C.I.T. 284 (1983) and Ferriswheel v. United States, 68 CCPA 21, C.A.D. 1260 (1981). However, we do not agree with protestant's conclusion that the tabs on these rompers impart no more than an incidental decorative effect and have a functional capability which outweigh their decorative effect. Nor do we agree with protestant's contention that these tabs and D rings are similar to the hammer loops on jeans which were considered non-ornamented in Brittania Sportswear v. United States, 5 C.I.T. 212 (1983) and the tabs and D rings on trench coats which were also considered non-ornamented in C.S.D. 84-10.

We cannot say that the features at issue are plain, insignificant, nor unobtrusive in appearance in relation to the entire garment. The tabs and D rings are highly decorative in appearance and serve no real function on the garment. Since the cuffs on the legs are turned up and stitched in place at the seams, it is unlikely that the leg is designed to be hiked up as claimed by protestant. Additional rolls would expose unsightly seam edges and create bulk and buckling at the inseam.

HOLDING:

In view of the foregoing, this merchandise was properly classified in item 383.08, TSUS. Therefore, you should deny this protest in full.

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A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

076897

25 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
076897 DW

Mr. Bob Milne
International Bag Manufacturing Ltd.
1-2351 Simpson Road
Richmond, B.C., Canada V6X 2R2

Dear Mr. Milne:

Your letter dated May 20, 1985, concerning the tariff classification and country of origin of polypropylene tubing addressed to our New York office has been referred to Customs Headquarters for a response. Samples of the merchandise have been provided.

The sample merchandise which is constructed of tubular woven polypropylene strips is purchased in the Far East and sent to Canada where it is cut, printed and sewn into a finished shipping bag.

It is well-settled that plastics materials processed into filaments, strips, or fibers are textile materials in the form of man-made fibers. The subject tubing constructed of tubular woven polypropylene strips satisfies the dimensional requirements for man-made fibers in Headnote 3(d), Part 1C, Schedule 3, TSUS.

The penultimate issue raised by this ruling request is whether the subject tubing is classifiable as unfinished bags and sacks, or other shipping containers, of textile materials, of man-made fibers in item 385.53, Tariff Schedules of the United States (TSUS).

In our opinion, the subject tubing appears dedicated to use as a bag and in its condition as imported the identity of a particular bag is ascertainable. Therefore, the tubing is classifiable in item 385.53, TSUS, dutiable at the rate of 4 cents per pound plus 11.3 percent ad valorem.

We are unable, however, to determine the country of origin of the subject tubing without detailed explanations of the processing done in each country, including (1) what is done at each stage of manufacture, and by whom, (2) complete descriptions of the machines involved, the skills required to operate those machines and to do any other processing, (3) the capital investment involved with each processing operation, and (4) data concerning the time and costs involved with each processing operation.

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We believe that the following information may be helpful. Under the final rule containing the country of origin regulations that was published in the Federal Register on March 5, 1985, as T.D. 85-38 (50 F.R. 8710), cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use does not result in a substantial transformation of the merchandise. Section 12.130(e)(2)(ii), Customs Regulations.

We note, also, that under section 12.130(e)(2)(v), Customs Regulations, dyeing and/or printing of fabric and or yarns usually will not result in a substantial transformation of the merchandise.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076897

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
076903 JGH

076903

2 OCT 1985

Mr. C. Arnone
ICI Americas Inc.
Wilmington, Delaware 19897

Dear Mr. Arnone:

In your letter of May 21, 1985, you state that you received two different tariff classifications of ATSURF.

In a letter of December 19, 1984, ATSURF, a poloxy propylene polyoxy ethylene polyol, was classifiable as surface active agent in item 465.95, TSUS. In a letter of February 28, 1985, it was classified as a polyhydric alcohol in item 428.47, TSUS.

Upon review of the matter it is concluded that ATSURF is classifiable as a surface active agent in item 465.95, TSUS.

Sincerely,

Arthur P Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
076904 TLL

076904

23 OCT 1985

W. A. King
Purchasing Agent
TIM DONUTS LIMITED
874 Sinclair Road
Oakville, Ontario Canada
L6K 2Y1

Dear Mr. King:

This is in reply to your letter dated August 27, 1985, requesting a ruling allowing certain dry mixes to be imported into the United States without being subject to Presidential Proclamation 5340.

The dry mixes in question consist of flour, sugar and shortening as principle ingredients. In addition each product incorporates a number of minor ingredients including milk powders, salt, starch, leavening, flavours etc. The dry mixes in question are classified under item 183.01, Tariff Schedules of the United States (TSUS).

Presidential Proclamation 5340 amended Presidential Proclamation 5294 to impose a quota on articles described in item 958.17, TSUS, covering "[a]rticles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form that are prepared for marketing to the retail consumer in the identical form and package in which imported..." provided for in items 156.45, 183.01, 183.05, TSUS.

While your submission does not indicate the percentage of sugar contained in the imported product, we assume that it is greater than the 10 percent figure set forth in Presidential Proclamation 5340 and it is apparent to us that your products are specifically the type of products set forth in Presidential Proclamation 5340 as being subject to quota. Under these circumstances, we have no alternative but to deny your request.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

25 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
076927 DW
814823 NY

Mr. Hans Wolf
Pausa AG
7406 Mossingen
Tubingen, West Germany

Dear Mr. Wolf:

You have requested the country of origin of 100 percent cotton greige goods from Peru that are finished in West Germany.

As you indicated in your letter of July 11, 1985, greige cloth from Peru is sent to West Germany where it is scoured, boiled with sodium hydroxide solution, bleached with hydrogen peroxide, dried and framed. Then the cloth is printed with warp dyes in multi-colored designs. To complete the processing of the cloth, a variety of finishing processes such as dye-fastening, oxidizing, washing, predrying, treatment for water and stain repellant finish, framing and calandering are performed. You note that substantial shrinking occurs during the finishing process.

We are unable to provide you with a ruling on the country of origin of the instant goods without a detailed explanation of the processing done in each country, including (1) what is done at each stage of manufacture, and by whom, (2) complete descriptions of the machines involved, the skills required to operate those machines and to do any other processing, (3) the capital investment involved with each processing operation, and (4) data concerning the time and costs involved in each processing operation.

We would like to add, however, that under section 12.130(e)(1)(i), Customs Regulations, usually fabric will be a product of the country where it has undergone dyeing and printing along with two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing. The subject fabric has not been dyed; therefore, probably it would not be regarded as a product of West Germany.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 31 1985

REFER TO
CLA-2 CO:R:CV:G
076933 JLV
813819 NY

076933

Mr. William T. Cariano
Leitz Tooling Systems, Inc.
4301 East Paris Avenue, S.E.
Grand Rapids, Michigan 49508-3980

Dear Mr. Cariano:

In a letter ruling dated June 6, 1985 (file 813819), it was stated that certain planer, indexible, and profile knives were classifiable under the provision for other knives and cutting blades for power or hand machines in item 649.67, Tariff Schedules of the United States (TSUS). Upon review of descriptive literature which was received after the letter of June 6, 1985, was issued, it is our position that these knives are, for tariff purposes, classifiable as interchangeable tools rather than as knives or blades. Therefore, this letter ruling revokes the ruling of June 6, 1985.

Not all items described as "blades" or "knives" are classifiable as such for tariff purposes. We have consistently classified articles, designed as the cutting part of reamers, planers, or similar machine tools or hand tools, as interchangeable cutting tools rather than as knives or blades in item 649.67, TSUS, because these cutters do not fall within the common meaning of knife or blade (a device used to cut by slicing, shearing, or chopping.) The cutters in issue are used to shape or smooth a workpiece.

Therefore, the proper tariff classification for the three cutters is item 649.43, TSUS, with a dutiable rate of 9.2 percent ad valorem. Pursuant to section 177.9(d)(2), Customs Regulations (19 CFR 177.9(d)(2)), this ruling is to be applied retroactively to entries of these articles because your initial request for a ruling was made at a time when the transaction was current, rather than prospective.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 18 1985

REFER TO

CLA-2 CO:R:CV:G
076960 DW

Mr. Peter S. Rodgers
VPV International Limited
Unit 09, Wenta Business Park
Coine Way, Watford WD2 4ND
England

Dear Mr. Rodgers:

Your letter dated August 14, 1985, requested the tariff classification and country of origin of certain knitted wearing apparel.

You state that the garments will be manufactured either wholly in the United Kingdom or manufactured in Turkey and sent to the United Kingdom for printing.

As you point out in your letter, the garments that are manufactured wholly in the United Kingdom are not subject to import restrictions. We are unable to determine, however, the country of origin of the garments manufactured in more than one country without actual samples of the merchandise in its condition as exported from Turkey and as imported into the United States, coupled with detailed explanations of the processing done in each country, including (1) what is done at each stage of manufacture, and by whom, (2) complete descriptions of the machines involved, the skills required to operate those machines and to do any other processing, (3) the capital investment involved with each processing operation, and (4) data concerning the time and costs involved in each processing operation.

For your information, under section 12.130(e)(2)(v), Customs Regulations, dyeing and/or printing of fabrics or yarns in a country usually will not result in considering the goods to be a product of that country.

Turning to your inquiry about the tariff classification of certain women's and children's garments, we regret that we are unable to issue a ruling without samples and/or detailed descriptions of the articles. As far as we can tell from your letter, generally women's and children's cotton T-shirts that are not ornamented for tariff purposes are classifiable in item 384.29, Tariff Schedules of the United States (TSUS),

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D/O

dutiable at the rate of 21 percent ad valorem. If the T-shirts are ornamented, they are classifiable in item 384.02, TSUS, with duty at the rate of 25.7 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

076960

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1985

REFER TO

CLA-2:CO:R:CV:G
076961 c
814221

076961

Mr. Russ Hoffer
Sears Roebuck and Co.
Sears Tower - Department 733X
Chicago, Illinois 60684

Dear Mr. Hoffer:

In a letter dated June 18, 1985, you inquired as to the dutiable status of a robot shaped combination lock produced in Japan. A sample was submitted for examination.

The sample, a padlock robot, measures 3 or 5 inches in length depending on whether it is in an extended or compact position. It is composed of zinc alloy, plastic, and steel. The robot is in chief value of metal and is in chief weight of the zinc alloy.

The sample is a sturdy functional lock operated by a three number combination. Its physical parts may be moved about to the fullest extent when the locking shackle is in an unlocked position. The lock and movable parts of the robot are one unit and the lock may not be separated from the rest of the article.

The padlock robot is a functional lock and also provides an element of amusement. You advise us that this article will be advertised in the toy section of your catalog as suitable for ages 5 and up. However, sale of the article in the toy department does not necessarily compel classification as a toy. The manufacturer in this instance appears to be capitalizing on a "hot" concept in children's products and has produced a lock in a novelty housing.

It should be noted that the toy features of the robot cannot be overlooked. In aiming your sales at young children who would not be likely to have much use for a functional lock, you are stressing the novelty characteristics of the article as an inducement to purchase the robot. The robot is designed to provide amusement when not in a locked position in the same manner as a toy robot that does not include a functional feature. This particular item may, however, be

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aimed at more than one age group. The five-year-old would be enticed by the toy features of the robot. However, the older child could find the lock useful for a school locker while at the same time be attracted by the novelty feature of the robot.

Schedule 7, Part 5, Subpart E, Headnote 2, Tariff Schedules of the United States (TSUS), provides that "For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults".

It is our opinion that the robot is not chiefly used for the amusement of children and, therefore, could not be considered a toy for tariff purposes. However, the utilitarian feature of the article (locking function) cannot be said to be its predominate characteristic. Thus, the padlock robot is more than a lock and more than a toy. For this reason it is classifiable under the provision for articles of zinc, not coated or plated with precious metal in item 657.80, TSUS, and dutiable at the rate of 6.7 percent ad valorem.

Sincerely,

Arthur P Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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076961

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

24 OCT 1985

REFER TO
CLA-2:CO:R:CV:G
076982 c

076982

Herbert Peter Larsen, Esq.
Herrick & Larsen
Attorneys at Law
233 Broadway
New York, New York 10279

Dear Mr. Larsen:

In a letter dated July 24, 1985, you inquired as to the dutiable status of certain novelty animal backpacks manufactured in Korea. A sample of this merchandise was submitted for examination.

The sample Koala "candy bear" model measures approximately 12 inches in height and is in chief value of man-made textile materials. The head, arms and legs of the bear are stuffed but the body cavity is empty. The "candy bear" is dressed in overalls which form the bottom half of the torso with plush fabric forming the top half. The hollow body cavity forms an interior compartment. A zipper closure across the front of the chest of the bear secures this lined compartment and a smaller pouch within. Adjustable textile tape harness straps are attached to the rear of the overalls at the seam and at the back of the stuffed head to form armholes.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), Tariff Schedules of the United States (TSUS), provides in pertinent part that "For the purposes of the tariff schedules -(a) the term '<u>luggage</u>' covers (i) travel goods such as *** knapsacks, *** and like articles designed to contain clothing or other personal effects during travel".

Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, provides that "For the purposes of the tariff schedules, a '<u>toy</u>' is any article chiefly used for the amusement of children or adults."

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General Interpretative Rule 10(e)(i), TSUS, provides that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined."

The issue presented is whether the sample Koala "candy bear" is chiefly used for the amusement of children or adults. If so used, it would be considered a toy for tariff purposes. If not so chiefly used, it would be considered luggage for tariff purposes.

It has been asserted that the subject merchandise is a novelty backpack more specifically designed to contain clothing or other personal effects during travel than it is designed to be a toy. The rationale for this position is as follows:

(1) An article can only be considered a toy if there is clear evidence that it is chiefly used as a source of frivolous amusement or play value or that it is chiefly used to give its user the same kind of enjoyment or amusement as a user would derive from those articles normally considered playthings. In this instance the backpack cannot be seen as a source of direct frivolous amusement to the exclusion of any other use.

(2) There is no evidence to show that the Koala "candy bear" is devoid of a functional value or utility or that it is simply a toy figure worn predominantly to experience a frivolous amusement akin to the amusement derived from an obviously humorous toy button or a comical Halloween costume or a whimsical non-functional clip-on monkey. In fact, it can be considered as simply a child's novelty backpack, but a backpack nevertheless. With its harness strap and compartment it is a functional adjunct to a child's environment much like any other child's version of a functional article.

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(3) Merchandise represented by the sample meets the headnote definition of luggage. As previously stated, the lined interior compartment has a functional utility. The main compartment and smaller pouch are designed to contain those personal effects relative to the size of the intended users such as a young student's crayons and small books in the main compartment and treat or milk money in the small pouch.

(4) A survey of retail outlets in the New York area shows that similar animal backpacks are marketed in the school supplies and/or backpack sections of the stores and not the toy departments. Also, advertising literature from two sources indicates the marketing of similar items as backpacks. One brochure describes a bear backpack as a serious "backpack". Further, in a New York newspaper's article on opening day of school, a reporter observed the use of animal backpacks in lieu of more conventional carry bags.

It should be noted that the "candy bear" is designed to be used by two to five year old children. There is no doubt that the item does have a utilitarian function, and also provides play value for the users. In Ideal Toy Corp. v. United States, 78 Cust. Ct. 28, C.D. 4688 (1977), the court made the observation that "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose incidental to the amusement."

In this particular instance, it is our position that the utilitarian function of the "candy bear" is incidental to its play value for the following reasons:

(1) The sample is so small as to be confined to use by two to five year old children;

(2) the amount of storage space is minimal;

(3) the sample is in fact a plaything and can provide frivolous amusement to the users. See United States v. Topps Chewing Gum, Inc., 57 CCPA 157, C.A.D. 1022 (1971). Wilson's Customs Clearance, Inc. v. United States, 59 Cust. Ct. 36, C.D. 3061 (1967); and

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(4) as a practical matter the "candy bear" would not be chiefly used as an article of utility i.e., for the users to carry their personal belongings during travel.

It is your view that the sample "candy bear" is stuffed and is, therefore, classifiable under the provision for toy figures of animate objects (except dolls) not having a spring mechanism; stuffed; valued over 10 cents per inch of height in item 737.30, TSUS, and dutiable at the rate of 6.4 percent ad valorem.

The rationale for your view that the item is stuffed for tariff purposes is that four of the five interior compartments are completely stuffed. Also, that "not completely stuffed" should be equivalent to "stuffed" as "not completely filled" is equivalent to "filled".

Our examination of the sample reveals that its arms, legs and head are stuffed. However, the torso which constitutes a major part of the article is devoid of filling. For this reason we would not consider the "candy bear" to be stuffed for tariff purposes.

Schedule 7, Part 5, Subpart E, Headnote 6, TSUS, provides that "For the purposes of item 737.47, the term "filled" includes toy figures which are not completely filled or are filled with materials such as plastic beads or crushed nutshells but which otherwise possess the characteristics of toy figures classifiable as 'stuffed'."

It is our view that the concept expressed in the cited headnote has application only to merchandise classifiable in item 737.47, TSUS. An extension of this concept to merchandise classifiable under item 737.30, TSUS, would be contrary to our previous rulings as to what constitutes a stuffed article for tariff purposes.

In view of the foregoing it is our position that merchandise represented by the sample is properly classifiable under the provision for toy figures of animate objects (except dolls): not having a spring mechanism: not stuffed: other in item 737.40, TSUS, and dutiable at the rate of 9.6 percent ad valorem.

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This ruling is not intended to cover similar but larger animal backpacks where the amusement value may be incidental or subordinate to the utilitarian function.

Sincerely,

John T Rath

For Harvey B. Fox
Director, Classification
and Value Division

076982

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

1 OCT 1985

REFER TO
CLA-2 CO:R:CV:G
076993 c

076993

Mr. Alan Bagliore
President
Medline Disposamed
One Medline Place
Mundelein, Illinois 60060-4486

Dear Mr. Bagliore:

With your letter dated September 4, 1985, you enclosed two samples of shoe covers. The first sample marked "A" is said to be a new style having a rubber content of less than 10 percent of the total weight of the shoe cover. The second sample marked "B" is the shoe cover that was previously classified by Customs under item 700.59, Tariff Schedules of the United States (TSUS), because more than 10 percent of its total weight was rubber.

A Customs laboratory analysis has revealed that sample "A" contains 6.9 percent by weight of rubber while sample "B" was found to contain 17.2 percent by weight of rubber. The remainder of each sample consists of nonwoven textile fabric.

Based on the laboratory analysis it is our position that shoe covers represented by sample "A" are properly classifiable under the provision for disposable footwear, designed for one-time use in, item 700.90, TSUS, and dutiable at the rate of 8.8 percent ad valorem or entitled to duty-free treatment under the Generalized System of Preferences, if otherwise qualified.

With respect to sample "B" the law requires that footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics must be classified under items 700.51, TSUS, through 700.71, TSUS, even though they may be described elsewhere in the footwear subpart. Consequently, shoe covers represented by sample "B" are classifiable under the provision for footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics: footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, in item 700.59, TSUS, and dutiable at the rate of 37.5 percent ad valorem.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1985

REFER TO
CLA-2 CO:R:CV:G
076998 TLL
814891

076998

Mr. Robert J. Mele
Import Manager
BDP International, Inc.
90 West Street
Suite 1105
New York, New York 10006

Dear Mr. Mele:

Your letter of July 20, 1985, requesting a ruling on a "snapframe" has been recently forwarded to Headquarters for reply. The sample which was included with your submission was received in broken condition.

The "snapframe" consists of a glass cover, a hardboard backing, and metal clips to hold it together. It is used to mount pictures or photographs. In your submission, you state that the component material in chief value is wood. The snapframe has no moldings or other type of border.

In reviewing the various definitions of a frame, we note that they all anticipate some type of border. See for example, the Second College Edition of Webster's New World Dictionary (1972 World Publishing Company) which defines "frame" as, "a border, often ornamental, surrounding a picture, etc." In accord is the definition set forth in Webster's Third New International Dictionary, which provides:

> ...an open case or structure made for admitting, enclosing, or supporting something (as one that encloses a window, door, or picture)...
>
> an enclosing usu. rectangular and esp. ornamental border.

The "snapframe" has no moldings or other type of border. Consequently, it is our opinion that the article may not be considered a "frame." Accordingly, it is appropriately classified under item 207.00, TSUS, which provides for articles not specially provided for, of wood.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

E6

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G

077010 DW

District Director of Customs
Savannah, Georgia 31401

07 NOV 1985

Dear Sir:

Re: Application for Further Review of Protest No. 1703-5-000066

This application for further review was filed against your decision in the liquidation on February 8, 1985, of entry No. 479055 dated July 24, 1984.

FACTS:

The merchandise involved in this protest consists of vertical blind vane material composed of woven man-made fiber fabric that is filled with polyvinyl acetate plastic. It was entered under the provision for narrow fabrics, of man-made fibers, other, in item 347.70, Tariff Schedules of the United States (TSUS), but was classified in liquidation under the provision for woven or knit fabrics (except pile or tufted fabrics), of textile materials, coated or filled with rubber or plastics material, or laminated with sheet rubber or plastics, of man-made fibers, other in item 355.82, TSUS.

ISSUE:

Whether the vertical blind vane material that has been impregnated with a plastic filling satisfies the definition for coated or filled fabrics in Headnote 2(a), Subpart 4C, Schedule 3, TSUS.

LAW AND ANALYSIS:

As suggested by counsel for the protestant in his submission, the test used to determine whether a fabric is "coated or filled" for tariff purposes requires that the coating or filling material visibly and significantly affect the surface or surfaces of the fabric to which it has been applied by other than a change in color.

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077010

A fabric that is visibly stiffer after the addition of a plastics material that is visible only upon microscopic inspection has been held by the court to satisfy the meaning of "coated or filled" for purposes of the headnote. H. Rosenthal Co. v. United States, 81 Cust. Ct. 77, C.D. 4769 (1978), aff'd. C.A.D. 1236 (1979).

Protestant acknowledges that "the coating imparts a certain amount of stiffness to the fabric." Yet, we are invited to believe that the coated and uncoated versions of the fabric are visibly indistinguishable. It is claimed that under Headquarters Ruling Letter 038986 dated May 9, 1975, in which Customs ruled that a small quantity of latex coating which appeared to impart stiffness to the fabric did not constitute a coating for tariff purposes, the subject merchandise is not coated or filled for tariff purposes.

That ruling was issued before the Rosenthal decision and represents the former position of Customs that the coating itself must be visible to the naked eye.

In light of the Rosenthal decision, Customs issued an interpretation of the decision in T.D. 81-219, where the following criteria were listed for determining whether the surface of a fabric is visibly affected by a coating or filling:

> (1) the coating or filling material can be separately distinguished from the fabric by the naked eye; (2) the coating or filling material imparts a shine, luster or glossy appearance, or a dull appearance that is noticeable by a casual examination; or (3) the coating or filling material has caused the fabric to have a pronounced (obvious) appearance of stiffness. In regard to the appearance of stiffness, the fabric should appear significantly more rigid than that fabric would be if not coated or filled.

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At any rate, T.D. 81-219 revoked all rulings that were not in accordance with the foregoing criteria under the authority of section 177.9(d), Customs Regulations.

Representative samples of the treated and untreated fabrics submitted on October 22, 1985, are supportive of Customs classification of the vane material. In our opinion, the filling visibly affects the surface of the fabric, and in the words of the protestant "imparts a certain amount of stiffness to the fabric." In this regard, a sample from the subject entry was analyzed by the Customs laboratory which determined that the filling represented 39 percent of the weight of the fabric. Therefore, the vane material is "coated or filled" for tariff purposes.

Although our finding is dispositive of the protest, as a matter of information we note that protestant would have been unable to prevail with its claimed classification as a narrow fabric because the laboratory report indicated that the sample lacks fast edges.

HOLDING:

The merchandise was correctly classified in item 355.82, TSUS. You should deny the protest. A copy of this decision should be attached to your Form 19 Notice of Action to be returned to the protestant.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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010470

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV - 6 1985

REFER TO

CLA-2 CO:R:CV:G
077013 EMS

077013

Ms. Diana Incivilito
Warnaco Sourcing
350 5th Avenue
65th Floor
New York, New York 10118

Dear Ms. Incivilito:

Your letter dated July 30, 1985, addressed to our New York office regarding the tariff classification of ladies' blouses with ties from Hong Kong has been referred to this office for direct reply to you. Two sample garments, style Nos. L620 and L624, were provided along with your inquiry.

Both styles are ladies' man-tailored blouses manufactured from 100 percent woven cotton yarn dyed fabrics. These blouses are to be imported with unattached coordinated ties measuring approximately 3 inches wide and manufactured from 100 percent silk fabric.

Customs has previously ruled that similar sets are classifiable under the provision for blouses since the tie component of the set is subordinate to the blouse component. See Headquarters Ruling Letter (HRL) dated January 31, 1983, file No. 802002, HRL dated February 10, 1983, file No. 070742, HRL dated September 12, 1983, file No. 072321, and HRL dated December 8, 1983, file No. 072888. Subsequent to the issuance of these rulings, Congress added Headnote 3 to Schedule 3, Part 6, Tariff Schedules of the United States (TSUS), which covers wearing apparel. Headnote 3 provides that:

> (a) Except as provided in (b) of this headnote, each garment is to be separately classified under the appropriate tariff item, even if two or more garments are imported together and designed to be sold together at retail.
>
> (b) The provisions of paragraph (a) of this headnote shall not apply to —
>
> (i) suits,
> (ii) pajamas and other nightwear,
> (iii) playsuits, washsuits, and similar apparel,
> (iv) judo, karate, and other oriental martial arts uniforms,
> (v) swimwear, and
> (vi) infant's sets designed for children who are not over 2 years of age.

E10

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The question posed by your ruling request is whether the tie component is to be considered a "garment" for Headnote 3 purposes. The Fashion Dictionary, M. Picken (1973 ed.) defines the term "garment" as "any article of apparel, chiefly one made of fabric." That dictionary defines "apparel" as "clothing of all sorts; also to clothe or attire." "Clothing" is defined as "any wearing apparel." Finally, "accessories" are defined as "articles of apparel that complete the costume, such as shoes, gloves, hats, bags, jewelry, neckwear, belts, boutonnieres, scarfs."

In view of these definitions and the Congressional intent, as expressed in Headnote 3, it is our view that these blouses and ties should be classified separately. Given the fact that the lexicographic authority considers ties as articles of apparel and garments as articles of apparel, it is appropriate to consider ties as garments for purposes of Headnote 3. Consequently, the blouses and ties are most appropriately classified under separate tariff provisions.

In view of the foregoing, the blouses are classifiable under the provision for blouses in item 384.4605, TSUS, (Category 341) dutiable at the rate of 16.5 percent ad valorem. The ties are classifiable under the provision for woven silk other wearing apparel in item 384.7892, TSUS, dutiable at the rate of 10.3 percent ad valorem, with no textile category applicable. Consequently, only the blouses require visas. Your samples are being returned as requested.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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E11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV - 8 1985

REFER TO
CLA-2:CO:R:CV:G
077017 JGH

District Director of Customs
301 Ashley Drive
Tampa, Florida 33602

Re: Decision on Application for Further Review of Protests Nos. 1801-3-000019 and 1801-3-000020, classification of Maxepa concentrated Marine Oil

Dear Sir:

Maxepa, a concentrated marine oil, described as a dietary supplement, is said to be made from the oil of the anchovy, and, therefore, classification under item 177.12, fish oils other than liver oils, anchovy, was requested. Based on laboratory reports, the port classified the product under the provision for artificial mixtures of two or more fish oils in item 178.30, TSUS. Initially the Customs laboratory report stated that the sample had the characteristics of fish oil, other. A supplemental report stated that the importer called and verified that the product was a mixture of fish oils. However, a statement from the manufacturer is to the effect that the oil shipped to the United States has only been from one species of fish, anchovy, with Vitamin E added as a natural antioxident intended to protect the oil from deterioration. A further statement from the producer is to the effect that the oil in question was produced from a single type fish, anchovy, and the whole anchovy fish is processed into meal and oil. While the liver is included, it is claimed that the amount of oil obtained is virtually nil. Vitamin E, a natural D tocopherol acetate, is added as a natural antioxidant. To the manufacturer's knowledge, no other type of fish is used.

The determination that this oil is an artificial mixture of fish oils is based on the Customs laboratory reports, which indicated in the first report, that the sample had characteristics of fish oil other and in a subsequent report stated that the sample was characteristic of a mixture of fish liver oils. The second report added that the importer verified that the product was a mixture of fish oils. The manufacturer stated that the product is derived from the anchovy and claimed that he never described the oil as a "fish liver oil".

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077017

Information from technical sources is that the analysis of fish oils is extremely complex and can best be made only when the samples are undecomposed and comparisions made with authentic samples. The differences in composition of many marine fish oils are quantitative as to amounts of various similar components present. These various components differ in amounts present in the various oils and hence qualitative determinations as to the origin of a particular oil is based on ratios of each component present as compared with authentic standards. In this case when the sample was first submitted for analysis, it is indicated that there was no information on the sample to show that it was other than a "liver oil." Therefore, it is not clear that it was ever examined for the characteristics of anchovy oil. In the second lab report, reliance was placed on the opinion of the importer, which was denied by the manufacturer. Again no evidence that the oil was tested for anchovy. The Tariff Summary notes that fish oils are obtained from the whole bodies of fish caught primarily for oil and from the trimmings and viscera of fish caught for edible use.

An evaluation of all the evidence does not establish that the oil analyzed was not anchovy oil.

There are many fish oils available in commerce and as there was no indication given at the time of analysis that the oil was from the anchovy, no comparisions were made with an authentic sample of an oil of this type. Therefore, as the oil of the anchovy was never tested for, it can not be concluded that it was not present.

You are directed to allow the protest in full.

A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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E13

070617

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 22 1985

REFER TO
CLA-2 CO:R:CV:G
077038 c
815082

Ms. Pamela Dooley
Beck Shoe Polisher
P.O. Box 586
St. Peters, Missouri 63376-0586

Dear Ms. Dooley:

Your letter dated August 19, 1985, addressed to our New York office concerning the tariff classification of a disposable PVC hotel slipper produced in Hong Kong, has been referred to us for a direct reply to you. A sample was submitted for examination.

The sample is a heat-seamed PVC scuff with a foamed cushioned cardboard insole.

Item 700.56, Tariff Schedules of the United States (TSUS), provides for other footwear which is over 50 percent by weight of rubber of plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which over 90 percent of the exterior surface area is rubber of plastics. The applicable duty rate is 6 percent ad valorem.

Item 700.56, TSUS, is not applicable to the slipper because cardboard accounts for over 50 percent of its total weight.

Item 700.90, TSUS, provides for disposable footwear designed for one-time use with duty at the rate of 8.8 percent ad valorem or entitled to duty-free treatment under the Generalized System of Preferences (GSP), if otherwise qualified.

The creation of item 700.90, TSUS, by Presidential Proclamation 4707, published in the Federal Register of December 13, 1979, was intended to capture disposable hospital shoe covers which are immediately discarded after one-time use.

The issue presented here with respect to classification under item 700.90, TSUS, is whether these slippers are, in fact, disposable footwear, designed for one-time use.

You have not submitted any documentation to support a claim for classification under item 700.90, TSUS. However, the sample is of inexpensive, flimsy material and construction. We have no reason to doubt that these slippers will be sold to hotels which will then distribute them to their guests. Although the slippers probably are capable of being worn

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851022

several times before disposal, we are satisfied by their flimsiness that they are not so designed, nor would such a use be intended by a hotel distributing these slippers to their guests. Any such use would be fugitive.

It is our position that footwear represented by the sample slipper is classifiable under the provision for disposable footwear, designed for one-time use in item 700.90, TSUS, and dutiable at the rate of 8.8 percent ad valorem or entitled to duty-free treatment under the GSP, if otherwise qualified.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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070038

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1985

REFER TO

CLA-2 CO:R:CV:G
077054 TLL

077054

Thomas J. O'Donnell, Esq.
Sonnenberg, Anderson & O'Donnell
Attorneys at Law
One North La Salle Street
Suite 3015
Chicago, Illinois 60602

Dear Mr. O'Donnell:

This is in reply to your letter dated September 30, 1985, forwarding a copy of an April 3, 1985, letter addressed to the Department of Agriculture requesting an exemption from Presidential Proclamation 5294 on behalf of your client, Quaker Oats Company.

The particular product for which you seek exemption is Frescavena. Frescavena is a dry beverage mix which is comprised primarily of oats and sugar with various flavors and other ingredients added. The sugar content is more than 50 percent but less than 65 percent. It is our understanding that the product is packaged for retail sale. Subsequent to your April 3, 1985, submission, Presidential Proclamation 5340 was promulgated on May 17, 1985.

Presidential Proclamation 5340 imposed a quota on articles described in items 958.16, 958.17, or 958.18 (TSUS), covering "[a]rticles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form that are prepared for marketing to the retail consumer in the identical form and package in which imported..."

In reviewing Presidential Proclamation 5340, it is evident that the product you are seeking to import outside the quota was specifically the type of product which was intended to be subject to quota; hence, the reference to "articles not principally of crystalline structure or not in dry amorphous form" in the retail package exemption.

Under these circumstances, we see no basis or authority for exempting the Frescavena from Presidential Proclamation 5340.

Sincerely,

Arthur Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

24 OCT 1985

CLA-2 CO:R:CV:G
077072 c

077072

Stephen Sale, Esq.
Law Offices
Fehrenbacker, Sale, Fudesco & Quinn
Suite 650
1819 H Street, N.W.
Washington, D.C. 20006

Dear Mr. Sale:

In a letter dated October 1, 1985, on behalf of Eastern Silk Trading Co., Ltd., you inquired as to the dutiable status of silk-upholstered room dividers and silk-upholstered headboards manufactured in Hong Kong.

The room dividers are described as having four panels, each of which has a wooden frame upholstered in 100 percent silk fabric. The frames are said to be of teak, rosewood and a black lacquer finish. The only other component of the room dividers will be the metal connectors. These connectors will allow the folding of the room dividers in order to permit moving without disassembly.

The room dividers will be upholstered with silk fabric that is woven in the Peoples Republic of China. The silk is cut, dyed and printed prior to its use in upholstering the room dividers. These dividers will be available in two sizes. The dimensions of each large room divider will be 72 inches by 86 inches. For the smaller room dividers, the dimensions will be 68 inches by 60 inches.

The headboards are described as consisting of wooden frames that are upholstered in 100 percent silk fabric. The frames will be of teak, rosewood and a black lacquer finish.

The headboards will upholstered with silk fabric that is woven in the People's Republic of China. The silk is obtained, cut, dyed and printed in Hong Kong prior to use in upholstering the headboards.

The headboards are said to be of two dimensions. The queen/full size dimensions will be 46 inches by 61 inches while the twin size will be 46 inches by 39 inches. These headboards will have a plush, or slightly overstuffed appearance. For this reason, the silk upholstery will be backed by foam rubber which is covered in a light fabric of 100 percent cotton.

The cost figures for the components submitted by you indicate that the room dividers and headboards are in chief value of wood.

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PUBLIC

It is your position that the room dividers are furniture for tariff purposes. However, the room dividers described previously are considered wooden screens for tariff purposes. It should be noted that Headnote 1(v), Schedule 7, Part 4, Subpart A, Tariff Schedules of the United States (TSUS), specifically states that "blinds, shutters, curtains, screens, and shades" cannot be classified as furniture. Consequently, the room dividers are classifiable under the provision for other wood blinds, shutters, screens, and shades, all the foregoing with or without their hardware in item 206.67, TSUS, and dutiable at the rate of 8 percent ad valorem.

The headboards are classifiable under the provision for furniture, and parts thereof, not specially provided for, of wood, other than chairs in item 727.35, TSUS, and dutiable at the rate of 3.1 percent ad valorem or entitled to duty-free treatment under the Generalized System of Preferences, if otherwise qualified.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

25 OCT 1985

CLA-2 CO:R:CV:G
077096 DW

Mr. Jack Shamash
S. Shamash & Sons, Inc.
42 West 39th Street
New York, New York 10018

Dear Mr. Shamash:

Your letter dated October 1, 1985, requested a ruling on the country of origin of greige goods from Asia that are processed in a European country.

Unfortunately, we are unable to provide you with a ruling without actual samples of the merchandise in its condition as exported from Asia and as imported into the United States, along with detailed explanations of the processing done in each country, including (1) what is done at each stage of manufacture, and by whom, (2) complete descriptions of the machines involved, the skills required to operate those machines and to do any other processing, (3) the capital investment involved with each processing operation, and (4) data concerning the time and costs involved in each processing operation.

We believe, however, that the following information may be helpful. Under section 12.130(e)(1)(i), Customs Regulations, fabric will be usually considered a product of a country where it has undergone dyeing and printing coupled with two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 23 1985

REFER TO
CLA-2 CO:R:CV:G
077104 JGH

077104

Mr. Richard G. Gabriel
Vinings Chemical Company
3950 Cumberland Parkway
Atlanta, Georgia 30339

Dear Mr. Gabriel:

Your letter of October 7, 1985, concerns the dutiable status of aluminum hydroxide and aluminum oxide from Japan, Venezuela or Australia.

Aluminum hydroxide or oxide is free of duty under item 417.12, TSUS, from the above countries.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: NOV 12 1985

FILE: CLA-2 CO:R:CV:G
077123 TLL

077123

TO : District Director of Customs
San Francisco, California

FROM : Director, Classification and Value Division

SUBJECT: Classification of Orange Sacs and Apple Grains; IA 63/85

The subject internal advice was originated by the Beech-Nut Nutrition Corporation. The file was received in Headquarters in October 1985.

The merchandise in question are apple grains and orange sacs. Apple grains are described in the incoming submission as tiny shavings of fresh apples. Examination of the sample reveals a wet pulpy mass with a distinct apple aroma. The product is of uniform consistency without large pieces of apple. In our opinion based on the information in the file the product is typical of a fruit pulp. Fruit pulps (also called purees) are prepared from fresh, frozen, or canned fruits by various mechanical means, such as grinding or extruding, which pulverizes the fruit to a homogeneous mass. The imported product should be classified as apple pulp under item 152.40, Tariff Schedules of the United States (TSUS).

Page 71 of USITC Publication 841, October 1983, entitled "Deciduous Tree Fruit and Fruit Products" points out that orange sacs are obtained by peeling an orange, removing a section and then taking the membrane off the section. Orange sacs are thus the individual juice cells of the orange flesh which are then suspended in a relatively small amount of orange juice. The product is not a juice because it is not pressed from the flesh of the fruit. It is not a fruit pulp because it lacks the uniform consistency characteristic of a pulp. Therefore, it should be classified as oranges, prepared or preserved in item 147.31, TSUS.

You should advise the internal advice applicant of our decision on this matter.

for Parvey B. Fox

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JUN 28 1979

DOR-7-03-R:CD:C
103946 MKT

District Director of Customs
El Paso, Texas 79985

Dear Sir:

Thank you for your letter of March 28, 1979, regarding one of our decisions on the use of Canadian railroad cars to load domestic cargo while on a trip from Canada to Mexico. When this event took place, possibly a decision could have been made that a penalty existed. However, it is clear from the facts that there was no engagement in local traffic. Nor do we think title 19, United States Code, section 1322, contemplates the assessment of a duty on instruments of international traffic engaged in foreign trade, which these were.

While we believe the petitioner is in technical violation of section 123.12(b), Customs Regulations, as presently written, the intent of the Regulations is to prevent only diversions to unpermitted point-to-point local traffic and not to stymie or stifle any variety of strictly international traffic. In view of the total circumstances of the case, including the question as to the interpretation of the existing regulations, we believe the interests of justice and the Customs Service are best served by remitting the penalty pursuant to the authority contained in section 1618 of title 19.

Sincerely,

/s/ Donald W. Lewis

ACTING

Leonard Lehman
Assistant Commissioner
Regulations and Rulings

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VES-13-18-R:CD:C
103999 JM

This ruling concerns the applicability of title 19, United States Code, section 1466, to equipment imported into the United States for installation on a United States flag vessel other than the importing vessel.

ISSUE:

Is equipment imported into the United States on a vessel other than the United States flag vessel for which the equipment will be used dutiable under the Tariff Schedules of the United States as other merchandise imported into the United States or as vessel equipment under title 19, United States Code, section 1466.

FACTS:

A Japanese corporation plans to establish a wholly owned subsidiary under the laws of New York. The subsidiary will solicit orders for vessel repair parts from United States buyers, order the parts from Japan, import the parts on vessels other than the vessel for which the parts are intended and enter the parts through Customs. It is anticipated that in the future the United States subsidiary will establish an "in bond" warehouse and fill orders out of its inventory.

LAW AND ANALYSIS:

Title 19, United States Code, section 1466, states in pertinent part "The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country ...."

In ORR Ruling 924-70 dated October 14, 1970 abstracted as TD 70-214 (24) we held that equipment imported into the United States for installation on a vessel other than the importing vessel is not dutiable under title 19, United States Code, section 1466, but is dutiable under the Tariff Schedules of the United States as other merchandise imported into the United States.

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HOLDING

Section 1466 is not applicable to equipment imported into the United States for installation on a vessel other than the importing vessel. The equipment is dutiable under the Tariff Schedules of the United States as other merchandise imported into the United States.

Signed

George C. Steuart
Acting Director
Carriers, Drawback and Bonds Division

103999

[redacted]

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[redacted]

CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE						F10	
SURNAME							

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-75)

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

VES-10-02 CO:R:CD:C
105089 DHR

27 APR 1981

[redacted]

Dear [redacted]

Your letter of February 6, 1981, to [redacted] concerning the use of a Japanese-built "Oozer" dredge in the United States, has been forwarded to this office for reply.

Title 46, United States Code, section 292, provides, in pertinent part:

> A foreign-built dredge shall not, under penalty of forfeiture, engage in dredging in the United States [inland and territorial waters]...

Whether or not the dredge presents competition to the American dredging industry is not a condition of the prohibition.

We note that the operation of this dredge has been observed by the Army Corps of Engineers. The prohibition against the use of foreign-built dredges may be waived by Customs in specific cases where deemed necessary in the interest of national defense by the Secretary of Defense.

Sincerely,

(Signed) Alfred G. Scholle

Alfred G. Scholle
Chief
Carrier Rulings Branch

[redacted]

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CODE AND DATE	[redacted]						FIT
SURNAME							
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-78)

MAR 16 1982

VES-7-05/VES-7-03
VES-7-02-CO:R:CD:C
105518 JL

Regional Commissioner of Customs
New Orleans, Louisiana 70130

Chief, Carrier Rulings Branch

Fishing Operations Proposed by [redacted]

With your memorandum of February 8, 1982, you transmitted a letter dated December 31, 1981, from [redacted] of [redacted] in which he asks a number of questions regarding a proposed fishing operation to be conducted with an American-built and documented vessel of 175 gross tons. Our response to [redacted] proposals are presented below.

1. (a) The transshipment of tuna and/or bi-catch from the vessel to a Japanese vessel outside the Fisheries Conservation Zone (FCZ): There is no law administered by Customs which would preclude this operation.

(b) As above, but within the FCZ and outside the territorial waters of the U.S.: Same answer as above but laws administered by the National Oceanic and Atmospheric Administration (NOAA) may have some bearing on this operation.

(c) Transshipment inside territorial waters or in port: The Nicholson Act, the second sentence of 46 U.S.C. 251(a), prohibits a foreign-flag vessel from landing in a port of the United States fish (or fish products processed therefrom) taken or received on the high seas. Customs has held that transshipment is a landing within the meaning of 46 U.S.C. 251(a). See T.D. 68-206(2). Accordingly, it would be permissible for the U.S.-flag fishing vessel at issue to transship its catch to the Japanese vessel, but the Japanese vessel could not land or transship the catch or fish products processed therefrom inside territorial waters without violating section 251(a). Operations of this nature may, however, be restricted by regulations of NOAA.

2. (a) The use of a commercial transport freezer vessel for the transshipment of tunas and/or bi-catch outside the FCZ: The answer is the the same as 1(a) above.

(b) As above, but within the FCZ and outside territorial waters: The answer is the same as 1(b) above.

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(c) Transshipment inside territorial waters or in port: If the commercial transport freezer vessel is foreign-flag, then the answer is the same as 1(c) above. If the freezer vessel is U.S.-flag, the prohibition of section 251(a) will not apply but the prohibitions of the coastwise laws may apply to the vessel if it is not coastwise qualified. Even if the vessel is not coastwise qualified, it may receive the transshipment within territorial waters provided it does not transport it to another coastwise point and unlade. This prohibition may also be operative if the vessel proceeds to a foreign port and unlades the cargo if it is subsequently transported to the U.S.. This is because 46 U.S.C. 883, a coastwise statute, prohibits any part of a transportation of merchandise between two coastwise points in a foreign vessel. Whether the fish or fish products would be imported into the foreign country so as to break the continuity of the coastwise transportation would depend entirely upon the facts in the particular case.

3. Flying premium tunas by air cargo: This proposal is not entirely clear. If the bi-catch (or the tuna) are landed in the U.S. by the U.S.-flag fishing vessel there are no Customs restrictions we are aware of, and that includes the proposal to subsequently fly the fish to Japan. If the landing is accomplished by a foreign-flag vessel, then the restrictions outlined in 1(c) and 2(c) will apply. It is also asked "which plan will be considered export?" Any operation whereby the fish or fish products are transported from the Customs territory of the U.S. to a foreign country with the intention that the articles are to be commingled with the mass of goods in that country will be an exportation as far as Customs is concerned. Specific information on export permits, procedures, etc., which are not covered in the Customs Regulations should be obtained from NOAA, the Export Control Administration, or any agency which might have an interest in fishing operations.

Regarding Japanese fishing gear and equipment to be installed on the vessel in the United States, such articles are imported under the TSUS and vessel repair duties will not be applicable. See T.D. 70-214(24). However, the equipment cannot be entered under a TIB as there is not an intention to export the equipment. Nor is there any relief available under 19 U.S.C. 1309 because the vessel is not a foreign-flag fishing vessel. Accordingly, duty will have to be paid upon importation (or withdrawal from warehouse) of each item, the rate and amount of duty (if any) being determined by the applicable provisions in the TSUS. See ruling 213247, copy attached.

105518

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[redacted] also outlined a plan whereby Japanese instructors will be transshipped to his vessel outside territorial waters, or will embark and disembark the vessel in a U.S. port. If the instructors are transshipped on the high seas, they may or may not accompany the vessel into port and disembark (temporarily). If the do they will have work visas as regular crewmen.

We perceive of no Customs laws or regulations which would serve to prohibit or restrict the proposals regarding the Japanese instructors. We note that [redacted] states he plans to contact the Immigration Service and the Coast Guard and we presume that those agencies will instruct him on their regulations.

It is proposed that the fishing vessel unload its bi-catch in the U.S. for marketing. We would refer [redacted] to sections 4.96, 10.78 and 10.79, C.R., for pertinent materials regarding this aspect of his proposed operation. If the tuna are landed in the U.S. for transportation to Japan, the T & E and in-bond materials contained in parts 6,18 and 113 of the Customs Regulations should be helpful to the inquirer.

105578

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.

[redacted]

[redacted]

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[redacted]

CODE AND DATE							
SURNAME							
CODE AND DATE							
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

SEP 26 1984

REFER TO
VES-3-CO:R:CD:C
106983 PH

[redacted]

Dear [redacted]

In your letter of August 25, 1984, you ask whether the proposed use of your 45-foot wooden pleasure cruiser to engage in treasure hunting in the coastal waters off of Florida would constitute coastwise trade requiring you to document the vessel.

Our response to your letter is contained in the enclosed ruling. Also enclosed are copies of the laws referred to in our ruling, as requested.

Your letter may raise questions pertaining to the vessel documentation and safety requirements administered by the United States Coast Guard. If you wish to question the Coast Guard about the subject of your inquiry, you may contact the nearest Coast Guard office or write to Coast Guard headquarters at the following address:

Mr. Joseph A. Yglesias
Chief, Merchant Vessel Documentation Division
G-MVD/13, U.S. Coast Guard
2100 Second Street, SW., Room 1312
Washington, D.C. 20593

Sincerely,

Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

[redacted]

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

SEP 26 1984

REFER TO
VES-3-CO:R:CD:C
106983 PH

This ruling concerns the use of a vessel for treasure hunting in the coastal waters off of Florida.

ISSUE:

Is the engagement of a vessel in treasure hunting in the coastal waters off of Florida, when treasure is found and brought on board the vessel and transported to a port of the United States, coastwise transportation requiring the vessel to be documented for the coastwise trade?

FACTS:

The inquirer proposes to do some treasure hunting in the coastal waters off of Florida with his 45-foot wooden pleasure cruiser. He asks, if treasure is found and is brought aboard his vessel for transportation to a United States port, whether his vessel would be considered to be engaged in the coastwise trade and need to be documented with the United States Coast Guard.

LAW AND ANALYSIS:

Generally, the coastwise trade is the transportation of merchandise or passengers between points in the United States embraced within the coastwise laws. The coastwise laws (i.e., 46 U.S.C. 289, 883, 12106, and 12110) restrict the engagement in the coastwise trade to vessels built in, documented under the laws of, and owned by citizens of the United States. Related restrictive United States navigation laws include 46 U.S.C. 316(a) (towing), 46 U.S.C. 316(d) (salvaging), 46 U.S.C. 292 (dredging), and 46 U.S.C. 251(a) and 12108 (fishing).

For purposes of the coastwise laws, a point in United States territorial waters is considered a point embraced within the coastwise laws. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline. Customs has ruled that "merchandise," as used in the coastwise law regarding the transportation of merchandise (46 U.S.C. 883), includes anything of commercial value.

The inquirer, if he is successful and finds treasure, plans to transport the treasure from the point of discovery to the United States in his vessel. If the point of discovery is

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in United States territorial waters (see above), his vessel would be transporting merchandise between points in the United States and would be engaged in the coastwise trade. To engage in the coastwise trade, it would need to be appropriately documented. If the point where the treasure is discovered and from which it is transported is not in United States territorial waters, the vessel would not be engaged in the coastwise trade. The vessel would not need to be documented in this event.

For the information of the inquirer, property taken from the sea within the jurisdiction of the United States off the coast of Florida must be brought to a port in the United States (46 U.S.C. 722, 723). Any vessel which takes property recovered off the coast of Florida to a foreign port is subject to forfeiture. Also for the information of the inquirer, the United States imposes no duty (under the Tariff Schedules of the United States) on merchandise recovered and brought into port from a vessel which has been sunk in United States waters for 2 years or more and has been abandoned by its owner (19 U.S.C. 1310). When property sunk less than 2 years is formally entered with Customs in the United States, it will be subject to duty under the Tariff Schedules of the United States as imported merchandise.

HOLDING:

The engagement of a vessel in treasure hunting in the coastal waters off of Florida, when treasure is found and brought on board the vessel and transported to a port of the United States, is coastwise trade if the point where the treasure is found and from which it is transported to a port of the United States is in United States territorial waters. If the point where the treasure is found and from which it is transported to a port of the United States is not in United States territorial waters, the vessel would not be engaging in the coastwise trade.

EFFECT ON OTHER RULINGS:

None.

Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

106983

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

SEP 18 1985

REFER TO
VES-5-18-CO:R:CD:C
107876 PH

Mr. Roger Beaudean
Sales Manager
Leevac Marine Transportation
Post Office Box 2528
Morgan City, Louisiana 70381

Dear Mr. Beaudean:

With your letter of August 23, 1985, you sent a copy of your letter dated August 16, 1985, to the District Director of Customs in New Orleans concerning Customs entrance and clearance requirements for vessels engaged in lightering operations. You are concerned with the amendments to the Customs Regulations described in Treasury Decision 85-91, published in the Federal Register on May 24, 1985 (50 FR 21427).

In your August 23 letter you state that the amendments will, in essence, put your company out of business because the cost of your lightering service will "skyrocket" to the degree that oil companies will "light load" their tankers and not need lightering services. You state that other companies you are aware of which will be affected by this change are Sonat Marine, Moran Towing, and Bouchard.

In your August 16 letter to the District Director you state that your company has been engaged in the lightering and bunkering of foreign tankers via ocean-going tank barges since the early 1960's. You state that you presently lighter tankers and clear the cargo through Customs upon arrival at the destination port. You state that all of your vessels are American-flag and also engage in the coastwise trade.

You describe three examples in which you believe the amendments would adversely affect your company. The examples concern lightering and bunkering. We are quoting them in full below.

> 1. The DOMAR 18 (tank barge) discharges No. 6 fuel oil in Tampa, Florida, and departs light barge back to the upper United States Gulf Coast. The cargo was normal coastwise trade. The voyage takes three (3) days. After one (1) day at sea Exxon calls and wants to lighter one of their foreign tankers at Southwest Pass. We are now in the middle of the Gulf of Mexico.

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Does this change mean we have to pass up the tanker at Southwest Pass, come into port, clear Customs, and then go back out and lighter the tanker?

2. The DOMAR 6501 (tank barge) picks up bunkers for a Texaco tanker located at South Sabine Point. This location is 70 miles offshore. Our next job after discharge is the lightering of an Exxon tanker off of Galveston, Texas. Do we have to come back in port (70 miles), clear Customs, and then go out to the Exxon tanker?

3. The DOMAR 6501 (tank barge) picks up bunkers for a Texaco tanker off Corpus Christi, Texas. We make the delivery and our next cargo is to be loaded at Chevron, Pascagoula, Mississippi. Do we have to clear Customs to take the cargo out, then come back into port, clear Customs, and then go to Pascagoula, Mississippi? We can not go from Corpus Christi to Pascagoula in the required 48 hours.

In addition to the examples you describe, the District Director of Customs in New Orleans, who has forwarded to us a copy of your August 16 letter to him about this matter, describes a lightering example and asks if the vessel entrance and clearance requirements apply to it, under Treasury Decision 85-91. In that example:

The M/T EXXON TRADER arrives at the Mississippi River Southwest Pass (outside Customs territory) with foreign crude for discharge in Baton Rouge, Louisiana. Due to draft restrictions at the pass, the tanker must lighter approximately one-eighth of its cargo into the DOMAR 118 (tank barge). After lightering the tanker proceeds through the pass and (now in Customs territory) re-lighters its cargo from the DOMAR 118. The tanker then proceeds to Baton Rouge with all of its cargo on board. The point of re-lightering occurs approximately 80 miles south of the New Orleans port limits. The DOMAR 118 is a United States-flag vessel which engages in coastwise and foreign trade. Does the DOMAR 118 require foreign clearance from Customs prior to lightering the tanker? Is the DOMAR 118 required to make entrance when entering Customs territory? Since the M/T EXXON TRADER is not a sister vessel, may the re-lightering from DOMAR 118 be allowed? If re-loading is not allowed, is a separate entry (CF 3461 or CF 7501) required?

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You request a clarification of the amendments affected by Treasury Decision 85-91. If your interpretation is correct, you ask for a change or exemption from the regulation.

Treasury Decision 85-91 amended sections 4.3, 4.9, 4.20, and 4.60, Customs Regulations (19 CFR 4.3, 4.9, 4.20, and 4.60), to require a vessel to obtain clearance if it is bound for another vessel on the high seas to either: (1) transship export merchandise which it has transported from the United States to that vessel; or (2) receive import merchandise from that vessel and transport the merchandise to the United States. A vessel is required to make vessel entry if it is returning from another vessel on the high seas after either: (1) transporting export merchandise out of the United States and transshipping the merchandise to that vessel; or (2) transporting import merchandise to the United States after receiving the merchandise from that vessel. Copies of the Treasury Decision and the Notice of Proposed Rulemaking (Federal Register of October 3, 1984 (49 FR 39072)) and the Advance Notice of Proposed Rulemaking (Federal Register of October 14, 1983 (48 FR 46808)) for the Treasury Decision are enclosed.

Treasury Decision 85-91, as stated therein, was issued to clarify the applicability of the entrance and clearance requirements of the navigation laws to vessels engaged in lightering of import and export cargo between the United States and vessels located on the high seas. There was no intention to expand the applicability of those requirements. Such action would require legislation.

With few exceptions, entrance and clearance requirements are only applicable to vessels when they are in the United States. The very rare exceptions must be by statute. An example of such a statutory exception, although not relevant to your inquiry, is the applicability of the entrance and clearance laws to mobile rigs during the period when they are secured to or submerged onto the seabed of the outer continental shelf beyond the territorial waters of the United States for drilling operations (see Treasury Decision 54281(1)). This is in accordance with section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a)). Normally, entrance requirements of the navigation laws are only applicable to vessels when arriving in the United States from a foreign port or place and clearance requirements of the navigation laws are only applicable to vessels when bound out of the United States for a foreign port or place. Treasury Decision 85-91 clarifies the status of a vessel on the high seas as "a foreign port or place" with regard to the applicability of the entrance and clearance requirements to lighters and other vessels arriving in the United States or bound out of the United States when engaged in the transportation of import and export cargo between the vessel on the high seas and the United States.

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In the first example you give, a United States-flag coastwise-qualified tank barge is in the "middle of the Gulf of Mexico" proceeding between United States ports after completing a coastwise movement. The vessel operator receives a request to divert the vessel to a foreign tanker in the Gulf of Mexico to lighter some of the tanker's cargo.

The coastwise-qualified tank barge is on a vessel movement not subject to entrance and clearance requirements (see section 4.81(a), Customs Regulations; 19 CFR 4.81(a)). While on the high seas it receives orders to proceed to a vessel on the high seas and receive import merchandise for transportation to the United States. Since the tank barge was not in the United States but on the high seas in a movement not subject to Customs entrance and clearance requirements when it received orders to proceed to the vessel on the high seas, it is not subject to the clearance requirement of section 4.60(e), Customs Regulations (19 CFR 4.60(e)), as amended by Treasury Decision 85-91.

Of course, on return to the United States with the import merchandise from the vessel on the high seas, the tank barge would be required to enter under sections 4.3(c) and 4.9(a), Customs Regulations (19 CFR 4.3(c) and 4.9(a)), as amended by Treasury Decision 85-91.

In the second example, a United States-flag coastwise-qualified tank barge transports bunkers to a tanker located 70 miles off shore and, after discharging the bunkers, proceeds to lighter a tanker on the high seas. Again, assuming that the tank barge was on the high seas when it received orders to proceed to the tanker on the high seas, the tank barge would not be required by the amended section 4.60, Customs Regulations, to obtain clearance from Customs before proceeding to the tanker on the high seas. Of course, it would be required to enter, by the amended sections 4.3 and 4.9, Customs Regulations, on returning to the United States with the lightered import cargo. The tank barge would not have been required to obtain clearance from Customs before proceeding to transport the bunkers to the first tanker, nor would it be required to enter when returning from the bunkering voyage.

In the third example, a United States-flag coastwise-qualified tank barge proceeds from one United States port to a vessel in the Gulf of Mexico to which it delivers bunkers and then proceeds to another United States port where it takes on cargo. In this case, the tank barge is not subject to clearance at the first port, nor is it required to enter at the first port or any other port after delivering the bunkers. The Treasury Decision 85-91 amendments do not make the entrance and clearance requirements applicable to a vessel

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transporting bunkers, or stores, supplies, spare parts, or crew members, to a vessel on the high seas, as specifically stated in the Notice of Proposed Rulemaking for the amendments and the Analysis of Comments in the Final Rule for the amendments.

In the fourth example, a United States-flag coastwise-qualified tank barge receives import cargo from a tanker at a point outside Customs territory (and thus, outside territorial waters) so that the tanker can proceed through the Southwest Pass at the Mississippi River. After the tanker has proceeded through the Pass, the tank barge, now in Customs territory, transships the cargo back to the tanker. The tanker proceeds to a United States port to unlade the cargo.

The Treasury Decision 85-91 amendments were intended to apply the vessel entrance and clearance requirements to vessels engaged in the transshipping or lightering of export or import cargo to or from another vessel on the high seas. The concern was that "import and export cargo of the U.S. [could] be transported in vessels not subject to statutory entry and clearance requirements upon arrival at or departure from the U.S." (See, Treasury Decision 85-91, under "Background.")

In the fourth example, the tank barge only temporarily lighters the tanker and the tanker proceeds to a United States port where it unlades its cargo, including the cargo which was temporarily lightered. All of the import cargo will be unladed from a vessel "subject to statutory entry and clearance requirements upon arrival at or departure from the U.S." Therefore, Treasury Decision 85-91 does not apply to the tank barge in this situation and the barge is not required to obtain clearance from Customs before temporarily lightering the tanker or to make vessel entry when arriving empty at a United States port after completing this operation.

We appreciate your communicating to us your concerns about the possible effects of the Treasury Decision 85-91 amendments. We hope that you will continue to keep us informed of any effects of the amendments on operations such as those of your company.

Sincerely,

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

Enclosures

10786

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AUG 7 1972

DB 516.24 ED
200141

The Honorable
Ted Stevens
United States Senate
Washington, D. C. 20510

Dear Senator Stevens:

This is in reference to your correspondence of July 24, 1972, on behalf of [redacted], who is engaged in archaeological explorations in Alaska.

[redacted] is associated with the University of Berne, Switzerland. On arrival in Alaska he imported such things as surveying equipment, cameras, etc., temporarily free of duty under bond, apparently as professional equipment or tools of trade under item 864.50, Tariff Schedules of the United States. [redacted] will return to Switzerland this September, but he intends to return to Alaska in 1973. He is inquiring about what arrangement can be made concerning his equipment without violating the aforementioned provision of our tariff schedules.

Equipment of the type in question may be entered temporarily free of duty under bond for its subsequent exportation under item 864.50, Tariff Schedules of the United States, provided it is imported by or for nonresidents sojourning temporarily in the United States and for the use of such nonresidents. The period of the bond is 1 year which may, upon application, be extended for additional periods, which when added to the initial 1-year period, may not exceed a period of 3 years.

Since the foregoing provision permits the entry of merchandise thereunder only for the use of nonresidents, the equipment entered by [redacted] could not be used during his absence and the absence of the other nonresidents in his party. However, it appears that [redacted] could store the equipment in Alaska during his absence without violating the provisions of item 864.50 of the tariff schedules, so long as the bond period does not expire.

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We are forwarding a copy of this letter to our Anchorage office. It is suggested that [redacted] contact that office in this regard and also request that office to extend the bond for a further period of 1 year, if necessary.

It has been a pleasure to be of assistance to you in this matter.

Sincerely yours,

(Signed) EDWIN F. RAINS

Acting Commissioner of Customs

[redacted]

[redacted]

[redacted]

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JAN 1 1 1974

DRA-1-09-R:CD:D O
200545

For Publication T.D 74-95-K

Dear Mr. Boyett:

200545

T.D. 51723-D, as amended by T.D. 54533-C, authorizing the allowance of drawback under the provisions of title 19, United States Code, section 1313(a), on, among other things, methyl violet 5RX and methyl violet 2RX, manufactured by Dye Specialties, Inc., Jersey City, New Jersey, with the use of imported magenta or fuchsin and methyl violet manufactured by the company under drawback regulations, is hereby further amended to cover methyl violet liquid DS-2988, methyl violet liquid DS-2517, methyl violet DS-1440 powder, methyl violet base, methyl violet base DS-1599, methyl violet oleate 2:1, methyl violet AB acid DS-1769, and malachite green liquid DS-2444, purified or stabilized, manufactured by the company under section 1313(b) with the use of methyl violet and malachite green.

There are enclosed, approved, copies of the manufacturer's supplemental drawback statements subscribed to on August 22 and December 13, 1973, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

The quantity of imported dyestuffs, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of such merchandise of the same kind and quality as that designated which was used in the manufacture of the exported articles, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after January 5, 1970, and exported on and after February 13, 1970. Exportation shall be made within 5 years after importation of the imported merchandise.

	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
CODE	[redacted]				GII
SUR-NAME					
DATE				TO THE	

DEPARTMENT OF THE TREASURY CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (5-72)

There are enclosed extra copies of the manufacturer's drawback statement and of this authorization, which may be used in connection with verification of the first drawback claim filed hereunder.

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

Mr. Fred R. Boyett
Regional Commissioner of Customs
New York, New York 10004

Enclosure

200545

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MAR 5 1974

WAR-6-R:CD:D LO
201581

Dear Mr. Martin:

This is in reply to your letter dated February 4, 1974, requesting our comments and suggestions on a problem that , is experiencing in the operations of their duty-free shops along the Canadian border.

In their letter of August 29, 1973, to the Regional Commissioner of Customs, Boston, Massachusetts, Ammex stated that at certain border crossing points the services of a full-time Customs officer had not been required. Instead, export and warehouse operations had been conducted under the overall supervision of the port director of Customs with exportations being supervised at the point of exportation by Customs officers. It is the instructions from the Regional Commissioner in Boston that full-time warehouse officers be assigned on a reimbursable basis to supervise the export operations that Ammex is questioning.

The authority for the establishment of the Customs bonded warehouses in question is set forth in sections 555, 557, and 562, Tariff Act of 1930, as amended, under the provisions of which imported merchandise may be stored or manipulated in Customs bonded warehouses, and exported therefrom without payment of import duties or taxes.

In this regard, section 555 provides, in part, as follows:

> * * * Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or

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CLEARANCE Form 100 (5-72)

> proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse. (Underscoring supplied)

Analysis of this provision shows that the responsibility placed upon the U.S. Customs Service by the Congress goes beyond supervision of the premises and of the merchandise. The statute makes Customs one of the joint custodians of all merchandise placed in the warehouse. We mention this fact because if we were dealing here only with a question of supervision, we are aware that under the authority of section 1646a of title 19, supervision can be reduced to occasional verification of the merchandise in the warehouse.

In the circumstances involved, we can see no way in which Customs can remove a warehouse officer from the premises in question and at the same time fulfill its responsibilities under section 1555. This conclusion is reached even without considering the very pertinent fact that the type of warehouse involved here, the so-called duty-free store, has been and continues to be the subject of close scrutiny and sharp attack by several State agencies. The U.S. Customs Service and the Department of the Treasury have time after time emphasized in replies to Congressional and other inquiries that merchandise warehoused at border Customs bonded warehouses remains under Customs control at all times until it is exported to Mexico or Canada. Even if the law permitted it, any relaxation of our control over merchandise in these warehouses would be ill-timed and would in fact constitute a breach of trust with those who have received our reassurance as to the completeness of Customs control.

It should also be mentioned that two bonds supported by surety companies are involved in these transactions, namely, the Warehouse Entry Bond, Customs Form 7555, and the Proprietor's Warehouse Bond, Customs Form 3581. Any failure by Customs to insist on a strict adherence to the requirements of section 1555 would present to the surety a basis for defending against attempts to recover for a breach of either bond. That the surety companies are well aware of the scope of Customs control over bonded warehouses was brought to the attention of the U.S. Customs Service in a letter of

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October 20, 1965, from the Surety Association of America regarding various recommendations for relaxing controls over Customs bonded warehouses, in which the Association stated:

> We should point out that the present low rates applicable to bonds filed by these warehouse proprietors are predicated on the tight supervision and controls now exercised by the Customs Bureau. If this recommendation is adopted, those rates would probably have to be revised because of the increased hazards and exposure which elimination of customs control and supervision would create. It should also be borne in mind that if this change is adopted many proprietors of Customs Bonded Warehouses may not be able to qualify for bonds on such basis.

We would also like to emphasize that Condition 4 of the Proprietor's Warehouse Bond, Customs Form 3581, filed by Ammex in order to obtain approval to operate a Customs bonded warehouse, provides:

> (4) And if said principal shall pay to the district director monthly the compensation of the customs officers and employees on duty at or assigned to such warehouse, including overtime compensation of customs officers and employees assigned to duty at night or on Sunday or a holiday pursuant to a request made by the above-bounden principal on behalf of the owner or consignee of any merchandise or baggage; and, upon the demand of said district director, shall pay any and all such other amount or amounts as may be found to be legally due and payable to the United States

In summary, there is no authority to remove Customs warehouse officers from duty-free stores. The temporary removal of such officers from some stores was not approved by Customs Headquarters, and the recent action of restoring the required supervision now conforms operations at the stores with Customs policy as applied elsewhere in the United States.

We would like to bring to your attention that Customs and Treasury Department policy favors the limitation of the scope of operation of duty-free shops exclusively to airports and seaports. Further,

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the Department has advocated the restriction of the sales from these facilities to travelers "departing from the United States on a vessel or aircraft." This is amply demonstrated in Department comments to S-2144 and H.R. 10532 (92nd Congress), and S-144 (93rd Congress).

Sincerely yours,

(Signed) VERNON D. ACREE

Commissioner of Customs

John M. Martin, Jr., Esq.
Chief Counsel
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

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TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
U.S. CUSTOMS SERVICE OFFICE OF REGULATIONS AND RULINGS WASHINGTON, D.C.	ACTION P INFO:	
ACCOUNTING CLASSIFICATION COLLECT	DATE PREPARED 6-26-74	TYPE OF MESSAGE [X] SINGLE [ ] BOOK [ ] MULTIPLE ADDRESS
FOR INFORMATION CALL		
NAME JERRY C. LADERBERG R:CD:D	PHONE NUMBER 964-5856	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

WAR-6-R:CD:D JL
201875

JUN 27 1974

REURLET JUNE 14, CONTAINING PROPOSAL OF TO IMPORT VINYL FLIGHT BAGS FOR SALE TO FOR USE AS PREMIUMS GIVEN TO CUSTOMERS PURCHASING CIGARETTES AT DUTY FREE SHOPS LOCATED VARIOUS INTERNATIONAL AIRPORTS. U.S. CUSTOMS SERVICE OF OPINION THAT SINCE DUTY FREE SHOPS ARE CUSTOMS BONDED WAREHOUSES, MERCHANDISE IN QUESTION SHOULD BE MADE SUBJECT OF WAREHOUSE ENTRY FOR SUBSEQUENT WITHDRAWAL FREE OF DUTY PURSUANT TO 19 USC 1557.

J. P. TEBEAU
DIRECTOR
CARRIERS, DRAWBACK AND BONDS DIVISION
U.S. CUSTOMS SERVICE

201875

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PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
1	1	A1

STANDARD FORM 14
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-35.306

U.S. GOVERNMENT PRINTING OFFICE: 1971-FSS 7480-B/446-801

FEB 3 1975

DRA-1-09-R:CD:D GS
202284

202284

[redacted]

Dear [redacted]

This is in reply to your letter dated December 2, 1974, concerning the designation of fungible merchandise under section 22.5(a)(2) of the Customs Regulations. You mention a situation in which a manufacturer commingles imported and domestic merchandise of a fungible nature in a tank, and then withdraws merchandise from the tank both for use by himself in manufacturing and for sales to others.

You refer to the following specific situation. A tank contains 5,000 gallons of domestic merchandise, and 5,000 gallons of imported merchandise is added to it. Next 5,000 gallons is withdrawn, presumably for sales. The remaining 5,000 gallons is withdrawn in 1,000 gallon increments, alternating between use and sale.

In such a situation we do not see how the manufacturer can meet the obligation of establishing that any part of the imported material was in fact used in manufacture by him. He could only show that he did use 3,000 gallons in manufacture, but since that quantity could have come from the domestic material in the tank, he would fall short of establishing the use of any imported material.

If the first 5,000 gallons which was withdrawn had been for use in manufacturing, there would be a total of 8,000 gallons withdrawn for use. In such a situation 3,000 gallons of the imported merchandise would be considered to have been used in manufacturing and could be designated for drawback purposes.

Sincerely yours,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

(Signed) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

[redacted]

[redacted]	REVIEWER	REVIEWER	REVIEWER	REVIEWER	APPROVAL	REVIEWER
[redacted]						
[redacted]						

CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-8-73)

SEP 24 1976

DRA-1-09-R:CD:D B
206080

206080

Dear

This is in reply to your letter of March 9, 1976, wherein you asked for our opinion regarding certain questions arising from the fact situation detailed in the next paragraph.

You have enclosed bills of lading from which indicate that the articles (gear frame assemblies) are being consigned to the for shipment to is listed as the shipper. Submitted invoices indicate that the articles are shipped to and are being sold to is listed as the shipper.

You ask three specific questions as follows:

1. If we get an authorization letter from showing that the drawback rights have been retained as required in section 22.21 (a), can we claim drawback on these exports?

2. We would like to use the date on the Bill of Lading as the date of export even though the items will be shipped from the Pool Car installation within three to five days. If we cannot use this Bill of Lading date, what date should be used?

3. I assume that we would have to put on the drawback claim "Exported by since our Bill of Lading will show as the company shipping the material. Would you please clarify this fact if should not be considered the exporter.

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In answer to your first question, by "we" this office assumes you refer to your client, for which your firm will collect drawback. as the manufacturer or producer, may retain the right to claim the drawback upon production of satisfactory evidence that such right has been retained, as set out in section 22.21(a), Customs Regulations. If a letter or other paper to that effect is obtained from the exporter, then your firm may continue to collect drawback for as its agent.

In answer to your second question, the date on the bill of lading may not be used as the date of export unless that date is in fact the correct date of export. The date which should be used as the date of export is the date on which the articles were actually exported.

In regard to your final question, since is not the exporter, but the shipper to the exporter cannot be shown on the bills of lading or the drawback claims as the exporter. However may claim drawback upon proof of assignment to it of the drawback rights of the exporting company. The claim should note that is the exporter with right to claim drawback being retained by Proof of this right should be filed at each port where drawback will be claimed.

Sincerely yours,
(Signed) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

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WAR-4-02-R:CD:D JE
207584

Regional Director, Inspection and Control Division, Region III

Director, Carriers, Drawback and Bonds Division R:CD

Request for Internal Advice, Bulk Distilled Spirits, Class 6

This is in response to your memorandum of March 17, 1977, on the above referenced subject.

In your correspondence you indicated that you have a request from a warehouse proprietor who wished to transfer a quantity of over-proof bulk spirits from Class 2 storage to Class 6 where it will be reduced in proof and bottled. You further state the proprietor then wished to withdraw the bottled spirits for transfer to duty-free shops at the border or airports in the hope of sales to persons departing the United States. The proprietor further desires the option and flexibility to transfer the merchandise to other duty-free shops in the event sales are not successful.

You opined that this activity does not constitute the direct shipment and exportation or transportation and immediate exportation as required in connection with Class 6 merchandise under section 19.15 of the Customs Regulations.

You have propounded five questions based on the foregoing situation for our consideration. First, you ask if the proprietor's request can be approved. Next you want to know if it makes any difference if title (ownership) to the merchandise is transferred. Your third question is whether the proprietor could transfer the Class 6 goods to ship's chandlers who deal exclusively in sales to vessels or aircraft as "supplies". In this case you indicate withdrawals would be effected under section 309 of the Tariff Act of 1930. Fourthly, you ask if the answer to the third question is in the affirmative would the warehouse proprietor at the port of origin be responsible for assuring compliance

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with section 19.15(g)(1) of the Customs Regulations relating to modification of the Warehouse Entry Bond; CF 7555, recital clause and the insertion of the new condition on the bond at the destination. Lastly, you want to know if merchandise unsold by ship's chandlers could be transferred back to the Class 6 warehouse.

The answer to your first question relating to whether the proprietor's request may be approved must be answered in two parts. Initially, we must consider the question of whether the transfer to the duty-free shop is permissible and next whether a subsequent transfer to other duty-free shops is permissible.

Under the authority of section 311, Tariff Act of 1930 and section 19.15(g)(1) of the Customs Regulations, articles manufactured may be withdrawn from the manufacturing warehouse for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom. As you know "duty-free stores" are Customs bonded warehouses established under the authority of sections 555, 557, and 562, Tariff Act of 1930. Therefore, under statutory and regulatory authority manufactured articles from a Class 6 warehouse may be transferred to duty-free stores if it is for the sole purpose of immediate export therefrom. Headquarters in construing the immediate exportation requirement has not placed any time limits within which such merchandise must be exported but has looked to the intention of the parties at the time of the transfer. Accordingly, if merchandise is transferred to the duty-free shop with the intention of selling the merchandise to persons departing the United States, Headquarters has authorized such a transfer irrespective of when the actual exportation does in fact occur.

The question of whether merchandise may be transferred from one bonded warehouse to another was considered by Headquarters in CIE 947/65. Therein it was indicated that merchandise manufactured in a Class 6 bonded manufacturing warehouse and withdrawn therefrom for rewarehousing at an exterior port may not be subsequently withdrawn from the storage warehouse at that port for any purpose other than exportation in accordance with section 311 or 309(a), Tariff Act of 1930, as amended.

In your second question you ask whether it makes any difference if title (ownership) to the merchandise is transferred. Our answer to your first question is not in any manner affected by who owns the merchandise.

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207584

The next question for our consideration is whether the proprietor could transfer the Class 6 merchandise to ships chandlers instead of duty-free shops. As you indicated, such withdrawals would be made pursuant to section 309 of the Tariff Act which provides for withdrawal of supplies for certain vessels and aircraft. The transfer of Class 6 merchandise to ship's chandlers would be no different from a transfer to a duty-free shop. As with duty-free shops merchandise transferred to a ship's chandler could not thereafter be transferred for any purpose other than exportation.

Next you inquire whether the warehouse proprietor at the port of origin would be responsible for complying with the requirements of section 19.15(g)(1) relating to modification of the recital clause and the insertion of the new condition on the bond at destination. Under the provisions of section 19.15(g)(1) a rewarehouse entry shall be made at the exterior port in accordance with section 144.34(b) supported by a bond on Customs Form 7555. Section 144.34(b) indicates that merchandise may be transferred to a warehouse by withdrawing it for transportation and entering it for rewarehouse in accordance with section 144.41 upon arrival at destination. That provision states that such merchandise may be entered for rewarehouse by the consignee named in the withdrawal. Accordingly, the consignee or such other individual who makes entry, which may or may not be the warehouse proprietor at the port of origin, would be responsible for complying with the requirements of section 19.15(g)(1).

In answer to your final question regarding whether merchandise may be transferred back to the Class 6 warehouse if sales were not consummated by ship's chandlers, Headquarters has consistently held that when merchandise has been transferred into any bonded warehouse at an exterior port for the purpose of immediate export therefrom it may not thereafter be transferred back to the Class 6 warehouse.

(Signed) J. P. TEBEAU

J. P. Tebeau

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A13

MAY 23 1977

DRA-1-09-R:CD:D JL
207669

207669

REFERENCE: Request for ruling dated April 13, 1977, in behalf of

Gentlemen:

You ask in the above-referenced letter whether drawback would be payable upon the exportation of Aircraft manufactured by your client, pursuant to 19 U.S.C. 1313(g), or, alternatively, 19 U.S.C. 1313(a).

You state that had previously contracted with (hereinafter referred to as for the manufacture and sale of three Aircraft for domestic service. Upon completion of the aircraft, delivery was refused by and another purchaser was sought. You state that an agreement thereafter was entered into between and the (hereinafter referred to as Inasmuch as requirements for the aircrafts' configuration, technical specification and performance were entirely different than those specified by the domestic buyer, the aircraft were extensively altered at a cost of approximately $2 million and 3,000 man hours per aircraft. You state that one of the three aircraft, serial number 1120, upon delivery to in the United States is scheduled to leave on a revenue flight in the very near future.

You ask whether section 313(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), applies under the facts presented. Alternatively, you ask in the event that Headquarters concludes that section 1313(g) does not apply, whether the entry of the subject aircraft into the commerce of Germany as an article of merchandise upon the conclusion of its initial revenue flight from the United States will so qualify the aircraft as being considered exported within the meaning of section 313(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(a)).

In this regard, 19 U.S.C. 1313(g) provides as follows:

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> The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

We have carefully studied the document submitted with your request setting out in great detail the extent of the work performed on the aircraft for the German buyer, We find the work performed on the aircraft to be extensive but cannot conclude that the aircraft were "built for foreign account and ownership" within the meaning of the above quoted statute. Instead, we find that the aircraft were built and completed for the domestic buyer and subsequently altered to the specifications of We find it particularly relevant that the aircraft were complete and airworthy at the time delivery was refused by

Inasmuch as the record discloses that the aircraft were manufactured in the United States by with the use of certain imported merchandise, drawback would be payable upon exportation of the aircraft pursuant to 19 U.S.C. 1313(a), provided all pertinent regulations and the law are complied with. In this regard, section 1313(a) provides in relevant part as follows:

> Upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum . . .

Headquarters, U. S. Customs Service, has consistently held that departure of aircraft in international traffic, that is, carrying paying passengers and cargo, will not satisfy the requirement of section 1313(a) that the aircraft be exported in order to qualify for payment of drawback. As you know, the Courts have defined an exportation for purposes of the Customs Law as a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. In our opinion, that an intention may exist to enter the aircraft into the commerce of a foreign country subsequent to its departing flight in international traffic would not so qualify it as exported for purposes of 19 U.S.C. 1313(a).

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

We would like to point out in closing that in circumstances in which an exportation cannot be said to have been effected in consonance with the definition, enabling legislation has been enacted by the Congress to so qualify such movements of merchandise as exportations. We refer you specifically to 19 U.S.C. 1309 and 1317, regarding the lading of supplies and equipment; to 19 U.S.C. 81, the fourth proviso to section 3 of the Foreign Trade Zones Act; to exception (2) of headnote 1(a), Schedule 8, Part 5C, Tariff Schedules of the United States, pertaining to certain parts of aircraft entered under item 864.05, Tariff Schedules of the United States, and of course, finally to 19 U.S.C. 1313(g), under which vessels (and aircraft) are considered as exported for purposes of the drawback law.

207669

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-7)

SEP 25 1981

CO:R:CD:D
213476 R

Regional Commissioner of Customs
(Attn: Director, Classification and Value Division)
Region I
Boston, Massachusetts 02110

Re: Protest No. 0712-0-000113, your file PRO-2-0:CV:00 GAM, x37-5

Dear Sir:

213476

The protestant contends that temporary housing units are entitled to entry under item 864.50, Tariff Schedules of the United States (TSUS). That provision lists the types of articles that may be temporarily imported and then states "all the foregoing imported by or for nonresidents sojourning temporarily in the United States and for the use of such nonresidents." It is clear that entitlement to the provision depends on the importer meeting three independent requirements: (1) the articles must fall within the listed types, (2) the entry must be made by or for a nonresident, and (3) the article is for the entering nonresident's use. Failure to establish all three points is fatal to establishing entitlement to the provision.

The protestant states that the articles were for the use of the [redacted] Only one Customs entry was presented for review (80-357382-8 dated November 19, 1979). Consequently, our views are limited to the facts presented in that entry. The importer is shown to be a nonresident corporation on the entry. The original provision, paragraph 9 of section 308, Tariff Act of 1930, as amended, allowed temporary importation of "Professional equipment, tools of trade, and camping equipment imported for their own use by nonresidents sojourning temporarily in the United States,"... Act of June 26, 1938, sec. 4 Pub. L. 75-721, 52 Stat. 1079 (emphasis added). After adoption of the Tariff Schedules in 1962 (19 U.S.C. 1202), the provision was designated as item 864.50, TSUS, without change. That provision was amended to its present form by Act of October 24, 1968, Pub. L. 90-635, 82 Stat. 1351. That statute added Headnote 1 for Part 5c, Schedule 8, TSUS, which required that entry under item 864.50, TSUS, must be made by the nonresident importing the articles or by an organization represented by the nonresident. It is clear that the word "nonresident" in the statute refers to an individual rather than a corporation. See also S. Rpt. 1618, 90th. Cong. (Oct. 8, 1968).

There is no evidence to show that the importation was made by the corporate importer for use of a nonresident individual. Instead, the evidence indicates that the merchandise was imported for the use of the [redacted] presumably neither a nonresident nor an individual.

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PUBLIC _____

Accordingly, the available evidence shows no entitlement to entry under item 864.50, TSUS, as contended by the protestant. Therefore, the protest is to be denied in full.

Sincerely,

George C. Steuart

Marilyn G. Morrison,
Director
Carriers, Drawback & Bonds Division

213476

[redacted]

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

MAR 22 1983

WAR-1-CO:R:CD:D
215150 L

Dear Mr.

Re: Your letter of August 13, 1982, concerning permits for "duty-free stores"

Your letter encloses a copy of an article from a publication called "International Tax-Free Trader." The article states that the United States Department of the Treasury issues "permits" to open "duty-free stores" in any city in the United States with an international airport.

What are referred to as "duty-free stores" are Customs bonded warehouses which are established under the provisions 19 U.S.C. 1555, 1557, and 1562. Under these provisions, imported merchandise may be stored or manipulated in bonded warehouses and exported without payment of import taxes or duties.

No "permit" is issued to operate a bonded warehouse. The owner or lessee of a warehouse makes written application to the district director of Customs at the place where the warehouse is located to establish a bonded warehouse.

The procedures relating to the establishment and operation of Customs bonded warehouses are found in Part 19 of the Customs Regulations (19 CFR Part 19). These regulations were extensively amended, effective December 1, 1982, and current requirements to establish a bonded warehouse were published in the Federal Register on November 1, 1982 (47 FR 49355). The amended regulations may also be found in Treasury Decision 82-204, published in the "Customs Bulletin" on November 10, 1982.

In addition to the statutory and regulatory requirements which must be observed by all bonded warehouse operators, warehouses operated as "duty-free stores" must also comply with certain operational requirements, designed primarily to insure exportation of the merchandise withdrawn. As these requirements

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vary somewhat depending upon the type of operation involved, we suggest that you contact the office of the District Director of Customs in Honolulu (808-546-3115) for specific information. That office will also be able to advise you of current requirements to establish a bonded warehouse.

Sincerely,

George C. Steuart

George C. Steuart
Chief
Drawback and Bonds Branch

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

NOV 22 1982

WAR-1-CO:R:CD:D
215257 L

Dear Sir:

Re: Your letter of October 26, 1982, reference WAR-1-O:IC:OO 3M

You ask for the procedure and documentation necessary to accomplish a multi-district warehouse operation change of ownership.

It is not clear from the correspondence how the change of ownership will take place. Neither do we know whether the currently existing warehouse proprietor's bonds show the parent, or the subsidiary, as principal. We assume is the principal on the bonds and the operator of the warehouses.

If the change in ownership is the result of the sale of the stock of the corporation to a new owner or owners, but the corporation will survive and continue to operate the bonded warehouses, no action is necessary so far as the bonds are concerned since the corporation continues to exist as the same legal entity.

As you are aware, the Customs Regulations relating to the establishment of Customs bonded warehouses have been amended. A copy of the final rule, published in the Federal Register on November 1, 1982 (47 F.R. 49355), is enclosed. While not related to the change of ownership in this case, new warehouse bonds will be required for all bonded warehouses on December 1, 1982.

If is to be dissolved as a result of the sale or if the assets of are being sold to a new owner, whether a corporation, partnership, or individual, that is a different legal entity, it will be necessary, of course, for the present owner to discontinue the warehouses and for the new owner to apply to the appropriate district directors to establish new bonded warehouses. New regulations concerning application to establish a bonded warehouse (section 19.2, Customs Regulations), will be found on page 49368 of the enclosed Federal Register. Note, however, that section 19.2 is not effective until December 1, 1982, although fees required by section 19.5 became effective on November 1, 1982.

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Note further that while present section 19.2(a) permits all storage warehouses operated by one proprietor in one district to be included in one bond, this will not be allowed after November 30, 1982, except in the case of Class 7 warehouses (see Part 113 - Comment, 47 F.R. 49365).

Sincerely,

George C. Steuart

George C. Steuart
Chief
Drawback and Bonds Branch

Regional Commissioner of Customs
Boston, Massachusetts 02110

Enclosure

215257

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON SEP 13 1983

REFER TO

DRA-1-09-CO:R:CD:D
215974 B

215974

ISSUE:

Pursuant to section 22.13, Customs Regulations, who is the exporter, the air freight forwarder which consolidates small shipments for export, or the individual companies whose shipments are parts of the consolidated exported shipments?

FACTS:

An air freight consolidater of smaller shipments issues air waybills to the individual companies whose shipments it consolidates for exportation. The exporting carrier issues a waybill listing the consolidater as the shipper. The consolidater's waybill issued to each individual company notes the latter as the shipper and the consolidater as the shipper's agent. A Customs field office has asked which is the exporter for purposes of section 22.13, Customs Regulations, the consolidater or the individual companies.

LAW AND ANALYSIS:

The operative language of section 22.13 of the regulations refers not to "exporter" but to "shipped by the person," and "person in whose name the merchandise was shipped," as follows:

> The certified or uncertified notice of exportation shall show that the merchandise was shipped by the person making the drawback entry, or shall bear an endorsement of the person in whose name the merchandise was shipped, showing that the person making entry is authorized to make it and receive the drawback. Emphasis added.

The language is as set out to distinguish between the exporting carrier of the goods, who has no interest or ownership of the goods, and the person or entity having an interest in or ownership of the goods who causes them to be shipped or exported. The Customs Court and Court of Customs and Patent Appeals have always held that "shipper" is construed not to include one having no more interest in or knowledge of the merchandise than merely that involved in the physical function of placing together, packing, and starting the same in transit. See Louis Rosenfield v. United States, 18 CCPA 146, T.D. 44361, (1930).

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The sample waybill submitted with the file, wherein the consolidater is noted as the shipper's agent and the individual company is noted as the shipper, is correctly prepared to show the true state of facts. The individual companies having interest in the merchandise and causing that merchandise to be exported are the "persons" referred to in section 22.13, C.R. The consolidater is an agent of these companies.

HOLDING:

In this case, the individual companies are the "exporters" or "shippers" contemplated by section 22.13, Customs Regulations.

George C. Stewart
for

Marilyn G. Morrison
Director, Carriers, Drawback
and Bonds Division

Enclosure

215974

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____.

BID

07 DEC 1983

DRA-1-CO:R:CD:D
216139 K

216139

Assistant District Director
Classification and Value Division
Baltimore, Maryland 21202

Dear Sir:

Re: Drawback Entry 83-100446 and your memorandums dated April 7 and July 29, 1983

Notices of Exportations, Customs Forms numbered 7511, filed with the above-referenced drawback entry named a domestic manufacturer as the exporter for some shipments while other shipments named a foreign corporation as the exporter without endorsements on the notices to waive drawback rights in favor of the domestic manufacturer. At the request of your office, the domestic manufacturer obtained a document signed by a member of the board of directors of the foreign corporation in an attempt to obtain a power of attorney to waive drawback rights in favor of the domestic manufacturer. We agree with your view that the documents submitted are not in compliance with the requirements of section 141.37 of the Customs Regulations to authorize a power of attorney by a nonresident corporation. Thereafter, the domestic manufacturer indicated that the foreign corporation filed for bankruptcy in Switzerland during 1982 and the domestic manufacturer is unable to obtain further documentation. You are concerned with Customs Service Decision (C.S.D.) 83-13 relating to bankruptcy in the event drawback is paid to the domestic manufacturer and requested advice.

Section 22.21(b) of the Customs Regulations in conjunction with section 22.45 (new regulations, sections 191.73(b) and 191.6, effective December 12, 1983), require that when the manufacturer or the exporter who is entitled to drawback wants to assign the payment to a third person (someone other than the manufacturer or exporter) the assignment must be in writing and in the case of a corporation, an officer of the corporation or one with a power of attorney in compliance with sections 141.31 through 141.46 of the regulations must sign the document authorizing payment to another person (other than to the manufacturer or exporter). The facts presented concern whether payment should be made to the manufacturer or the exporter, not to another person. Therefore, the assignment need not be in writing. For this reason, we have avoided an unnecessary discussion of the complex facts concerning the power of attorney.

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Section 22.21(a) (191.73(a)) of the regulations is controlling in this case. The regulation provides that the person named as the exporter on the notice of exportation is entitled to drawback unless the manufacturer on the sale or assignment of the articles reserved to himself the right of drawback upon satisfactory evidence that such reservation was made with the knowledge and consent of the exporter. We are of the opinion that there is evidence in the record (we do not have a copy of your file and the entry documentation) to find that the domestic manufacturer reserved the right to drawback for the following reasons:

1. The domestic manufacturer, incorporated under the laws of the State of Delaware, did not provide the foreign corporation with a certificate of delivery and manufacture necessary for the foreign corporation to complete a drawback entry.

2. The domestic manufacturer had possession of the notices of exportations required as evidence to prove that articles were exported for drawback. The foreign corporation could not complete a drawback entry without the notices.

3. The ineffective power of attorney signed by a member of the board of directors of the foreign corporation is some evidence of an attempt to assign the right to drawback to the domestic manufacturer.

4. The domestic manufacturer's proposed drawback contract was subscribed to on June 17, 1980. In response to an oral request for information, the drawback applicant submitted a letter dated July 3, 1980, containing a statement that the applicant "would receive full benefit of drawback not our customers." The drawback proposal with the letter of July 3, was approved by your office on July 17, 1980.

C.S.D. 83-10 concerned the rights, if any, of a broker to file drawback claims and receive monies for a bankrupt claimant. It did not concern the rights of drawback between a manufacturer of articles and an exporter of articles. A proper finding that the manufacturer is entitled to drawback in the facts presented negates any applicability of C.S.D. 83-10.

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The attorney representing the domestic manufacturer indicated on November 1, 1983, that he would further research the records such as contracts between the parties for evidence to satisfy section 22.21(a) of the regulations. It is our understanding that an audit will be performed to verify the drawback claim. The regulatory auditor may acquire further evidence to show that drawback was reserved to the domestic manufacturer with the knowledge and consent of the exporter of record.

Finally, it is our understanding that the articles covered by the drawback entry were exported in January of 1981. As a practical matter, the entry will not be liquidated with payment to the domestic manufacturer until after January of 1984. Note that section 22.13 of the regulations (191.62) requires that a drawback entry and a certificate of manufacture shall be filed within 3 years after the date the articles are exported. Upon expiration of the time limitation, the foreign corporation would be precluded from the benefit of drawback.

A copy of this letter may be furnished to the claimant and/or his representative.

Sincerely,

George C. Steuart

George C. Steuart
Chief
Drawback and Bonds Branch

216130

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AND DATE

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 30 AUG 1984

FILE: CON-9-CO:R:CD:D
217259 L

TO : Director, Carriers, Drawback and Bonds Division

FROM : Chief, Drawback and Bonds Branch

SUBJECT : Treatment of Cargo Handling Apparatus; Proposed Response of Carrier Rulings Branch to District Director, Portland, Oregon

217259

You ask what procedures apply to the transportation of foreign stevedoring equipment from Blaine to Portland to be used in unloading vessels in Portland, whether a V.S.T. & E (vessel supply transportation and exportation entry) or V.S.I.E. (vessel supply immediate exportation entry) is allowed, and whether a T.I.B or other procedure could be used.

The proposed response and background material indicate that the stevedoring equipment in issue is not vessel equipment and we assume that is the case.

Section 309(a), Tariff Act of 1930, as amended, provides for the withdrawal from continuous customs custody elsewhere than in a bonded warehouse or foreign trade zone of certain equipment for vessels free of duty and tax. The Customs Regulations, in sections 10.59 et seq. and 18.20 et seq. generally cover such situations and, for qualifying equipment, a V.S.I.E. or V.S.T. & E. entry would be appropriate when the equipment is to be exported directly or indirectly. As this equipment is not qualified vessel equipment a V.S.I.E. or V.S.T. & E. cannot be used.

The stevedoring equipment here is cargo and must be entered at Blaine either for consumption or immediate transportation (I.T.) to Portland. Upon arrival at Portland, the port of destination, some form of entry (see section 18.12, Customs Regulations) must be made.

Temporary importation under bond under item 864.50, TSUS (professional equipment) might be available if the equipment is entered by a nonresident operator or supervisor and if the equipment is used only by or under the supervision of the nonresident.

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We are aware of no other provision of law under which this equipment could be brought into the United States and used as described without entry and payment of duty.

George C. Steuart

George C. Steuart

217259

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUL 19 1985

REFER TO
DRA-1-CO:R:CD:D
217850 RB

Issue: While in a foreign-trade zone exempt from the payment of duty, does privileged foreign or nonprivileged foreign merchandise thereby constitute duty-free merchandise within the meaning of the substitution manufacturing drawback law, 19 U.S.C. 1313(b), so that an article manufactured therefrom, and then exported, may be the subject of a claim for drawback under section 1313(b)?

Facts: Prior to activation of its foreign-trade subzone, A, a motor vehicle manufacturer, imported transmissions, duty-paid, and used them in the manufacture of motor vehicles which were thereafter sold for domestic consumption. Following activation of its subzone, A admitted transmissions thereto in privileged foreign and nonprivileged foreign statuses, and then used them in the manufacture of motor vehicles which were exported. Accordingly, no duty was paid upon these latter transmissions. A claimed drawback under 19 U.S.C. 1313(b) on the exported vehicles manufactured with the use of the privileged foreign and nonprivileged foreign transmissions, and designated for drawback the duty-paid transmissions used prior to activation of the subzone.

Furthermore, A similarly claimed drawback under 19 U.S.C. 1313(b) on additional exported vehicles, a significant portion of which had been manufactured with the use of privileged foreign and nonprivileged foreign parts, and, in so doing, A designated for drawback shipments of "identical" parts which had, from time to time, been previously imported, duty-paid, and admitted to the subzone in privileged domestic status, and there used in the manufacture of other vehicles which were entered for domestic consumption.

It is presumed herein that the remaining statutory and regulatory requirements applicable to section 1313(b), as to same kind and quality, time limits, etc., were properly satisfied.

Law and Analysis: The provisions of 19 U.S.C. 1313(b) provide in pertinent part for the allowance of drawback on exported articles manufactured with the use of duty-paid, duty-free, or domestic merchandise.

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Foreign merchandise in a zone pursuant to the Foreign-Trade Zones Act of 1934 (FTZA), as amended, 19 U.S.C. 81a-u, is, except as otherwise provided therein, exempt from the Customs laws of the United States affecting imported merchandise (19 U.S.C. 81c). This, of course, means, inter alia, that, while in a zone pursuant to the FTZA, such merchandise is exempt from the payment of duty.

> "[A foreign-trade zone]...differs from adjacent territory in being exempt from the Customs laws as affecting goods destined for reexport. It means simply that, as regards Customs duties, there is freedom unless and until imported goods enter the domestic market" (emphasis added) (FOREIGN TRADE ZONES, REPORT OF A SUBCOMMITTEE of the COMMITTEE ON WAYS AND MEANS on H.R. 3657 and H.R. 9322 (later enacted as the FTZA) (House Committee Print), 73d Cong., 2d Sess., at 1).

Foreign merchandise in a zone under such circumstances is thus conditionally free, and is not duty-free merchandise within the purport of section 1313(b). Compare in this connection ORR Ruling 74-0216, which held that merchandise imported temporarily free of duty under bond (TIB) in accordance with the provisions of Subpart 5C, Schedule 8, Tariff Schedules of the United States, was likewise conditionally free, and not duty-free merchandise within the meaning of section 1313(b).

Holding: While in a foreign-trade zone exempt from the payment of duty, privileged foreign or nonprivileged foreign merchandise does not thereby constitute duty-free merchandise within the meaning of the substitution manufacturing drawback law, 19 U.S.C. 1313(b), and, hence, an article manufactured therefrom, and then exported, may not be the subject of a claim for drawback under section 1313(b).

Edward B. Gable, Jr.

Edward B. Gable, Jr.

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217850

C3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

01 JUL 1985

REFER TO

CON-9-03-CO:R:CD:D
218069 MM

[redacted]

Dear [redacted]

In response to your letter dated June 25, 1985, there is enclosed a copy of our letter to the District Director of Customs, Anchorage, Alaska, concerning the entry of drilling equipment under item 864.50, Tariff Schedules of the United States.

We would like to point out, however, that if the barge were to become frozen into the ice and [redacted] were to return to The Netherlands over the winter, there would be a breach of the entry bond.

Sincerely,

George C. Steuart

George C. Steuart
Chief
Drawback and Bonds Branch

[redacted]

218069

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

C4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

01 JUL 1985

REFER TO

CON-9-03-CO:R:CD:D
218069 MM

District Director of Customs
620 East 10th Avenue
Anchorage, Alaska 99501

Dear Sir:

This is in response to a letter dated June 25, 1985 (copy enclosed) from [redacted] concerning entry of digging equipment under item 864.50, Tariff Schedules of the United States. [redacted] indicates that your office is doubtful entry could be made under this item and suggested that he contact this office for guidance.

The information submitted states that foreign-manufactured digging equipment would be entered at Anchorage, Alaska and assembled temporarily on board a U.S.-built barge to perform an underwater digging operation on the Outer Continental Shelf off the North Slope of Alaska. The operation is to take place during the relatively brief ice-free summer season. Upon completion the equipment will be removed, disassembled and exported. It is further stated that a [redacted] a nonresident will have continuous responsibility for and control over the equipment while it is in the United States.

Based on the facts presented, it would appear the equipment could be allowed entry under item 864.50, TSUS, provided there is compliance with the applicable statute and regulations.

Sincerely,

George C. Steuart
Chief
Drawback and Bonds Branch

[redacted]

218069

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

16 AUG 1985

REFER TO

DRA-1-09-CO:R:CD:C
218100 B

ISSUES:

Is crude degummed soybean oil (CDSBO) fungible for purposes of the same condition substitution drawback law 19 U.S.C. 1313(j)(3) under the facts set out below?

Under the following fact situations, is possession of the CDSBO sufficient pursuant to C.S.D. 85-34 to support drawback under the same law?

FACTS:

A corporation is apparently a commodities dealer and an importer and exporter of CDSBO, which is stated to be internationally traded and that no matter where produced, is "basically" (the corporation's term) the same. The corporation, through counsel, further states that there are no recognized differences in grade or type, and that a shipment of CDSBO from any country is considered within the industry to be a good delivery, unless, according to the corporation, "a particular country of origin is specified in the contract." Even then, there is "generally" no difference in grade, merely a "preference" of a product from a particular country, as is the case with United States CDSBO because financing for the purchase of the product is dependent on the country of origin.

As to the question of possession, the following fact situations are proposed:

1. The corporation purchases CDSBO f.o.b. a vessel at a South American or European port. The CDSBO is then transported in that vessel to the United States, and the corporation imports it, pays duty on it, and stores it in a tank owned or leased by it. The corporation then sells the commodity to another entity in the U.S. for refining, and does not furnish a Certificate of Delivery (CF 7543) or otherwise transfer any drawback rights attendant to the imported CDSBO.

The corporation then purchases the same amount of U.S. CDSBO located somewhere in this country, and has it transported to the same port where importation of the aforementioned CDSBO occurred, placing the domestic CDSBO in tanks owned or leased by it. The domestic CDSBO is then sold c.i.f. or f.a.s. (free alongside vessel) at a foreign port. The corporation then timely (i.e., within 3 years of the date of importation of the foreign CDSBO) exports the domestic commodity.

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2. Same as (1), except the corporation purchases the foreign origin CDSBO at the port of importation but does not act as importer of record.

3. Same as (1), except the corporation purchases the foreign CDSBO which has already been imported and placed in a Customs bonded tank. The corporation then makes entry for the CDSBO and pays all duties.

4. Same as (1), except the corporation sells the CDSBO while on the high seas before entry, and although acting as importer of record, does not place the CDSBO in its tanks, but instructs the shipping company to transport the CDSBO directly to the purchaser in the U.S.

5. Same as (1), except the corporation purchases the CDSBO on c.& f. or c.i.f. U.S. port terms, acts as importer or record, pays the duties, but transfers the merchandise immediately to a purchaser at the port of entry. This is a combination of variants (2) and (4), but the corporation does not state at what time the sale was made. We believe based on our discussion below that the time of sale in this variant (5) is irrelevant.

6. Same as (1), except exportation occurs at a port other than that of importation.

7. Same as (1), except the exported shipment is sold f.o.b. vessel at the U.S. port.

8. Same as (1), except the corporation purchases the CDSBO to be exported in tanks or tank cars at the port of exportation, then sells it c.& f. foreign port, and has the commodity loaded directly onto a vessel bound for that foreign port.

9. Same as (1) with the (5) variant, then proceeds with the (8) variant.

10. Same as (9), except exportation occurs at a port other than the port of exportation.

The corporation, as represented by counsel, believes each of the above situations will support a valid claim for drawback under 19 U.S.C. 1313(j)(3).

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LAW AND ANALYSIS:

1. The law, enacted as 19 U.S.C. 1313(j)(3) and which is in the process of being corrected to 19 U.S.C. 1313(j)(2), allows for the substitution of domestic or other imported merchandise provided at the time of exportation (or destruction) the substituted merchandse is fungible (i.e., commercially identical, (see 19 CFR 91.2(k)(1)) with the imported and is in the same condition as was the imported at the time of its importation.

Counsel states there are no recognized differences in grade or type of soybean oil. This type oil and other types of vegetable oil are bought and sold under the rules of the National Cottonseed Products Association. Rule 102, Section 1, of the NCPA rules deals with the standard of quality of crude soybean oil. The types of crude soybean oil are set out in section 1(A)(1-7) of that rule. Crude soybean oil must meet standards of color, free fatty acid limits, moisture and volatile contents and other standards. Crude degummed soybean oil can contain no more than 0.03 percent phosphorous as determined by A.O.C.S. tentative method Ga 1-53. The best method to prove fungibility of agricultural commodites is to obtain chemical analyses of the designated and substituted materials.

We will assume that all CDSBO in question is just that, per the standards of Rule 102, for purposes of this ruling.

The commercial world consists of buyers, sellers, comminglers, government agencies, and others. If these groups treat articles or merchandise as fungible or commercially identical, the articles or merchandise are fungible. Whether these groups treat the articles or merchandise as fungible is a question of fact, not law. Generally, fungible merchandise is identified by records, rather than physical properties. When two or more units of apparently identical properties are treated differently by the commercial world for any reason, then they are not fungible.

Words and phrases such as "generally no difference", "preference for product," (over another), "basically the same," etc. are anathema to the concept of fungibility. Counsel in this case states there is "generally no difference of grade, merely a preference for product from a particular country ..." This is an admission that the CDSBO in the instant case is probably not fungible.

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The commercial world treats articles as different and not fungible for several reasons. The articles may be physically different, an obvious case, or they may have different origins, history, or association values. An example of the latter cases would be an original Roman coin and its reproduced twin. These would not be fungible because of the respective histories and associations attached to the genuine article and the reproduction. So, too, if the commercial world for snobbish, sentimental, or financial reasons values an article made in one country more than the identical article made in another, the two articles are not fungible. Parenthetically, we add here that more than once in the many telephonic conversations between staff lawyers and soybean trading sector representatives, unsolicited comments were made by the latter that United States CDSBO is more highly sought than, for example, Brazilian.

2. Despite the apparent nonfungibility of the various CDSBO's in this case, we will rule on the possession aspects of the various situations set out by counsel because we were asked to do so.

"Possession" for purposes of the same condition drawback law means just that. It means complete control over the articles or merchandise on premises or locations where the possessor can put the articles or merchandise to any use chosen. It does not mean that by trading commercial paper, e.g., purchase orders or bills of lading, between brokers or others in a commodity while that commodity wends its way across America by train or truck, possession is somehow created. Transactions made in order to create a climate for drawback, or stated another way, ersatz transactions made to resemble bona fide transactions, will not support drawback. See C.S.D.'s 81-76 and 81-218. To hold that for purposes of same condition drawback arbitragers and futures dealers in commodities have "possession" of these commodities because of the purchase of commercial paper and temporary storage in leased bins or tanks, would not further the intent of the Congress or the fundamental purpose of the drawback law.

This is not to say any or all the proposed situations set forth by counsel are not bona fides. It is to say that transactions and sales of commodities will be and should be carefully scrutinized by Customs, because many bona fide sales transactions in commodities do not create possession. The question is: Does the legal person possess paper or the commodity itself?

The port of exportation need not be the port of importation for any type of drawback; therefore, this aspect of the situations will not be further discussed. The corporation in none of the cases has possession under C.S.D. 85-34 of both the imported and

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domestic oil. That ruling requires that the designated and substituted merchandise must have been in the possession of a single entity during a period beginning on the date of importation and ending on the date of exportation, such period not to exceed three years. Certainly, the purchase of CDSBO located in tanks or tank cars at a port of exportation just prior to exportation of the oil is not possession of that oil. Just as certainly, sale of oil purchased on the high seas and shipped immediately upon arrival to another purchaser does not constitute possession, despite the fact that the high seas purchaser makes entry for and pays duty on the merchandise. In short, temporary ownership, even such ownership with concurrent storage in tanks leased or owned by the owner, does not create possession if the "owner" is dealing in commercial paper, rather than the commodity itself. Middleman dealers in commodities are not possessors despite being owners.

218100

HOLDINGS:

1. Based on the facts, the crude degummed soybean oil is not fungible in this case.

2. The corporation in none of the situations set out by counsel has possession of both the imported and substituted soybean oil to the extent necessary to support a claim for drawback under 19 U.S.C. 1313(j)(3).

Edward B. Gable, Jr. for
Director, Carriers, Drawback and
Bonds Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUL 25 1985

REFER TO

DRA-1-09-CO:R:CD:D
218102 RB

Issue: Whether "lawful duties" paid pursuant to 19 U.S.C. 1592(d) legally constitute "duties" and are thus subject to drawback under 19 U.S.C. 1313?

Law and Analysis: Monies paid to the United States which legally constitute "duties" are properly the subject of drawback under 19 U.S.C. 1313 (see section 191.3, Customs Regulations, 19 CFR 191.3).

In this regard, as set forth in 19 U.S.C. 1592(d), "if the United States has been deprived of lawful duties as a result of a violation of subsection (a) of this section, the appropriate customs officer shall require that such lawful duties be restored, whether or not a monetary penalty is assessed." Section 1592(d) is implemented by section 162.79b, Customs Regulations (19 CFR 162.79b), which states that such lawful duties are to be restored within 30 days of a written notice demanding their deposit or payment, and that application may be made in this connection to the Commissioner of Customs for review.

By way of brief background, subsection (d) was added to section 1592 by the Customs Procedural Reform Act of 1978, Pub. L. No. 95-410, section 110(a), 92 Stat. 888, 896, in order to remedy the problems relating to the finality of liquidations. As a result, the United States, under section 1592(d), is able to require the restoration of duties even though a particular entry and liquidation have become final within the meaning of 19 U.S.C. 1514(a).

Accordingly, in United States v. Ross, 574 F. Supp. 1067, 1069 (U.S.C.I.T. 1983), the Court of International Trade, in holding that the United States did not have to follow the elaborate penalty procedures of section 1592 when pursuing "a duty claim" under subsection (d), stated that "[s]ubsections (b) and (c) of §1592 are cast in such terms as 'monetary penalty' or 'penalty claim.' Subsection (d) alone deals with 'lawful duties' and makes no reference to the preceding matters."

Additionally, in C.S.D. 81-223, Customs concluded that a surety on a Customs entry bond was liable for the payment of "duty" determined to be due under section 1592(d), inasmuch as a surety was "jointly liable with a bond principal for payment of any duty due when demanded."

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Hence, it is clearly recognized and understood both judicially and administratively that "lawful duties" paid under section 1592(d) simply represent "duties" from a legal standpoint, this view being fundamentally supported by the plain meaning as well as by the evident legislative intent of subsection (d).

Holding: "Lawful duties" paid pursuant to section 1592(d) legally constitute "duties" and are thus subject to drawback under 19 U.S.C. 1313.

George C. Stewart
Edward B. Gable, Jr. for

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

26 JUL 1985

REFER TO
DRA-1-09-CO:R:CD:C
218114 B

ISSUES:

Is drawback allowed under the substitution same condition drawback law, 19 U.S.C. 1313(j)(3), upon exportation of imported fungible substituted merchandise, assuming compliance with all requirements of the law and guidelines as set out in C.S.D. 85-34?

FACTS:

A Customs broker has requested a ruling on the presented issue.

LAW AND ANALYSIS:

Section 202 of Public Law 98-573 sets out the provisions of the same condition substitution drawback law, 19 U.S.C. 1313(j)(3). Legislation has been introduced to designate correctly the provision as 19 U.S.C. 1313(j)(2).

The statute specifically provides:

> (j)(3) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic) that--
>
> > (A) is fungible with the imported merchandise . . . (Emphasis added).

HOLDING:

The law specifically allows substitution of other imported fungible merchandise for imported merchandise. This ruling is limited solely to the issue as stated.

George C. Stewart
for
Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

30 AUG 1985

REFER TO

DRA-1-09-CO:R:CD:D
218215 B

Director, Classification and Value Division
Chicago, Illinois 60603

Dear Sir:

Re: Chicago Protest and Request for Further Review 3501-4-000006 of March 29, 1984 - 19 U.S.C. 1313(c) - Specifications - Latent Defects - Polysulphone Support and Spacer Plates

This is in reference to the referenced protest, request for further review, and other referenced subjects.

ISSUE:

1. When must alleged failures to meet specifications for merchandise sought to be exported with drawback under 19 U.S.C. 1313(c) as rejected merchandise be brought to Customs attention in order to obtain an extension of the 90-day return of merchandise provision in the statute and former section 22.33(a) and present section 191.142(a)(4) of the Customs Regulations?

2. Are allegations of failure to meet Governmental standards sufficient to prove merchandise ordered does or did not meet those standards?

FACTS:

Polysulphone spacer plates and supports used in the processing or production of whey by reverse osmosis were imported by protestant between some time in April 1981, and November 1982, under cover of approximately 100 entries. These were supplied to and installed in various dairies by protestant. On August 20, 1983, protestant's broker notified the District Director at Minneapolis of its intent to return the plates because they were defective, and that due to circumstances beyond its control, protestant was prevented from returning the merchandise to Customs custody within 90 days of its release, as required by section 1313(c) and former section 22.33(a) of the regulations. The District Director or his designee agreed to an extension of time for return of the goods under the same regulations, evidently believing the defects discovered by the protestant were latent.

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Customs accepted eighteen drawback entries on October 13, 1983, and drawback was denied on December 21, 1983. Protestant claims in the timely protest filed March 20, 1984, that the spacer supports and plates did not meet minimum life requirements as agreed to by the manufacturer and that they did not meet United States Department of Agriculture (U.S.D.A.) requirements, as conveyed to the manufacturer and agreed to by the manufacturer/supplier. The manufacturer has agreed to replace the supports and spacers "at cost," approximately 70 percent of the normal price to its customers.

Drawback was denied because there was no showing of any failure to meet warranties or guarantees to support a rejected merchandise claim, and further there was no evidence showing failure to conform to U.S.D.A. standards or that protestant had communicated these standards to the seller as part of the agreement to purchase.

LAW AND ANALYSIS:

Former section 22.32(b) of the Customs Regulations (present section 191.142(b)(2)) requires the claimant for drawback for rejected merchandise to submit, if no written order was placed, a certificate of the actual owner setting forth the specifications of the order and the method by which the specifications were communicated to the seller.

The polysulphone spacers replaced noryl support and spacer plates which had previously resulted in product leakage in 1977. In the dairy industry, leakage and the sanitary problem caused by the trapping of whey in the space plates did not occur and were not discovered overnight. Regarding noryl plates, used prior to the polysulphone plates, the U.S.D.A. had written protestant in December 1977, referring to minor problems, as well as the major problems of trapped whey and leakage. U.S.D.A's Poultry and Dairy Quality Division informed protestant that further inspection would be delayed until the initial of protestant's customers' plants was equipped with the new (polysulphone) plates. On February 8, 1978, the manufacturer/supplier, in a letter to protestant, informed it that "... it is important to check the (assembling) pressure (30.000kp) before the starting up." Regarding the leakage, the manufacturer would examine the possibility of insertion of pipe fittings all the way through the module flange as proposed by protestant, but that the problem was ... "(T)hat our present stock of flanges with male parts pressed-in will be enough for 2 years'consumption, and an alteration of these will therefore be very expensive." (Emphasis added) Drawings were supplied by the manufacturer with the letter which it claimed show that when the flange is pressed down at 5,000 kp pressure, the leakage/ sanitary danger would not arise.

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U.S.D.A. then informed the protestant that the "press-fit" arrangement shown by the drawings "appears to be satisfactory until the present inventory is used up." Letter of April 2, 1978, from U.S.D.A. Diary Inspection Branch to protestant. On July 25, 1980, the Poultry and Dairy Quality Division, U.S.D.A., regional supervisor wrote one of protestant's dairies that "in view of light materials observed on the plates and other unsatisfactory conditions observed ... we are not able to approve the whey operation at this time." The file in this case also contains notes/memoranda made by the U.S.D.A. field representative saying "(the noryl) plates are breaking like mad by the hundreds ..." (but) "DDS (the manufacturer) has new plates made of polysulphone now --- We're norel (sic), Will replace all US norel (sic) plates. Still have double outside seal ring but research underway to eliminate it." The representative was referring to the new polysulphone plates as still having the double outside ring which resulted in leakage but that research was underway to eliminate leakage. Notes of a June 6, 1981, phone conversation indicate protestant was "busy replacing noryl plates with new double ring polysulphone type. They're cleaning great, <u>except between the rings</u>. <u>New single ring PS plate is coming along next</u>. Old ring 2 plates will go to animal feed ... (Unknown) isn't having trouble with breaking plates." Emphasis added.

The foregoing notes taken by a U.S.D.A. official from statements made telephonically by protestant's representative indicate the plates in question here were accepted or at least acceptable even though they did not clean well, and did not eliminate leakage entirely, and that protestant apparently was willing to use them until "research" resulted in leakproof equipment, i.e., the single-ring plates which are apparently being sold at cost by the manufacturer to replace the rejected plates. Another representative of protestant informed U.S.D.A. in March 1982, that DDS still had the double ring plates but that protestant would replace them "free" later.

Former section 22.33(a), Customs Regulations requires that rejected merchandise be returned to Customs custody within 90 days of its release, and no extension of that period will be given unless the district director is satisfied the importer has been or will be prevented by circumstances beyond his control from returning the merchandise within the prescribed periods. See section 191.142(a)(1) of the present Customs Regulations.

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Customs has allowed importers to return rejected merchandise after the 90-day period when it is convinced the failure to meet a specification was not discovered or was incapable of being discovered because of latent defects which surfaced after the running of the 90-day period. Implicit in allowing extensions for such hidden defects, such as in C.S.D. 81-176, is that latent defects are brought to Customs attention at the time they become patent defects. It is true that in this case Customs allowed an extension of time for filing the entries and returning the plates to our custody. But this allowance was based on the assumption that the sanitary and leakage problems were of recent vintage. The file indicates that as early as six weeks after the initial entry of the double ring polysulphone plates, on June 12, 1981, they did not clean properly and that on April 4, 1981, protestant was aware that the double ring polysulphone plates would not eliminate the leakage inherent in the noryl plates but that research was under way. In short, insofar as specificatior ire concerned, protestant received the plates which it ordered, d was awaiting until improved replacement plates (singl ring) were available from the manufacturer. When they finally were available, over 26 months after initial importation, protestant filed rejected merchandise drawback entries in August 1983, claiming latent defects precluded earlier return. As to life expectancy, there is no evidence in the file to indicate premature breakage of the double ring plates. Protestant apparently ordered a stock item and "hoped for the best" pending technological improvement. In any case, we have previously held that failure to meet warranty guarantees as to length of service does not in and of itself constitute a failure to conform to specifications. When the credit allowed in such cases is for all or substantially all of the purchase price, the merchandise may be considered as not conforming. T.D. 66-169-1, cited in C.S.D. 83-104. Here, the replacement plates are being supplied at cost, approximately 70 percent of the usual price. This does not meet our standards set in T.D. 66-69-1 as to the possibility of warranty guarantees supporting a claim of failure to meet specifications.

Counsel for protestant cites many court cases referring to type of proof, and acceptance of such proof, necessary to show a communication of certain necessary specifications between the buyer/importer and the foreign seller/manufacturer, e.g., Pistachio Corporation v. United States, 23 Cust. Ct. 103, C.D. 1193 (1949) app. dismissed 37 CCPA 127 (1950); Lansing Company v. United States, 77 Cust. Ct. 92, C.D. 4675 (1976). In these cases, however, the claimant submitted proof of some defect in merchandise sufficient, in the courts' opinions, for the claimant to carry the burden of proof. In the instant case,

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counsel alleges that the plates broke within 8 or 9 months, and sometimes as soon as two or three weeks. There is no reference in the file to breakage of the polysulphone plates, other than the allegation by counsel. All references to breakage are to the earlier noryl plates. Further, counsel alleges because dairy products manufactured, processed, or packaged in a nonapproved plant could not be inspected by the U.S.D.A., citing 7 CFR 58.122(a) (1983), that these plates did not meet U.S.D.A. standards, a specification required by the protestant. The file does include some references by the U.S.D.A. to unacceptable sanitary conditions, leakage, and the like, attendant to the noryl plates, but there is no indication from the Department of Agriculture that these conditions would place any of protestant's customers' plants under the sanctions of the noted U.S.D.A. regulation if the polysulphone plates were used. On the contrary, the U.S.D.A. officials involved apparently only gave protestant notice of the shortcomings on the noryl plates, and suggestions how to correct them, noting that the officials would reinspect the operation at a later date. In fact, the drawings referred to above regarding assembly were pronounced "satisfactory" by U.S.D.A. until the present inventory is used up. There are no indications that U.S.D.A. stated that no product of these dairies would be inspected or that any orders were issued to stop production of whey or other dairy products for human consumption while polysulphone plates were used. In short, other than counsel's allegation of failure to meet U.S.D.A. specifications, we have no other indication of this failure. It certainly is not mentioned in protestant's broker's letter of August 30, 1983, to the District Director, where he was told that the reason for delay in returning defective units was due to time necessary for replacing the defective plates and rebuilding their modules.

The courts have allowed drawback in these cases based on unwritten specifications, (Lansing, supra), and oral specification. Mattia Localelli v. U.S., T.D. 46390, 63 Treas. Dec. 829 (1930). However, also in these cases and crucial to the courts' findings, it was shown that such specifications had been breached. Other than counsel's allegation, in the case before us we have no showing of such a breach, and mere allegations by counsel are not evidence. Bar Bea Truck Leasing Co., Inc. v. U.S., 5 CIT _____, Slip Op. 83-22 (1983).

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The provision for refunds on rejected merchandise was inititated to help American importers who receive goods that were so far from specifications as to be useless. See C.S.D. 84-110, citing the legislative history found in H. Rept. 7, 71st Cong., 161 (1929); H. Doc. 15, 71st Cong., 333 (1929); and S. Rept. 27, 71st Cong., 62 (1929), and C.S.D. 83-104 supra, citing legislative history of Public Law 71-369, 71st Cong., (H.R. 2667), Vol. 9, Part 2, part 9749, in particular.

Granting arguendo the plates did not meet U.S.D.A. or other specifications, protestant continued to import them and use them as they were ordered, until the new, improved models were available. At that time, alleged defects were called to Customs attention with an attendant claim for drawback. The Congress did not contemplate a refund of drawback in these circumstances.

HOLDING:

1. Drawback claimants under 19 U.S.C. 1313(c) must bring latent defects to Customs attention immediately upon discovery to be eligible for an extension of the 90-day period for return of rejected merchandise to Customs custody.

2. Mere allegations of failure to meet Governmental Standards are not sufficient to meet the burden of drawback claimants under 19 U.S.C. 1313(c).

You are directed to deny the protest in full.

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

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T.D. 68-101-U

MAR 25 1968

FOR PUBLICATION

DB 731.1 T

The Regional Commissioner of Customs
Chicago, Illinois 60605

Dear Sir:

You are hereby authorized to allow drawback on stainless steel tanks manufactured under the provisions of section 1313(b), title 19, United States Code, and Part 22 of the Customs Regulations, by The Cornelius Company, Anoka, Minnesota, with the use of cold rolled stainless steel sheet. There is enclosed, approved, a copy of the manufacturer's drawback statement subscribed to on February 6, 1968, requesting the foregoing action and containing the manufacturer's proposals as to procedures it will follow and records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

The quantity of imported cold rolled stainless steel sheet, or of such merchandise manufactured under drawback regulations, of the required kind and quality which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity of such merchandise of the same kind and quality as that designated which appears in the exported articles, as shown by the schedule which is attached to and forms a part of the drawback statement of February 6, 1968.

In order to avoid an overallowance of drawback, in cases where, because of its metallic composition, the imported designated material is dutiable in a greater amount than the merchandise used to manufacture the exported articles would have been if it had been imported, appropriate adjustment shall be made in liquidation in conformity with the principles set forth in CIS 709/42 of October 13, 1942. Where the imported designated material, because of its metallic content, is dutiable in a lesser amount than the merchandise used to manufacture the exported articles would have been if it had been imported, no adjustment shall be made.

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Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after January 1, 1967, and exported on and after April 21, 1967. Exportation shall be made within 5 years after importation of the imported merchandise.

Sincerely yours,

(Signed) B. W. LYONS

Acting Director, Division of Entry Procedures and Penalties

Enclosure 51879

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FOR PUBLICATION 731.1 278944

MAR 12 1948

T.D 51865-B

The Collector of Customs

New York 4, N. Y.

Sir:

You are hereby authorized to allow drawback upon compliance with the provisions of section 313(a), title III, Tariff Act of 1930, and the drawback regulations (Part 22, Customs Regulations of 1943), on gasoline, blended gasoline, fuel oil, and blended fuel oil manufactured by The Texas Company, New York, N. Y., at its Port Arthur, Tex., factory with the use of imported naphtha distillate, also known as naphtha.

The manufacturer has filed a sworn statement subscribed to on October 14, 1947, in accordance with the provisions of section 22.4(h), Customs Regulations of 1943, describing the methods which it will follow and the records which it will keep for the purpose of establishing that the articles described therein have been manufactured with the use of properly identified imported merchandise in accordance with the provisions of section 313(a) of the tariff act and the regulations (sec. 22.4). The manufacturer shall follow the methods described and shall keep the records outlined in this sworn statement, a copy of which is enclosed for your information.

At the end of each period, which shall not exceed 1 month during which the above-mentioned petroleum products are manufactured for exportation with benefit of drawback, there shall be filed a sworn abstract of the manufacturing records showing as to such products the quantity, identity, and value of the imported merchandise put into process during the period, the quantity, description, and relative values of the various finished and intermediate products obtained, the stock in process (in terms of the imported merchandise) put into process at the beginning of the period and the quantity on hand at the end of the period, and the quantity and value of the waste incurred.

The drawback allowance shall not exceed the duty paid, less 1 per centum thereof, on the quantity of imported merchandise used in the manufacture of the said products, less the quantity of imported merchandise which the value of the waste will replace, the drawback to be distributed to the several products obtained in accordance with their relative values at the time of exportation as shown by a sworn abstract of the manufacturing records provided for above.

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When a drawback product is blended with a domestic product or a duty-free product to make a blended product, the drawback allowance on such blended product shall not exceed the drawback accruing to the quantity of the drawback product used in the manufacture of the exported article, as shown by a sworn abstract of the manufacturing records provided for above.

The gasoline burned in the plant of the manufacturer, converted to its fuel oil equivalent, shall be considered a valuable waste.

The entire period covered by the abstract shall be deemed the time of separation of the petroleum products covered thereby.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after July 10, 1947, and exported on and after August 1, 1947. In cases where the imported merchandise was imported on or after June 18, 1930, exportation shall be made within 3 years after importation of the imported merchandise.

Very truly yours,

(Signed) W. E. HIGMAN

Acting Commissioner of Customs

Enclosure No. 76990

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TD55580-FF

FOR PUBLICATION

Honorable Sam D. W. Low
Collector of Customs
Galveston, Texas

Dear Mr. Low:

T. D. 46508-G, as extended by T. D. 50569-J and amended by T. D. 52659-E, 53986-G, 54773-F, 54946-I, and 54975-G, authorizing the allowance of drawback under the provisions of section 313(a) Tariff Act of 1930, on various petroleum products manufactured by Texaco, Inc., New York, New York, at its several refineries with the use of, inter alia, tax-paid crude petroleum, is hereby further amended to cover petroleum products manufactured under section 313(b) of the tariff act, as amended, at the corporation's factories located at Port Arthur, Amarillo, and El Paso, Texas; Casper, Wyoming; Westville and Bayonne, New Jersey; Lawrenceville, and Lockport, Illinois; Sunburst, Montana; Tulsa, Oklahoma; Norfolk, Virginia; Providence, Rhode Island; Wilmington, California; Clearport, Delaware; and Anacortes, Washington, with the use of crude petroleum, naphtha distillates, miscellaneous distillates, and residual oils.

The manufacturer has filed a supplemental statement subscribed to on July 18, 1961, in accordance with the provisions of section 22.4(c) of the Customs Regulations, setting forth that the methods which it will follow and the records which it will keep for the purpose of establishing that the articles exported have been manufactured in accordance with the provisions of section 313(b), of the tariff act and the regulations (sec. 22.5) will be the same as those described in the statements upon which the above-mentioned Treasury Decisions were predicated, and as described in the aforementioned supplemental statement, a copy of which is enclosed for your information.

The said records shall show:

(1) The quantity, identity, kind, and quality of the imported crude petroleum, naphtha distillates, miscellaneous distillates, and residual oils which will be designated as the basis for the allowance of drawback on the exported articles;

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(2) That such designated merchandise has been used in manufacture within 3 years from the date on which it was received by the above-named company;

(3) That the exported products upon which drawback is claimed were manufactured either with the use of (a) the designated merchandise, (b) other merchandise of the same kind and quality as the designated merchandise, or (c) any combination of the foregoing;

(4) That the exported articles were manufactured within 3 years from the date on which the designated merchandise was received by the above-mentioned company;

(5) That duty-free or domestic merchandise of the same kind and quality as that designated was used in manufacture within a period not to exceed 3 years from the receipt of the said designated merchandise; and

(6) The quantity of crude petroleum, naphtha distillates, miscellaneous distillates, and residual oils of the same kind and quality as that designated which was used in the manufacture of the exported articles, such quantity to be distributed to the several products obtained in accordance with their relative values at the time of separation.

The 3-year period set forth herein, authorized by the Customs Simplification Act of 1953, replaces the 1-year period heretofore in effect. The 3-year period is not applicable if the 1-year period expired before September 7, 1953, the date the above Act became effective.

The quantity of imported crude petroleum, naphtha distillates, miscellaneous distillates, and residual oils, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of crude petroleum, naphtha distillates, miscellaneous distillates, and residual oils, respectively, of the same kind and quality as that designated, which was used in the manufacture of the exported articles and is attributable thereto as determined in accordance with the provisions of paragraph No. (6), above, as shown by an abstract of the manufacturing records.

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The manufacturer shall file with you for each of the months of October, November, and December, 1958, and for each year thereafter an abstract of its manufacturing records showing in the form and to the extent set forth in the exhibits incorporated in and made a part of the supplemental statement of July 18, 1961, the information required to enable your office to liquidate drawback entries in accordance with the provisions set forth above. Your attention is invited to the fact that the procedure contemplated under the above-mentioned exhibits may be modified to the extent permitted in T. D. 55563(1). With respect to the said exhibits, sheet B of Exhibit B-Summary shows the date of importation of the designated merchandise, but not the date of receipt of such merchandise. Since the date of receipt of the designated merchandise is an essential factor in establishing compliance with the provisions of subparagraphs 2, 4, and 5 of section 22.5(a) of the Customs Regulations, information in that regard shall be required on sheet B of Exhibit B-Summary.

The manufacturer shall also file with you for the months of July, August, and September, 1958, the documents described on page 17 of the enclosed supplemental statement covering operations at its Port Arthur, Texas, refinery during such months.

The manufacturer's supplemental statement of July 18, 1961, contains the following agreement:

> It is understood and agreed that in no case will imported crude petroleum be designated as the basis for the allowance of drawback on exported articles where such articles could not be obtained in the quantity exported from such crude petroleum.

In other words, the quantity of articles which may be exported against a given quantity of imported crude may not exceed the quantity of such articles which could be produced from the quantity of imported crude designated, with due regard to related by-products.

In view of the fact that the manufacturer's substitution proposal includes naphtha distillates, miscellaneous distillates, and residual oils in addition to crude petroleum, it is necessary that the foregoing agreement be extended to cover such additional materials. Before any drawback entries filed under this authorization and covering the substitution of naphtha distillates, miscellaneous distillates, or residual oils are liquidated, the manufacturer shall be required to submit to you a statement in writing containing the necessary extension to the said agreement.

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Drawback may be allowed hereunder upon compliance with the law and regulations, on articles covered hereby which are manufactured at the corporation's Port Arthur, Texas refinery on and after July 1, 1958, and exported on and after October 1, 1958, and on articles which are manufactured at the other refineries covered by this authorization and exported on and after October 1, 1958. Exportation shall be made within 5 years after importation of the imported merchandise.

The manufacturer has requested in a letter of September 20, 1961, copy enclosed, an extension of the time for filing drawback entries hereunder. In that regard, the drawback application which initiated action resulting in this amendment was filed November 21, 1958. Preparation of the supplemental statement of July 18, 1961, was held in abeyance pending a decision by the Bureau with respect to the criteria for determining which imported and domestic crude petroleums are of the same kind and quality, which decision was made in February, 1961.

In the circumstances the 3-year period provided in section 22.13(a) of the Customs Regulations for completing drawback claims filed hereunder is hereby extended through October 31, 1962, with regard to claims covering articles exported prior to January 1, 1960.

In view of the fact that beginning with 1959, the manufacturer will file claims on an annual basis, it also presents the question in the letter of September 20, 1961, whether the 3-year period in section 22.13(a) of the Customs Regulations would be based upon the last calendar month of the yearly filing period. In other words, would the 3-year period for the claim covering 1959, end on December 31, 1962?

Compliance with section 22.13(a) of the Customs Regulations requires that the drawback entry be filed within 3 years after exportation of the earliest shipment covered by the entry. For example, if the earliest shipment covered by the manufacturer's drawback entry for 1961, was exported on January 20, 1961, the said entry is required to be filed on or before January 19, 1964.

Sincerely yours,

(Signed) W. E. Wigman
Deputy Commissioner

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Mr. Ben A. Burk
Regional Commissioner of Customs
San Francisco, California 94102

Precedent

Dear Mr. Burk:

This is in reply to Regional Counsel Gilmore's letter of October 4, 1971, requesting guidelines as to degree and type of supervision required for duty free status of an earth moving machine imported under item 864.50, TSUS.

It is stated in the report of Special Agent Dennis Derr, dated September 20, 1971, that the machine in question was imported from Canada on June 30, 1971, by [redacted], a nonresident, for [redacted]. It is further stated that the rig was driven to Baultoff, Alaska, where it was operated twenty-four hours per day and seven days per week until the job was completed on July 18, 1971. Each drilling day was divided into two twelve hour shifts with three men, a driller, a driller's helper, and a sampler, working on each shift. [redacted], the nonresident supervisor, remained near the rig until the job was completed, even though he was not one of the three men who operated the machine. Inasmuch as it was physically impossible for [redacted] to remain with the rig on a 24 hour day basis seven days a week, the question presented is whether the operation of the rig when [redacted] was away constituted a violation of the bond. Because there have not been any recently published guidelines, you are requesting a Bureau ruling.

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The Bureau is of the opinion that the above-mentioned facts do not warrant a finding that the bond has been violated. The Bureau has said previously that the nonresident for whose use merchandise is entered under item 864.50, TSUS, need not personally use the merchandise, but that it must in any event be used under his supervision. To meet that requirement, we do not believe it to be necessary that the nonresident be physically present to personally witness the use of the imported merchandise at all times. Rather, it would suffice if the nonresident exercise full personal control

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in regard to the manner in which the imported merchandise is used, even though he may on occasion be physically absent from the operation. Nothing in the present case indicates that the operation was other than under the personal control of Mr. Waldner.

Sincerely yours,

(Signed) LEONARD LEHMAN

LEONARD LEHMAN
Acting Assistant Commissioner
Office of Regulations and Rulings

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Dear Mr.

In your letter of November 20, 1961, in which you indicate that you represent a group of associates who are desirous of opening a series of so-called "duty-free" stores on the United States side of the United States-Canada border, you ask the following questions (numbered for convenience in answering):

1. Are there any specific United States regulations concerning such an enterprise, or the location of such an enterprise, or is it rather a question of obtaining a permit to operate a customs bonded warehouse. If the latter is the case, what are the requirements with respect thereto?

If our understanding of your proposed operations is correct, you intend to sell to persons departing from the United States into Canada merchandise from customs bonded storage or customs bonded manufacturing warehouses upon which duties have not been paid. As such merchandise is to be exported into Canada upon its sale to purchasers departing from the United States, duties would not be collected thereon.

Generally speaking, merchandise may be withdrawn from customs bonded storage warehouses, and from customs bonded manufacturing warehouses, for exportation without the payment of duties, under the authority in sections 557 and 311, Tariff Act of 1930, as amended, provided there is compliance with the provisions of these sections of the law, and with the pertinent regulations. However, as it will be necessary for you to both store and manipulate the bonded merchandise on your premises prior to sale and exportation, the establishment

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of a class 2-8 customs bonded warehouse will be required for that purpose. Application to establish such a bonded warehouse shall be made to the collector of customs in whose district the warehouse is to be located in accordance with section 19.2 of the Customs Regulations. A copy of sections 19.1 to 19.12 of the regulations, which sections pertain to the establishment and operation of customs bonded warehouses, is attached hereto.

2. What, if any, are the citizenship requirements for proprietors of customs bonded warehouses?

We are aware of no such requirements.

3. What are the licensing requirements in connection with such establishments, and what is the licensing period?

See the enclosed copy of sections 19.1 to 1912 of the Customs Regulations. Additional information in this matter should be obtained from the collector of customs with whom your application is filled.

4. Are there any special reporting requirements?

Although an adequate reporting procedure must be approved by the local collector of customs, a bonded warehouse operation of the type contemplated will probably require the services of a full-time customs warehouse officer during all working hours (the salary of such officer to be reimbursed to the Government) in order that there may be continous customs supervision thereof.

5. May the merchandise sold at the border store be delivered directly to the purchaser, or must such sales be concluded by mail, i.e., order-taking for subsequent mail order delivery?

It is not necessary that purchases be delivered by mail. However, the bonded merchandise must remain under customs supervision until it is actually exported. This requirement may be satisfied by delivery of the merchandise by bonded carman to the customs border station, where a transfer to the departing purchaser may be made under the supervision of the customs officer there.

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The balance of your questions have to do with "tourist duty free" importations by returning residents of the United States or by nonresident visitors.

There is enclosed a copy of paragraph 1798 of the Tariff Act of 1930, as amended, with a cover sheet explaining the effect of the latest legislation in this field which has temporarily reduced the maximum amount of tourist exemptions available, with minor exceptions, to $100.

Merchandise need not accompany a returning resident but may be shipped to him by mail or other means after his return to the United States. The returning resident should declare such goods "to follow" on his baggage declaration. He will be given a Customs Form 3351, Release For Unaccompanied Tourist Shipment, to present to the postman or to file with customs if the goods arrive by freight, and will receive the merchandise duty free if his total importations are within the limits of his tourist exemptions. The traveler cannot receive any exemption in advance of his trip because the exemption does not accrue until the resident returns to the United States.

However, exemptions from duty under the provisions of paragraph 1798, as amended, are granted only as an incident of foreign travel. United States residents who are traveling abroad and who order goods from a foreign trade zone or customs bonded warehouse located in the United States may not apply their tourist exemptions to such purchases upon their return to the United States.

A resident of the United States may order merchandise from one foreign country while traveling in another foreign country under the provisions of paragraph 1798, as amended. He may not conclude a purchase of merchandise from a foreign country while he is in the United States and then travel abroad to take possession of the article or arrange to have it sent to him after his return to the United States.

Similarly, a nonresident may bring into the United States nonrestricted merchandise from any source, but he may not order goods from a foreign country while in the United States and enter them free of duty.

Alcoholic beverages shipped from abroad are not entitled to free entry under the $10 exemption for unsolicited gifts.

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See the enclosed handout entitled Alcoholic Beverages. Also enclosed is the current copy of Tumblate Trade-Mark Information which you requested.

Sincerely yours,

Deputy Commissioner

Enclosure 84569

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T.D 70-189-L HB 731.1 T

FOR PUBLICATION

Mr. Michael Stramiello, Jr.
Regional Commissioner of Customs
New York, New York 10004

Dear Mr. Stramiello:

You are hereby authorized to allow drawback upon compliance with the provisions of section 1313(b), title 19, United States Code, and Part 22 of the Customs Regulations, on fuel gas, unsaturated aliphatic hydrocarbons, aromatics, and ethylene manufactured by Union Carbide Corporation, New York, New York, at its factory located at Torrance, California, with the use of refinery gas, and on polyethylene, and ethylene oxide manufactured by the said company under the provisions of section 1313(b) with the use of ethylene, at such factory.

There are enclosed, approved, copies of the manufacturer's drawback statements subscribed to on June 5, 1969, and April 29, 1970, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations. The records shall show the quantity of refinery gas, of the same kind and quality as that designated, which was used in the manufacture of articles hereunder, such quantity to be distributed to the fuel gas, unsaturated aliphatic hydrocarbons, aromatics, and ethylene obtained in accordance with their relative values at the time of separation.

The quantity of refinery gas, manufactured under drawback regulations, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of such merchandise of the same kind and quality as that designated, which was used in the manufacture of fuel gas, unsaturated aliphatic hydrocarbons, aromatics, and ethylene and is attributable thereto as determined in accordance with the provisions of the preceding paragraph, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

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The quantity of ethylene manufactured under drawback regulations, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of such merchandise of the same kind and quality as that designated which was used, respectively, in the manufacture of polyethylene, and ethylene oxide, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

The application for this action was received by the regional commissioner of customs, New York, New York, on February 17, 1969. The present action could have been issued as an amendment to the existing drawback rate of Union Carbide Corporation, T.D. 55655-I, as amended, rather than as a new drawback rate. As the effective dates of amendments to rates of drawback may, under the authority of section 22.4(c) of the Customs Regulations, be made effective prior to the receipt of the application for the amendment, and as this rate of drawback could have been issued as an amendment, if the Bureau found that course preferable, the Bureau is of the opinion that the effective date of this rate may antedate the receipt of the application on February 17, 1969.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after January 1, 1967, and exported on and after January 7, 1967. Exportation shall be made within 5 years after importation of the imported merchandise.

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. TEBEAU
Director, Division of
Carriers, Drawback and Bonds

Enclosure 79173

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APR 17 1978

BAG 5-05 R:E:E
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Mr. George White
Department of State
EB/OT/STA - Room 3331
Washington, D. C. 20520

Dear Mr. White:

This is in reference to a telegram sent March 28, 1978, from the American Embassy in Belgrade, Yugoslavia, concerning reciprocity in Customs treatment of foreign companies. The telegram asks if there is a provision in the Customs laws of the United States permitting foreign companies to import temporarily office equipment, including automobiles for official business use, without payment of Customs duty. Alternatively, the telegram inquires as to the possibility for a person who would, for Customs purposes, be considered a nonresident of the United States, to import duty-free household goods and/or office equipment, including either a personal or company automobile.

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While item 864.50 of the Tariff Schedules of the United States (TSUS) (copy enclosed) permits duty-free entry under bond of professional equipment and tools of trade, which would include certain items of office equipment, an automobile is not considered to fall under either of those categories. Nor would an automobile, either for personal or company use, be considered as part of a nonresident's household effects, which would be entitled to duty-free entry (if actually used abroad for not less than one year and not intended for any other person or for sale). However, section 148.45 of the Customs Regulations (19 CFR 148.45) (copy enclosed)

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entitles a nonresident to duty-free entry of an automobile under item 812.30, TSUS (copy enclosed) if it is imported in connection with the nonresident's arrival in the United States and is to be used in this country only for the transportation of the nonresident, his family and guests. Sections 12.73(b)(5)(v) and 12.80(b)(2)(v) of the Customs Regulations (copies enclosed) provide that an automobile which is not in compliance with federal safety and air pollution control standards is to be imported by a nonresident for a period not exceeding one year and is not to be sold in the United States during that time. Sections 12.73 and 12.80 provide for importation under bond of a nonconforming automobile which the importer declares will be brought into compliance with federal standards.

Sincerely yours,

(Signed) Harvey B. Fox

~~(Signed) Edward B. Gable, Jr.~~

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

[redacted]

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NT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

FEB 18 1981

CLA-2 CO:R:CV:V
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District Director of Customs
Portland, Oregon 97209

Director, Classification
and Value Division

Request for Internal Advice No. 182/80

This is in response to the referenced Internal Advice request concerning whether or not certain charges incurred by the importer form part of the dutiable value of the imported merchandise. Specifically, two payments to the exporter are at issue: (1) An amount representing a payment for the termination of the contract for the imported merchandise, and (2) A payment representing a penalty for late shipment of United States components to the exporter.

It is the opinion of your office that the subject payments are dutiable assists, and as such, are includable in the dutiable value of the imported articles. In support of your position, you cite Headquarters ruling R:CV:V TLL 541436, dated May 18, 1977, in which this office determined that amounts paid to an exporter pursuant to a standard termination clause of the original purchase contract formed part of the constructed value of the imported merchandise.

It is the opinion of the Chief, Duty Assessment Branch I/II in New York, that the subject payments are not assists, nor should they be considered part of the exporter's usual general expenses and profit for constructed value purposes. We agree.

In the instant situation, the payments in question do not relate to the assembly or manufacture of the imported articles, therefore, they would not be considered assists for appraisement purposes. Our May 18, 1977, ruling did not label the termination payments involved in that case as assists, but rather, indicated that the payments appeared to be part of the usual general expenses and profit of the exporter.

It is our opinion that the above-cited ruling relied upon by your office is not applicable in the instant situation. In that decision, Headquarters determined that the appraising office did not err in including the termination payments in the constructed value of the imported articles. In that case, the termination payment clause was executed as part of the original purchase agreement prior to importation, and no evidence had been submitted by the importer to indicate that the termination payment was an amount other than

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"an amount for general expenses and profit equal to that usually reflected etc...." In the case before us, the record indicates that the cancellation payment and a late shipment penalty payment were the subject of supplementary agreements, executed after the original purchase contract. We note that it is not uncommon for parties to a contract to renegotiate agreements and arrange for the payment of damages where one of the parties wishes to amend or terminate previous agreements. Failure to renegotiate could subject the breaching part to suit, as well as impair or destroy the business relationship between the contracting parties.

In view of the above, we conclude that the payments in question do not form part of the "usual general expenses and profit" under section 402(d), and therefore, would not be included in the dutiable value of the imported merchandise.

Harvey S. Fox

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-78)

DATE: NOV 26 1984

FILE: CLA-2 CO:R:CV:V
543288 CW

543288

TO : District Director of Customs
Boston, Massachusetts 02109

FROM : Director, Classification and Value Division
Headquarters

SUBJECT: Valuation of Defective Parts Imported by Digital Corporation

This is in reference to your memorandum of March 7, 1984, which forwarded a request for a ruling, dated February 7, 1984, from (importer), concerning the proper basis of appraisement for certain merchandise returned to the United States for repair.

According to counsel's letter, the importer is engaged in the production and sale of computers and related equipment. The company's Field Service Organization (FSO) is responsible for the installation and maintenance of computers sold to customers throughout the world. When parts of computers owned by customers outside the United States become defective, the FSO, acting as part of the importer's foreign subsidiaries, arranges to have these parts sent either to a foreign service center or to the United States for repair. Defective parts are returned to the United States under three programs. These include two return and replacement (r & r) programs, which account for approximately 75 percent of all defective parts returned to the United States, and a return for credit (r & c) program, which accounts for the balance of the parts returned to this country.

Under the r & r programs, the returned parts are exchanged for repaired parts or, occasionally, new parts of the same kind and quality. Counsel for the importer maintains that no financial transactions occur upon return of the defective parts to the United States under the r & r programs. However, counsel states that, on occasion, intercompany transfer prices, referred to as Maynard Transfer Prices (MTP), are stated on the commercial invoices accompanying the returned parts in order to satisfy certain foreign export requirements. Counsel has submitted an opinion prepared by the importer's certified public accountants which provides, in part:

> No financial transactions occur upon return of the defective parts to the United States. Rather, the U.S. service center receives the material on a consignment basis. ... Although the U.S. service center maintains a perpetual inventory of defective parts awaiting repair or replacement, this is done for operating control purposes only and the material appearing on the perpetual inventory is assigned no financial value, ie. it is treated as an inventory consignment.

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Under the r & c program, the foreign subsidiary from which a defective part is received is given a credit equal to the MTP for that part. This price is shown on the commercial invoice and the credit is used by the subsidiary to acquire other parts needed to maintain a proper inventory.

Counsel contends that transaction value under section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), cannot be used as the basis of appraisement for the parts returned pursuant to the r & r programs for the reason that there are no financial transactions betwee the parties in regard to these parts and, therefore, the parts are not "sold" as required by section 402(b). Moreover, counsel maintains that as transaction value of identical or similar merchandise, section 402(c) of the TAA, also cannot be determined, deductive value, section 402(d), should properly be used to appraise the merchandise.

With respect to parts returned under the r & c program, counsel states that "the basis upon which the credit values were selected was arbitrary and done for administrative and internal accounting conveniences." Thus, counsel claims that the relationship between the importer and its foreign subsidiaries clearly influenced the establishment of the MTP. Under these circumstances, counsel contends that the value statute mandates that a comparison be made between the MTP and one of the test values set forth in section 402(b)(2)(B) of the TAA to determine the "acceptability" of the MTP for purposes of establishing transaction value. In this regard, the importer has calculated deductive values for parts which are identical or similar to parts imported under the r & c program. These values, which are significantly lower than the MTP values for comparable parts, establish, in counsel's opinion, that the MTP values do not represent "acceptable" transaction values. Counsel maintains that defective parts returned under the r & c program should be appraised under the deductive value method.

It is the opinion of your office that transaction value, as represented by the MTP, is the appropriate basis of appraisement for all merchandise imported pursuant to the r & r programs and the r & c program. Concerning the r & r programs, you note that the word "consignment" is defined as a shipment of goods sent to an agent for sale. You state that a review of the importer's submissions clearly indicates that the defective parts returned to the United States for repair are "not returned in order for the importer company to act as an agent for a sale." In regard to the r & c program, you characterize the importer's argument that the relationship between the buyer and seller influenced the price for the merchandise as "beyond the grasp of reason." You contend that the fact that the importer establishes the invoice price does not preclude acceptance of that price as representing transaction value.

Section 402(b) of the TAA defines transaction value, in pertinent part, as "the price actually paid or payable for the merchandise when sold for exportation to the United States" (emphasis added). We are satisfied from a review of

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the importer's submissions that no payment is made by the importer to its foreign subsidiaries for the parts which are imported pursuant to the r & r programs. Thus, we concur with the importer that transaction value cannot be determined with respect to these parts and that, assuming transaction value of identical or similar merchandise also cannot be determined, the merchandise should be appraised on the basis of deductive value.

However, it is clear that there is a "price actually paid or payable" for the parts which are returned pursuant to the r & c program. The importer argues in this regard that because it establishes the MTP for these parts, which essentially is the price for a comparable newly-manufactured part, it is evident that the relationship between the parties influenced the price. The importer states that common sense dictates that a defective part should not command the same value as a newly-manufactured part.

Section 402(b)(2)(B) of the TAA provides that the transaction value in a related party transaction will be deemed acceptable if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between the buyer and seller did not influence the price; or if the transaction value of the imported merchandise closely approximates any one of the four test values set forth in that subsection. The Statement of Administrative Action relating to Customs valuation makes clear that these two methods of determining "acceptability" are alternatives, that is, if the criteria o. either one is met, the transaction value will be accepted.

In TAA #61, dated March 25, 1983 (542792), copy attached, we were presented with essentially the same issue as that presented here. The importer (protestant) in that case unilaterally established, without negotiation, the price which it paid its foreign subsidiary for certain imported merchandise. The importer contended that the relationship influenced the price and that, therefore, transaction value was eliminated as the basis of appraisement. We held that:

> ... there is no basis on which we can determine that the relationship has not influenced the price, or that the price satisfies a test value. Under these circumstances, and where it appears that the parent does, in fact, set the prices, we must reject transaction value.

It appears that the decision in that case was based in part on the portion of the Statement of Administrative Action relating to Customs valuation which describes in some detail the circumstances of the sale that should be examined in determining whether the relationship influenced the price paid. The Statement provides in this regard that:

> ... if the price has been settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who

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are not related to him, this will demonstrate that the price had not been influenced by the relationship.

There is no question that, in a transaction between unrelated parties, the seller would not permit the buyer to unilaterally, without negotiation, establish the sales price for the affected merchandise.

On the basis of the information available to us in this case, we are unable to determine that the relationship between the importer and its foreign subsidiaries has not influenced the price paid, or that the price satisfies an established test value. Thus, consistent with our holding in TAA #61, we conclude that if the importer, in fact, sets the MTP values which it pays its subsidiaries for parts returned pursuant to the r & c program, transaction value must be rejected as the basis of appraisement for these parts. Assuming, again, that transaction value of identical or similar merchandise also cannot be determined, deductive value would be the proper basis of valuation for this merchandise.

Please provide the importer with a copy of this decision.

(Signed) Harvey B. Fox

Harvey B. Fox

Attachment

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CLA-2 CO:R:CV:V
543378 MK

NOV 20 1984

543378

District Director of Customs
Detroit, Michigan 48226-2568

Dear Sir:

Re: Application for Further Review of Protest No. 3801-4-000090, Dated January 13, 1984

This protest was filed against your appraisement of fuel pumps and other automotive parts sold by to a related importer, The importer's customhouse broker contends that the merchandise should be appraised under transaction value at invoice prices, Canadian funds, less an allowance for American components under item 807.00, TSUS. The importer also contends that there was an established intercompany Canadian exchange rate of United States $.85 against the Canadian dollar, and that the proper rate of exchange should be the published rate in accordance with 19 CFR 159.34 and 159.35. Since you advise that you allow a partial exemption from duty under item 807 where applicable, and use the published rates of exchange, these matters do not appear to be in issue in this protest. You also note that the broker did not submit any value information to support his position.

Since the sale in question is between related parties, the price actually paid or payable must be "acceptable" under the law to represent transaction value. Under section 402(b)(2)(B), the price is acceptable if an examination of the circumstances of sale indicates that the relationship did not influence the price, or the price closely approximates one of the statutory test values.

In your examination of the circumstances of sale, you advise that the Canadian company sells for export to unrelated United States buyers at arm's length and they purchase approximately 69 percent of the merchandise. Sales to the related company are at standard cost plus 10 percent, and the related company purchases approximately 10 percent of the merchandise. In comparing the cost breakdown for sale of the same item to the importer and to an unrelated O.E.M., there is no difference in the cost of labor and materials, but the factory overhead costs for related party transactions are only 32 percent of the amount used to calculate fixed factory overhead costs to manufacture the same article for the unrelated purchaser.

In your experience, factory overhead costs are the same for the manufacture of the same article, regardless of the class of purchaser, and a higher volume normally results in lower fixed overhead costs per piece produced.

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The parties allocate all general and administrative expenses associated with the sale of the merchandise to products produced for sale to unrelated purchasers. You recognize that while some such expenses such as commissions, warranties, advertising, etc. which are incurred in sales to unrelated parties may not be incurred in sales to a related company, other general and administrative expenses do normally accrue in both categories of sales.

In considering the circumstances of sale set forth above, we conclude, in agreement with you, that the relationship between the parties did influence the price paid or payable and that the price did not meet any of the statutory test values. Accordingly, the invoice price cannot represent transaction value, and appraisement should be on the basis of transaction value of identical or similar merchandise, section 402(c)(1)(A) and (B), if applicable.

Please deny the protest in full and send the importer's broker a copy of this decision with your notice of action on the protest. Your file is returned herewith.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 18611

MAY 13 1985

CLA-2 CO:R:CV:V
543440 CW

543440

Leonard L. Rosenberg, Esq.
Sandler & Travis, P.A.
Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

Dear Mr. Rosenberg:

This is in response to your letter of October 19, 1984, in which you request a ruling, on behalf of your client, Bonnie International Corporation, that certain monies paid by your client to a related company constitute bona fide buying commissions under section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). We understand that your ruling request pertains to prospective transactions.

You state that your client, a United States company engaged in the importation and sale of handbags and similar articles, is entering into a buying agency agreement with Bonlyn Taiwan Co. Ltd., a Taiwan company. Your client and the Taiwan company are considered related parties under the TAA as they are both subsidiaries of a third company. You state that the written agreement between your client and the Taiwan company provides that the latter will perform the following services on behalf of your client:

1. Advise the importer on prices and sources of merchandise available for export to the United States,

2. Solicit offers to sell merchandise and procure samples of the merchandise for the importer's consideration,

3. Place orders and purchase merchandise at the request of the importer,

4. Monitor and advise the importer of the status of all orders until delivery has been made,

5. Inspect merchandise for compliance with the importer's quality control standards, and

6. Handle all export requirements in regard to transportation and documentation for the merchandise.

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You state that payment for the merchandise to be imported and payment of the commission are accomplished in the following manner: when an order is placed with a factory and the amount of the sale is known, your client will open a letter of credit payable to the Taiwan company in that amount. The Taiwan company will pay the factory by a local letter of credit that is for the same amount that the Taiwan company received from your client. Although the invoices from the factory will be addressed to the Taiwan company, the merchandise will be marked for shipment directly to your client. Moreover, the invoice from the Taiwan company to your client will be for the same amount as the invoice from the factory to the Taiwan company. Your client will pay monthly amounts to the Taiwan company for the services which it performs and no portion of these amounts will be remitted to the foreign manufacturers.

Based upon your description of the services which the Taiwan company will perform on behalf of your client and of the manner in which payment for the imported merchandise to the foreign manufacturers will be accomplished, it is our opinion that amounts paid by your client to the Taiwan company for the services rendered by the latter constitute bona fide buying commissions. As you know, buying commissions are not included as part of transaction value under section 402(b) of the TAA.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 23 1985

FILE: CLA-2 CO:R:CV:V
543445 CW

TO : District Director of Customs
Chicago, Illinois 60607

FROM : Director, Classification and Value Division
Headquarters

SUBJECT: Internal Advice No. 107/84; Valuation of Automobile Engines Purchased by Chrysler Corp. from Peugeot

This refers to your letter of September 14, 1984, received in this office on November 11, 1984, which forwarded the above-referenced internal advice request initiated by Chrysler Corporation (the importer). The issue presented for consideration concerns whether amounts paid by the importer to the manufacturer, Peugeot S.A. of France, a related company, for failure to purchase a contracted minimum quantity of engines are dutiable as part of transaction value, section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

The record reflects that the importer and the manufacturer entered into a contract for the purchase of diesel engines and a contract for the purchase of gasoline engines with respect to model years 1983 through 1985. Both contracts provide that a minimum quantity of engines shall be purchased by the importer for each year of the contract. If the minimum number of engines is not purchased during a particular year, the contracts state that the importer shall pay the manufacturer additional compensation equal to a certain amount for each engine below the contracted minimum quantity that is not purchased. The contracts further provide that if purchases exceed a certain quantity during the life of the agreements, the importer shall receive a "special volume discount," payable within 60 days after that quantity is purchased.

During the 1983 model year, the importer purchased no diesel engines and fewer than the specified minimum quantity of gasoline engines. As a result, the importer was required by the contracts to pay the manufacturer certain additional compensation the precise amount of which was subsequently determined pursuant to a settlement agreement between the parties dated February 21, 1984.

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Counsel for the importer refers to the additional compensation as "liquidated damages" and maintains that these amounts are not part of the price actually paid or payable for the imported merchandise under several alternative theories. First, counsel contends that because the additional amounts were paid in connection with engines that were never sold or imported, these amounts are not dutiable as they do not relate to the engines that were imported. Counsel also maintains in this regard that the specific pricing formula set forth in the contracts for engines which were imported was separate from the liquidated damages contractural provision which related only to engines that were not purchased. Secondly, counsel states that even assuming that the additional payments affect the price of the imported merchandise, the payments must be disregarded since they represent changes to the price which are arrived at subsequent to the time of importation. Counsel points out in this connection that the Statement of Administrative Action relating to the TAA provides as follows:

> Changes in a price actually paid or payable which are arrived at subsequent to the time of importation shall not be taken into account in determining a transaction value.

Your office agrees with the importer's position that the additional compensation is not part of transaction value. In the opinion of your office, the additional payments are "not attributable to any particular importation" but, rather, they accrue "on the non-importation of merchandise." Moreover, according to your office, the subject compensation appears to be "simply a contractural obligation that is separate and distinct from the import transaction."

The Chief, Commercial Operations Branch I, New York Seaport, points out in a memorandum of October 31, 1984, that because the record before us does not address the issue of the acceptability, under section 402(b)(2)(B) of the TAA, of the transfer prices between the related parties, transaction value has not been established. Concerning the compensation paid to the manufacturer due to the failure of the importer to purchase the contracted minimum quantity of gasoline engines, the Chief of the Commercial Operations Branch I concludes that these amounts are part of the dutiable value of the imported merchandise under section 402(f) of the TAA. This conclusion is based upon the following analysis:

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> The base selling price of the engines is subject to adjustments. All these adjustments are based upon delivery dates and numbers purchased. It is our opinion that these are not transfer prices or estimates envisioned by TAA #25; nor can these adjustments be termed 'retroactive.' It is our opinion that the price paid or payable is arrived at in terms of the full value of the three-year contract and is not divisible in terms of invoice unit values.

We note initially that your office has not raised or otherwise addressed the issue of the acceptability of the transfer prices between the related parties in this case. As there is insufficient information in the record for us to make a determination regarding this issue, we will assume, for purposes of this decision, that your office is satisfied that the agreements between the parties reflected arms-length negotiations and, therefore, that the transfer prices are acceptable within the meaning of section 402(b)(2)(B) of the TAA.

As you are aware, the words "price actually paid or payable" in the definition of transaction value are themselves defined in section 402(b)(4)(A) of the TAA as:

> ... the total payment (whether direct or indirect ...) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

We believe it is significant that the gasoline purchase agreement refers to a "base selling price," which is the unit price reflected on the invoices that accompanied the engine shipments to the United States. As explained earlier, the agreement provides that if the importer fails to purchase the specified minimum quantity of engines in any given model year, the importer shall pay the manufacturer, in addition to the "base selling price," "a compensation amounting to" a certain amount for each engine below the specified minimum quantity that is not purchased during that model year. In our opinion, the term "base selling price" clearly implies that it is not a firm price but is subject to certain adjustments such as the additional compensation required in the event the minimum quantity of gasoline engines is not purchased. Thus, the agreement essentially provides that the

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final unit purchase price for the engines that are purchased during a model year will not be known until the the number of engines actually purchased during that year is known. This conclusion recognizes that in many business transactions the quantity of merchandise purchased is a significant factor in the determination of the unit price for that merchandise.

Consequently, while the additional compensation required as a result of the importer's failure to purchase the contracted minimum quantity of engines was computed on the basis of a specific amount for each engine below the minimum quantity that was not purchased, we believe that, for the reasons explained above, there is a direct relationship between this additional compensation and the gasoline engines that were purchased (and imported). Therefore, we conclude that the additional compensation required in connection with the purchase of gasoline engines during the 1983 model year is properly part of the price actually paid or payable for the imported gasoline engines.

We also disagree with the alternative argument advanced by counsel for the importer that the additional compensation must be disregarded since it represents a change in the price which was arrived at after the merchandise was imported. We have consistently held in this regard (see TAA #47 and rulings dated September 13, 1984 (543358), and March 30, 1984 (543252)), that where the buyer and seller agree, prior to exportation of the merchandise, to a fixed formula pursuant to which adjustments, either upward or downward, are to be made to the invoice price, those adjustments will be taken into consideration in determining the price actually paid or payable. The "base selling price" and the adjustments thereto set forth in the gasoline purchase agreement clearly were agreed to prior to exportation of the engines to the United States.

However, it is also clear that the settlement agreement was entered into subsequent to the importation of the gasoline engines during the 1983 model year. As we have no reason to believe that the parties did not view the pricing formula set forth in the purchase agreement as representing a fixed formula at the time the agreement was executed, we believe that a price determined in accordance with that formula constitutes the "price actually paid or payable for the merchandise when sold for exportation to the United States." (Emphasis added; see TAA #48). Thus, the amount of

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the additional compensation to be included in transaction value should be calculated on the basis of the provisions of the gasoline engine purchase agreement rather than on the basis of the provisions of the settlement agreement. This amount should be apportioned equally over the number of engines actually imported during the 1983 model year.

In regard to the amounts that were paid by the importer to the manufacturer in connection with the failure of the importer to purchase any diesel engines during the 1983 model year, we agree with counsel for the importer that these amounts are not dutiable inasmuch as the diesel engines were subject to a separate purchase agreement and none were, in fact, imported.

Harvey B. Fox

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DATE: NOV 06 1985

FILE: CLA-2 CO:R:CV:V
543456 CW

TO : District Director of Customs
Detroit, Michigan 48226-2568

FROM : Director, Classification and Value Division
Headquarters

SUBJECT: Internal Advice No. 113/84; Valuation of Automobile Engines Purchased by Chrysler Corp. from Mitsubishi

This is in reference to your memorandum of October 3, 1984, received in this office on November 28, 1985, which forwarded the above-referenced internal advice request initiated by Chrysler Corp. (the importer). The issue under consideration concerns whether amounts paid by the importer to the seller, Mitsubishi Motors Corporation of Japan, a related company, as a result of the importer's failure to purchase a contracted minimum quantity of engines are dutiable as part of transaction value, section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

The facts are that in 1975 the importer and manufacturer entered into an engine purchase agreement which provided that the importer would purchase a specified minimum quantity of engines for each model year from 1981 through 1985. If the importer failed to purchase the minimum quantity during any one of those model years, the agreement required the importer to pay the seller liquidated damages equal to 22 percent of the engine price in effect on March 1 of the applicable model year "multiplied by the number by which (the importer's) purchases of engines is less than" the minimum quantity for that year. According to the agreement, the 22 percent figure consists of a 4 percent non-reimbursable amount and an 18 percent amount which would be repaid by the seller in subsequent years to the extent that the importer purchased more than the minimum number of engines in those later years.

Because the importer did not purchase the minimum number of engines during the 1981 model year, it was required to pay the seller in excess of $9 million in liquidated damages. In the opinion of your office, the unit price reflected in the invoices which accompanied the engine shipments to the United

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States was based on a quantity discount given in anticipation of purchases of a specified minimum quantity. Consequently, when the importer failed to qualify for this discount price, additional payments became due as provided for in the purchase agreement. Generally speaking, your office believes that these additional payments are dutiable as part of transaction value. However, you indicate that if the 18 percent reimbursable amount is subsequently repaid by the seller, that amount should not be dutiable.

Counsel for the importer contends that the liquidated damage payments are not part of the price actually paid or payable for the imported merchandise for the reason that these payments relate to engines that were not purchased rather than to engines that were purchased and imported. Counsel further maintains that a review of the agreement itself indicates that the parties did not intend for the liquidated damages to be part of the price paid or payable for the engines. Counsel states in this regard that Part 3 of the agreement, entitled "Prices and Payment," sets forth the actual pricing for the engines while Part 2, a totally separate provision from the pricing portion of the agreement, provides for the payment of damages in the event minimum quantities are not purchased. Finally, counsel states that even assuming the additional payments do affect the price of the imported engines, "the holding of TAA #48 make it clear that subsequent adjustments to prices originally thought to be firm do not alter the transaction value estimated on the actual unit sale prices."

The Chief, Commercial Operations Branch I, New York Seaport, believes that both the reimbursable and non-reimbursable liquidated damage payments are part of dutiable value since the various provisions in the agreement providing for the payment of compensation from the importer to the seller assure the seller's "recovery of the cost of producing the engines plus a profit commensurate with the production run." However, the Chief, Commercial Operations Branch I, indicates that "the price paid or payable is arrived at in terms of the full value of the (multiple-year) contract and is not divisible in terms of invoice unit values."

As you know, the words "price actually paid or payable" in the definition of transaction value are themselves defined in section 402(b)(4)(A) of the TAA as:

> ... the total payment (whether direct or indirect ...) made, or to be made, for imported

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merchandise by the buyer to, or for the benefit of, the seller.

We believe that the following provision of the engine purchase agreement is pertinent to a determination of whether the additional compensation paid as a result of the failure of the importer to purchase the minimum quantity of engines during the 1981 model year is part of the purchase price of the imported engines:

> In the event that (the importer) fails to purchase the minimum number of Engines set forth above, because of the major investment in plant and equipment which (the seller) must make in order to produce the Engines required by this Agreement, the improbability of finding alternative purchasers for the Engines specially manufactured, ... and in light of the uncertainty in determining the profits which (the seller) would have made and the costs and incidental damages which (the seller) would have avoided but for such failure, the parties have considered and agreed that, as an essential condition to (the seller's) willingness to sell Engines at the prices provided for herein, the following payments, representing fair and reasonable compensation for (the seller's) anticipated losses, will be made by (the importer) to (the seller) as liquidated damages and not as penalties with respect to the number of units by which (the importer's) purchases of Engines with respect to any model year are less than the minimum quantities specified above ....

As you point out in your October 3, 1984, memorandum, it is clear from the underscored portion of the above-quoted provision that the invoice unit price for the imported merchandise was established based on the premise that the minimum quantity of engines would be purchased. Of course, if this premise proved to be incorrect, the agreement required the importer to pay the seller certain amounts as liquidated damages in addition to the invoice unit values. Thus, the agreement essentially created a pricing formula pursuant to which a base price (the invoice unit price) for the imported merchandise was established which was subject to an upward adjustment at the end of the model year to the extent that the importer's actual purchases during the year were less than the specified minimum quantity. This construction recognizes that in many business transactions the quantity of merchandise purchased is a significant factor

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in the determination of the unit price for that merchandise.

Consequently, while the additional compensation paid as a result of the importer's failure to purchase the contracted minimum quantity of engines was computed on the basis of a specific amount for each engine below the minimum quantity of engines that was not purchased, we believe, for the reasons explained above, that there is a direct relationship between this additional compensation and the engines that were purchased and imported during the 1981 model year.

We also disagree with the alternative argument advanced by counsel for the importer that the additional compensation must be disregarded since it represents a change in the price which was arrived at after the merchandise was imported. We have consistently held in this regard (see TAA #47 and rulings dated September 13, 1984 (543358), and March 30, 1984 (543252)), that where the buyer and seller agree, prior to exportation of the merchandise, to a fixed formula pursuant to which adjustments, either upward or downward, are to be made to the invoice price, those adjustments will be taken into consideration in determining the price actually paid or payable. The invoice unit price and the adjustments thereto set forth in the purchase agreement in this case clearly were agreed to prior to exportation of the engines to the United States.

We understand that in regard to certain model years subsequent to 1981, the importer purchased in excess of the minimum quantity requirements and, as a result, the seller has repaid most, if not all, of the reimbursable liquidated damages paid by the importer in connection with purchases during the 1981 model year. Generally speaking, in situations in which the price paid or payable is determined by application of a formula which is agreed to by the parties prior to exportation of the merchandise, we believe that, in view of the one-year statutory liquidation period, the final purchase price for the merchandise should be ascertainable within one year of the date of entry. In other words, the one-year statutory liquidation period should not be extended in regard to a particular entry soley to enable an adjustment to be made to the invoice price pursuant to an agreed-upon pricing formula. While the repayments of the reimbursable liquidated damages in this case apparently were made more than one year after the dates of entry of the subject imported engines, it is our opinion that these repayments should be taken into consideration in appraising the engines

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imported during the 1981 model year since liquidation of the affected entries has been suspended pending resolution of this internal advice request.

Based on the foregoing, we conclude that the additional compensation paid by the importer to the seller as a result of the former's failure to purchase the contracted minimum quantity of engines during the 1981 model year is properly part of the price actually paid or payable for the engines purchased and imported into the United States during that model year. This additional compensation, which includes both the 4 percent non-reimbursable amount as well as that portion of the 18 percent reimbursable amount which has not been repaid to the importer as of the date of this decision, should be apportioned equally over the number of engines actually imported during the 1981 model year.

(Signed) Harvey B. Fox

Harvey B. Fox

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CLA-2 CO:R:CV:V
543467 MK

APR 1 1985

Mr. Subash Agarwal
Director - Customs Department 733X
Sears, Roebuck & Company
Sears Tower
Chicago, Illinois 60684

Dear Mr. Agarwal:

This refers to your letter of December 18, 1984, requesting a ruling on the dutiability of certain royalty and commission payments on shoes imported from Korea under the following circumstances.

Sears has contracted for the purchase of children's jogging shoes with the "Go-Bots" name, manufactured by Kukje Corporation, Korea, at an F.O.B. Korea price of $5.10 per pair. Sears agreed to pay Chadwick Industries (located in the U.S.) a royalty of 10 percent (51¢ per pair) for the use of the "Go-Bots" trade name, and a commission of 10 percent directly. This commission represents Chadwick's fee to Sears for development and styling of the shoe, and also includes Chadwick's profit. Chadwick is a licensee of the trademark owner, also a U.S. Company. Chadwick, Sears, and Kukje are not related.

Chadwick does import the same shoe from different manufacturers, mostly from sources other than Kukje, and offers them for sale in the United States, either as a principal or in an arrangement similar to that with Sears. However, in the Sears transactions, Chadwick has none of the risks associated with that of a principal. It merely charges a fee for development of the shoe, which includes a profit, and another fee for use of the "Go-Bots" name. Sears assumes all the risks of a buyer.

Through its offices in Korea, Sears conducts the liaison work with the manufacturer to arrange for the transfer of funds and for shipment of the merchandise.

Kukje is a long-standing supplier of shoes to Sears. In fact, Sears insisted to Chadwick that Kukje be the manufacturer of these shoes due to their long-standing business relationship and Sears' satisfaction with Kukje's quality levels, notwithstanding the fact that Kukje's prices were higher than prices Chadwick could have obtained from other manufacturers. Sears was aware of that fact.

Chadwick negotiated the F.O.B. price in conjunction with Sears, with the understanding that certain royalties and commissions would be paid to Chadwick. Chadwick does not share any portion of the commission or royalty fees with Kukje.

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You contend that neither the royalty nor the commission is dutiable. The royalty is non-dutiable because it is payable to an unrelated third party for the right to sell "Go-Bots" shoes and is not a condition of the sale of such shoes by the manufacturer to Sears.

The commission is non-dutiable because Chadwick is not related to the manufacturer, is neither controlled by nor works on behalf of the manufacturer, and does not share any of its commissions with the manufacturer. The commission is not a selling commission and therefore should not be considered as an addition to the price paid or payable to the manufacturer.

Furthermore, Chadwick should not be considered as a "seller" in this transaction because it does not assume any of the risks normally borne by a seller in a buyer/seller relationship.

You also contend that this commission is not a buying commission because Chadwick provides no agent services to Sears other than what they did on Sears' behalf to arrive at a final negotiated price. You describe the commission as being consideration for developing the idea of a "Go-Bots" shoe into a marketable product, and you analogize the fees to development, design and/or marketing fees, expenses which Sears would have had to undertake to develop, promote, and sell the product in the United States. Such "selling expenses" are considered to be non-dutiable.

Under the foregoing circumstances, we agree that the royalties and commissions are not part of transaction value, for the reasons you present.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY - U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

APR 15 1985

CLA-2 CO:R:CV:V
543498 MK

District Director of Customs
Seattle, Washington 98174

Dear Sir:

Re: Application for Further Review of Protest No. 3002-4-000002, dated January 16, 1984

This protest was filed against your appraisement of a shipment of canned mushrooms sent from the Peoples Republic of China (PRC) to Universal Products (Impex), Ltd. (UPL) of Hong Kong, which sold the merchandise to the importer, Nature's Farm Products, Inc.

You appraised the merchandise under transaction value, represented by the invoice price from UPL to the importer, less ocean freight from Hong Kong to the United States. The invoice price included ocean freight from the PRC to Hong Kong and related handling charges.

The importer's customhouse broker contends that the merchandise should have been appraised at invoice value less freight, insurance, and related charges from the PRC to Hong Kong, as well as the freight from Hong Kong to the United States.

Section 402(b)(4)(A) excludes from the price actually paid or payable any costs, charges, or expenses incurred for transportation, insurance, and related services, incident to the international shipment of the merchandise from the country of exportation to the United States.

The issue is whether the country of exportation was the PRC or Hong Kong.

In TAA #57 we ruled that when there are two or more transactions which might give rise to a transaction value, the one which most directly causes the merchandise to be exported to the United States is the one to be used in determining transaction value. Clearly, here the transaction which most directly caused the merchandise to be exported to the United States was the sale from UPL to the importer. In fact, that is the only sale which is documented in the file. There is no information at all concerning the transaction that caused the merchandise to be exported from the PRC to Hong Kong, and no evidence that at the time of that exportation the merchandise was destined for the United States.

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The invoice price from UPL to the importer included itemized charges for ocean freight, insurance and related costs from the PRC to Hong Kong. We conclude that the invoice price, deducting therefrom only the ocean freight from Hong Kong to the United States, represents transaction value.

Please deny the protest in full and send the protestant a copy of this decision with your notice of action on the protest.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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SURNAME			

DATE: NOV 26 1985

FILE: CLA-2 CO:R:CV:V
543544 BG

TO : District Director of Customs
Seattle, Washington 98174

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice With Regard to Transactions Between a Parent Corporation in Canada and its Subsidiary in the United States

This is in reference to your memorandum requesting advice on the proper valuation of certain roofing material imported to the United States from Canada. The merchandise is manufactured in Italy by Polyglass S.P.A., and exported to Ciro Roofing Products of Canada Limited in Vancouver, B.C., Canada, (hereinafter parent corporation; seller). The merchandise is then allegedly sold to Ciro Roofing Products U.S.A., Inc., a subsidiary of Ciro-Canada, located in Bothell, Washington, with its principal office in Reno, Nevada, (hereinafter referred to as subsidiary, buyer). The consignee is Georgia-Pacific Corporation with offices in Woodinville, Washington, and various other locations throughout the United States.

The parent corporation states that its subsidiary receives purchase orders from the consignee. Merchandise is supplied to the consignee from the subsidiary's Chicago plant where a portion of the merchandise is manufactured. When this stock is not available, it is alleged that the merchandise is supplied by the parent corporation. If the merchandise is available, it is allegedly sold by the parent corporation to the subsidiary at cost plus a 7 percent markup to cover expenses. The consignee then pays the subsidiary. Payment by the subsidiary is subsequently remitted to the parent corporation. Accounting for both the Canadian and the U.S. office is done in Canada, although separate books and bank accounts are maintained. It is further alleged that sales from the parent to the subsidiary are F.O.B. Vancouver, in U.S. funds. The subsequent sale between the subsidiary and the consignee is F.O.B. Seattle, Washington, and includes Customs duties, brokerage, and a markup for general expenses and profit.

It is alleged that the proper method of valuation in this case is transaction value under section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), as represented by the sale price between the parent corporation and the subsidiary. The parent corporation indicates that this is proper, even though the parties are related, and relies upon section 402(b)(2)(B) which states:

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> The transaction value between a related buyer and seller is acceptable... if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates —
>
> (i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States; ....

It is further alleged that the value of the merchandise in question is actually higher than that of identical merchandise. Thus, the proper method of valuation is allegedly transaction value, i.e., the price actually paid or payable for the imported merchandise between the parent corporation and the subsidiary.

The issue in this case is whether the transactions between the parent corporation and its subsidiary, constitute bona fide sales. We agree with your conclusion that the transactions do not constitute bona fide sales as alleged.

The transaction value of imported merchandise is defined in section 402(b) as "the price actually paid or payable for the merchandise when sold for exportation to the United States," plus amounts for the items enumerated in section 402(b)(1). Therefore, the "price actually paid or payable" must be derived from an actual sale. The word "sale" generally is defined as a transfer of ownership in property from one party to another for a price or other consideration. See J. L. Wood v. United States, 62 CCPA 25, C.A.D. 1129 (1974), and J. H. Cottman & Co. v. United States, 20 CCPA 344, T.D. 46114 (1932).

The evidence in the instant case indicates that the subsidiary does not act as an independent entity. For example, telephone calls placed to the phone number of the subsidiary are automatically rerouted to the parent corporation, and answered by staff of the parent corporation. There is evidence available which indicates that on more than one occasion, the parent invoiced its subsidiary and the ultimate purchaser at the same time for the same order, with payment to be made directly from the ultimate purchaser to the parent. In this situation, it is clear that there was no transfer of ownership in property between the parent and the subsidiary, but rather, the transfer of ownership occurred between the parent corporation and the ultimate U.S. purchaser. In the situation where the ultimate purchaser does in fact pay the subsidiary for the merchandise, there is no evidence which indicates that the subsidiary retains any profit prior to remitting the funds to the parent corporation.

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In light of the facts and circumstances viewed in their entirety, we agree with your position that the proper method of appraisement is transaction value, as represented by the price actually paid or payable for the imported merchandise by the ultimate U.S. purchaser.

(Signed) Harvey B. Fox

Harvey B. Fox

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27 AUG 1985 CLA-2 CO:R:CV:V
543551 CW

John B. Pellegrini, Esq.
Ross & Hardies
220 East 42nd Street
New York, New York 10017

Dear Mr. Pellegrini:

This is in response to your letter of May 22, 1985, in which you request a ruling on behalf of Enro Shirt Company concerning the dutiability under transaction value, section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), of certain purchasing expenses.

You state that your client presently purchases various articles of wearing apparel from factories located principally in the Far East. Under current procedures, the factories use fabric purchased from suppliers designated by your client at prices determined by negotiations between your client and the fabric suppliers. The invoice price between each factory and your client for imported merchandise consists of a negotiated price encompassing the cut, make and trim (CMT) operation as well as the purchase price of the fabric plus a markup. The CMT charges include the cost of materials and components (other than fabric) which are purchased directly by the factories.

Your client proposes to restructure these arrangements so that the price negotiated between your client and the factories is limited to the cut, make and trim operation. The factories would be reimbursed at cost for the purchase of the fabric and the purchase orders from your client to the factories would separately reflect the CMT charges and the reimbursement for fabric. Your client further proposes to enter into a separate service agreement with each factory pursuant to which your client would compensate the factories for services rendered in connection with the purchase of fabric. These services would include checking production, scheduling delivery, and inspection. The compensation to the factories for performing these services would be a percentage of the purchase price of the fabric. You also indicate that the amounts due under the service agreement would be paid on a periodic basis rather than against particular shipments of imported merchandise.

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In your opinion, if the proposed procedure is implemented, the price paid or payable for the imported articles would consist of the sum of the CMT charges and the reimbursement cost of the fabric. The amounts which would be paid to the factories pursuant to the service agreements for services rendered in connection with the purchase of fabric would not, in your opinion, form part of the price paid or payable for the merchandise. You state that the proposed transaction described in your request is similar in all material respects to the arrangement described in TAA #52 dated September 21, 1982 (542831). We concluded in that ruling that:

> ... the payments which would be made pursuant to the service agreement would not be directly related to the imported merchandise. Payments would be made periodically and not tied to the sale for exportation of any specific merchandise. Accordingly, we find that the payments in question would not be part of the "price actually paid or payable," and, therefore, would not be part of the transaction value of the merchandise.

We agree with you that our holding in TAA #52 is controlling with respect to the proposed transactions described in your letter. Therefore, assuming that the arrangement described in your letter is implemented, we believe that payments from your client to the factories pursuant to the service agreements would not form part of the transaction value of the imported merchandise.

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If this letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

(Signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

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23 AUG 1985

CLA-2 CO:R:CV:V
543556 CW

S. Richard Shostak, Esq.
Stein Shostak Shostak & O'Hara
3580 Wilshire Boulevard, Suite 1240
Los Angeles, California 90010

Dear Mr. Shostak:

This refers to your letter of June 7, 1985, with enclosures, on behalf of Ford Motor Company. You request a ruling on the dutiable status of certain capital equipment used in producing automobile parts in Canada for Ford, and the applicability, if any, of our ruling in C.S.D. 83-3.

In the instant situation, Ford paid the manufacturer to have a third party manufacture tools for Ford, which at all times retained title to and ownership of the tools. The Canadian manufacturer then used the tools free of charge to manufacture the parts for Ford. Documents you enclosed substantiate these facts.

C.S.D. 83-3 involved certain valves which an importer contemplated having manufactured abroad. The manufacturer would build special tools for this purpose and the importer would reimburse the manufacturer for the cost of manufacturing the tools.

In our ruling, we referred to the statutory definition of the term "assist" contained in section 402(h)(1)(A) which provides in part that:

> (1)(A) The term 'assist' means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:
>
> * * *
>
> (ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

We then concluded that the tools in question would not come within the statutory definition of "assists" because they would not be supplied by the buyer. Instead, the importer's proposed reimbursement of the manufacturer would be dutiable as part of the price actually paid or payable for the imported merchandise.

Customs officers at Champlain determined that C.S.D. 83-3 was controlling in this case, whereas you contend that there are substantial differences between the facts in that decision and those you present.

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You point out that in the prior case the manufacturer made the tools, but the record was wholly silent regarding their ownership. You contend that the ruling in C.S.D. 83-3 is correct if, but only if, the ownership of the tools remained with the manufacturer. If the importer owned the tools, they were assists, the cost of which could be amortized.

You further contend that the tools in issue come squarely within the statutory definition of the term "assists." They are purchased separately by the importer and are manufactured by a third party, are owned by the importer of the product being manufactured therewith and are not part of the price paid to the manufacturer for the imported merchandise. The tools belong to the importer-purchaser, were given free of charge to the manufacturer to manufacture the goods being purchased, and are subject to return to the purchaser upon request.

In C.S.D. 83-3, it was implied, though not specifically stated, that the manufacturer would own the tools. We agree with you that the facts in that ruling are distinguishable from those you present, wherein the importer paid a third party to manufacture the tools and retained title to them. Under these circumstances, the tools come within the statutory definition of assists and their costs can be amortized under generally accepted accounting principles.

We are sending a copy of this decision at the District Director at Champlain for his information and future guidance.

Sincerely,

(Signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

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AUG 30 1985

CLA-2 CO:R:CV:V
543584 CW

Mr. Ralph S. Kilp
John V. Carr & Son, Inc.
P.O. Box 479-A
Detroit, Michigan 48232-0479

Dear Mr. Kilp:

This is in response to your letter of July 10, 1985, in which you request a ruling concerning the dutiability of certain engineering work produced in the United States. You state that your company represents a number of Canadian firms which manufacture tools for export to the United States. In producing the tools, these firms frequently purchase the required design and engineering work from outside vendors, both in Canada and the United States.

While you believe that the cost of the purchased engineering obtained in Canada is undoubtedly part of the dutiable value of the tools, you ask whether the cost of the purchased engineering work obtained in the United States is also dutiable.

We are assuming, for purposes of your request, that transaction value, the primary basis of appraisement under the valuation statute, section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), is applicable to the imported tools. We are also assuming that the tool manufacturers do not obtain the engineering work at reduced cost.

Transaction value essentially is defined in section 402(b) of the TAA as the price actually paid or payable for the imported merchandise when sold for exportation to the United States. Thus, the cost of design and engineering work purchased by a Canadian seller from vendors in the United States or Canada is dutiable only to the extent that that cost is included in the price actually paid or payable for the imported tools by the importer to the Canadian seller. If, for some reason, the cost of the design and engineering

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CODE AND DATE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME							
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

work is not included in the price for the imported tools, there is no authority for adding that cost to the price actually paid or payable for purposes of determining dutiable value.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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END

NOV 13 1985

CLA-2 CO:R:CV:V
543559 CW

Mr. Richard Moreland
Director, Countervail Compliance
Import Administration
International Trade Administration
Department of Commerce
Washington, D.C. 20230

Dear Mr. Moreland:

By letter of June 10, 1985 (copy enclosed), R. Brian Burke, Esq., representing the M. I. Group of Manhattan Industries, Inc., requested a ruling from this office concerning the manner in which the Customs Service determines the "ad valorem value" of wearing apparel subject to a countervailing duty order for purposes of ascertaining the amount of estimated countervailing duties which must be deposited pursuant to Section 706(a)(3) of the Tariff Act of 1930, as amended (U.S.C. 1671e(a)(3)). It is our opinion, for the reasons set forth below, that the issue raised by Mr. Burke should properly be addressed by your office.

Mr. Burke specifically refers to a a final affirmative countervailing duty determination and order, published as a notice in the Federal Register on March 12, 1985 (50 FR 9826), relating to certain textile mill products and apparel from Sri Lanka. The notice provides that the "... estimated net bounty or grant for duty deposit purposes is ... 3.06 percent ad valorem for apparel" and directs the Customs Service "... to require a cash desposit in the amount indicated above for each entry of the subject merchandise from Sri Lanka ... and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act."

According to Mr. Burke, his client (hereinafter referred to as "importer") plans to purchase certain wearing apparel from a Hong Kong company which will place an order for the apparel with a related manufacturer in Sri Lanka. The merchandise produced by the manufacturer will be shipped directly to the importer in the United States and will be accompanied by an invoice prepared by the manufacturer which will reflect the F.O.B. Sri Lanka price. A second invoice relating to this transaction will be prepared by the Hong

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Kong company and will reflect the costs it incurred in processing the order plus its usual profit on the transaction. The importer will pay both invoices.

Counsel contends that when his client's wearing apparel is imported from Sri Lanka, the amount of the cash deposit to be required by the Customs Service as representing estimated countervailing duties should be calculated based only on the Sri Lanka manufacturer's invoice price, and that the Hong Kong company's invoice should not be included in this calculation. Mr. Burke bases this contention on the fact that, pursuant to section 303(a)(1) of the Act (19 U.S.C. 1303) and section 702(a)(1) of the Act, the countervailing duty to be imposed in connection with the importation of merchandise subject to a final affirmative determination and order shall equal the net amount of the "bounty or grant" that was paid or bestowed. Counsel points out in this regard that as the Government of Sri Lanka confers its bounty or grant upon the Sri Lankan manufacturer, and your office calculates the estimated amount of the net bounty or grant, in percentage terms, based upon the F.O.B. Sri Lanka prices, the amount of the cash deposti should also be based upon the F.O.B. Sri Lanka prices.

As noted earlier, the referenced Federal Register notice provides that the "... estimated net bounty or grant for duty deposit purposes is ... 3.06 percent ad valorem for apparel." We understand that written instructions issued to the Customs Service pursuant to this order utilize this same language. In the absence of language indicating a contrary intention, this agency interprets the words "3.06 percent ad valorem" to mean that this percentage should be applied against the appraised value of the imported merchandise, as determined in accordance with the valuation statute, section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a).

On the basis of Mr. Burke's description of the prospective transactions involving his client, it is our opinion that the appraised value of the subject wearing apparel would include the amounts reflected on both the manufacturer's invoice and the Hong Kong company's invoice. Consequently, in calculating the amount of the cash deposit to be required, pursuant to the referenced Federal Register notice, for wearing apparel imported by Mr. Burke's client, this agency will apply the 3.06 percent against the full

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appraised value of the merchandise.

The Customs Service, of course, is without authority to require a cash deposit of estimated countervailing duties in any amount other than that which is specified in the final affirmative countervailing duty order. Therefore, to the extent that you may agree with Mr. Burke that requiring a cash deposit for his client's importations based upon the full appraised value of the merchandise would be inconsistent with sections 303(a)(1) and 702(a)(1) of the Act, we suggest that your office may wish to consider an amendment to or a clarification of the instructions to this agency concerning the amount of the cash deposit to be required for such importations.

We have notified Mr. Burke that his letter has been forwarded to your office for consideration of the issue raised therein. If you have any questions concerning this matter, please contact Craig Walker of this office at 566-2938.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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03 SEP 1985

CLA-2 CO:R:CV:V
543581 CW

Mr. Randall F. Andrews
Industrial and Agricultural Chemicals Inc.
Route 2, Box 521-C
Red Springs, North Carolina 28377

Dear Mr. Andrews:

This is in reference to your letter of May 13, 1985, to the Area Director of Customs, New York Seaport, concerning the dutiable status of copper ammonium acetate from Canada. You advised that your company is obtaining this product free of charge. In his response to you of June 24, 1985, the Area Director stated that your letter was being referred to Headquarters for consideration of the issue of the dutiable value of the subject merchandise.

As you are probably aware, the primary basis of valuation for imported merchandise is transaction value, which is defined in section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), as "the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts" for certain specified items to the extent they are not already included in that price. Although you are obtaining the copper ammonium acetate free of charge, it is clear that the product has some value when it arrives in the United States. Consequently, since there is no "price actually paid or payable" for the merchandise, transaction value cannot be determined and is eliminated as the basis of appraising the merchandise.

Under these circumstances, the valuation statute provides that the appraised value shall be determined by proceeding sequentially through the alternative bases of appraisement to the first such basis that can be determined. These alternative bases, listed in order of precedence for use, are: transaction value of identical or similar merchandise, section 402(c) of the TAA, deductive value, section 402(d), and computed value, section 402(e).

Sincerely,

(Signed) J. T. Rozh

~~For Harvey B. Fox~~
Director, Classification
and Value Division
~~cc: Operations, Branch 2, NY Seaport~~

1/85

CORRESPONDENCE APPROVAL AND CLEARANCE

CLA-2 CO:R:CV:V
10 SEP 1985 543600 CW

Mr. Mort Weissman
Senior Vice President
Heloros Watches Inc.
330 West 34th Street
New York, New York 10001

Dear Mr. Weissman:

This is in response to your letter of July 16, 1985, in which you inquire concerning the dutiability of freight charges involved in the shipment of watch bracelets from Hong Kong to your subsidiary company, located in the United States Virgin Islands.

As we understand the facts involved in these transactions, watch bracelets purchased from a Hong Kong supplier by your subsidiary in the Virgin Islands are shipped from Hong Kong to your subsidiary's plant in the Virgin Islands where they are assembled with movements, dials and cases. You indicate that upon importation of the assembled articles into the United States, your company pays duty on the cost of the bracelets only, which includes the freight charges involved in shipping the bracelets from Hong Kong to the Virgin Islands. You maintain that the inclusion of these freight charges in dutiable value is "unfair" considering that when you import bracelets directly to the United States from Hong Kong, ocean freight charges are not included in dutiable value.

The primary basis of appraisement for imported merchandise under the valuation statute, section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), is transaction value (section 402(b) of the TAA) which essentially is defined as the price actually paid or payable for the imported merchandise when sold for exportation to the United States. Section 402(b)(4)(A) of the TAA provides for the exclusion from "the price actually paid or payable," and, therefore, from transaction value, of expenses incurred in connection with the international shipment of the merchandise from the country of exportation to the United States.

Under the circumstances of this case, it is clear that the "country of exportation" of the imported assembled articles is the U.S. Virgin Islands and not Hong Kong. Thus, while section 402(b)(4)(A) permits the exclusion from the

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price actually paid for the imported assembled articles of those charges involved in shipping the assembled articles from the Virgin Islands to the United States, no such exclusion is permitted for the charges involved in shippng the bracelets from Hong Kong to the Virgin Islands. Of course, in those instances in which bracelets are shipped directly from Hong Kong to the United States, the country of exportation of the imported articles (i.e. bracelets) is Hong Kong and, therefore, the charges involved in shipping the bracelets from Hong Kong to the United States is deducible from the price actually paid or payable for the merchandise.

If you have any questions concerning the above explanation, please contact Craig Walker of this office at (202) 566-2938.

Sincerely,

(Signed) J. T. Roth

for Harvey B. Fox
Director, Classification
and Value Division

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DEC 4 1985

CIA-2 CO:R:CV:V
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District Director of Customs
Chicago, Illinois 60607

Re: Decision on Application for Further Review of Protest No. 3307-5-000004

Dear Sir:

This protest was filed against your decision in the liquidation on January 4, 1985, of Entry No. 103084 dated November 5, 1984, covering a shipment of computer software.

Regarding the classification issue, companion hardware or software which is imported with its accompanying computer is classified as an entirety in the various data processing machine provisions, when it has been shown to form a complete article of commerce with the computer and will so be used.

The facts here indicate that this IDA-XP protocol analyzer is designed for complete, real-time emulation and analysis of high-level protocols (communications). Test pak software is separately packaged and is available as an option which provides additional protocols to analyze. As such, the purchasers may choose their own specific protocol which needs to be emulated and then analyzed. Such a process indicates that these test paks are not essential for the operation of the protocol analyzer itself.

Accordingly, we find that the protocol analyzer can function for its intended use without the optional test pak software. Thus, it is our determination that this software is classifiable separately under the provision for media recorded on magnetic tape or any medium other than wire in item 724.40, Tariff Schedules of the United States (TSUS). As such, this item is entitled to duty-free entry in item 960.65, TSUS. You are thus directed to accept this protest with regard to the classification issue.

The increase in value by 14 percent is also being protested by the importer. The protesting party contends that the goods in question are sold by Idacom Electronics, Inc. in Canada (seller; parent coporation) to their U.S. office in New Brunswick, New Jersey (buyer; subsidiary). It is alleged that the U.S. office increases the price by 14 percent in order to cover the cost of operation and profit, and that this increase is not returned to the Canadian office.

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The first issue to be resolved is whether or not bona fide sales actually take place between these two related parties. We find no evidence indicating that the transactions do not represent bona fide sales. In J. L. Wood v. United States, 62 CCPA 1139 (1974), the court held that the term "sale" should be given its ordinary meaning, that being, "transfers of property from one party to another for consideration." Applying this definition to the instant case, we find that the transactions at issue constitute bona fide sales. The subsidiary appears to be a separate, legal entity. The parent corporation invoices the subsidiary for the merchandise, and payment is subsequently made back to the parent. The fact that the shipment of imported merchandise may be shipped from the foreign manufacturer to the ultimate consignee is a common business practice. Therefore, this is not viewed as evidence that there are no bona fide sales between the two related parties.

Secondly, the proper method of appraisement of the merchandise must be determined. In regard to transaction value, because the two parties are related, the following provision of section 402(b) of the Trade Agreements Act governs:

> The transaction value between a related buyer and seller is acceptable... if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates --
>
> "(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States;
>
> "(ii) the deductive value or computed value for identical merchandise or similar merchandise;...

The evidence in the instant case indicates that the relationship between the buyer and seller did in fact influence the price paid or payable for the merchandise. The price for the merchandise sold by the parent corporation to the subsidiary is 14 percent lower than the price paid by other purchasers. We have no information regarding transaction value of indentical or similar merchandise in sales to unrelated buyers or of the other "test values" enumerated above. Therefore, the price is not acceptable within the meaning of section 402(b)(2)(B) of the TAA.

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Since in this case transaction value pursuant to section 402(b) cannot be determined, value should be determined by proceeding sequentially through the succeeding provisions enumerated in section 402(a)(1) of the TAA, until a method of appraisement can be satisfactorily determined.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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OCT 01 1985

CLA-2 CO:R:CV:V
543616 BG

Frank J. Desiderio, Esq.
Grunfeld, Desiderio, Lebowitz
& Silverman
Two World Trade Center, Suite 2238
New York, New York 10048-0654

Dear Mr. Desiderio:

This is in response to your letter of August 16, 1985, on behalf of Jones Apparel Group Inc., (importer), in which you request a binding ruling that buying commissions and quota charges will not be included in the transaction value of imported merchandise under section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

You state that the importer plans to utilize the services of Murjani Industries, Ltd. (buying agent) with respect to the importation of certain merchandise. You indicate that the buying agent will perform routine buying agency functions, and that the importer will pay the buying agent a commission for these services. You rely on Headquarters ruling 542603 dated October 30, 1981, which held that buying commissions paid by Murjani International, Ltd. (Importer) to Murjani Industries, Ltd., (the same buying agent herein) were nondutiable as long as no portion of these fees were remitted to the manufacturer/seller. In the instant case, you state that the buying agent will provide the same services as those described in the prior ruling.

You describe the arrangement between the importer and the buying agent as one whereby the buying agent will be under the express direction and control of the importer. All manufacturers will be advised that orders placed by this particular buying agent are done so on behalf of the importer. You further indicate that a portion of the merchandise to be imported will originate from factories which are totally unrelated to the buying agent's family interests. However, merchandise will also originate from factories in which one family member of the buying agent does in fact have an interest.

The buying agent will also charge the importer for the use of its export quota. Should the importer's quota requirements exceed those available to the buying agent, then the buying agent has the authority to obtain quota on a temporary basis. However, the quota will be obtained from sources other than the factories which will produce the imported merchandise. You state that the arrangement is the same as that covered by Headquarters ruling 54.603.

Transaction value is defined in section 402(b) as "the price actually paid or payable for the merchandise when sold for exportation to the

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United States," plus amounts for the items enumerated in section 402(b)(1). Buying commissions are not specifically included as one of the additions to the price paid or payable. The price paid or payable is more specifically defined in section 402(b)(4)(A) as:

> The total payment (whether direct or indirect...) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller. (Emphasis added)

In determining whether a bona fide buying agency relationship exists between an importer and an alleged "buying agent", the primary consideration is the right of the principal to control the agent's conduct with respect to matters entrusted to the agent. B & W Wholesale Co., Inc. v. United States, 58 CCPA 92, C.A.D. 1010 (1971), Dorf International, Inc. et al. v. United States, 61 Cust. Ct. 604, A.R.D. 245 (1968). The alleged buying agent may not act as an independent seller, nor as representative of the manufacturer or seller. On the basis of the information you have provided regarding the prospective transactions in question, we are satisfied that the importer will exercise the requisite degree of control over the buying agent. However, you have indicated that the buying agent will be purchasing merchandise from certain factories in which one of the buying agent's family members has an interest. Although this is not per se an absolute bar to the finding of a bona fide agency relationship, the importer has the burden of conclusively demonstrating that it exercises absolute control over the buying agent with respect to these types of transactions. It is also essential that no portion of the commissions paid to the agent inure to the benefit of those factories in which the family member has an interest. With these considerations in mind, we conclude that the commissions to be paid to the buying agent constitute bona fide buying commissions which, therefore, will not be dutiable under transaction value provided the buying agent performs the types of services described in your letter, the importer exercises sole control over the agent's activities, and no part of the commissions inure to the benefit of the factories.

With respect to the quota payments which the importer makes to the buying agent, we conclude that these are nondutiable under transaction value. This holding applies as long as these payments are not remitted in any way, directly or indirectly, by the buying agent to the seller/manufacturer. The facts which you have presented indicate that the quota

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will be obtained from sources other than the factories producing the merchandise. Therefore, these payments, as well as expenses the agent incurs in purchasing quota from unrelated sources, are nondutiable under transaction value.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

543616

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CLA-2 CO:R:C:V:V
543627 CH

24 OCT 1985

Ms. Diana Incivelito
Marmaxo Sourcing
350 5th Avenue, 50th Floor
New York, New York 10118

Dear Ms. Incivelito:

This is in response to your letter of September 25, 1985, in which you request a ruling concerning the valuation of finished garments which Speedo America, a division of Marmaxo Sourcing, will be purchasing from an unrelated contractor in Taiwan.

As we understand the facts surrounding this prospective transaction, Speedo (hereinafter referred to "purchaser") has arranged for the purchase of fabric from a fabric supplier whose administrative offices are located in California but whose mill is located in Japan. The fabric supplier is not related to either the purchaser or the Taiwan contractor. Payment for the fabric will be made by the purchaser to the fabric supplier's California office although the fabric will be shipped directly from the mill in Japan to the contractor in Taiwan. The contractor will reimburse the purchaser for the cost of the fabric by opening a letter of credit to the purchaser for this amount. When the finished garments are imported into the United States, the invoice price from the Taiwan contractor to the purchaser will include the cost of the fabric.

You inquire as to the dutiability of the cost of the fabric under these circumstances and ask if our conclusion would be the same if contractors in other countries are used.

From the information provided, it appears that the finished garments will be appraised on the basis of transaction value, which is defined in section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), as "the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts" for five specified items to the extent that those items are not already included in that price. One of the items to be added to the "price actually paid or payable" is "the value, apportioned as appropriate, of any assist."

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Section 402(h)(1)(A) of the TAA provides, in pertinent part, as follows:

> The term 'assist' means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:
>
> (i) Materials, components, parts, and similar items incorporated in the imported merchandise.

Applying the above provisions to the facts of this case, it is apparent that since the contractor will reimburse the purchaser for the cost of the fabric, the fabric will not be supplied "free of charge or at reduced cost by the buyer" to the contractor. Therefore, the fabric will not constitute an assist. However, inasmuch as the cost of the fabric will be included in the invoice price for the finished garments, this cost will be dutiable as part of the "price actually paid or payable for the imported merchandise." This conclusion would apply to similar transactions involving contractors in other countries.

If you require further advice concerning this matter, please contact Craig Walker of this office at (202) 566-2938.

Sincerely,

(signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

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OCT 29 1985

CLA-2 CO:R:CV:V
543632 CW

Stephen Sale, Esq.
Fenrenbacher, Sale, Fudesco & Quinn
1819 H Street, N.W., Suite 650
Washington, D.C. 20006

Dear Mr. Sale:

This is in response to your letter of October 1, 1985, in which you request a ruling on behalf of Eastern Silk Trading Co., Ltd. (hereinafter referred to as "importer") concerning the valuation of silk comforter covers which your client will begin importing from Hong Kong in the near future.

According to the information you have provided, the silk bedding will be purchased from a bedding manufacturer in Hong Kong and will be composed of scraps of silk fabric which the bedding manufacturer has purchased from a furniture manufacturer in Hong Kong. The silk scraps are the residue from the manufacture of silk-upholstered room dividers and headboards by the furniture manufacturer who, in turn, has purchased its requirements of silk fabric from a supplier in the People's Republic of China. In addition to purchasing the silk bedding from the bedding manufacturer, the importer will also purchase upholstered furniture from the Hong Kong furniture manufacturer.

You state that for purposes of assisting in regard to its purchases of upholstered furniture and silk bedding from Hong Kong, the importer has retained a Hong Kong firm as its purchasing agent. To the best of your knowledge, neither the agent nor the importer is related to or affiliated in any way with either the bedding manufacturer or the furniture manufacturer. You also state that the agent is not itself a manufacturer and, to the best of the importer's knowledge, is not related to a manufacturer. Although there is no indication in your letter as to whether the importer and agent are related, we are assuming for purposes of this ruling letter that these parties are not related within the meaning of section 402(g)(1) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

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You advise that the services which the agent has and will continue to perform for the importer include.

> ... (1) assistance in the identification of and contractural negotiation with the furniture and bedding manufacturers in Hong Kong, (2) establishment of quality standards for and sources of silk fabric in Hong Kong, (3) coordination of efforts of manufacturers so that the residue of one manufacturer can be used by the other manufacturer, (4) purchasing, (5) quality control and manufacturer liaison, (6) receiving inspection, (7) arranging delivery to the carrier, and (8) payment of manufacturers for the account of (the importer) with funds received from (the importer).

As compensation for performing these services, the agent will receive from the importer a commission of 6 percent of the purchase price of the bedding and furniture articles.

On the basis of the foregoing information, you request that we confirm the following:

A. That the comforter covers shall be valued by Customs at the purchase price paid to the manufacturer.

B. That the purchasing agency commission shall be excluded in the determination of the value of the comforter covers.

The primary basis of appraisement under the valuation statute, transaction value, is defined in section 402(b) of the TAA as "the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts" for five specified items to the extent that those items are not already included in that price. Although "any selling commission incurred by the buyer with respect to the imported merchandise" is included as one of the five items, buying commissions are not included as an item to be added to the price actually paid or payable.

From the information you have provided, it is our opinion that transaction value, as represented by the price paid or payable by the importer to the bedding manufacturer for the comforter covers, will be the basis of appraisement

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for the imported merchandise. Moreover, based upon your description of the services which the agent has and will be performing on behalf of the importer, we believe that the 6 percent commission to be paid by the importer to the agent will constitute a bona fide buying commission. As such, the commission will not be dutiable as part of the transaction value of the imported silk bedding.

As we pointed out in TAA #7, it will be necessary for the entry documents to include an invoice or other documentation from the bedding manufacturer to establish that the agent is not the seller and to determine the price actually paid or payable to the seller.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEC 6 1985

CLA-2 CO:R:C:V
542637 BG

Ms. Suzanne Driscoll
Apollo Computer Inc.
International Distribution
330 Billerica Road
Chelmsford, Massachusetts 01824

Dear Ms. Driscoll

This is in response to your letter of October 17, 1985, on behalf of Apollo Computer Inc., in which you request a decision as to the proper value of merchandise of foreign manufacture which is used and subsequently returned to the United States for repair.

You indicate that the parts in question are manufactured abroad, purchased by your company in this country and imported, and then shipped back out to a subsidiary in a foreign country. The appropriate duty is paid and drawback is obtained. After various time periods, you state that the part breaks down thereby necessitating its return to the United States for repair. An invoice is prepared by the foreign subsidiary reflecting a value equal to the original purchaser price. Duty is again paid by your company based upon this full value.

You further state that it is possible to determine the date of manufacture of each part by tracing the serial number. It is your contention that a deduction in the value of the parts should be made depending upon the date of manufacture. You advise that a Customs Service import specialist has proposed a 5 percent reduction in value for every year the item has been in use.

The primary basis of appraisement pursuant to the Trade Agreements Act of 1979 (TAA), is "transaction value." This is defined in section 402(b) of the Tariff Act of 1930, as amended by the TAA as "the price actually paid or payable for the merchandise when sold for exportation to the United States...". Although this is proper for the first importation of the parts (when new) to the United States, we agree with you that, when the parts are returned for repair the original purchase price should be adjusted downward to reflect reasonable depreciation for the period of time that the parts are used abroad.

We believe that the proposed 5 percent reduction in value for every year of use is acceptable, provided such a depreciation rate is in accordance with generally accepted accounting principles as they relate to the specific merchandise under consideration here.

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We should point out that foreign-made components may be imported for repairs free of duty under bond pursuant to the provisions of item 864.05, TSUS, copy enclosed. This entry procedure may be used in those circumstances where parts are returned for repairs and exported after repairs. However, the same repaired article must be exported. The law does not permit one article to be substituted for another. In circumstances where an article is imported for repairs and a substituted article is exported, item 864.05, TSUS, is inapplicable. However, if fungible merchandise is commingled, identification on the basis of records is permitted. Fungibility is usually a question of fact.

The final decision regarding the dutiability for the returned parts will be made by the Customs office at the port where the merchandise will enter the United States.

Sincerely,

(Signed) Harvey B. Fox
Harvey B. Fox
Director, Classification
and Value Division

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NOV 20 1985

CLA-2 CO:R:CV:V
543644 BRS

Mr. Charles Williams
Manager, Administrative Services
R & H Fraser Companies
Box 3587 Georgetown Station
Washington, D.C. 20007-0087

Dear Mr. Williams:

This is in regard to your correspondence dated October 4, 1985, concerning the customs valuation of merchandise which is the subject of countertrade transactions. Please be advised that the Customs Service currently values imported merchandise pursuant to a hierarchy of methods prescribed by the Trade Agreements Act of 1979 (P.L. 96-39) (the TAA). Under the TAA the large majority of imported merchandise (over 95 percent) is valued under transaction value. Transaction value is defined in 19 U.S.C. 1401a(b) as follows:

> (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States....

The use of transaction value is precluded in countertrade transactions if the parties thereto have not made reference in their contracts to some reasonable monetary standard representing the "price actually paid or payable" for the merchandise. In such instances it would be necessary for Customs to value merchandise under one of the following methods, all of which are described in the attached pamphlet:

1. Transaction value of identical or similar merchandise

2. Deductive value

3. Computed value

Finally, the identification of a transaction as involving countertrade will not normally be readily apparent from the entry documents filed with Customs. Accordingly, in order to have your importations involving countertrade processed properly, we would advise

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that you give advance notification to the appropriate Customs personnel at the ports through which you intend to import that your importations involve countertrade.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

Attachment

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 15 1985

REFER TO

CLA-2 CO:R:CV:V
553161 KP

Ms. Gigi Kalfayan
Import Manager
Toshiba America, Inc.
82 Totowa Road
Wayne, New Jersey 07470

Dear Ms. Kalfayan:

In your letter dated April 3, 1984, addressed to our New York Seaport Area office, you inquired as to the dutiable status of a stereo cassette tape player system identified as the Toshiba Model RT-CS1. This article, which is produced in Japan, measures 10-11/16 inches long, 3-3/8 inches high, and 1-7/8 inches wide. It consists of two main components: (1) a speaker/amplifier section; and (2) a tape player.

The speaker/amplifier section is designed to house the tape player. It has two speakers which are located on either end of the unit. A plug protrudes from the inner side of each speaker to connect the unit electronically with the tape player. The speaker/amplifier section has volume and power mode controls along its top side, as well as a telescopic antenna in the back.

The tape player is a portable unit measuring 4-5/16 inches long, 3-1/8 inches high, and 1-1/8 inches wide. It has no built-in loudspeaker, but it can be used independently of the speaker/amplifier section by connecting headphones or earphones to it through two jacks provided for that purpose. Otherwise, of course, the tape player may be connected to the speaker/amplifier section for listening.

The RT-CS1 tape player system will be imported and sold with a number of accessories. First of all, it will come with what is described in the sales literature as "headphones." As pictured in the literature, these "headphones" appear to be stereo earphones, for the two miniature speakers are not attached to each other by a band worn over the head to support them. The RT-CS1 will also include an AM/FM tuner pack which can be inserted into the tape player like a cassette and used as a radio receiver. This tuner pack is made to be inserted into any Toshiba model cassette player. Finally, to assist in the portability of the unit, the RT-CS1 will come with a textile carrying strap which can be attached to the ends of the speaker/amplifier section of the article, and a belt clip that is used to hold only the tape player section of the system when one wants to use the tape player independently of the speaker/amplifier section.

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The importation of the tape player, the speaker/amplifier, the "headphones," the AM/FM tuner pack, the carrying strap, and the belt clip together in one shipment raises the question whether any or all of these articles are classifiable as an entirety for customs purposes. In cases regarding the applicability of the entireties doctrine to imported audio components, Customs has previously looked to whether the components may be used solely with one system and whether the separate identity of each component is subordinated to and lost in that system. See Customs Rulings CLA-2 CO:R:CV:V 071832 KP (Dec. 24, 1984) and CLA-2 RRUCSC 065054 LLB (Aug. 14, 1980). With this in mind, it appears that the tape player and the speaker/amplifier section of the RT-CS1 are classifiable as an entirety because, although the tape player is capable of separate use, the speaker/amplifier looks to be usable only with that tape player. This observation is based on the immobility of the plugs which connect the speaker/amplifier unit to the tape player. Where all of the entities in a combination are complete in themselves and are capable of separate use, the unit is not an entirety, but where at least one of the entities has no separate commercial value or separate use, the combination is an entirety. Chadwick-Miller Importers, Inc. v. United States, 59 Cust. Ct. 529, 535, C.D. 3221 (1967). Therefore, unless there is a viable use for the speaker/amplifier unit independent of the RT-CS1 tape player, the tape player and the speaker/amplifier are classifiable as an entirety under the provision for machines not specially provided for, and parts thereof, in item 678.50, TSUS, which currently carries a column 1 duty rate of 4 percent ad valorem. We believe this to be consistent with the legislative intent behind the Tariff Schedules, for, as the Customs Court has stated, "[w]e do not think that Congress intended to classify separately an article which, as generally accepted, has no viable separate identity except in combination with another article." Ikora, Inc. v. United States, 66 Cust. Ct. 262, 271, C.D. 4202, 325 F. Supp. 905, 912 (1971).

Regarding the "headphones," we recently held that headphones and earphones imported with portable radio-tape players similar to the RT-CS1 tape player were classifiable separately therefrom because the headphones and earphones were usable with other audio components and did not lose their identity when used in conjunction with the radio-tape players. See Customs Ruling CLA-2 CO:R:CV:V 553148 KP (Aug. 27, 1985). We assume that the "headphones" for the RT-CS1 may likewise be used with other audio components. Consequently, they, too, are classifiable separately from the tape player systems with which they are imported. There is a tariff provision for headphones in item 684.70, TSUS, but that provision is limited to certain audio listening devices which are supported in position by the user's head. General Electric Co. v. United States, 59 Cust. Ct. 140, C.D. 3887 (1969), aff'd, 58 CCPA 152, C.A.D. 1021, 441 F.2d 1186 (1971). Inasmuch as the "headphones" imported here are actually stereo earphones, they cannot be classified in item 684.70, TSUS. Instead, they are classifiable under the provision for radiobroadcasting reception apparatus and parts thereof, other, other, other, in item 685.32, TSUS, and dutiable at a rate of 6 percent ad valorem.

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The AM/FM tuner pack obviously has a separate use, and thus a separate identity, from the rest of the imported merchandise since it can be used with any Toshiba model cassette player. Therefore, it is seperately classifiable under the provision for solid-state entertainment broadcast band radio receivers in item 685.14, TSUS, which carries a column 1 duty rate of 7.1 percent ad valorem.

As for the carrying strap, we have previously ruled that carrying straps imported with certain transceivers and transistor radios should be separately classified from those electrical devices because the straps and the radios and transceivers remain distinct articles which do not lose their identity upon being joined and used together. See C.I.E. 635/67 and C.I.E. C-29/68. From the pictures contained in the sales literature which you submitted, we find that the same may be said of the carrying strap and the RT-CS1 tape player system. Accordingly, depending on the type of textile of which it is made, the carrying strap is separately classifiable either under the provision for other articles not specially provided for, not ornamented, of cotton, other, other, in item 386.53, TSUS, which carries a column 1 duty rate of 9.3 percent ad valorem, or under the provision for other articles not specially provided for, not ornamented, of man-made fibers, other, other, in item 389.62, TSUS, which carries a column 1 duty rate of 8 cents per pound plus 11 percent ad valorem.

Finally, based on judicial precedent, we find that the belt clip is also separately classifiable from the tape player system. In Mattel, Inc. v. United States, 8 CIT ___, Slip Op. 84-133 (Dec. 11, 1984), the issue presented was whether certain doll stands imported in retail packages with the dolls with which they were to be sold were classifiable as entireties with those dolls. The court observed that the doll stands had extrinsic value and identity as evidenced by their capability to be used with other dolls. This interchangeability of use also indicated to the court that the doll stands did not merge and lose their identity to form a new article of commerce when combined with the dolls. In addition, the court noted that the doll stands were not vital towards the play activities of the dolls, but merely supplemented those activities. Moreover, the court found that the both the dolls and the doll stands were commercially viable entities in and of themselves; neither object was essential to the completeness of the other. Therefore, the court held that the dolls and the doll stands were separately classifiable.

What was said of the dolls and doll stands in Mattel may also be said of the tape player system and the belt clip here. There does not appear to be any reason why the belt clip cannot be used with other tape players aside from the RT-CS1 tape player. This indicates that the belt clip has an extrinsic value and a separate identity which is not lost in a new article of commerce when the belt clip is combined with the tape player. Additionally, the belt chip is not vital to the tape player system's use, but simply supplements that use. Neither the belt clip nor the tape player system is essential to the completeness of the other article; each one is commercially viable by itself. Thus, the belt clip should be treated as a separate entity for tariff purposes.

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In contrast, we note Lafayette Radio Electronics Corp. v. United States, 57 CCPA 62, C.A.D. 977, 421 F.2d 751 (1970), which involved the classification of two models of transistor radios imported with leather cases. The cases were separately designed to fit the respective radio models and had die cuts positioned for the radios' dials, knobs, antennas, and the like. Thus, the radios could function and were designed to function in the cases as cohesive units. Taking that in conjunction with the facts of importation and sale as units, enhancement of appearance, and the functional contributions of protection and portability afforded by the cases, the court held that the radios and cases should be classified as entireties. In so ruling, the court distinguished its case from two earlier decisions holding that cases imported and sold with binoculars and microscopes, rspectively, but which did not function as units with their respective instruments, were separately classifiable from the binoculars and microscopes.

Unlike the Lafayette radio cases, the belt clip is used only with a part of the RT-CS1 tape system, and only for limited applications. Thus, it does not function as a unit with the tape player system. Furthermore, the belt clip does not appear to be specially designed for the RT-CS1 tape player, nor does it protect the tape player or enhance its appearance. These properties warrant separate classification of the belt clip. Accordingly, ass ming the belt clip to be made of plastic, it is classifiable under the provision for articles not specially provided for, of rubber or plastics, other, other, in item 774.55, TSUS, and dutiable at a rate of 6.1 percent ad valorem.

Sincerely,

Russell Arnold

Russell Arnold
Chief, Value and Special
Classification Branch

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CLA-2 CO:R:CV:V
553348 HS

Ms. Valerie T. Diaz
Diaz Customs Brokerage Services
P.O. Box 1503
Frederiksted
St. Croix 00840
U.S. Virgin Islands

Dear Ms. Diaz:

This is in response to your letter of August 8, 1984, concerning merchandise entered in the United States Virgin Islands from the Customs territory of the United States.

After receiving a report from the District Director of Customs in the Virgin Islands, and reviewing the applicable statutes involved we have reached the following conclusions:

(1) Importations of foreign merchandise listed in section 2 of Public Law No. 64 of April 1, 1914, the Virgin Islands Tariff Act, are to be extended duty-free treatment when imported into the United States Virgin Islands from the Customs territory of the United States.

(2) Based upon section 301 of the Virgin Islands Act No. 4877, the U.S. Customs Service in the Virgin Islands has the authority to require of the importer documentation concerning items shipped from within the United States Customs Zone. This Virgin Islands Act was passed subsequent to Treasury Decision 72-213. Pursuant to section 301, Customs has the authority to require an original invoice annotated by the seller or shipper.

We have informed the District Director of Customs in the Virgin Islands of these conclusions and appropriate action will be taken.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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APR 24 1985

CLA-2 CO:R:CV:V
553431 KP

Paul E. Linet, Esq.
Sandler & Travis, P.A.
Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

Dear Mr. Linet:

This is with reference to your letters dated June 19, 1984, November 14, 1984, January 14, 1985, and March 25, 1985, which you submitted on behalf of your clients James E. O'Brien and W. P. Greer, wherein you requested a ruling that threaded, coupled, steel oil well casing and tubing produced in Panama as described below is properly classifiable in item 610.42, Tariff Schedules of the United States (TSUS), and qualifies for duty-free entry into the United States pursuant to the Caribbean Basin Initiative (CBI).

As you described it, the proposed Panamanian processing involves two stages. The first stage entails the unrolling of coils of steel (known as skelp) into flat skelp, shaping the flat skelp into cylinders, crimping and trimming the edges of the steel cylinders, welding the steel together to form closed tubes, trimming the seams of the tubes, spraying the tubes to cool them, cutting the tubes to predetermined lengths, hydrostatically testing the tubes, inspecting the tubes for proper welds and dimensional specifications, coating the tubes with lacquer, stencilling the tubes, and measuring the tubes for shipment to a processing facility. You identify the articles emerging from this portion of the Panamanian processing as plain end tubular pipe. The second stage of the processing begins in one of two ways, depending upon whether the steel pipe is to be made into casing or tubing. To prepare the pipe to be made into casing for the threading process, the ends of the pipe are bevelled. The pipe to be made into tubing, however, is prepared for threading using a process called "upsetting," whereby the ends of the pipe are heated, forged, and thickened. Steel pipe for tubing having diameters of 2-3/8 inches and 3-1/2 inches is not subjected to the "upsetting" process. After the steel pipe undergoes proper preparation, it is threaded, couplings are applied to one end of each pipe, the articles are hydrostatically tested, they are "drifted" (a test to assure proper inside diameter), thread protectors are installed for shipping, and the finished products are tallied and bundled for shipment.

Generally speaking, any merchandise which is imported directly from a CBI beneficiary country and which meets the country of origin criteria in section 10.195, Customs Regulations (19 CFR 10.195), is eligible for duty-free treatment under the CBI. 19 CFR 10.191(b)(2). Subsection (a) of 19

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CFR 10.195 sets forth two requirements which must be satisfied in order for an article to be accorded duty-free entry under the CBI. First, the article must be either (1) wholly the growth, product, or manufacture of a beneficiary country or (2) a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country. Second, the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, must not be less than 35 percent of the appraised value of the article at the time it is entered.

For purposes of the latter requirement in 19 CFR 10.195(a), "materials produced in a beneficiary country or countries" includes those materials incorporated in an article which are substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country in the production or manufacture of a new or different article which is imported directly into the United States. 19 CFR 10.196(a)(2). In The Torrington Co. v. United States, _____ CIT _____, Slip Op. 84-101 (August 24, 1984), the court found that a similar regulation promulgated by Customs with respect to the Generalized System of Preferences (GSP) implicity requires that "[t]here must first be a substantial transformation of the non-BDC [beneficiary developing country under the GSP] material into a new and different article of commerce which becomes 'materials produced,' and these materials produced in the BDC must then be substantially transformed into a new and different article of commerce" in order to include the cost of a BDC material towards the GSP's 35 percent value-content requirement. The court noted that "such a requirement is not contrary to the GSP statute and its goals," and that "absent such a dual requirement, the GSP's goal of industrialization, diversification, and economic progression for underdeveloped nations could be frustrated." For similar reasons, Customs requires the same dual substantial transformation of materials produced outside of the CBI beneficiary countries in order to include the cost of materials made therefrom towards satisfaction of the CBI's 35 percent value-content requirement.

We find that the threaded, coupled, steel oil well casing and tubing produced in Panama as described above cannot enter the United States free of duty pursuant to the CBI because, according to the information you submitted, the 35 percent value-content requirement in 19 CFR 10.195(a) cannot be satisfied. In this regard, you maintained that the plain end tubular pipe resulting from the first stage of the Panamanian processing is a material produced in Panama which, in turn, is substantially transformed in Panama into oil country tubular goods. Therefore, you believe that the cost of that pipe may be counted towards meeting the CBI 35 percent value-content requirement.

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We disagree. In Customs Ruling CLA-2 CO:R:CV:G 075174 JLV (March 15, 1985), we held that plain end tubing from Korea dedicated to meeting a certain API specification for oil well inner tubing did not undergo a substantial transformation in Mexico when it was upset, threaded, fitted with couplings, and tested so as to meet all the requirements of the API specification to which it was dedicated. It appears that the second processing stage in Panama, wherein the plain end tubing resulting from the first processing stage is used to produce the final oil country tubular goods, consists of virtually the same operations as the ones performed in Mexico in the above-cited case to produce the oil well tubing, and consists of less complex operations to produce the oil well casing, which is prepared for threading by a bevelling operation rather than "upsetting." Furthermore, it appears that the plain end tubing produced in the first processing stage is dedicated in the same manner and to the same extent towards making the ultimate products as was the plain end tubing from Korea in the referenced decision. Thus, assuming without deciding that the plain end tubing resulting from the first Panamanian processing stage constitutes a new and different article from the imported steel, it is not further substantially transformed into other new and different articles of commerce in Panama. Accordingly, the cost of the plain end tubing cannot be included towards meeting the CBI 35 percent value-content requirement, for it is not a "material produced in a beneficiary country" as defined in 19 CFR 10.196(a).

553431

You cite Customs Ruling CLA-2 CO:R:CV:V 071620 FF (December 24, 1984) for the proposition that substantially transformed constituent materials may be counted towards the GSP 35 percent value-content requirement when the totality of the circumstances demonstrates that a product of the beneficiary country has been made. On that basis, you contend that the cost of the plain end tubular pipe used to produce the oil well casing and tubing in Panama should be includable towards meeting the similar 35 percent requirement for CBI eligibility.

In the ruling in question, the imported merchandise consisted of magnetic disc memory heads, referred to as E Blocks, which were assembled in Singapore from, inter alia, certain subassemblies known as Head and Gimbal Assemblies (HGA's) produced in the Philippines or in Thailand. Inasmuch as the Philippines, Thailand, and Singapore are members of the Association of South East Asian Nations (ASEAN), which is treated as one country for most GSP purposes, the importer sought to enter the E Blocks free of duty under the GSP. However, since the HGA's were assembled from components produced in countries outside the ASEAN, a question arose whether the HGA's were substantially transformed constituent materials produced in the ASEAN which, in turn, were substantially transformed in producing a new and different article of commerce in the ASEAN. We concluded that the extensive processing of the original non-ASEAN materials substantially transformed those materials into new and different articles of commerce identified as HGA's. In addition, we found that the assembly of the HGA's with other components in Singapore resulted in the

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production of another new and different article of commerce, the E Blocks. With the necessary dual substantial transformation present, the cost of the HGA's could be counted towards meeting the GSP 35 percent value-content requirement.

Unlike the HGA's in that case, the plain end tubular pipe produced in the first processing stage in Panama is not a different and distinct article of commerce from the ultimate product into which it will be made. Rather, it is dedicated towards making oil country tubular goods meeting particular API specifications by virtue of the metallurgical qualities, tensile strength, wall thickness, and inside tube diameter built into it during the first processing stage. Thus, the name, character, and use of the merchandise remain unchanged as it proceeds through the second manufacturing stage. Consequently, there is no second substantial transformation as is required to count the cost of the plain end tubular pipe towards meeting the CBI 35 percent value-content requirement. That plain end tubular pipe like that which would be produced in the first processing stage might be adaptable to and may have actually been sold in a few isolated situations for uses other than in the production of oil country tubular goods meeting the particular API specifications for which it was designed does not convince us that the character or use of the plain end pipe is different from the oil well casing and tubing, for unless those uses take advantage of the special qualities built into the plain end tubing and are, in fact, significant uses for such tubing, they would be considered fugitive uses.

It appears from cost information you submitted that without the ability to include the value of the plain end tubing as a material produced in Panama towards meeting the CBI 35 percent value-content requirement, the final articles to be produced in Panama are unable to satisfy that requirement. Therefore, the oil well casing and tubing cannot enter the United States free of duty under the CBI.

Insofar as the tariff classification of the oil well casing and tubing is concerned, we agree that the merchandise would be classifiable under item 610.42, TSUS, provided that it conforms to API specifications as indicated in your letter.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

HS # 7306 20 10 (casing)
HS # 7306 20 60 (tubing)

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AUG 28 1985

CLA-2 CO:R:CV:V
553567 KP

Bruce Aitken, Esq.
Busby, Behm and Leonard, P.C.
1629 K Street, NW., Suite 1100
Washington, D.C. 20006

Dear Mr. Aitken:

This is with reference to your letters dated March 29, 1985, and August 1, 1985, submitted on behalf of your client Times Fiber Communications, Inc., wherein you requested that we review part of a tariff classification ruling issued by the Area Director of Customs, New York Seaport, on January 14, 1985 (reference CLA-2-06:S:COM:N1:108-760 811480), holding that two specific components of the MINI-HUB II cable television distribution system are classifiable under item 685.90, Tariff Schedules of the United States (TSUS).

The MINI-HUB II is a system that may be used by cable operators to selectively distribute television signals to its subscribers via coaxial cable. It consists of modular components which may be combined in various ways to fit the particular needs of different cable operators.

The signal-processing electronics of the MINI-HUB II are housed in Local Distribution Units (LDUs), which are centrally located within a subscriber service area. The LDUs contain variable amounts of different system components according to the number of subscribers served and the types of services provided to those subscribers. It is New York's classification of two of these types of components found in the LDU which is questioned here.

One of the subject components is identified as a Remote Switching Unit (RSU). An RSU is installed in an LDU for each primary television set in a subscriber's home. The RSU receives channel-change request signals from a subscriber's remote interface unit, and relays them to the other of the two components in question, which has been identified as the Digital Controller Card, the Digital Control Module, and the Digital Communications Module (hereinafter referred to as the "DCM"). The DCM contains a microprocessor and the nonvolatile logic needed for recording subscriber authorization information. Upon receiving a channel-change request, the DCM ascertains whether the subscriber who has made the request is authorized to receive the channel requested, and sends back an appropriate signal to the RSU instructing it to fulfill or deny the request. If ordered to fulfill the request, the RSU uses its tuner to select the frequency requested by the subscriber, and sends that signal back via coaxial cable through the remote interface unit to the subscriber's television set.

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Although the RSU is denominated as a "switching" unit, that module cannot be classified under item 685.90, TSUS, because its tuner gives the RSU a function which is inconsistent with classification of the device merely as a switch or other electrical apparatus for making or breaking electrical circuits. Accordingly, we agree with your contention that the RSU is properly classifiable under the provision for other television apparatus and parts thereof, other, in item 685.08, TSUS.

However, we do not agree with your similar claim regarding the DCM, which is basically a control module. As explained in an affidavit from Mr. Donald Moore, Director of Manufacturing for the Communications Systems Division of Times Fiber Communications, Inc.:

> The DCM is a micro-processor based control module that controls the operation of the programmable two-way signal converter modules (RSU's). It also processes control information from the central office coming to the M-H II hub location. Subscriber requests arrive at the DCM from the RSU and are then processed. The DCM then directs the RCU [sic] either to fullfill [sic] or deny the subscriber request, depending on the control data received from the central office and stored in its memory.
>
> A single DCM serves up to as many as 16 RSU's. Hence, this module is an integral and controlling component required in the operation of the full M-H II system.

Letter dated August 1, 1985, at Appendix 5.

In United States v. John V. Carr & Son, Inc., 61 CCPA 41, C.A.D. 1116, 495 F.2d 771 (1974), the imported merchandise consisted of two kinds of transistorized printed wiring board assemblies, one invoiced as a "control board" and the other as a "protective circuit board." These boards were used as parts of a pulse modulation system for operating fork lift trucks. The function of the control board was to provide electrical pulses to control the opening and closing of a solid state switch device which regulated the flow of energy to the truck's motor. The court held that the control board was "within the common meaning of at least certain of the articles in 685.90, including particularly 'other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; *** control panels; *** and parts thereof.'" 61 CCPA at 45, 495 F.2d at 774. Accordingly, it was classified under that item number.

Like the control board in Carr, the DCM is essentially a transistorized printed wiring board assembly except that the DCM has a metal housing. Nevertheless, the primary purpose of the DCM is to control a switching device which, in this case, regulates the frequency which is transmitted to the subscriber's television set. Therefore, we conclude that the DCM, like the Carr control board, is classifiable in item 685.90, TSUS.

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The microprocessor and other devices incorporated in the DCM which allow it to process data do not make the DCM "more than" the type of articles classified in item 685.90. Unlike a computer, whose main functions are to store and manipulate data, the DCM performs those functions only so that it may serve its purpose of controlling the RSUs. Thus, the data processing functions of the DCM are subservient to its control function, as they are merely the means by which control is accomplished.

Accordingly, Customs Ruling 811480 is modified to classify the RSU under item 685.08, TSUS, and affirmed with respect to classification of the DCM under item 685.90, TSUS. The column 1 rates of duty for those tariff provisions are 4 percent ad valorem for item 685.08, TSUS, and 6.1 percent ad valorem for item 685.90, TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD
Russell Arnold
Chief, Value and Special
Classification Branch

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DEC 2 1985

CLA-2 CO:R:CV:V
553651 HS

District Director of Customs
U.S. Customs Service
Post Office Box 3130
Laredo, Texas 78041

Dear Sir:

This ruling is in response to the Application for Further Review of Protest No. 2304-4-000022 dated April 13, 1984.

ISSUE:

Whether a glass decanter imported without a handle that is dedicated for use as part of an electric coffee-maker is classifiable as an article chiefly used in the household or elsewhere for preparing, serving, or storing food under item 546.60, Tariff Schedules of the United States (TSUS), or as a part of an electro-thermic kitchen and household appliance under item 684.55, TSUS.

FACTS:

Imported glass decanters are brought into the United States from Mexico without handles attached. The decanters are marked with the graduated cup measurements and product identification. They are built specifically for use with a specific electric coffee-maker with the exact design, capacity, and physical properties necessary for functioning with the coffee-maker. After importation, the imported decanters are equipped with metal neck bands and handles. The decanter is designed to maintain coffee at the proper temperature when sitting on the coffee-maker's warmer plate, but is not constructed to withstand the high temperatures produced

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by gas or electric stove burners or ovens. The decanter bottom has a convex surface specially designed to mate with the concave surface of the warmer plate and seat.

LAW AND ANALYSIS:

Item 546.60, TSUS, provides for articles of glass chiefly used in the household for preparing, serving or storing food or beverages. Item 546.60 does not include "parts" of the articles described (L & B Products Corp. v. United States, 70 Cust. Ct. 30, C.D. 4404 (1973)), but does embrace the articles described even though they are unfinished (General Headnote 10(h), TSUS). In our view, the imported article — although lacking a handle — is a substantially complete decanter; consequently, item 546.60 is not precluded from application. Daisy-Heddon, Div. Victor Comptometer v. United States, 66 CCPA 97, C.A.D. 1228 (1979). The information submitted indicates that the broad chief use of the finished decanter is in the preparation, serving, and (to a limited degree) storage of a beverage (coffee).

The competing tariff provision at the time of the entries at issue was item 684.55, TSUS (now 684.2020), which provides for portable electrothermic kitchen and household appliances (coffee-makers) and parts thereof. The information contained in the file unquestionably establishes that the imported article, when finished, will be chiefly used as a part of the "Mr. Coffee" coffee-maker and was specifically designed for such use. To the extent the imported article, after finishing, is sold separately (rather than being combined with the balance of the coffee-making apparatus and marketed as a complete "Mr. Coffee" unit), the information submitted

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indicates that its use will be effectively limited to service as an additional or replacement decanter with "Mr. Coffee" or similar coffee-makers.

The determination as to which of the two provisions described above sets forth the most appropriate tariff description of the imported article is guided by General Headnote 10(ij), TSUS, which provides that "a provision for parts of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such parts."

Notwithstanding the case law, legislative history, and arguments advanced by counsel for the protestant, we do not believe that item 546.60, TSUS, is inherently incapable — because it embraces articles "not specially provided for" elsewhere in the tariff schedules — of being a "specific provision" within the meaning of General Headnote 10(ij). However, whether item 546.60 qualifies as a "specific provision" in the instant case can only be determined by examining the degree to which the imported merchandise fits within its terms.

Although the imported articles, when finished, are encompassed in the universe of glass articles chiefly used in the household for preparing, serving, or storing beverages, such use(s) are chiefly in connection with the coffee-makers of which they are designed to be a part; the finished decanters are of the broad class or kind of articles used to prepare and serve coffee but, because of their physical characteristics, are effectively limited to use with coffee-maker/warmers of the "Mr. Coffee" type. In short, the imported article, when finished, has no substantial use, practical or commercial, other than with the device (coffee-maker) of which it is claimed to be a part.

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Based on the foregoing, we conclude that item 546.60, TSUS, is not a "specific provision" for the imported merchandise within the meaning of General Headnote 10(ij) and that such merchandise is more specifically described as a part of a coffee-maker. Trans-Atlantic Company v. United States, 74 Cust. Ct. 134, C.D. 4597 (1975).

HOLDING:

In accordance with the above reasoning, we conclude that the decanters should be classifiable under item 684.55, TSUS. The protest should be granted. A copy of this decision should be attached to the Form 19, Notice of Action, to be sent to the protestant.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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AUG 20 1985

CLA-2- CO:R:CV:V
553654 HS

David C. Elliott, Esq.
Barnes, Richardson & Colburn
475 Park Avenue South
New York, New York 10016

Dear Mr. Elliott:

This is in response to your letter of May 13, 1985, requesting on behalf of Durand Glass Manufacturing Co., a ruling as to whether certain articles of glass which are used in the manufacture of glass stemware are properly classifiable under Item 548.05, Tariff Schedules of the United States (TSUS) as articles, not specially provided for, of glass: other.

The articles of glass in question consist of pieces of processed glass which are in the rough shape of stems of finished glassware. Once imported, they will be heated and pulled extending the stems. The base or foot of the articles will then be flattened. The completed stems will then be fused to bowls manufactured in the United States.

In Customs ruling 045680, Customs held that stems of glasses that at the time of importation were in completed form and need only be fused with bowls to become finished glass were articles of glass chiefly used in the household or elsewhere for preparing, serving or storing food or beverages, or food or beverage ingredients under item 546.52, TSUS. The reasoning in that case was that since the glass stems were so far advanced they had a individuality which identified them as the thing they would be when finished: glasses for serving beverages.

In L&R Products Corp v. United States, 70 Cust. Ct. 30, C.D. 4404(1973), a case cited by Customs ruling 045680, it was found that although salt shakers imported without tops could not be utilized as salt shakers in their condition as imported, they could still be used in the household for preparing, serving or storing food or beverages.

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It is our view that the articles of glass in this case are not so far advanced as to be considered unfinished glasses for serving beverages. The articles in this case differ from those in Ruling 045680 as they are not completed stems, but still must be worked on to be finished. L&B Products can be distinguished as the articles in question here, unlike the articles in L&B Products have no use in their imported condition. Articles for serving beverages must have a bowl of some sort to hold liquid; the imported unfinished stems have no characteristic to serve this purpose.

As L&B Products and ruling 045680 can be distinguished, it is our view that the subject articles are not unfinished articles of glass used in the household for preparing, serving or storing food or beverages, but are classifiable under Item 548.05, TSUS, as articles, not specially provided for, of glass: other.

Your inquiry concerning the country of origin marking of the imported articles will be separately addressed.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value & Special
Classification Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 21 1985

REFER TO
CLA-2 CO:R:CV:V
553739 KP

Paul E. Linet, Esq.
Sandler & Travis, P.A.
Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

Dear Mr. Linet:

This is with reference to your letters dated May 8, June 3, July 2, and July 3, 1985, submitted on behalf of your clients and , wherein you requested a ruling that threaded, coupled, steel oil well casing and tubing produced in Panama as described below would be eligible for duty-free treatment under the Caribbean Basin Initiative (CBI) upon importation into the United States.

As described in your letter, the oil well casing and tubing is produced in two stages. In the first stage, products which you identify as steel tubes are formed from imported coils of steel by the following process:

1. The raw material is placed in a slitter line where a double cone-type uncoiler rotates the coil.

2. The peeler section separates the strip where it enters the hold down roll.

3. Side guides direct the strip through the pinch rolls into the flattener.

4. The leading and following ends are crop sheared before being forced into the pinch rolls at the slitter section. The slitter cuts the master coil into strips conforming to the size of the desired product.

5. Each slitted strip is then recoiled and banded.

6. The coils are then placed in a coil car. This entry system uncoils and peels the steel and then feeds it into a roll flattener.

7. At the roll flattener, the coil is extended into the overhead reserve loop storage compartment which stores approximately 400 feet of coil and loop back into a series of leveling rolls.

8. The steel strip is then cropped on the squaring shear and butt welded to the preceding coil end.

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9. The steel strip next is forced through two side trimmer knives for sizing and then into the tube forming rolls.

10. The tube forming rolls form the steel into a cylinder.

11. The edges of the tube are welded.

12. The external weld bead is then trimmed to a flush condition.

13. The weld area is then normalized by a seam annealer.

14. The welded product then goes through an air cooling zone and into the electro-magnetic inspection station for testing. Marks are put on all detected defects for identification.

15. The product then goes through a water cooling station.

16. Next, the tube goes to a sizing station where any deviations that might have resulted from the application of heat through welding and seam annealing are corrected.

17. The product is then cut to length with a flying cutoff saw.

Although the steel tubes emerging from this process would have virtually the proper wall thickness and inside tube diameter to meet A.P.I. specification 5A for oil well casing and tubing, you stated that they would not have the metallurgical qualities or the yield or tensile strength necessary to satisfy that specification. You furnished us with copies of letters from two industry representatives indicating that steel tubes such as those produced in this first processing stage could and would be sold for use in line pipe, standard pipe, and structural applications.

In the second processing stage of the proposed operation, oil well casing and tubing would be produced from the steel tubes as follows:

1. The tubes that are to be made into oil well tubing are put through an "upset forging" process, in which the ends of the pipe are heated, forged, and thickened.

2. Both the upset tubes (for oil well tubing) and plain-end tubes (for oil well casing) are heated to a temperature above the austenitizing temperature.

3. The tubes are cooled through water quenching.

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4. The steel is then heated again through a "tempering" treatment to a temperature below the critical temperature, and cooled.

5. The products are then diverted to an inspection table for visual inspection and laboratory analysis. Electronic and sonic tests may be performed at this station.

6. The ends of the steel tubes are then threaded.

7. Couplings that join individual lengths of the pipe are applied by machine to one end of each steel tube.

8. The tubes are then hydrostatically tested.

9. Next, the steel tubes are "drifted," a test in which a metal cylinder is passed through the inside of the tube to check for compliance with A.P.I. specifications.

10. Thread protectors are [illegible]talled for shipping and handling protection.

11. If the product has met all specifications at this point, it is then conveyed to the identification station where each joint is marked to reflect the individual size, weight, grade, end finish, length, test pressure, method of manufacture, company of manufacture, and origin. The product is then coated with a lacquer finish and banded for shipment.

Generally speaking, any merchandise which is imported directly from a CBI beneficiary country and which meets the country of origin criteria in section 10.195, Customs Regulations (19 CFR 10.195), is eligible for duty-free treatment under the CBI. 19 CFR 10.191(b)(2). Subsection (a) of 19 CFR 10.195 sets forth two requirements which must be satisfied in order for an article to be accorded duty-free entry under the CBI. First, the article must be either (1) wholly the growth, product, or manufacture of a beneficiary country or (2) a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country. Second, the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, must not be less than 35 percent of the appraised value of the article at the time it is entered.

Oil well casing and tubing are not among the types of merchandise that have been specifically excluded from receiving duty-free treatment under the CBI. In addition, Panama is one of the countries which have been designated as beneficiary countries for CBI purposes. You did not specifically state in your correspondence that the finished products would be imported directly into the United States from Panama; however, for purposes of this letter, we shall assume that to be the case. It is beyond question that the oil well casing and tubing, in comparison to the

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imported coils of steel from which they are made, are new or different articles of commerce which are grown, produced, or manufactured in Panama. Accordingly, the primary issue here is whether the 35 percent value-content requirement of the CBI is satisfied. In this regard, you orally indicated that your client must be able to consider the steel tube resulting from the first processing stage as a material produced in Panama, or else the CBI 35 percent value-content requirement cannot be met.

For purposes of the aforementioned 35 percent requirement, "materials produced in a beneficiary country or countries" covers only those materials incorporated in an article which are either (1) wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries, or (2) subject to certain limitations in 19 CFR 10.195(a), substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country in the production or manufacture of a new or different article which is imported directly into the United States. 19 CFR 10.196(a). Clearly, the steel tubing emerging from the first processing stage cannot be considered wholly the growth, product, or manufacture of Panama because the raw material from which it is made is the product of a country which is not a beneficiary under the CBI. Therefore, the steel tubing produced by the first stage of processing must satisfy the latter of the two criteria in 19 CFR 10.196(a) in order to be considered a material produced in Panama which may be counted towards meeting the CBI 35 percent value-content requirement.

The second criterion in 19 CFR 10.196(a) imposes a dual substantial transformation requirement upon raw materials imported into a CBI beneficiary country which are to be counted as materials produced in that country. Here, this means that the coils of steel produced in the nonbeneficiary country must first be substantially transformed into a new and different article of commerce which becomes a material produced in Panama. Then, that beneficiary country material, which you claim to be the steel tubing in this case, must, in turn, be substantially transformed into another new and different article of commerce which is imported into the United States. This dual substantial transformation requirement was recently upheld with respect to analogous Customs regulations concerning the Generalized System of Preferences. See The Torrington Co. v. United States, No. 85-670 (Fed. Cir. June 14, 1985).

A substantial transformation occurs when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process. Torrington, slip op. at 10-11 (citing Texas Instruments, Inc. v. United States, 681 F.2d 778, 782 (CCPA 1982)). By this definition, the first stage of processing clearly effects a substantial transformation of the imported coils of steel. The imported steel is a raw material whose characteristics are no more dedicated to making steel tubes than they are to making many other types of products. However, the steel tubes emerging from the first process have a size and shape which makes them particularly suited for the transportation of liquids or gases, or for use in structural

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applications calling for pipe. The steel tubes are new and different articles from the imported coils of steel, for they are more refined products which have lost the identifying characteristics of the raw steel and acquired new attributes which make them better qualified for specific uses. Thus, having found a substantial transformation resulting from the first process, we now look to the second process to see if the dual substantial transformation requirement has been met.

In the second processing stage, the steel tubes are made into the final products, oil well casing and tubing. This process is analogous to the first process in that where the first process transformed a material capable of being made into many types of steel products into an article generally designed for steel pipe applications, this process changes the multifunctional tube into pipe that is especially suited for use as oil well casing and tubing. This application demands pipe which can withstand greater stress than that which is used as line pipe or structural pipe, and, in fact, the final products here have a considerably higher yield strength and tensile strength than do the steel tubes emerging from the first process. In addition, the final products meet A.P.I. specifications for different grades of oil well casing and tubing, whereas the steel tubes emerging from the first processing stage do not. Furthermore, with threaded and, in the case of the tubing, upset ends, the oil well casing and tubing have a different physical appearance than the unprocessed steel tubes. Accordingly, we find that the second processing stage, whereby the steel tubes are changed into oil well casing and tubing, also results in a substantial transformation.

These two findings of substantial transformation are supported by the substantiality of the processing operations performed in Panama. As stated earlier, each of the two processing stages causes physical changes to the steel material. From cost figures submitted in connection with your first ruling request on behalf of and (file No. 553431), it is apparent that both processing stages would also add a significant amount of value to the steel. Moreover, inasmuch as the final products must comply with strict standards, the two processing stages demand attention to detail and quality control. Clearly, then, this is not the type of "pass-through" operation which Congress intended to prohibit from receiving the benefits of the CBI.

With the required dual substantial transformation present, the steel tubes may be regarded as a material produced in Panama within the meaning of 19 CFR 10.196(a), and therefore, their value may be included towards the satisfaction of the CBI 35 percent value-content requirement. If, counting the value of the steel tubes, the 35 percent value-content requirement can be met, then threaded, coupled, steel oil well casing and

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tubing produced in Panama as described herein may enter the United States free of duty under the CBI provided all other pertinent regulations and requirements, such as the requirement that the articles be imported directly into the United States, are satisfied.

Sincerely,

JOHN P. SIMPSON

John P. Simpson
Director, Office of
Regulations and Rulings

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DATE: AUG 7 1985

FILE: CLA-2 CO:R:CV:V
553769 EM

TO : Chief, General Classification Branch

FROM : Chief, Value and Special Classification Branch

SUBJECT: I.A. 59/85 - Assembly of Disposable Hospital Gowns and Patients' Drapes in Mexico

The following paragraphs on the 807.00 question may be included in your reply to the subject internal advice on disposable hospital apparel:

It is stated that hospital disposable gowns and patient drapes, which are used for surgery, are made from precut paper, cotton, and textile components that are exported to Mexico for the assembly process. During assembly of the gowns, trapezoidal-shaped sleeve panel components are first sewn to the gown body component and then sewn along a seam, described in the submission as a feld (fell) seam to form the sleeve components, and finally sewing cuff components onto the opposite sleeve ends.

The main component forming the patient drapes is a large rectangular piece of reinforced paper, to which are added side components, called wings, presumably to cover a patient's arms. During the assembly process of adding the side wing components, two slits are made by a machine blade in the main component, parallel with the drape length. Tracks of glue are applied or laid along the sides where the drape is slit and the added side components are manually laid over the glue tracks to form the added wing components.

With respect to component materials exported for assembly and return, item 807.00, TSUS, provides for United States components that are designed to be fitted together in an assembly process, with no operations performed thereon except attachment of the components to form the imported merchandise and operations incidental thereto.

On the basis of the samples and information submitted, allowances may be made for those components forming the hospital drapes since the slitting operation appears to be minor and bears some relation to the total assembly of the drapes. However, no allowances can be made under the tariff provision for the exported panels that are sewn into the form and shape of sleeves during the assembly process. The requirement under the tariff

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provision that a component "be ready for assembly without further fabrication" dictates that the component be a finished article ready for assembly. In the circumstances described, the sleeves were not exported as finished sleeves but had to be fabricated into sleeves abroad by the fell seaming operation on the sleeve material.

Accordingly, the sleeve panels are regarded as having been exported "not in condition ready for assembly without further fabrication."

(Signed) RUSSELL X. ARNOLD

Russell Arnold

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DATE: NOV 26 1985

FILE: CLA-2 CO:R:CV:V
553787 EM

TO : Area Director of Customs
New York Seaport
New York, New York 10048

FROM : Chief, Value & Special Classification Branch

SUBJECT: Reconsideration PRT 0901-3-000413 Decision Buffalo 553617 EM

This has reference to your memorandum dated June 25, 1985, requesting a partial reconsideration of the denial of item 807.00, Tariff Schedules of the United States (TSUS), to polyester/cotton scrim substrate material that is exported in long material lengths and laminated abroad with foreign vinyl material. This was the subject of a previous ruling dated May 20, 1985, under file No. 553617.

After the lamination process, the material was trimmed to 54-inch widths during the final take up step and also cut to length to form 30-yard rolls of the imported material. Item 807.00, TSUS, was found applicable on the basis that such operations as cutting to length and trimming to width are generally considered incidental to an assembly process.

On the other hand, cutting the same material during take up after lamination to lengths of 10.67 yards and 27-inch widths was considered contrary to the assembly provisions of item 807.00, TSUS. Cutting the exported materials to length as well as width was considered a further fabrication of the exported materials.

It was stated in the memorandum that slitting similarly exported materials to width was considered an acceptable operation under item 807.00, TSUS, in a prior ruling dated April 20, 1982, 067694. In that ruling, the textile materials were exported in long material lengths in a single width of 100 inches. Slitting the material during the take up into narrower widths was permitted for ease of handling since the material was returned in the same long material lengths as exported from the United States.

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However, it is still our position that cutting exported textile materials to length and width constitutes a fabrication that is contrary to the requirements of item 807.00, TSUS. As stated on many prior occasions, the requirement under the tariff provision that a component "be ready for assembly without further fabrication" dictates that the component be a finished article ready for assembly, except for the process of assembly itself and operations incidental thereto.

Harvey B. Fox

553787

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DATE: AUG 20 1985

FILE: CLA-2- CO:R:CV:V
553790 EM

TO : Area Director of Customs
Jamaica, New York 11430

FROM : Chief, Value & Special Classification Branch

SUBJECT: Internal Advice Request No. 16/85, Concerning the Applicability of Item 807.00, Tariff Schedules of the U.S. (TSUS), to Certain Cable Assemblies made in Ireland from Domestic-made Components

FACTS:

The merchandise will be exported by AT & T Technologies, Inc., and consists of wire, tape, and twine on spools, and labels, spacers, displacement connectors, connector hoods, and dust covers. In the assembly of the D 4 Bank Cable the wire is laid on a cable board in accordance with specifications and instructions provided. After the cables are formed in the desired manner, the harness is sewn with twine and cable junctions are secured by tape. Identification labels are placed on the cable arms and each connector, and insulation is stripped from the wire leads. After inspection and testing the cables are packed for shipment. In assembling the miniature coax cables of numerous varieties, the wire is drawn from the spools, stripped of some insulation, and then attached to various termination components by crimping, labeled, and packed for shipment. In the case of all of the returned articles, the exporter will be the ultimate consumer.

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ISSUE:

Is an allowance under item 807.00, TSUS, applicable to the domestic components assembled abroad into the cables?

LAW AND ANALYSIS:

We have viewed your submission including the exhibits and samples and have concluded that the components of United States origin are joined together by operations which qualify either as assembly or incidental to assembly.

CONCLUSION:

Accordingly, we are of the opinion that allowances may be made for the value of the exported fabricated components under item 807.00, TSUS, upon compliance with the regulations. In view of the fact that AT & T Technologies, Inc., is stated to be the ultimate consumer of the imported cables, the marking exemption provided for in section 134.32 (b), Customs Regulations should be applicable.

(Signed) RUSSELL ARNOLD

Russell Arnold

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CORRESPONDENCE APPROVAL AND CLEARANCE

CIA-2 CO:R:CV:V
553798 EM

F. Gordon Lee, Esq.
O'Connor & Hannan
Attorneys at Law
Suite 800
1919 Pennsylvania Avenue, NW.
Washington, D.C. 20006-3483

Dear Mr. Lee:

In your letter of July 22, 1985, on behalf of Max Kahn Curtain Corporation, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to an assembly of certain draperies performed in Haiti from component materials of United States origin.

Samples were submitted. The exported component materials consist of precut-to-size face and lining fabric materials, and rolls of 4-inch buckram material which is used as a stiffener to support the drapes. The assembly operations consist of lining up the face fabric with the liner, with the buckram in between. In order for the buckram to serve as a support for the drapes, evenly-spaced pleats are made in the three materials, and all are vertically stitched together to support the hanging fabrics and prevent the drapes from drooping. It is stated that added strength is needed at the top to support the hanging draperies and in order to carry this out, vertical pleats are made by gathering the three component fabrics at the top and vertically stitching the fabrics together. The stitched pleats allow the drapes to hang correctly, without drooping between hanging hooks. The assembled drapes are finished by sewing the face and lining fabrics at the bottom to form a hem, and the completed drapes are returned to the United States.

With respect to foreign assembly operations, item 807.00, TSUS, applies only to fabricated United States components that are designed to be fitted with other components in an assembly process, with no operations performed thereon except the attachment of the components to form the imported articles and operations incidental thereto.

Generally, allowances may be made under item 807.00, TSUS, for fabric materials that are exported in certain lengths, assembled abroad, and returned in the same lengths. Although the pleats sewn into component garment fabrics have previously been determined to go beyond the meaning of the term "assembly" under the tariff provision when the only purpose served by the pleats was that of ornamentation, we believe that the described pinch pleats made in the exported fabrics are necessary to carry out, and are functionally related to, the assembly of the fabrics. The pleats serve to add strength and support to the assembled fabrics and, therefore, are considered incidental to the assembly.

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Hemming the bottoms of articles is considered a finishing step that is of such a minor nature that it has traditionally been regarded as incidental to assembly. Further, joining the face fabric with only the buckram stiffener material at the top, without a liner, may be considered an assembly within the meaning of the tariff provision, since there is a joinder of two components. Hemming the bottom portion of the hanging drapes is of such a minor nature that it would be regarded as an operation incidental to the assembly.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

353798

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D14

SEP 25 1985

CLA-2 CO:R:CV:V
553802 EM

Luis Chavez, Esq.
Kemp, Smith, Duncan & Hammond, P.C.
Attorneys at Law
Post Office Drawer 2800
El Paso, Texas 79999-2800

Dear Mr. Chavez:

Re: IC No. 85-0022

In your letter of August 19, 1985, on behalf of W. S. Tyler, Inc., a subsidiary of Combustion Engineering, Inc. of Mentor, Ohio, you asked about the applicability of the Generalized System of Preferences (GSP) program to either brass or stainless steel testing sieves, proposed for manufacture in Mexico from materials of United States origin.

Samples and a manufacturing process description (MPD) with photographs were submitted. The sieves will be used for screening out particle size materials or separating liquid-contained materials in laboratories, mining companies, and similar industrial areas.

Sieve frames are first produced in Mexico from steel and brass blanks exported from the United States. The process involves press stamping the blanks into pie-plate shaped seamless hollow vessels and then punching out the bottoms in a die press. The upper edge of the shaped blanks is rounded off in a curling machine to produce rounded sieve frames.

Sieve skirts are made from a piece of wire mesh precut to desired shape and soldered to a rounded metal piece made from exported 32 in. strip to hold the mesh firmly. Sieve skirts are then soldered to sieve frames to produce finished sieves.

The completed sieves, shown in a round configuration in the photographs, consisting of sieve frames and assembled mesh skirts, are finish buffed to a luster, sprayed with a paint lacquer, and inspected. Before being packed in containers for return to the United States, however, two small evenly spaced holes are drilled in the sieves to hold a nameplate which is riveted in after return from Mexico.

With respect to the GSP question raised in your letter, in order to be regarded as a material produced in a beneficiary developing country and subject to the 35 percent criterion, the materials must either be produced in the beneficiary country or produced from substantially transformed constituent materials. A material imported into a BDC must be

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substantially transformed into a new article of commerce that is different from the material imported and which is used in the manufacture of the eligible article. The substantial transformation of the article imported into the BDC must result in an intermediate new material or article which is then used in producing the eligible article that is imported directly into the United States.

In this respect, the value of the brass or stainless steel blanks which are substantially transformed into sieve frames may be included in the 35 percent value-added requirement under the GSP. The sieve frames become a constituent element of the eligible testing sieves which are exported to the United States.

However, the exported mesh material and the metal in the sieve skirts directly used in making the imported sieves, are not substantially transformed constituent materials. The value of the metal material contained therein cannot be included in determining the 35 percent value-added requirement. Of course, all direct costs of processing may be included.

Sincerely,

(Signed) RUSSELL L ARNOLD
Russell Arnold
Chief, Value and Special
Classification Branch

553802

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OCT 16 1985

CLA-2 CO:R:CV:V
553807 EM

Mr. Adolfo Loera
Consultant
Twin Plant Customs Consultant
and Services
6044 Gateway East, Suite 506
El Paso, Texas 79905

Dear Mr. Loera:

In your letter of August 15, 1985, on behalf of Components Electricos de Lamparas of Juarez, Mexico, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to a certain "flock tip" assembly used as a component of a lipstick applicator, and made in Mexico from components of United States origin.

A sample flock tip was submitted. The exported components are described as a plastic tip, nylon flocking, and glue. In the assembly process, the exported plastic tips are first dipped in glue and then passed through a process of blowing the flocking material onto the tips. Excess flocking is removed and the glue is dried. Loose flocking is removed after drying and the flocked tips are packed for return to the United States.

With respect to articles assembled abroad, item 807.00, TSUS, applies only to fabricated United States components that are designed to be fitted together with other components in an assembly process, with no other operations performed thereon except the attachment of the components to form the imported merchandise.

On the basis that there is no assembly of components designed to be fitted together in an acceptable process, no allowances can be made for any of the exported components. The nylon flocking material is exported in a loose condition and is not designed for fitting together in an assembly. Glue loses its physical identity in the process and no allowances can be made for the exported plastic tips in the absence of an assembly of parts having taken place abroad. Accordingly, item 807.00, TSUS, remains inapplicable in the circumstances.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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CORRESPONDENCE APPROVAL AND CLEARANCE

OCT 11 1985

CLA-2 CO:R:CV:V
553808 EM

Richard A. Kaplan, Esq.
Lamb & Lerch
Counsellors at Law
233 Broadway
New York, New York 10279

Dear Mr. Kaplan:

In your letter of August 27, 1985, on behalf of Prevue Products, Inc., you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain styles of footwear, which are proposed for assembly in the Dominican Republic from components of United States origin.

Both partially and completely assembled articles of ladies' footwear, identified as Denise and Davos style boots, as well as component parts used in the assembled boots were submitted. The finished footwear is described as rubber or molded plastic soled boots with uppers made of fabric, plastic, or leather. In any event, the components forming the uppers will be sewn together in the assembly process and all components such as the shaft, vamp, quarter, collar, and lining components will be pre-cut to size-and-shape before exportation. Other components such as tapes, string, findings, etc., which are exported on spools or rolls, will be merely cut to needed length abroad. It is stated that thermoplastic pellets will be exported and injection molded to form plastic soles which will be assembled to the uppers to form completed boots. Buckles, rivets, and plastic heel plugs or inserts will be exported in condition ready for assembly.

It is stated that all components of the uppers will be assembled by stitching, cementing, and heatpressing in accordance with specifications for particular style boots. The completed stitched upper is secured over a last in an injection molding machine. Cement is placed on the bottom margin of the upper in order to effect adhesion with the molded plastic outsole. The bottom portion of the last is enclosed by a cavity mold. The exported plastic pellets are melted to a viscous state and injected into the mold cavity to form the outsole which is pressed to the upper, causing the cement-coated upper to adhere to the molded outsole. The plastic heel plug or insert is used to produce a higher wedge heel in a protrusion on the base of the last and is permanently held in place and encapsulated by the molten plastic. Upon cooling and adhering to the upper, the heel plug becomes an encapsulated part of the upper/outsole assembly. The molded boot is removed from the mold and last, trimmed and deflashed of excess plastic. An insole is inserted into the boot and the remaining components such as straps and buckles, are assembled to the

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finished boot after the molding, lasting process. The boots will then be sealed in shipping cartons exported for that purpose, along with packing tissue, stuffers, and labels of domestic origin and returned to the United States.

With respect to foreign assembly operations, item 807.00, TSUS, applies only to fabricated United States components that are designed to be fitted together in an assembly process, with no operations performed thereon except the attachment of the components to form the imported articles and operations incidental thereto.

On the basis of the samples and the description of the assembly process submitted, allowances may be made under item 807.00, TSUS, for all components forming the uppers, that are of United States origin and exported in a cut-to-size-and-shape condition. Tapes and similar materials exported on spools or rolls are regarded as fabricated components ready for assembly when exported. Allowances may also be made for the exported plastic heel plug which retains its identity as an exported fabricated component and is merely fixed in position throughout the process. No allowances can be made under the tariff provision for the exported thermoplastic pellets that are reduced to a molten state and injection molded into outsoles for the reason that the pellets have lost their physical identity by a change in form or shape in the molding process.

Containers or holders, including packaging materials, of United States origin may be returned free of duty under the provisions of General Headnote 6(b)(i), TSUS, as the usual type containers or holders that have not been advanced in value or improved in condition by any means while abroad.

The classification of the respective styles of boots will be the subject of a separate reply from our General Classification Branch.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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CORRESPONDENCE APPROVAL AND CLEARANCE

SEP 19 1985

CLA-2 CO:R:CV:V
553821 EM
814645 NY

Mr. Gerry Joseph
Joseph & Schiller Inc.
Customhouse Broker
5601 Corporate Way, Suite 109
West Palm Beach, Florida 33407

Dear Mr. Joseph:

Your letter of July 18, 1985, addressed to our New York office, has been referred to us for reply on the application of item 806.20, Tariff Schedules of the United States (TSUS) to certain balloons printed in Jamaica.

You state that balloons will be printed with advertising abroad and packaged for return to the United States. The printed balloons will be chiefly used as advertising media rather than for amusement.

We are of the opinion that the processing of the balloons by printing them with advertising amounts to more than an alteration since it gives the articles new characteristics and uses. Accordingly, the returned printed balloons would not be eligible for tariff treatment under the provisions of item 806.20, TSUS, and would be subject to duty on total quantity and full value.

Sincerely,

(Signed) RUSSELL, ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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SEP 19 1985

CLA-2 CO:R:CV:V
553822 EM
814982 NY

Mr. Richard G. Dumont
R. G. Dumont Associates
437 Rozzi Place
So. San Francisco, California 94090

Dear Mr. Dumont:

Your letter of August 7, 1985, addressed to our New York office, has been referred to us for reply on the tariff status of certain precious metal rings assembled in Italy utilizing Asian gemstones cut and polished in the United States.

The processing of the stones in this country would be sufficient to qualify them as domestic fabricated components for the purposes of item 807.00, Tariff Schedules of the United States (TSUS). Accordingly, upon submission of satisfactory proof and compliance with the regulations, an allowance in duties could be made for the value of the exported stones used in assembling the rings.

Gold rings made in Italy are dutiable under the provisions in items 740.14 or 740.15, TSUS, for jewelry of precious metal or stones at the rate of 7.9 percent ad valorem.

Sincerely,
(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

E7

SEP 25 1985

CLA-2 CO:R:CV:V
553828 EM

Mr. Timothy J. Manning
Fabex, Inc.
27950 Orchard Lake Road, Suite 101
Farmington Hills, Michigan 48018-4783

Dear Mr. Manning:

In your letter of September 4, 1985, you asked about the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to certain copper-coated steel strip that will be exported to Mexico for processing into tubing and returned to the United States for further processing.

Samples were submitted. Small diameter steel tubing is used in the automotive industry. Upon return to the United States, the tubing will be zinc plated on the outer surface area and cut into specific lengths. Fittings will be assembled on the cut ends and the tubing will be bent to special shape and form, depending upon final use. The ends of the tubing will also be flared or upset.

With respect to a duty allowance for articles of metal made abroad from United States-made base metal, item 806.30, TSUS, requires further processing to be performed on exported articles both in the foreign country and again upon return to the United States. In order to meet the requirements of "further processing," some operations must be applied to the metal articles that will change their shape or form or impart new and different properties and characteristics to the metal that did not exist before and which become an integral part of the metal itself.

On the basis that steel strip of United States origin is exported and converted into tubing which is returned for further processing by plating, cutting to length, flaring the ends, and bending to special shape and form, it appears that both the foreign and domestic segments of the processing cycle are met. In these circumstances, we are of the opinion that the processing requirements are satisfactorily complied with and the imported tubing is eligible for item 806.30 tariff treatment, upon compliance with the regulations.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 180 (11-13-73)

NOV 21 1985

CLA-2 CO:R:CV:V
553835 EM

District Director of Customs
U.S. Customs Service
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2528

Dear Sir:

This ruling is in response to the Application for Further Review of Protest No. 3801-2-002051 of December 21, 1982. The protest was filed against the decision in the liquidation of entry No. 82454896 dated June 11, 1982. The entry was liquidated on December 17, 1982.

ISSUE:

The question raised concerns the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to a certain article referred to as an air ring that was exported to Canada as part of a plastics die assembly for repairs.

FACTS:

The air ring as part of a die assembly was foreign made and both the air ring and die assembly were exported to Canada in separate shipments and listed on separate Certificates of Registration CF 4455 but reimported together. Both are components of blown plastics film processing equipment producing extruded film. Air rings rotate in conjunction with dies. A 22-inch die was exported for re-design and a 22-inch aluminum body lip air ring was later exported upon discovering that they were not exported together since one cannot operate without the other. The air ring was exported for the purpose of testing the redesigned die and no work was done on the air ring while it remained in Canada. Both were returned in the same shipment.

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The district director believes that testing alone does not fall within the purview of item 806.20, TSUS, and the value of the air ring should be dutiable as part of the value of the repairs. The importer takes the position that the air ring should be entered free of duty under item 806.20, TSUS. Duty should be assessed only on the cost of the repair work done on the die in Canada.

LAW AND ANALYSIS:

Under item 806.20, TSUS, articles exported for repairs or alterations may be returned to the United States with duty on the foreign value of the repairs or alterations.

On the basis of the information submitted, an air ring and film die are generally fitted together since the die has to fit the ring in an exact manner. The ring is necessary for proper functioning of the die since the ring supplies cooling air for the outer surface of the film and, unless cool air is delivered to the die, the film will not form properly during the extrusion process.

Although the air ring and die are both classifiable as parts of machines for molding or otherwise forming plastics, the air ring was nonetheless necessary for precise testing of the redesigned die and to establish precise fit with the air ring. There was no other means for determining whether the die would be a proper fit in the absence of the ring. The fact that the ring was not repaired in Canada does not preclude its return under item 806.20, TSUS, since the repair was done to the die but the presence of the ring was necessary for successful completion of the repair work performed.

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CONCLUSION:

If there was no physical change or enhancement of value of the ring, the work being performed exclusively on the die, the ring should not be denied free entry as part of the repaired entity under item 806.20, TSUS.

Accordingly, you are hereby requested to grant the protest in full. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant. The protest file is enclosed.

Sincerely,

Russell Arnold
Chief, Value and Special
Classification Branch

Enclosure

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SEP 27 1985

CLA-2 CO:R:CV:V
553836 EM
815115 NY

Mr. Edward Azizi
Wego Chemical & Mineral Corp.
417 Northern Boulevard
Great Neck, New York 11021

Dear Mr. Azizi:

Your letter of August 13, 1985, addressed to our New York office, has been referred to us for reply on tariff status of electrical wire of United States origin which is attached to lamp sockets made in China.

Item 807, Tariff Schedules of the United States, provides for an allowance in duty for the cost or value of domestic fabricated components assembled abroad with other components.

On the basis of the samples and information submitted, allowances may be made under the statute for the value of the exported wire which is merely cut to length and attached to the sockets, upon compliance with the regulations.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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SEP 30 1985

CLA-2 CO:R:CV:V
553838 EM

Mr. John M. Ryan
Customs Administrator
Transportation Department/3M
3M Center
Post Office Box 33250
St. Paul, Minnesota 55133

Dear Mr. Ryan:

In your letter of August 27, 1985, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain merchandise referred to as a treble lock fastener device made in Mexico from component materials of United States origin.

Samples and a description of the fastener assembly process were submitted. The device is described as a hook and loop fastener system designed for attaching automotive seat covers to foam seat cushions. The fasteners are attached to seat cushion material by either an adhesive bonding or molding-in-place during the seat foaming process and are said to mate to loop fiber materials on the inside of seat covers. The fasteners consists of multiple protruding, plastic grapple-like hooks that lock into any one of a variety of loop materials.

The finished part is described as a lock fastener mounted on a nonwoven low-density web and covered with a protective film component, ready for use in the construction of foam cushions. Exported components are listed as a roll of plastic film backing about 6 1/4 in. wide, and spools of polypropylene filament material, metal strip 1/2 in. wide, nonwoven web strip 1 3/4 in. wide, peltable thin plastic cover film, resin pellets, and a quantity of a hot melt adhesive substance.

Briefly, the fastener assembly process is made in a series of three stages, the first of which is the filament implanter line whereby two parallel strips of carrier backing are implanted with fibers and then separated along the fiber line into two separate implanted carrier backings, the hook formation stage of the implanted fibers, and the final stage of laminating between rollers the hook fastener material to both a nonwoven web and an embedded metal strip, all overlaid on the top with a thin clear peltable plastic cover film. The final product would either be seated in a specially designed cavity mold, with poured liquid urethane foam surrounding the bottom of the mold to form a finished foam cushion with a molded-in hook fastener; or, the hook fastener product can be bonded to a preformed seat cushion by an adhesive coating applied to both a nonwoven mat and a seat cushion surface.

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In making the initial basic hook fastener material, the fiber filament is looped back and forth between parallel upper and lower layers of heat-softened, viscous backing material and then separated by cutting horizontally through the looped fibers between the strips to form two backing strips, each with multiple implanted fibers. The strips are again heated to a temperature that causes the tips of the fibers to melt, creating round lobes or hooks on the ends, and cooled to halt any further deforming of the tips of the implanted fibers. The fiber-implanted strips are passed through a series of knives, which slit the material into strips 7/8 in. wide.

553838

In the final stage, the remaining exported components are processed by laminating the hook fastener material to a nonwoven web strip, with a strip of metal in between, and overlaid with a thin plastic cover film. Resin pellets are extruded into a backing joined with the metal, web, and fastener strips in a continuous line process to form a one-piece component. The final step may consist of sealing the assembled component within a mold cavity and pouring liquid urethane foam into the bottom of the mold. The result is a cured, finished urethane foam seat cushion, with a molded-in lock fastener on the surface. The clear plastic cover film on the top of the fastener prevents the liquid foam from leaking into the fastener hooks.

The underside of the moving lock fastener laminated strip is printed with specific automotive part numbers, cut into specific lengths, and packed for return shipment.

With respect to assembly operations, item 807.00, TSUS, provides for an allowance in duty for the cost or value of domestic-made fabricated components that are exported in condition ready for assembly without further fabrication.

On the basis of the samples and descriptions submitted, allowances may be made under the tariff provision for the value of the exported nonwoven web and metal strips, and the plastic cover film. These materials are exported on rolls and merely cut to length to facilitate the assembly. No allowances, however, can be made for the spool of polypropylene fiber material and the roll of plastic film backing which acts as the vehicle for the manufactured fastener hooks. Making fibers into hooks is not an assembly operation and cutting the plastic backing material into 7/8 in. wide strips and final cutting to specific lengths are operations beyond the province of item 807.00, TSUS. Cutting exported material to length and width is not considered incidental to assembly. Nor can allowances be made for the resins and adhesives since they lose their physical identity in the finished articles.

Sincerely,

(Signed) RUSSELL ARNOLD

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Russell Arnold
Chief, Value and Special
Classification Branch

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B5 CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

SEP 30 1985

CLA-2 CO:R:CV:V
553840 EM

William F. Joffroy, Jr.
Twin Plant Consulting Services
Post Office Box 2496
Nogales, Arizona 85621

Dear Mr. Joffroy:

In your letter of August 29, 1985, you inquire whether the plating of a can and lid in connection with the assembly of a filter in Mexico would preclude the application of item 807.00, Tariff Schedules of the United States (TSUS).

You state that the articles are plated with a nickel-copper alloy to protect them from rusting and to permit them to be soldered. You believe that the plating process should be considered incidental to the assembly operation.

One of the requirements of item 807.00, TSUS, is that the domestic fabricated components be ready for assembly without further fabrication at the time of exportation. Minor conformity painting and similar proceses are allowed as incidental if they must be accomplished in connection with the assembly.

We are of the opinion that the plating of the can and lid under the circumstances described is not a minor operation which must be performed as part of the assembly process. Accordingly, it cannot be considered as incidental to assembly and would be sufficient to disqualify the plated components from tariff treatment under item 807.00, TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

TO THE

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OCT 0 1 1985

CLA-2 CO:R:CV:V
553843 EM

Mr. John M. Ryan
Customs Administrator
3M Center
Post Office Box 33250
St. Paul, Minnesota 55133

Dear Mr. Ryan:

In your letter of September 6, 1985, you asked for information about the tariff status of rolls of ribbon material, referred to as "Pull String Pom Bow," which you propose to export to Mexico for cutting into individual bow units and packaging in cartons for return to the United States.

The sample is a man-made ribbon that is notched into 4 1/2 or 6 in. evenly spaced segments, depending upon ribbon width. Each bow unit consists of a specific number of notched sections which are fastened together at one end with a single glue dot and open at the opposite end. A drawstring runs lengthwise through the center of the notched ribbons. Bows are formed by pulling the drawstring through the unsealed end while pushing the segmented ribbon downward in bellow-like fashion. The bow ribbon product is sold either in rolls, cut into separate bow units, or in boxes of precut individual bow units.

It is proposed to export rolls of the notched bow ribbon material to Mexico for cutting into individual bow unit lengths, folding, and packaging into cartons of 40 bows each, and return to the United States.

Products of the United States may be returned free of duty under item 800.00, Tariff Schedules of the United States (TSUS), without having been advanced in value or improved in condition by any process of manufacture or other means while abroad. The test specified under the statute is whether the merchandise of American origin has itself been the object of an advance in value or improvement in condition while abroad. Cutting the exported material to shorter lengths constitutes at least an improvement in condition, sufficient to render the imported material ineligible for free entry under the tariff provision.

On the other hand, with respect to the described alteration, item 806.20, TSUS, provides that articles may be exported for repairs or alterations and returned to the United States with duty assessed on the value of the repairs or alterations made abroad.

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On the basis that the bow ribbon product is sold either in rolls or boxes of individual bow units, no new commercially different articles are produced by the foreign cutting and a finished product does not result from an unfinished one. Bow ribbon material is both exported and returned but in shorter lengths. In this view, the foreign cutting constitutes an alteration and tariff treatment under item 806.20, TSUS, is applicable to the imported articles, upon compliance with the regulations.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

553843

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OCT 03 1985

CLA-2- CO:R:CV:V
553848 EM

Mr. I. Bier
Thyssen Inc.
1114 Avenue of the Americas
Grace Building
New York, New York 10036

Dear Mr. Bier:

In your letter of September 18, 1985, you inquired concerning the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to certain steel tubing made in Mexico.

You state that hot rolled and cold rolled carbon steel produced in the United States will be converted abroad into structural and ornamental tubing. After importation into this country the tubing will be sold to distributors who will sell it to end users who will cut it into fixed lengths and weld it into machine parts. in turn

Item 806.30, TSUS, requires that the metal article processed abroad be further processed when returned to the United States. This further processing must be designed to complete the imported article and not be merely incidental to the use of the article for its intended purpose.

Based upon the information submitted, it appears that the steel pipe is in a finished condition when imported and the subsequent cutting and welding is performed to adapt it to the attachment to specific machine parts. As the statute does not apply to finished articles and since the cutting of the subject pipe is not to finish it but to utilize it in manufacturing parts, it cannot be considered as further processed after return to the United States.

Accordingly, the imported pipe in question would not be eligible for tariff treatment under the provisions of item 806.30.

EMBARGO/1pm/10/2/85

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value & Special
Classification Branch

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CODE AND DATE
DEPART
DIVICE
CORRESPONDENCE APPROVAL AND CLEARANCE
Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 19 1985

REFER TO
CLA-2 CO:R:CV:V
553849 HS

Stephen L. Urbanczyk, Esq.
Williams and Connolly
839 Seventeenth Street, NW.
Washington, D.C. 20036

Dear Mr. Urbanczyk:

This is in response to the petition you filed with the Customs Service pursuant to section 516(a), Tariff Act of 1930, as amended (19 U.S.C. 1516(a)), on behalf of the National Corn Growers Association, New Energy Company of Indiana, Ohio Farm Bureau Federation, Inc., South Point Ethanol, and Archer Daniels Midland Company. The petition challenges Customs view that azeotropic distillation of up to 190 proof ethanol in a beneficiary country of the Caribbean Basin Initiative (CBI) program to 199+ proof ethanol makes the 199+ proof ethanol a product of the CBI beneficiary country entitled to duty-free treatment.

This response, written pursuant to 19 U.S.C. 1516(c) and 19 CFR 175.22(b), is to notify you that we have reviewed your petition, your additional submissions, and all other submissions received as the result of our notice published in the Federal Register on April 11, 1985, (50 F.R. 14250) and have determined that the Customs classification is correct.

Over 45 comments were submitted in response to the published notice. Many of these comments discussed policy issues regarding the Caribbean Basin Initiative. However, it is our view that there is only one controlling issue in this case: whether azeotropic distillation of 190 proof ethanol to 199+ proof ethanol is a substantial transformation.

It is argued by the petitioner and other commenters that the azeotropic distillation process neither creates a new or different article of commerce nor involves substantial processing.

A brief description of the azeotropic distillation process is as follows:

> At 190+ proof, ethanol will have formed an azeotrope with water and other impurities that must be removed before the ethanol can sucessfully be blended with gasoline to make gasohol. As an azeotrope is a

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constant boiling point liquid, traditional distillation processes are ineffective to break the azeotropic system. Thus, to produce ethanol suitable for blending to make gasohol, the azeotrope must be "cracked" using a Ternary Azeotropic Distillation process, whereby a third chemical is added to the ethanol solution to form a new mixture. This chemical is called an entrainer and is usually benzene, although cyclohexane, di-isopropyl ether, and gasoline have also been used. The entrainer forms a ternary azeotrope which is mainly water and benzene with a boiling temperature different from water. This temperature varies widely with the relative concentrations of ethanol, entrainer, and water. In addition, flow rates and pressures become critical control variables. Once the ternary azeotrope solution is separated from the ethanol, its vapors are condensed and sent to another distillation column to separate the benzene and trace amount of ethanol from the water.

Among the arguments set forth as to why 199+ proof ethanol is not a new and different article of commerce than ethanol of up to 190 proof are: (1) there is no chemical change between the 190 proof and 199+ proof alcohol -- the only difference is that water is removed; (2) there is no clear distinction between hydrous and anhydrous ethanol for many industrial uses; and (3) hydrous ethanol is used in Brazil as motor fuel.

It is Customs view that the extra 5 percent water that is missing from the anhydrous ethanol which causes the difference in specification is significant enough to make the anhydrous a new or different article of commerce. It is the absence of water that makes 200 proof ethanol suitable for particular uses, while it is the presence of water that makes 190 proof ethanol unsuitable for those same uses. Also, 190 and 200 proof ethanol have different freezing points, boiling points, densities, viscosities, vapor pressures and flash points.

Further evidence that 190 proof and 200 proof ethanol are different articles is the price differential between the two. For the past year, the Chemical Marketing Reporter has stated that the price of tax-free absolute ethanol is 12 cents per gallon higher than that of 190 proof tax-free ethanol. There is a price difference of about 8 percent. A price difference of about 5 percent is to be expected since the anhydrous product contains 5 percent more alcohol, but a price difference of 8 percent reflects, in part, the additional dehydration steps involved. By way of comparison, the price difference between two different grades of glycerine (99.5

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percent and 96 percent) correlates almost exactly with the glycerine content of each, reflecting the fact that here the purer grade is subjected to a longer, but not a different, purification process.

Regarding the claim that 190 proof ethanol is used as motor fuel, the Brazilian government built a fleet of motor vehicles that used 190 proof ethanol as a defense against rising oil prices, but those vehicles and others like them were specially designed for that use. The modifications needed to enable the average car in the United States to use 190 proof ethanol would be more than minor and such vehicles are not commercially available in the United States.

In the United States, gasohol can have a maximum of 10 percent anhydrous ethanol according to EPA regulations. Only absolute ethanol can be blended with gasoline and technical references examined by Customs indicated that for ethanol to be blended with gasoline, to make gasohol, the entire fuel delivery system from refinery to tank trucks to undergound tanks in filling stations, must be dry. Water, even a small amount, will "split" the blend, causing the blend to separate into an aqueous phase and a hydrocarbon phase. Accordingly, it is Customs view that anhydrous ethanol has a use in the United States -- for blending to make gasohol -- that hydrous ethanol will not serve. While hydrous and anhydrous ethanol may both serve some industrial uses, our research reveals that anhydrous ethanol even when used for industrial purposes is used generally for purposes where water cannot be tolerated, such as in certain chemical manufacturing processes and for certain solvents.

The arguments that azeotropic distillation is not a substantial processing operation are that (1) dehydration is merely the opposite of dilution and dilution is clearly not considered a sufficient operation to entitle an article to duty-free treatment pursuant to section 10.195, Customs Regulations; (2) azeotropic distillation is just a simple boiling and cooling procedure; (3) the process does not require many workers; (4) the incremental capital, energy and labor requirements are miniscule when compared with the total cost of converting agricultural feedstock to ethanol, and (5) there is no significant distinction between proof enrichment from 194-199+ and from 190-199+, and Customs has ruled that enrichment from 194-199+ would not be sufficient to entitle the ethanol to duty-free treatment.

It is Customs view that if removal of water were to be considered per se an operation not sufficient to entitle an article to duty-free treatment under the CBI, it could have

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been listed in the statute or regulations as easily as dilution was listed. Further, the addition of water to a product is generally a much more simple process than removing water.

Azeotropic distillation is more than a simple boiling and cooling procedure. The process involves complex equipment, sensitive instruments and trained personnel. In the particular operation challenged in this petition, the equipment includes a dehydration column over 150 feet high and 7 feet in diameter, over sixty stainless steel trays, each with nearly a hundred valves, plus weirs and downcomers, all manufactured to exacting standards. The Entrainer Recovery Column is 90 feet tall, 3 feet in diameter with nearly 60 stainless steel valve trays of its own. There are reboilers, heat exchangers, condensers, reflux tanks, decanters, surge tanks, vents, interconnecting piping, instrumentation, valves, pumps, meters, structure and mechanical systems required to maintain these columns.

In Uniroyal, Inc. v. United States, 542 F Supp. 1026, 3 CIT 220, aff'd 702 F2d 1022 (Fed Cir. 1983), the court stressed that factors such as cost and skill can be considered in determining whether a substantial transformation has occurred. In this case, the personnel must be trained to correctly monitor the azeotropic distillation process, and there has been an ample capital investment.

According to one comment, the drying process, per se, is not complex. Any complexity associated with the ternary distillation and directly associated process steps is in the design of the equipment and control apparatus. It is our view that the technical nature of the design of the equipment and the skill required of the workers to operate and monitor the system is of sufficient complexity to take the operation out of the simple combining, packaging or mere dilution categorization. While the number of workers involved in any specific operation is a factor to be considered in determining whether a substantial processing operation has occurred, it is not a controlling factor. In this particular case, we believe that the amount of local employment involved in the operation would not deter us from finding substantial processing.

We do not agree with the argument that the conversion of 190 proof ethanol to absolute ethanol is a minor step in the manufacture of ethanol from grain and therefore cannot be a substantial transformation. Obviously, the relative cost of

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any one step in an overall process will decrease as the number of steps increases. Further, each operation must be examined on its own as to whether it is a substantial transformation.

Finally, Customs holding in a General Headnote 3(a) case that there is not a substantial transformation when ethanol of 194 proof is brought up to 199+ proof through azeotropic distillation was based on the fact that an entire azeotropic distillation operation was not occurring in the insular possession. Customs looks at all operations on a case-by-case basis in determining whether substantial transformation occurs. In the particular case where an operation was proposed to make ethanol anhydrous from a level of 194 proof, it was Customs view that since a partial azeotropic distillation operation had already occurred, merely finishing the azeotropic distillation operation in the insular possession would not be sufficient to make the 199+ proof ethanol a product of that insular possession. In this instance an entire azeotropic distillation operation is occurring in the beneficiary country.

In summary, after reviewing the petition, supplemental submissions and all the comments received, Customs has decided to continue to consider the azeotropic distillation of up to 190 proof ethanol to 199+ proof ethanol in a beneficiary country of the Caribbean Basin Initiative a substantial transformation of the ethanol making the 199+ proof ethanol a new and different article of commerce entitled to duty-free treatment.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

TO THE

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OCT 11 1985

CLA-2 CO:R:CV:V
553852 EM

Luis Chavez, Esq.
Kemp, Smith, Duncan & Hammond, P.C.
Attorney at Law
Post Office Drawer 2800
El Paso, Texas 79999

Dear Mr. Chavez:

In your letter of September 27, 1985, on behalf of W. S. Tyler, Inc., a subsidiary of Combusion Engineering Inc., referred to as C. E. Tyler, you asked for information about the tariff status of certain pre-crimped metal mesh screens that are proposed for manufacture in Mexico from component metal wire of United States origin.

An assembly process description and photographs were submitted. The mesh screens are used in separating materials of different sizes and are used in mining, gravel pit operations, quarries, laboratories, and other places requiring a sifting of materials.

Coiled wire stock is exported in various diameters, ranging up to .500 in. and is drawn through a vertical crimper that causes vertical humps or waves to be impressed at spaced intervals along its length and the wire so crimped is sheared to proper length. The vertical wire is pulled through a wire assembly machine and positioned by changing heddles which raise and lower the vertical wire for insertion of a similar horizontal die-crimped wire, which when completed forms a mesh size in accordance with a fixed width and the number of openings per linear inch of mesh. The finished mesh is either rolled or sheared to special length by an acetylene torch for return shipment to the United States.

Upon return to the United States, the imported rolls of wire mesh or flat lengths are squared to correct size by means of a torch. Further operations consist of knocking out either one or two horizontal wires from the ends, called pickets in the assembly description, and heating the sheared ends of a section in a furnace to a red, softened state, and forging the softened ends into hooks by a machine process called hook stripping the ends. The formed ends (pickets) may remain as hooks or a metal piece may be inserted across the interior of the hooked ends during the process.

With respect to item 807.00, Tariff Schedules of the United States (TSUS), this provision only applies to United States components that are exported in condition ready for assembly without further fabrication. However, the crimping and shaping of the exported wires before meeting up in an assembly are regarded as further fabrications and show that the wires are exported in a condition not ready for assembly. In this respect, the applicability of item 807.00, TSUS, to the imported mesh material would be precluded in the circumstances.

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On the other hand, item 806.30, TSUS, applies only to articles of base metal of United States origin that are processed abroad and then further processed on return. This further processing must be designed to complete the imported article and not be merely incidental to the use of the article for its intended purpose.

Based upon the information submitted, both the forming and shaping of the wire abroad and the described squaring the sides, furnace heating, and hooking the ends of the cut sections upon return to the United States appear to be a sufficient processing of the mesh material to qualify the imported mesh for item 806.30 tariff treatment.

With respect to the GSP question raised in your letter, the exported wire used in making the mesh material is not a substantially transformed constituent material. Merely die-crimping the wire into humps and waves along its length does not transform the wire into a new and different article. The value of the wire contained in the mesh material cannot be included in determining the 35 percent value-added requirement.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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F11

OCT 11 1985

DATE:

FILE: CLA-2 CO:R:CV:V
553855 RG

TO : Area Director of Customs
New York Seaport
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Request for Reconsideration of Headquarters Ruling 553522 HS

This is in response to your memorandum which requests reconsideration of Headquarters Ruling 553522 HS dated March 26, 1985. The decision letter classified a folding screen painted by Giacomo Balla under the provision for paintings executed wholly by hand in item 765.03, Tariff Schedules of the United States (TSUS), and therefore, not subject to duty.

You contend that the article is capable of being used as a screen, and the fact that the importer does not intend on using it as such is irrelevant. You rely upon Headquarters ruling 553140 which indicates that Headnote 1(iv) to Subpart A, Part 11, Schedule 7, TSUS, specifically precludes from coverage under any of the provisions therein any articles of utility. However, any utilitarian purpose or characteristic that can be attributed to the screen in question is outweighed by the elaborate paintings. The screen is merely being used as a background for the presentation of the artist's work.

The determination of whether the article can be considered under the "works of art" provision of the TSUS, is done on a case-by-case basis. In the instant situation, it is our opinion that the artist merely chose a familiar utilitarian form for which to present his work. This fact alone will not exclude the screen from the status of a painting and work of art. As stated by the court in Sanji Kohata et al. v. United States, C.D. 4213 (1971), an examination of the artistic merit of the article is a factor to consider. The artistic merit of the Giacomo Balla screen is substantial and contributes highly to the beauty and aesthetic value of the merchandise.

It is not necessary to reiterate the arguments set out in our prior decision letter. In view of all the circumstances, our opinion with respect

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to the Giacomo Balla screen has not changed. The folding screen is classifiable under the provision for paintings executed wholly by hand in item 765.03, TSUS, and not subject to duty.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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OCT 22 1985

CLA-2 CO:R:CV:V
553880 EM

Mr. Alan M. Sandperil
President
Capital Metals, Inc.
P.O. Box 6647
Providence, RI 02940

Dear Mr. Sandperil:

In your letter of October 11, 1985, you asked about the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to cold rolled steel strip in coil form that you propose to export to certain European Common Market countries for processing and return to the United States for further processing into finished consumer products.

It is proposed to export either hot or cold rolled steel strip in coil form. The foreign processing would consist of a line operation of first cleansing the metal and passing it through an electrolytic solution for electroplating with either nickel, brass, copper, or chrome, followed by rinsing and polishing. In some cases, the electroplated steel strip would be slit into narrow widths before return to the United States. Exported hot rolled steel strip would first be cold rolled to a required thickness in the foreign process before undergoing the same operations as cleaning, electroplating, polishing, and slitting into narrower widths.

Upon return to the United States, the steel strip would be sold to various manufacturers for producing such end products as flashlight battery cans, picture frames, three-ring metal loose-leaf binders, jewelry findings, fireplace fixtures, etc.

Item 806.30, TSUS, applies to articles of metal that are exported for further fabrication in a foreign country and again processed upon return to the United States, with duty assessed on the value of the foreign processing, upon compliance with Customs regulations.

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On the basis that the exported hot or cold rolled steel strip is of United States origin and will be processed abroad by electroplating with nickel, brass, or chrome, and further fabricated upon return to the United States into finished forms of metal products, all appear to be adequate operations sufficient to comply with the further processing requirements of item 806.30, TSUS.

However, with regard to the steel strip that is returned to the United States for sale to, and further processing by, unknown purchasers, the area or district director of Customs must determine from the overall circumstances of the transaction whether the metal would be returned for further processing in the manner and for the uses described. The mere expectation that the exported metal will be further processed by unknown customers in the undetermined future leaves open the speculation that the full cycle of processing might never take place, contrary to the tariff provision. This is the framework of compliance with the regulations within which the importer of the metal must operate. There can be no blanket endorsement of compliance without following the prescribed steps.

In the final analysis and in accordance with the rules and regulations, the question of whether claims for item 806.30 tariff allowances are justified by the facts rests ultimately with the area or district director of Customs. In this regard, see section 10.9 of the Customs Regulations, copy enclosed.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value & Sepcial
Classification Branch

Enclosures

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TO THE

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NOV 20 1985

CLA-2 CO:R:CV:V
553871 EM

Mr. F. E. Allen, Manager
Customs Planning and Administration
RCA
600 North Sherman Drive
P.O. Box 1976
Indianapolis, Indiana 46206-1976

Dear Mr. Allen:

In your letter of October 8, 1985, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain ceramic yoke ferrite cores which are exported to Mexico to be scored, cracked, and assembled into a deflection system of color cathode ray tubes and returned to the United States.

Samples and photographs depicting the cracking process were submitted. The round ceramic yoke cores are manufactured in the United States and exported to Mexico where they are assembled into color television yokes which in turn are returned to the United States for final assembly into complete color television receivers.

The exported cores are scored in Mexico by a small diamond wheel which scribes or scratches the inside of the core in order to crack the core into precise equal halves. The core is heated to a certain temperature for twenty seconds by infrared lamps and cracks into two equal halves along the scribed lines on the inside delineated by the groove on the outside of the core. The two halves are wound with copper wire and assembled with other components into a deflection system of color cathode ray tubes.

With respect to components exported for assembly and return, item 807.00, TSUS, provides for United States components that are designed to be fitted together in an assembly process, with no operations performed thereon except attachment of the components to form the imported merchandise and operations incidental thereto.

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On the basis of the samples and information submitted, so long as there are delineated grooves on the cores, showing where the scribing and breaking of the exported cores are to take place along determinable and controlled lines, in these circumstances the scribing and breaking may be considered incidental to assembly. The lines of separation between the halves are clearly defined by grooves in the cores before exportation, and scribing the cores between the control points of reference, followed by breaking or cracking in the heat process described, along the scribed lines, may not be considered a further fabrication of the cores within the meaning of item 807.00, TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value & Special
Classifiction Branch

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NOV 06 1985

CIA-2 CO:R:CV:V
553874 RS

Mr. David Blutas
Supervisor, International Traffic
Westinghouse Building
Gateway Center
Pittsburgh, Pennsylvania 15222

Dear Mr. Blutas:

This is in response to your letters of May 3, 1985, requesting rulings on the eligibility of certain printed circuit boards for duty-free treatment under the Caribbean Basin Initiative (CBI).

Bare glass base circuit boards are manufactured in Puerto Rico. The discrete components for the circuit boards are procured in the United States and sent to Puerto Rico where the components are separated into manufacturing kits. The kits are sent to an unrelated subcontractor in Haiti where the following occurs.

1. Components are checked and identified. Each component is manufactured into the bare glass base circuit board according to specific drawing requirements. Intricate tools are used to trim component leads to exact lengths and to form them to specific shapes as necessary.

2. The bare circuit board is mounted in a holding rack and operators proceed to mount and assemble the various components in the proper locations of the bare circuit board following blue prints. Intricate tools are used in the assembly process. When required, terminal parts are pressed into the bare circuit board by using a hand bench press.

3. The bare circuit board with all basic discrete components in place is mounted in a metal frame which holds the board in position to be fluxed, preheated and finally soldered.

4. The soldered circuit boards are loaded in metal baskets and immersed in hot Freon vapor in an ultrasonic tank. This process removes dirt, excess flux and foreign matter from the board.

5. The boards are checked for completeness and any missing components are inserted and soldered in place using a hand soldering iron. Other touch-up operations occur.

6. Special components and hardware that because of location or size could not be installed and wave soldered initially are mounted and/or soldered in place by hand.

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7. The boards are visually inspected.

8. The boards are packed and shipped to Puerto Rico where they have casings added and are tested.

Section 10.195, Customs Regulations, provides inter alia, that any article which is a new or different article of commerce which has been grown, produced or manufactured in a beneficiary country may qualify for duty-free entry under the CBI and that no article or material shall be considered to have been grown, produced or manufactured in a beneficiary country by virtue of having merely undergone simple combining or packaging operations. We are of the opinion that the processing that occurs in this operation is substantial; it is beyond a simple combining or packaging operation. We also believe that the operation creates a new and different article of commerce from the discrete components imported into Haiti.

Accordingly, printed circuit boards manufactured according to the described process are products of Haiti for purposes of the CBI and are entitled to duty-free treatment if they otherwise comply with the applicable CBI requirements.

One of the other requirements which is set forth in Section 10.195 is that the sum of the cost or value of the material produced in a beneficiary country, plus the direct costs of processing operations performed in a beneficiary country, must not be less than 35 percent of the appraised value of the article at the time it is entered. For purposes of satisfying the 35 percent requirement, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than Puerto Rico).

Concerning the appraisement of the imported circuit boards, it appears from the information you have provided that the merchandise will be appraised on the basis of transaction value, section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). Transaction value is defined as "... the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts ..." for five specified items, one of which is the value of any assist. The term "assist" is defined as any of four specified categories of items or services "... if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise."

Thus, it appears that the transaction value of the imported circuit boards will be represented by the price paid to the unrelated subcontractor in Haiti, plus the value of the assists furnished to the Haitian subcontractor.

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We note that you propose to include in entered value the salaries of supervisory personnel employed by the importer who work in the Haitian subcontractor's plant. We have held in this regard that the services of such personnel are not considered dutiable assists if the personnel are domiciled in the United States and are paid by the importer. (See TAA #46 (542696), copy enclosed). Under these circumstances, the salaries of such personnel also would not be included in the direct costs of processing operations, as those words are defined in section 10.197 of the Customs Regulations, for purposes of determining whether the 35 percent value requirement has been satisfied.

Sincerely,

For (Signed) J. T. Roth
Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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OCT 28 1985

CLA-2 CO:R:CV:V
553875 EM
815405 NY

Mr. Thomas Czubak
Administrator, Customs & Exports
Warner-Lambert Co.
International Operations
Post Office Box 505
Morris Plains, New Jersey 07950

Dear Mr. Czubak:

Your letter of September 16, 1985, addressed to our New York office, has been referred to us for reply on the tariff treatment of certain disposable surgical gloves and the I.V. start pak exported to Mexico for packaging.

The gloves and the individual medical components in the pak have not been changed in any way or advanced in value while abroad except for packaging into plastic and paper containers. On this basis, the imported packaged domestic articles are entitled to free entry under item 800.00, Tariff Schedules of the United States (TSUS), and the usual containers or packaging materials are also free under General Headnote 6(b)(i), TSUS, upon compliance with the regulations. Since the contents are free of duty, the containers are not subject to duty.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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CLA-2 CO:R:CV:V
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Michael A. Johnson, Esq.
Barnes, Richard & Colburn
Attorneys & Counsellors at Law
475 Park Avenue South
New York, New York 10016

Dear Mr. Johnson:

In your letter of October 9, 1985, on behalf of Schering-Plough Corporation, you asked about the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to certain chemical drug compounds, such as Aurothioglucose, Desamethasone, and Gentamicin, among others, that would be exported to Belgium for sterilizing and returned to the United States.

It is stated that the client is a pharmaceutical manufacturer that produces a large number of drug products for both human and animal use. Most of the drugs are used to treat inflammations by parenteral (intravenous or intramuscular injection) or ophthalmic use. Before being prepared for such use, however, in dosage forms, the drugs must be rendered sterile in a pure state in order to be free from microbiological contamination and toxic components.

It is proposed to export the drugs in bulk form to sterilize them and to return them asceptically packaged for further asceptic dosage formulation for parenteral injection or ophthalmic use. The bulk active drugs are exported in powder form, dissolved in an appropriate solvent, and passed through a special filter into a sterile environment. The purpose is to filter out of solution all micro-organisms and other impurities present in the drugs when manufactured. In order to restore the drugs to a solid state for return, precipitation solvents are added to the solution containing the drugs, which have the effect of precipitating the drugs out of solution into a solid state. What remains in the vessel is a solution containing only the solvents and a slight amount of the drug that failed to precipitate out. This process is explained in terms of a physical change or mixture, rather than a chemical change since the drug was originally manufactured with a specific chemical structure. The solution in the vessel is further passed through another filter in order to separate out and recover the solid precipitate. The recovered drug is dried to a powder form and packaged in sterile containers for return to the United States where it will be prepared further in appropriate dosage forms for ultimate use.

Item 806.20, TSUS, provides for an import duty to be assessed upon the cost or value of repairs or alterations made on articles that are exported for that purpose. The application of this tariff provision,

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however, is precluded in circumstances where the operations performed abroad result in new or commercially different articles, or where the foreign operations constitute a part of the manufacture that had begun in the United States.

In this respect, the foreign process of sterilizing the exported drugs does not create a new and different article of commerce since the bulk drugs may be sold either before or after to other pharmaceutical firms for processing into dosage end-use forms. The drugs are exported in powder bulk and returned in bulk, with no change in chemical or physical structure. Both the exported and returned product may be sold in the same markets to the same class of buyers within the pharmaceutical industry. The drugs are regarded as finished products except for preparing them further for dosage use. Sterilization is a kind of cleaning step that removes all traces of contamination and cleaning has traditionally been regarded as an appropriate process for item 806.20 tariff treatment.

Accordingly, we believe that the merchandise may be entered under the alterations provision of item 806.20, TSUS, with duty on the cost of the foreign processing, upon compliance with the regulations.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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OCT 25 1985

CLA-2 CO:R:CV:V
553877 EM
814978 NY

Mr. John P. Reynolds
President
Reynolds Company, Inc.
Post Office Box 13071
Fort Lauderdale, Florida 33316

Dear Mr. Reynolds:

Your letter of August 6, 1985, addressed to our New York office, has been referred to us for direct reply on the tariff treatment of a so-called "scissor carrier" for vertical blinds assembled in Mexico.

You indicate that the various plastic components used in assembling the imported merchandise are all made in the United States. The pieces are force fitted together in a prescribed sequence using simple hand pressure without loss of identity of any of the components by a change in shape or form.

On the basis of your description, allowances for the cost or value of the domestic-made components may be made under the provisions of item 807.00, Tariff Schedules of the United States, upon compliance with the applicable regulations.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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OCT 28 1985

CLA-2 CO:R:CV:V
553878 EM

Mr. John M. Hudson
Customs Consultant
Rudolph Miles & Sons, Inc.
Customhouse Brokers
4950 Gateway East
Post Office Box 144
El Paso, Texas 79942

Dear Mr. Hudson:

Your letter of July 11, 1985, addressed to the District Director of Customs at El Paso, Texas, has been forwarded to this office for reply on the applicability of GSP to certain wood cabinets made in Mexico.

You state that your client exports raw dimension lumber and plywood sheets to a Mexican firm which produces the various components such as doors, drawers, drawer fronts, moldings, kick plates and other parts. You submitted commercial magazines and other documentary data to show that such components are saleable articles of commerce.

On the basis of your submission, we are of the opinion that the foreign wooden raw materials have been substantially transformed into new articles of commerce in the beneficiary country and, therefore, may be considered intermediate constituent materials. Accordingly, since such materials are again substantially transformed when assembled into the eligible imported article, their cost may be included in arriving at the 35 percent added-value determination.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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CE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

NOV 01 1985

CIA-2 CO:R:CV:V
553881 H

Peter Buck Feller, Esq.
Law Offices
Rose, Schmidt, Chapman, Duff & Hasley
1825 Eye Street N.W.
Washington, D.C. 20006-5486

553881

Dear Mr. Feller:

In your letter of September 5, 1985, on behalf of Consolidated Cigar Corporation, you asked about the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to wrapper tobacco that will be exported to the Dominican Republic for sorting and stemming and returned to the United States.

It is explained that wrapper tobacco will be exported, some to be sold abroad and some to be stemmed and returned to the United States, all exported under a bill of lading in lieu of a Certificate of Registration C.F. 4455. The exporter of the tobacco (Windsor Shade Tobacco Company), however, will file a Certificate of Registration in connection with each exportation, indicating that a least a portion of the exported tobacco will be stemmed and returned to the United States.

Because the exporter and importer of the tobacco leaves and stems will be different parties, certain declarations by appropriate foreign officials will accompany the returned stemmed tobacco, attesting that the returned tobacco is the same as that which was exported and that it is the same tobacco covered by a Certificate of Registration. A copy of the bill of lading covering the exported shipments of the wrapper tobacco will also accompany the imported stemmed tobacco leaves and stems.

Item 806.20, TSUS, provides for a duty to be assessed on the value of repairs or alterations that are made on articles sent abroad for that purpose.

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On the basis that the stemming of exported wrapper tobacco has already been adjudicated under the alterations provision of item 806.20, TSUS, and the necessary steps are being taken to assure that the imported stemmed wrapper leaves and stems can be readily identified as the same U.S.-grown wrapper tobacco that was exported, though imported in an altered condition, item 806.20, TSUS, will not be denied.

In the final analysis and in accordance with the rules and regulations, the question of whether claims for item 806.20 tariff allowances are justified by the facts rests ultimately with the area or district director of Customs.

Sincerely,
(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value & Special
Classification Branch

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NOV 26 1985

CLA-2 CO:R:CV:V
553900 EM

Mr. John P. Tebeau
Heron, Burchette, Ruckert
& Rothwell
1025 Thomas Jefferson Street, NW.
Suite 700
Washington, D.C. 20007

Dear Mr. Tebeau:

In your letter of November 5, 1985, on behalf of Nizetich and Company, you asked about the applicability of item 800.00, Tariff Schedules of the United States (TSUS), to raw frozen tuna fish that is proposed for exportation to Mexico for canning and return to the United States.

It is explained that raw frozen tuna would be caught and landed in the United States and released as a product of American fisheries and subsequently exported to Mexico via truck along with accompanying cans and lids, labels, and oil, all of American origin. In Mexico, the tuna would be butchered, cooked, and placed in cans with either the exported oil or water of foreign origin. The lids would be fastened and labels attached. The canned tuna would be sterilized in Mexico by a second cooking in oil or water, and the canned tuna would be returned to the United States.

With respect to the described tuna, item 800.00, TSUS, applies to products of the United States which are returned free of duty after having been exported without having been advanced in value or improved in condition by any process of manufacture or other means while abroad. The test specified in item 800.00 cases is whether the merchandise of American origin has itself been the object of an advance in value or improvement in condition while abroad.

Since raw frozen tuna was exported and processed in the manner described, and canned and sterilized abroad before return to the United States, the returned canned tuna is not the same product that was exported. Instead, the exported tuna has been subjected to an advance in value and condition, contrary to the tariff provision. In these circumstances, the canned tuna is not entitled to free entry as American goods returned under item 800.00, TSUS. In the absence of any other special exemption from duty that might apply, the returned canned tuna would be dutiable on total value and quantity under the appropriate tariff provisions.

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With respect to the exported cans and lids, however, containers or holders of United States origin may be returned free of duty under the provisions of General Headnote 6(b)(i), TSUS, as the usual type containers or holders ordinarily sold at retail with their contents. This would also include such packaging materials as labels and shipping cartons of United States origin.

Sincerely,

Russell Arnold
Chief, Value and Special
Classification Branch

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MAY 2 1977

ENF 4-02.1 R:E:P
606812 JM

[redacted]

Dear [redacted]

This is in reference to your letter dated July 28, 1976, concerning the liability for unpaid duties and penalties which may be incurred by an importer when it is determined subsequent to importation that goods are not in fact eligible for duty free entry under the Generalized System of Preferences.

You posit a situation in which the entry has been liquidated, and later it is found that the Form A and the certification are false. Inasmuch as you appear to be seeking general information, we shall reply to your inquiry generally.

Section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) provides in pertinent part that, with certain exceptions, a liquidation shall be final and conclusive upon all persons, including the United States, unless a protest is filed within 90 days after liquidation. Section 521, Tariff Act of 1930, as amended (19 U.S.C. 1521) permits the appropriate Customs officer to reliquidate an entry within two years after the date of liquidation if he finds probable cause to believe there was fraud in the case.

Absent a finding of fraud, the liquidation of the entry would be final and conclusive, and we would have no legal basis for assessing or collecting duties.

However, in cases such as this, the Government will accept a voluntary tender of an amount equivalent to the duties which would have been payable had the error been discovered at a time which would have permitted the assessment and collection of duties.

In regard to the liability for penalties, as a general rule a claim for forfeiture value under title 19, United States Code, section 1592, may be assessed

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[redacted]

if the District Director of Customs determines that the importer did not have reasonable cause to believe the truth of the statements or documents submitted to Customs. Of course, if the District Director determines that the importer had reasonable cause to believe the truth of the statements and documents presented to Customs to effect entry, a claim for forfeiture value will not be assessed where circumstances otherwise amounting to a violation are revealed in a voluntary disclosure. If the District Director finds the loss of revenue to be the result of an inadvertent error or other circumstances such as technical or petty or isolated violation not amounting to negligence, however, a claim for forfeiture value will not ordinarily be issued.

If an importer believes he may have incurred a claim for forfeiture value under title 19, United States Code, section 1592, he may take advantage of the voluntary disclosure procedure outlined in section 171.1 of the Customs Regulations (19 CFR 171.1) and therefore limit the maximum contingent liability to one time the revenue loss. In the event the importer chooses to make a voluntary disclosure, a claim for forfeiture value will be assessed under section 1592 if the District Director of Customs determines that the importer did not have reasonable cause to believe the truth of the statements and documents presented to Customs to effect entry.

We trust the above provides the guidance you requested.

Sincerely yours,

(S) Kathryn C. Peterson

for Harvey B. Fox
Director, Entry Procedures
and Penalties Division

[redacted]

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MAR 15 1982

ENF-4-02.2 CO:R:E:C
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Dear Madam:

Your memorandum dated July 29, 1980, forwarded an undated petition, submitted by [redacted] on behalf of [redacted] (Petitioners) seeking relief from a joint and several claim for forfeiture value of $849,500, assessed for violation of title 19, United States Code, section 1592, in Minneapolis District Penalty Case No. 79-3501-50030.

The liability was incurred because during the period October 1974 through January 1976, petitioners caused certain printed labels (claimed to be "postage" stamps originating from the island of Staffa, Scotland) to be entered into the commerce of the United States by means of material false statements in entry documents, or otherwise through their failure to file Customs entries. The alleged falsities and omissions, and the loss of revenue attributable thereto are listed below.

Description	Loss of Revenue
1. Fifteen undeclared importations made by mail from October 15, 1974 through January 9, 1976.	$ 74,375.40 (Actual)
2. Six entries made between June 2, 1975, and November 13, 1975, in which the merchandise was falsely described as postage stamps ($37,137.40 loss of revenue) or was undervalued in that assists were not declared ($2,035.40 loss of revenue)	$ 18,072.80 (Actual) and $ 21,140.00 (Potential)
	$113,548.60 Total

The creation of the so-called Staffa stamps herein involved appears to have been a joint endeavor of petitioner [redacted] and petitioner [redacted]. The information currently in our possession indicates that the Isle of Staffa is uninhabited and has been so since about 1[illegible]. Staffa is currently owned by [redacted].

[redacted] purchased the Isle of Staffa in November 1972 from the [redacted]. Along with the title to the Isle, acquired an "assignment" or contract which ran with the land. That contract gave [redacted] President, [redacted] and [redacted], British companies [redacted] all rights in connection

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with the design, production, printing, and distribution of "local carriage labels or stamps" of the Isle of Staffa. In exchange, the owner of the land receives a small remuneration (several hundred British pounds per year).

On July 1, 1974, [redacted] entered into a contractual agreement whereby [redacted] granted [redacted] the exclusive right to market all proposed limited edition "gold stamps" printed by [redacted] on behalf of the "philatelically recognized" foreign territories of Oman, Nogaland, Dhufar, Iso, Staffa, and Eynhallow. In that agreement, [redacted] affirmed that it had the exclusive right to produce such "stamps" from each of the foreign territories cited.

Petitioners' numerous arguments will generally be treated herein in the order in which they appear in the petition. Accordingly, we deal first with the petitioners' assumption that the current proceeding is one in forfeiture, and the conclusion that the current petition is one which should have been properly instituted under 19 U.S.C. 1592, as amended by Pub. L. 95-410 (the "new law"). In this regard, we note that the statute under which the current action is brought, 19 U.S.C. 1592 as it existed prior to the passage of Pub. L. 95-410 (the "old law") permits the Customs Service to forfeit the merchandise involved, or to assess a penalty equal to the value of the imported goods. In the instant matter, the Customs Service elected not to forfeit the merchandise, but instead assessed a penalty equal to its value. Accordingly, we are of the opinion that the instant action is not one which is properly designated as a proceeding in forfeiture. Rather, it is an in personem action. See United States v. Willetts, et al., 28 F. Cas. 612 (S.D.N.Y. 1871) (No. 16,694); United States v. Baker, 28 F. Cas. 613 (S.D.N.Y. 1871) (No. 14,500); United States v. York Street Flax Spinning Co., 28 F. Cas. 800 (S.D.N.Y. 1879) (No. 16,781).

With regard to petitioners' conclusion that the current penalty action should have been brought under the new law, we note first that section (f)(1)(A) of the new law indicates that, "subsections (a), (b), and (c) [of the new law] . . . shall be effective with respect to proceedings commenced after the 60th day after the enactment of this Act." The proceedings embraced by subsection (b) of the new law include the issuance of a prepenalty notice. More importantly, the legislative history of the new law specifically indicates that proceedings are commenced upon the issuance of a prepenalty notice. S. Rep. No. 95-778, 95th Cong., 2d. Sess. 20, reprinted in [1978] U.S. Code Cong. & Ad. News 2211, 2231. The prepenalty notices in the current case were issued on December 22, 1978. Accordingly, because the prepenalty notices were issued prior to the 60th day after the enactment of the new law, we are of the opinion that the current action is one which was properly commenced under the old law. In this regard, see also United States v. Digital Equipment Corp., Slip Op. 82-11 (January 29, 1982), in which the Court of International Trade ruled that the date of the involved entries is controlling in determining whether a claim is properly assessed under the old law or the new law. We note that under this standard the current action was also properly commenced under the old law.

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Petitioners' second argument is that in connection with a prior action brought by the United States Postal Service an administrative law judge found that the merchandise herein involved was properly describable as a postage stamp[s]. P.S. Docket 5/24, December 21, 1976. First, as will be discussed in a later section of this decision, it is our opinion that the referenced Postal Service ruling was obtained by means of false representations. Secondly, although we do not question that such a finding may have been made by a United States Postal Service administrative law judge, we do note that the referenced Postal Service action was concluded by means of a consent agreement dated February 9, 1977, in which [redacted] agreed to cease and desist from representing that, "the Staffa stamps are 'postage stamps' or 'postal issues' unless a clear and conspicious affirmative disclosure is made . . . that they are British private local issues with a limited franking or postal function the nature and extent of which is fully described." Accordingly, the only reference to the nature of the imported merchandise in the document which concluded the Postal Service's action, refers to the goods as British private local issues. Finally, and most important, the consent agreement entered into in connection with the conclusion of the Postal Service's action indicates that, "neither this Agreement nor the Initial Decision incorporated herein shall operate as a bar, res judicata or as a collateral estoppel in any other proceeding nor shall they be determinative on any question of fact or issue of law in any such proceeding." We have been orally informed by our Office of Investigations that the above language was inserted in the consent agreement for the specific purpose of barring claims and arguments such as that which the petitioners are currently postulating. Accordingly, no weight at all is to be given to the fact that a Postal Service administrative law judge at one time may have opined that the merchandise herein involved consisted of postage stamps.

Third, petitioners state that: 1. personnel within the Customs Service were unable to agree on the proper classification of the goods during the pendency of an internal advice request regarding its classification, 2. that subsequently, the classification issue was tried in both the Customs Court and Court of Customs and Patent Appeals, and 3. that at the trial in the Customs Court petitioners presented numerous experts who testified that the merchandise was postage stamps. It is argued that the above circumstances demonstrate that petitioners had reasonable cause to believe that the merchandise herein involved constituted postage stamps.

In response to the above arguments, it must first be noted that it has been, and continues to remain our position, that legitimate disputes concerning the classification or appraisement of merchandise should not normally be the subject of penalties assessed pursuant to section 1592 (emphasis added). However, in the instant case, as will be demonstrated below, petitioners themselves did not actually believe that the merchandise involved constituted a type of postage stamp. Rather, once the Customs Service questioned petitioners' description of the merchandise, they attempted to legitimate the reasonableness of their purported position by availing themselves of all available administrative and judicial proceedings designed to contest Customs position, and 2. by making false representations concerning the nature of the stamps at those proceedings. Accordingly, the use of the internal advice and judicial proceedings by petitioners constituted self-serving attempts to convince the Customs Service that petitioners reasonably believed the goods herein involved were postage stamps.

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Likewise, petitioners erroneously cite the opinion of the Duty Assessment Branch of the New York Seaport, issued in connection with the internal advice request as indicative of an internal disagreement among Customs Service personnel concerning the classification of the merchandise as postage stamps. In this regard, while New York considered the merchandise to be flat shapes or forms (item 790.55 TSUS), and Customs Headquarters felt the goods were classifiable as articles of gold (item 666.10 TSUS), there was never any disagreement among Customs personnel that the merchandise was not postage stamps.

Finally, it is currently our impression that the experts who testified on petitioners' behalf at the trial in the Customs Court were all stamp dealers (as opposed to collectors), each of whom would have a pecuniary interest in maintaining that the merchandise involved consisted of postage stamps. Additionally, we would note that petitioners specifically point to the expert credentials of one of its witnesses, [redacted], including the large volume of publications authored and edited by him. In this regard, assuming [redacted] is an expert, his credibility at the trial is at best suspect, as evidenced by several articles appearing in publications he has edited or authored. See David Beech, "British Off-shore Island Postal Services," The Cinderella Philatelist, XV (April and July, 1975), 31, 67; L. W. and K. Williams, Cinderella Stamps 98-100 (1972).

The most serious of petitioners' arguments is that at the time the merchandise involved was introduced into the commerce of the United States, the petitioners did not know that it could not properly be described as postage stamps, and in fact, had reasonable cause to believe that it could be so described. In support of this argument, petitioners contest a statement contained in the penalty notice issued in this case which indicates that, "investigation has shown that the Staffa labels were neither issued nor recognized by a government and that they are not, and never were intended to be used as postage." Although petitioners apparently misconstrue the above statement as constituting the basis of the alleged violations of section 1592, it should be emphasized that the only violations herein charged are: 1. petitioners' description of the merchandise as postage stamps without reasonable cause to so believe, 2. petitioners' failure to declare an element of value attributable to design costs, and 3. petitioners' failure (a material omission) to make entry for 16 shipments of the involved stamps. The facts that: 1. attempts were made to mislead the Customs Service concerning the intended use of the merchandise, both prior and subsequent to its introduction, 2. the stamps were neither issued nor recognized by a government, and 3. that they are not, and never were intended for use as postage, are evidentiary matters supporting the conclusion that a violation of section 1592 occurred.

Taking the alleged violations of section 1592 in reverse order, petitioners argue that some of the stamps (16 importations) were introduced into the commerce of the United States without benefit of a formal entry, while six importations were the subject of formal entry because, "the importer believed he was exalting form over substance in making a formal entry of duty-free merchandise." In this regard, the record herein indicates that between approximately October 1974 and June 1975, petitioners made nine mail importations without benefit of a Customs entry; that subsequently, between June 1975 and August 15, 1975, three formal entries of Staffa stamps were filed; that thereafter, on or about August 26, 1975,

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another importation of stamps was made without benefit of an entry; that on September 24, 1975, an additional formal entry of stamps was filed; that on or about October 10, 1975, two importations of stamps were made without benefit of formal entry; that between October 24, 1975, and November 19, 1975, two formal entries of stamps were made; and that between approximately January 1, 1976, and January 9, 1976, three additional importations of stamps were made without benefit of any Customs entry. The above circumstances clearly demonstrate that petitioners were aware that formal entries for the merchandise should have been filed. Petitioners' claimed belief that the merchandise could be entered duty-free is of no relevance, and is not an excuse for, their failure to file Customs entries for the goods. Accordingly, petitioners' failure to file entries for 15 importations of stamps constitutes gross negligence in that petitioners acted with either actual knowledge of or wanton disregard for the relevant facts and with indifference or disregard for their obligations under section 1592.

The second alleged violation herein involved was the petitioners' failure to declare assists. No evidence appears in the file forwarded to us which substantiates this claim. In fact, information supplied by petitioners in two Special Customs Invoices (nos. 103210 and 104517) compels the conclusion that assists were declared. Accordingly, the claim for forfeiture value is hereby cancelled insofar as it relates to petitioners' failure to declare assists. Consequently, the total loss of revenue is reduced to $111,513.20 ($90,363.20 actual loss and $21,150 potential loss), and the domestic value of the goods is reduced to $637,285.

Proceeding to the remaining allegation, certain correspondence among petitioners prior to the creation of the goods indicates they actually believed the merchandise to be other than postage stamps. First, a letter from petitioner [redacted] to petitioner [redacted] dated July 29, 1974, comments on certain proposed literature advertising the stamps as follows:

> Similarly, instead of "rear [sic] postage stamp for collectors and investors" I would put in 'rear [sic] opportunity for discerning collectors and investors, stamps minted from 18/22kt. gold'. Where you have "by grant of the Postal Authority of Great Britain" I would leave it out completely as I think the implication is too strong.

In his response to [redacted] dated August 2, 1974, [redacted] asked, "Can't we call these postage stamps, or is there some reason why we must eliminate the word 'postage'?" [redacted] responded to [redacted] question in a letter dated August 17, 1974, in which it was stated:

> There is no objection to using the word "rare" as far as I know because rarity is probably a matter of opinion. I have eliminated the word "postage" because we then come on to the distinction between "local" [sic] and other post.

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In a latter portion of the same letter [redacted] also states:

> You will find that the stamps are on a base that can be removed leaving a gummed stamp. In other words you peel off the backing paper and you then have a fully gummed stamp, in fact no one will peel off the backing paper.

In addition, the original and amended versions of the contract entered into between [redacted] dated July 1, 1974, provide evidence of the parties' beliefs. For example, neither the phrase "postage stamp" nor the word "postage" appears anywhere in either the original or amended version of the contract. Rather, the merchandise in issue is referred to as "10kt. gold Limited Edition stamps", "stamps", and "gold stamps". Secondly, paragraph 9 of the contract is totally inconsistent with the notion that the merchandise could be called a postage stamp.

> 9. London Stamp understands that the primary intent is to market these stamps as a Limited Edition and agrees not to produce more stamps than actually ordered by [redacted] . . . .

The above cited evidence does not indicate that petitioners misdescribed the merchandise which is the subject of the instant case intentionally, or otherwise for the purpose of defrauding the revenue. Nevertheless, it does indicate that petitioners actually believed the Staffa stamps to be other than postage stamps. Accordingly, petitioners' misdescription constitutes an act of gross negligence in that they acted with actual knowledge of and wanton disregard for the relevant facts and with indifference or disregard for their obligations.

Subsequent to the previously cited correspondence, once the investigation of the stamps had began, petitioners intentionally misrepresented their true nature in an attempt to influence their classification by the Customs Service. These misrepresentations are additional evidence supporting the conclusion that petitioners did not actually believe the goods to be postage stamps. For example, in a letter dated January 16, 1976, after some shipments of gold stamps had been reliquidated by the District Director of Customs, Minneapolis, the petitioners protested, and requested internal advice from Customs Headquarters. The above letter claims, among other things:

> 1. The goods here in question constitute actual and official postage stamps of the Isle of Staffa and can lawfully and properly be used to prepay postage by affixing the stamps to an article to be mailed.
>
> 2. . . . .The subject stamp has been designed for use and actually used on envelopes.
>
> 3. A crucial fact, we think, is that it would be impossible to mail anything from the Isle of Staffa to the British mainland, unless a Staffa, Scotland, postage stamp were affixed to the item to be mailed.
>
> 4. The item could not be transferred by post from the Isle of Staffa to the British mainland if only postage stamps issued by the British government were affixed--nothing less than a stamp authorized and issued by the Isle of Staffa will suffice for this purpose.

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5. . . . .The merchandise constitutes postage stamps that were in fact issued as postage stamps by a governmental body that has the authority to issue postage stamps.

6. The stamps involved can be used at any time and are recognized by the Isle of Staffa to have the full carriage value of their face amount of six (6) pounds.

7. The owner of such a stamp is absolutely entitled to use it to prepay postage on items mailed on the Isle of Staffa.

Additionally, included with the internal advice letter of January 14, 1976, was an envelope claimed to be a "first day cover" mailed from Staffa. The "first day cover" contains a gold Staffa stamp and a Staffa, Scotland postmark dated November 1, 1974. In this regard, it should be noted that [redacted] previously testified in the Customs Court that no tourists can visit Staffa from October until April, and that during that period the weather conditions make it almost impossible to land on Staffa. Likewise, the information in our possession indicates that there is no boat service to Staffa during the October-April period. The above facts support the conclusion that the so-called first day cover was not and could not have been mailed from Staffa.

On January 24, 1976, [redacted] stated during the course of the investigation accompanying the current case that the Staffa gold "stamps" were legitimate postage in that Staffa "stamps" are required to be affixed to mail leaving the Isle of Staffa. [redacted] further stated that 20,000 sets (12 stamps each) would be printed by [redacted] per agreement; that customer orders for all 20,000 sets had already been received by [redacted], and; that after the printing of the 20,000 sets, the dies would either be returned to [redacted] or proof of their destruction would be provided. When it was pointed out to [redacted] that his assertions were diametrically opposed; i.e. that no "stamps" would be left for circulation or sale on, or by, the Isle of Staffa, [redacted] reversed himself and said that obviously a few extra stamps would have to be produced for domestic (Staffa) consumption.

During the pendency of the internal advice request initiated by the petitioners, a meeting was held at Customs Headquarters on June 2, 1976. The arguments presented by the petitioners were reduced to writing by their attorney. Selected quotations from the written arguments are cited below:

1. Tourists regularly mail cards and letters from the Isle and do so by affixing the Staffa stamp to the envelope or card, in the traditional manner. Stamps are sold from the ferry as with any other mailing system. The fee charged varies with the weight of the missive as it does in any post office. Staffa stamps range in values from one pence to six pounds sterling... In consideration for such payment, the card or letter is transported from Staffa to the mainland and a Crown stamp is affixed for worldwide transportation. From the point of mailing at Staffa to its coming to rest on the mainland, the letter is handled as is any other letter posted throughout the world.

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2. The present program of issuing Staffa stamps is carried on with the full advice and consent of the owner of the Isle. Apparently the Customs Service has developed information that the Staffa stamps were issued without the knowledge of its owner. Such a fact, if true, discredits the propriety of the offering since it would discount the use of the stamp in the transmission of letters from Staffa to the mainland.... [redacted] was completely aware of the Staffa stamp project and encouraged it.

3. The affixing of a Staffa stamp on an envelope will cause a letter or other missive to be transported from the Isle of Staffa to the mainland.

Additionally, during the course of the previously mentioned Postal Service inquiry, on September 3, 1976, petitioners, either individually or through their attorneys, made the following claims:

1. Staffa has an official postal agency.

2. The owner of Staffa provides a postal service from Staffa to the British mainland.

3. [redacted] produces the stamps for [redacted] plus the the number that are needed on the island to be supplied to the Staffa Postal Service.

4. The means by which the denominations of Staffa stamps are determined relates to the tariffs charged by the Staffa Postal Service.

5. Between 100 and 200 gold stamps have been sold on Staffa.

Furthermore, Respondent's Exhibit II introduced at the Postal Service inquiry purported to be a postcard which had been mailed on Staffa by use of a Staffa stamp, postmarked on Staffa, and transported to the Island of Mull where a British stamp was affixed thereto and separately cancelled.

As a result of the above claims, Customs initiated a foreign investigation, the results of which are summarized below. The information currently in our possession reveals that [redacted] and his wife operate a ferryboat which, during good weather in the summer, carries tourists from the Isle of Mull around Staffa and back; that landings on Staffa are rarely attempted because of the rough waters; and that when they are attempted, it is by means of small rubber rafts launched from the ferry. The ferry service employs one boat handler on a seasonal basis.

[redacted] sells souvenirs on board the ferry. Included among the souvenirs are sets of 6 Staffa labels which are printed to indicate that they are postage of Staffa. The labels have a face value of 1 pence to 20 pence. The British postal authorities have advised [redacted] that the stamps were "Cinderella Issues", and that as long as they did not interfere with British postage stamps affixed to mail they might also be affixed thereto.

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With regard to the gold stamps in particular, [redacted] first became aware of their existence from an article in the November 1974 issue of Business Week magazine. Prompted by the article, [redacted] wrote [redacted] letter on December 11, 1974, two months after the first shipment of gold stamps arrived in the United States, and six months after [redacted] began development of the project.

Even though [redacted] first learned of the gold stamps in December 1974, he did not actually see one until late 1975, or early 1976. At that time, [redacted] sent him ten gold "stamps", asking that the "stamps", along with British stamps, be affixed to post cards and cancelled in such a way that it would all appear to be in the right order. [redacted] cancelled the ten Staffa "stamps" with his Staffa cancellation in Chichester, Sussex, England. He then took the cancelled post cards to the British Post Office on the Isle of Wull, affixed British postage stamps and asked the postmaster to cancel the cards carefully so that he got a nice clean cancel mark. [redacted] then placed the ten post cards in an envelope and mailed them to [redacted] It was one of these postcards which petitioners introduced into evidence at the Postal Service hearing in September 1976, claiming it to have actually been posted in Staffa. In this latter regard, the postcard used by petitioners at the Postal Service hearing bears a cancellation date of "26 March 1976", proof that [redacted] did not have any gold stamps prior to late 1975 or early 1976.

After returning the ten gold "stamps" to [redacted] was again without gold "stamps" until July 1976. At that time he received an inquiry from a person in the United States seeking to purchase a gold "stamp". [redacted] asked [redacted] how he was to service the request, and [redacted] sent him a small quantity of gold "stamps" for such occasions. [redacted] sent one gold "stamp" to the person in the United States, cashing the $15.00 check, and kept the rest of the gold "stamps". Customs information indicates that the above transaction represents the only sale of a gold "stamp" by Staffa personnel as of November 1976.

On or about July 1976, (subsequent to the initiation of the Customs investigation herein) [redacted] approached [redacted] about the erection of a mail box on Staffa, the cost of which was to be absorbed by [redacted] [redacted] indicated to [redacted] that the presence of a mail box had then become important.

The information in our possession indicates 1) that only a very few cards have ever been found in the mail box; 2) that those which have been found were probably put there by traveling yachtsmen; and 3) that they all bore British postage stamps and no Staffa stamps. The above information was confirmed by [redacted], who has indicated that if British postage stamps were not affixed to letters placed in the box, such material would not be accepted because otherwise the [redacted] would be forced to absorb the cost of forwarding such mail.

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In addition to the above information, Customs investigation indicates that no parcels have ever been mailed from Staffa and that [redacted] does not operate the so-called Staffa Island Postal Service.

In addition to our finding of gross negligence concerning the alleged violations, we regard the petitioners' false representations during the internal advice, Postal Service, and judicial proceedings as an aggravating factor. Based on these findings, the claim for forfeiture value is hereby mitigated to $557,000, provided that the adjusted actual loss of revenue of $96,303.20 is also deposited as withheld duties.

Please notify petitioners immediately, through counsel, of this decision, together with the advice that payment or a promissory note executed in accordance with section 5362 of the Customs Service Policies & Procedures Manual must be submitted by the close of business March 25, 1982, or the case will be referred to the Justice Department for the institution of judicial proceedings. A cash payment by any of the involved parties may be considered as compliance with this decision.

Immediate steps should be taken to refer this matter to the Justice Department in the event that compliance is not forthcoming. Please note that the statute of limitations will currently become available as a defense to petitioners on April 3, 1982. A copy of this letter may accompany your written notification to the petitioners of our decision.

Sincerely,

/S/ by

John P. Simpson
Director, Office of
Regulations and Rulings

6523044

[redacted]

[redacted]

[redacted]

B2

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07 OCT

INF 4-02.2 CO:R:E:C
652453 ENS

[redacted]

Dear [redacted]

As requested in your letter dated September 23, 1981, please find enclosed our telegraphic opinion in the [redacted] case. In order to clarify the decision and differentiate the circumstances of the [redacted] case from those of the [redacted] case currently pending at Customs Headquarters, we note that the [redacted] decision was based on the following facts: 1. the merchandise there involved was not described as "postage" stamps, 2. our internal advice ruling 36/76 implies that the merchandise involved might reasonably be described, as was done in [redacted] as gold stamps, seals, or stamps for collectors, 3. an omission of an adequate description was charged in [redacted] rather than an affirmative false statement as is claimed in the [redacted] case, and 4. under the circumstances in the [redacted] case, where it was known by the Customs Service that an alleged classification dispute existed, the descriptions furnished us did not constitute material omissions.

Sincerely,

Edward T. Rosse
Chief, Commercial Fraud
and Negligence Penalties Branch

652453

[redacted]

[redacted]

B3

CODE AND DATE	[redacted]					
SURNAME	[redacted]					
CODE AND DATE						
SURNAME						

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

27 FEB 1984

653349

ENF 4-02.2 CO:R:E:C
653349 MKT

Area Director of Customs
JFK Airport Area
Jamaica, New York 11430

Dear Sir:

Your memorandum of May 26, 1983, forwarded for our decision a petition submitted by [redacted] on behalf of [redacted]. The petition seeks relief from a claim for a monetary penalty in the amount of $58,520 assessed against [redacted] for a violation of title 19, United States Code, section 1592 (19 U.S.C. 1592), in JFK Airport Area Case No. 80-4701-00109.

The claim arose on September 28, 1979, when [redacted] presented a Declaration For Free Entry Of Articles Not Accompanying A Resident Or Non-Resident (CF 3299) falsely declaring 122 carpets to be personal and household effects. On October 5, 1979, [redacted] presented a false Bill of Sale, dated August 19, 1978, for 108 carpets stating a purchase price of $48,600. The declaration was false in that the carpets were not personal and household effects used abroad for one year or more by petitioner or members of his family who accompanied him to the United States. The Bill of Sale was false in that it (1) purported to be from a seller in Iran, (2) was dated over one year old, and (3) undervalued the carpets, when in fact it was prepared by [redacted] at or about the time of the importation.

Counsel makes the following claims.

The violation is a technical one resulting from petitioner's ignorance of Customs laws, misjudgement, and concern over the serious illness of family members. Petitioner's family, his father, mother, and two sisters, left Iran to live in France. Petitioner, who has been a practicing physician in the U.S. since 1960, urged his family to come to the United States so that his mother and sister who were terminally ill could receive better medical care. The family shipped the 122 carpets to petitioner in anticipation of this relocation.

Counsel states that all the rugs were used in the three residences of the family and range from one to five or more years in age. Most were purchased during the summer of 1978. The fictitious invoice covers carpets allegedly purchased during the summer of 1978, a little over a year before the importation at hand. Others are four or more years old.

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Petitioner communicated with his father about the carpets after which petitioner prepared the Bill of Sale. Because the carpets are of second quality and because of recent price increases, petitioner's valuation is an accurate reflection of the value of the carpets.

Carpets of this type (mostly prayer rugs) and in this quantity are reasonable household effects of several residences in Iran. No intention to sell these carpets exists. Had the family intended to sell them, the family would have done so in France to profit from high French market prices.

The declaration on the CF 3299 certified by petitioner clearly states the requirements for free entry of personal and household effects. The Customs officer specifically requested a proforma invoice to substantiate the petitioner's claims.

The record does not demonstrate that these carpets were personal or household effects entitled to free entry. To be so entitled, the carpets must have been used in a household of which petitioner or one of the family members who accompanied him to the United States was a family member. Counsel states only that the carpets were used in three households of petitioner's family members and that some of these family members intended to move to the United States. The record does not reveal that any of the family members accompanied petitioner to the United States. Inasmuch as petitioner claims to be a resident of the United States, without other evidence we will not consider him to be a resident of these households.

The record contains petitioner's admission that he prepared the fictitious invoice. Counsel merely alleges that the values on the invoices are true because they were obtained from petitioner's father. But this alleged communication does not substantiate the value of the carpets. Nor does it negate the fact that petitioner backdated the invoice one year and one month and typed it on the letterhead of a concern with an address in Iran. Nothing in the record indicates that petitioner had a reasonable basis for the values, the date of purchase, or the seller, declared on the invoice. Each of these falsities is material to the appraisement of the carpets and in violation of 19 U.S.C. 1592.

The CF 3299 reflects that petitioner certified the statements contained on the form. As a consequence, we consider him to have actual knowledge of his obligation to provide true and accurate information to Customs on the CF 3299 and on the invoice he presented in response to the request of the Customs officer.

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Based on the evidence in the record and the discussion above, we find that petitioner falsely declared 122 carpets to be personal and household effects in violation of 19 U.S.C. 1592 and that the violation resulted from gross negligence. Inexperience is a factor warranting mitigation only when it contributes to the violation and the violation is not due to fraud or gross negligence. In this case, petitioner's inexperience in importing did not contribute to the violation. By the terms stated on the CF 3299, he knew what the requirements were to enter articles duty free as personal and household effects. He certified the document falsely and later presented a fabricated invoice.

Nevertheless, the unusual and unique circumstances in Iran during the time period of the violation are well-known. Taking these circumstances into account, we find substantial mitigation is warranted.

The claim for a monetary penalty in the amount of $58,520 is remitted upon payment of $7,315 and on the condition that petitioner pays the loss of revenue. Please notify counsel for petitioner that unless compliance is made with this decision the matter will be referred to the Department of Justice for appropriate action. Preliminary steps should be taken by your office to prepare the matter for referral in the event of noncompliance. A copy of this letter should accompany your notification.

Sincerely,

/s/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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[redacted]

B6

655319

15 JAN 1985

HIF 4-02.2 CO:R:E:C
653743 LE

653743

District Director of Customs
Houston, Texas 77052

Dear Sir:

This is in reference to the petition submitted on behalf of [redacted] requesting relief from a claim for $76,510 and the seizure of 38 rugs (Houston District Case No. 84-5309-00193).

The penalty was assessed and the merchandise seized because petitioner allegedly, as a result of fraud, made a material false statement upon his attempted entry of 38 rugs in violation of title 19, United States Code, section 1592. Specifically, petitioner attempted to enter the rugs free of duty under item 810.10, Tariff Schedules of the United States (TSUS) by declaring that the rugs are household effects used abroad for at least one year by him or his family and that such rugs are not intended for any other person or for sale. According to the penalty notice, the imported rugs are intended for resale in the United States.

As a result of the alleged violation, there is a reported potential loss of revenue of $4,650.

Petitioner requests relief from the penalty and return of the rugs based on his claim that his declarations regarding the rugs were accurate; i.e., that they were his personal effects for over a year and that they were not intended for resale. Petitioner argues that the subject carpets are part of his personal collection and that they are not now nor ever were intended for sale. Although petitioner admits that as a collector of carpets he may at some time trade or sell one or two, he claims that he is not in the business of selling them. He claims instead to be a commercial real estate developer by profession.

In support of the claim that the subject rugs are part of his personal collection, petitioner has submitted a signed statement of a personal friend, [redacted] attesting to this fact. [redacted] indicates that he knows that petitioner is a carpet collector and that he has seen petitioner's collection both in Iran and in a bonded warehouse in Geneva, Switzerland awaiting transportation to the United States. [redacted] states that he and petitioner left Iran under similar circumstances and that they both had certain personal items taken out of Iran through the same sources. He claims to have seen petitioner's carpets in the Swiss warehouse when he was arranging the shipment of his own belongings to the United States.

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As further evidence of his claim, petitioner has submitted a 1977 receipt for the purchase of 14 rugs from a New York carpet dealer, two warehouse receipts for the storage of rugs (an unknown number) in a foreign trade zone in Switzerland for a 28 month period ending on May 31, 1983, and a $300,000 insurance policy for rugs stored in Switzerland. Standing alone, these documents have little value since they do not identify the imported rugs in any manner. However, they do serve to substantiate [redacted] statement regarding storage of the subject rugs in a Swiss warehouse.

Based on [redacted] statement along with the above evidence, we conclude that the imported rugs were a part of petitioner's personal collection in Iran.

Nonetheless, there is evidence that petitioner intended to sell the subject carpets. First, both petitioner and his son told Customs inspectors that the carpets in question were to be exhibited in shows. We find it difficult to believe that the purpose of such exhibition was not to promote the sale of the carpets. In fact petitioner admits that he would sell the carpets to an interested buyer. Second, although investigation confirmed that petitioner is in the real estate business, it appears that petitioner's son may be in the carpet business (the subject shipment was in his name, he had in his possession numerous business cards from various rug dealers, and he admitted to Customs inspectors that he worked for his father buying and selling carpets). Third, when a Customs agent placed a telephone call to petitioner's office indicating that he was interested in buying carpets, the agent was advised that petitioner sells good carpets (petitioner was out of the office at the time). Finally, we find it difficult to believe that petitioner intended to use the rugs in his home since investigation revealed that petitioner lives in a two-bedroom apartment and that the floors and walls of every room are already covered with carpets.

Based on the above, we conclude that petitioner intended to sell the subject carpets and that his declaration to the contrary was false. We further find that this was a material false statement since it had the potential to effect the duty status of the rugs. There is, however, insufficient evidence upon which to base a finding of fraud. Since petitioner is a collector of carpets, he may have been under the mistaken impression that he could import them duty free despite his intention to exhibit and sell the carpets. Accordingly, we find petitioner was negligent in failing to use due care in ascertaining his obligations under the statute and in reporting the true facts.

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653742

In view of the circumstances in this case warranting mitigation beyond normal limits, the penalty is mitigated to $1,000, an amount believed sufficient to deter future violations. The seizure is remitted upon the filing of a formal entry and the payment of duties and the mitigated penalty.

Please notify petitioner of this decision, enclosing a copy of this letter therewith.

Sincerely,

(Signed) Edward T. Rosse

Edward T. Rosse
Commercial Fraud and
Negligence Penalties Branch

[redacted]

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653743

01 APR 1985

653826

HIP 4-02.2 CO:R:E:C
653826 RJP

[redacted]

Dear [redacted]

This is in response to your letter dated February 15, 1985, in which you have submitted an offer in compromise, pursuant to title 19, United States Code, section 1617, on behalf of your client, the [redacted] involving Customs entries of watchbands and parts which are the subject of Boston District Penalty Case No. 84-00601-50014.

In the referenced case, Customs has alleged that [redacted] fraudulently entered the subject merchandise into the commerce of the United States without fully or accurately reporting the true transactions and falsely claiming the country of origin to be Hong Kong, when, in fact, the merchandise was produced in the Philippines. You indicate that your client has deposited a check in the amount of $100,000 with the District Director of Customs (Boston), representing civil penalties and the full and complete settlement of all claims and potential claims of the Government with respect to the entries involved in the subject case in which the articles were incorrectly marked as, or otherwise incorrectly declared to be, products of Hong Kong rather than products of the Philippines.

After careful consideration of the file in this matter, and the terms of the proposed settlement, we hereby accept the subject offer. The terms of the settlement as described in your February 15, 1985, letter are incorporated herein by reference.

[redacted]

Sincerely,

B/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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File

27 NOV 1974

MAR-2-05-R:R:R
703881 B

19 MK-2-05
703881

MARKS, FISHING

[redacted]

Dear [redacted]

The District Director of Customs, Seattle, Washington, has forwarded us your letters of July 18, 19, and 29, 1974, concerning the country of origin marking of various kinds of fishing tackle imported by you, including swivels, lures, vinyl skirts and squids, rods and flies.

Your letters show that you are familiar with the requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), and the Customs Regulations issued thereunder.

We understand that your marking problems involve mainly swivels, vinyl skirts, and flies. The Customs Service issued a ruling in 1958 (C.I.E. 1257/58) excepting certain of the smaller sizes of swivels from individual marking. A copy of this ruling, with deletions is enclosed.

Larger swivels may be excepted from individual marking under 19 U.S.C. 1304(a)(3)(D) if they are imported in retail size packages that are properly marked to indicate the country of origin, or are repacked by you under the terms described in section 134.34 of the Customs Regulations. This exception does not apply, however, to swivels imported in bags containing 25 gross, which you in turn resell to other distributors after importation who will do the actual repacking.

Vinyl skirts and fishing flies are subject to individual marking unless they are imported in marked retail containers, or are repacked in retail containers by you, as in the case of the swivels. We understand that Customs in Seattle is willing to consider a package of 3 or 4 vinyl skirts, and a container of as many as 1 dozen flies of the same pattern, to be a retail container, and this sounds reasonable to us.

PRESIDENT FILE

B11

	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
CODE								
SUR-NAME								
DATE								

[redacted]

We presume that vinyl squids are a kind of fishing lure. We are not aware of any problems involving the marking of lures and rods. These items are large enough to be marked individually, or, in the case of lures, are in individual packages which can be marked.

We are causing this letter to be circulated to all ports of entry by the Customs Information Exchange for the information and guidance of Customs officers.

Sincerely yours,

(Sgd.) RAYMOND E. TURNER

Raymond E. Turner
Director, Entry Procedures
and Penalties Division

Enclosure

[redacted]

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[redacted]

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		REVIEWER	REVIEWER	REVIEWER

CORRESPONDENCE APPROVAL AND CLEARANCE

Form 100 (11-8-73)

[redacted]

Dear [redacted]

This is in reply to your letter of December 10, 1976, regarding the country of origin marking requirements for [redacted] stocking tights.

You indicate that the stockings which you propose to have imported into the United States are packaged five to a box, and are sold in these boxes, which are sealed with cellulose tape. A sample was submitted with your inquiry. The box is marked in small letters on the bottom flap, "Made in England." The London, England address of the manufacturer is also printed on the bottom flap.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides in general that all articles of foreign origin imported into the United States (or their containers in some instances) must be marked in a legible and conspicuous manner to indicate the English name of the country of origin to the ultimate purchaser in the United States.

Inasmuch as the stockings will be sold only in the sealed containers, we are of the opinion that the marking of these boxes satisfies the requirements of section 304, and the individual stocking legs need not be separately marked to indicate country of origin (19 U.S.C. 1304(a)(3)(C)). The language which appears on the sample box is adequate for this purpose.

The fiber content marking on the box suffices, as well. We have been informed by the Federal Trade Commission, which agency is charged with primary enforcement of the pertinent laws relating to fiber content identification, that articles which are marketed in sealed packages may be identified by marking the package rather than the article itself.

707203

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[redacted]

We are enclosing, for your further information, copies of section 334 of the Tariff Act and the applicable Customs Regulations.

Sincerely yours,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

[redacted]

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[redacted]

70 7 203

B14

MAR 28 1980

TRA-1-01 RRUEE
711795 M

711795

The Honorable
Daniel P. Moynihan
United States Senator
Federal Building
111 W. Huron Street
Buffalo, New York 14202

Dear Senator Moynihan:

This is in further reference to a letter dated October 29, 1979, from of your staff, transmitting a brief prepared by of concerning Customs requirements regarding the exportation of merchandise under Customs supervision. In addition to the brief, has subsequently submitted letters of November 22, and December 6, 1979, expanding on the points raised in his brief and mentioned at his meeting of November 16, 1979, with us, in which your administrative aid, was in attendance.

After a very detailed review and reconsideration of the matters raised by we believe that our letter of March 21, 1979 (copy enclosed), to him is substantially correct.

basically has three areas of concern which are the following:

(1) the liability of a carrier when it files a transportation and exportation entry under its name and its bond,

(2) the non-uniformity of procedures by Customs in handling at the various Customs ports of entry merchandise designated for exportation, and

(3) the new penalty processing guidelines.

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As explained in our earlier letter to the carrier who files the transportation and exportation entry in his name and under his bond is liable for the

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exportation of the merchandise under Customs supervision, as well as for the proper transportation of the merchandise from the port where the transportation and exportation entry was filed to the port of exportation. Unless a succeeding entry is filed for this merchandise in the name of another party, the carrier in such circumstances would be relieved of liability only after the Customs officer has certified on the transportation and exportation entry that the merchandise was laden on an exporting carrier which cleared for a foreign port on a designated date as verified by the export records.

The fact that the in-bond carrier may not have any control over the actions of the exporting carrier is not of legitimate concern to Customs because by filing the transportation and exportation entry in his name the in-bond carrier guaranteed the proper exportation of such merchandise. The in-bond carrier need not physically transport the merchandise itself. It may designate, in accordance with section 18.1 of the Customs Regulations, another carrier to transport such merchandise for the entire journey or for any portion of such journey. The in-bond carrier remains liable for the entire movement. Under such circumstances, the exporting carrier would be merely acting as an agent for the in-bond carrier.

In order to make it perfectly clear to carriers that when they file the transportation and exportation entry in their name they are liable for the exportation of this merchandise under Customs supervision, Customs is issuing a directive to the field to the effect that a carrier who files a transportation and exportation entry or any other type of exportation entry in its name with Customs must have on file with Customs an appropriate bond on Customs Forms 7557, 7559, 7569, 7595, or 7603.

maintains that penalty violations of section 18.8 of the Customs Regulations are often assessed against in-bond carriers, even when such carriers are not at fault. He notes that the assessment of such penalties results in the carrier having to make expensive investigations and to waste manhours in order to substantiate its innocence. Even after accomplishing this task, the carrier

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is still penalized in many instances for something over which it was not at fault. examples to illustrate this point depict three different situations.

In one situation, the transportation and exportation entry has been certified by a Customs officer that the merchandise has been exported under Customs supervision, but due to an error on the part of Customs a copy of this certified entry i not in Customs own internal in-bond files. Because of Customs errors, penalties are assessed against the carriers.

We wish to point out that numerous changes to the in-bond controls have been made to reduce Customs caused errors. The latest such action in this regard is the automation of local in-bond control files at high volume locations. This has already been done in New York, Miami, Houston, and Los Angeles and is scheduled for other high volume locations in the near future. Although Customs realizes it cannot totally eliminate this problem, we have instituted operational procedures and are seeking additional operational safeguards to minimize this problem in the future. Of course, in this situation the penalty assessed against the carrier would be cancelled.

In the second situation, the in-bond carrier does not have a certified copy of the transportation and exportation entry because the Customs officer refused to certify such entry because the actual exportation of the entry has not occurred. However, the transportation and exportation entry is stamped by the Customs officer to indicate that the merchandise has arrived at the port of exportation. believes that the in-bond carrier's liability under a transportation and exportation entry should end when the merchandise is delivered to the port of exportation, Customs is notified of this fact, and the transporation and exportation entry is stamped by a Customs officer to indicate that the merchandise was delivered to the port of exportation.

As explained earlier, when the carrier files a transportation and exportation entry in its name it is obligating itself to the exportation of such merchandise under Customs supervision. Therefore, the fact that the

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transportation and exportation entry is stamped by the Customs officer to indicate that the merchandise has arrived at the port of exportation does not satisfy the exportation requirement.

contends that Customs should request exportation information from the exporting carrier, rather than the in-bond carrier, because the exporting carrier has this information readily available. Very often, Customs does not know who the exporting carrier of a particular shipment is. In addition, the exporting carrier is merely an agent of the in-bond carrier and by filing the transportation and exportation entry in his name, the in-bond carrier obligates itself to obtaining the necessary export information for Customs.

notes that Customs at New York has a local control procedure by which they verify exportation by directly contacting export carriers, rather than in-bond carriers, for proof of exportation. New York's procedure is possible only because of its extremely high in-bond volume which necessitates a fairly large staff. This procedure represents a practical solution tailored by local considerations. Its applicability at other locations must be a local decision. There is presently no intention by Customs to implement this procedure nationwide.

In the third situation mentioned by the in-bond carrier does not have a certified copy of the transportation and exportation entry because it has been unable to locate a Customs officer to whom it can report arrival. Section 18.7 of the Customs Regulations requires that the in-bond carrier must notify Customs of the arrival of the merchandise. As a courtesy to the in-bond carrier, we permit the carrier to satisfy this obligation by submitting the entry (Customs Form 7512) to the Customs officer at the pier or location or at the airport terminal. However, if the carrier is unable to locate the inspector at such local places, it should submit the entry (Customs Form 7512) at the district or port headquarters.

Because in situations two and three, mentioned above, the carrier assumed by the filing of the transportation and exportation entry the responsibility of exporting the merchandise under Customs supervision, and neglected to do so, the penalty assessed against the carrier would not be cancelled. However, depending on the circumstances surrounding the particular case involved, the penalties originally assessed could be mitigated.

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complains of unfair treatment by Customs in assessing demands for liquidated damages for failure to export under Customs supervision. This matter is presently under study. However, there are no present plans to change our penalty processing guidelines or provide further mitigation in those instances when it can be shown that the goods were actually exported, but not under Customs supervision. These penalty guidelines were established in late 1978 to provide for uniform treatment of similar violations nationwide. Customs is interested in information which tends to show ineffectiveness or unfair treatment under these guidelines and has taken the information provided by under advisement.

believes that because of the penalties assessed against his company for such bond the surety company will not renew his company's bond. We are unaware of any case where a surety company has cancelled a carrier's bond because of the penalties assessed by Customs under such bond, unless the carrier has defaulted on the penalty and Customs has actually collected penalties due from the surety company.

If we can provide additional information or be of further assistance, please feel free to call on us.

Sincerely,

(Signed) R. E. Chasen

Commissioner of Customs

Enclosure

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JUN 30 1981

MAR-2-05 CO:R:E:E
716390 MC

716390

Director Classification and Value

Buffalo, New York 14202

Director, Entry Procedures and Penalties Division

Country of Origin Marking on Abrasive Paper

This is in response to your recent request of March 23, 1981, for Internal Advice concerning [redacted] November 26, 1980, letter regarding the country of origin marking and classification of packaged rolls of abrasive paper.

We reaffirm our position as expressed in ORR Ruling 218-69 of July 17, 1969, RM 363.2 K. The country of origin of the finished rolls is the country in which the jumbo rolls are produced. Processing of the jumbo rolls as described in Canada does not effect a substantial transformation so as to make Canada the country of origin of the finished products, within the meaning of 19 U.S.C. 1304.

Please inform the importer that if the jumbo rolls are not manufactured in the United States, then the country of manufacture must be marked on the back of the abrasive paper. In order to insure that the finished products will each bear the country of origin information, the rolls must be marked at frequent intervals.

Furthermore, the Special Classification Branch is of the opinion that item 800.00, TSUS, is not applicable to abrasive paper which has been cut to size from jumbo rolls and packaged in Canada. This provision of law is limited to articles that have not been advanced in value or improved in condition abroad. Thus they conceded that processing the merchandise in Canada clearly advanced and improved the domestic product which was exported.

Salvatore E. Caramagno

[redacted]

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CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

MAY 11 1982

MAR-2-05 CO:R:E:E
718915 FBO

This ruling concerns the country of origin marking requirements for watch cases consisting of a crystal, back and bezel.

ISSUE:

What is the country of origin of a watch case when integral parts of it are manufactured in more than one country and assembled in one or another country.

FACTS:

The importer has watch cases assembled in Taiwan from crystals, backs and bezels made in one or more countries, arriving in Taiwan in various stages of completion. Some arrive with the three pieces of the watchback assembled, then further work is done to make the cases part of completed watches. In some instances, the pieces arrive separately to be assembled with the general assembly of the watch. The importer seeks a general rule to apply to any given situation for watch cases.

LAW AND ANALYSIS:

The special marking requirements of Schedule 7, Subpart 2E, Headnote 4, Tariff Schedule of the United States (TSUS), hold that any movement, case, or dial shall not be permitted to be entered into the United States unless conspicuously and indelibly marked by cutting, die sinking, engraving or stamping. When various parts of watch cases are made in different countries, and in many instances assembled in a third, then these type of situations arise. After inspecting the watch case samples submitted to us by the importer, it is Customs position that the bezel is the predominant part of the watch case. Therefore, the country of origin of the watch case is the country of origin of the bezel.

718915

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HOLDING:

The country of origin of the watch case is the country of origin of the bezel as it is the predominant part of a watch case.

SIGNED

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

718915

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SURNAME					

SEP 14 1982

MAR-2-05 CO:R:E:E
720074 DK

720074

This ruling has to do with the country of origin marking of slide fasteners assembled in the People's Republic of China.

ISSUE:

1. Are certain slide fasteners to be assembled in China primarily with materials of U.S. origin required to be marked to indicate China as the country of origin pursuant to 19 U.S.C. 1304?

2. Will the marking of the containers of the slide fasteners meet the requirements of 19 U.S.C. 1304?

FACTS:

Slide fastener chain, consisting of plastic elements (teeth) woven into the edge of cloth tape, in rolls of 2,000 or 3,000 yards or more, along with rolls of aluminum wire and sliders for the slide fastener chain are made in the United States and sent to China. Plastic separating ends of the kind generally used in winter jackets, etc., are molded in China.

Upon receipt of the U.S. materials in China the slide fastener chain is cut to the proper lengths, and the plastic separating end is molded to one end of the cut-to-length fastener chain. Once the separating end is secured, the slider is now threaded onto the chain and the top stops, made by cutting short lengths of the aluminum wire and bending them, are attached to the upper end of the slide fastener. The equipment for molding the separating end and mounting the slider, cutting the wire to length, and forming and attaching the top stop are all performed on U.S. supplied equipment.

LAW AND ANALYSIS:

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides in general that all articles of foreign origin imported into the United States shall be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States, with certain exceptions. "Country of origin" is defined in section 134.1 of the Customs Regulations (19 CFR 134.1) to mean the country of manufacture, production, or growth of any article of foreign origin entering

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the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part.

In this case most of the components of the slide fasteners are of U.S. origin. It is stated that the value added in China compared to the total cost of the fastener is approximately 21 percent of the total cost. Nevertheless, it is obvious that the finished slide fasteners are new and different articles from the U.S. components that were sent to China. The rolls of slide fastener chain, in addition to being cut to the proper length, must undergo several other important processes in order to be converted into finished slide fasteners. The molding of the separating end, threading on of the slider and attachment of the top stops are more than mere minor assembly operations with respect to these articles. They are important steps which must be done with care and skill to make a functioning slide fastener. Accordingly, the finished slide fasteners will be considered to be products of China, for purposes of 19 U.S.C. 1304.

It is noted that the back of the slider has the letters "U.S.A." molded in the back in very small letters, which would not be conspicuous enough to meet the requirements of 19 U.S.C. 1304, if the same size letters were used to mark a foreign country of origin on an article. There will be no objection to this marking if the finished fasteners are properly marked to indicate the country of origin to the ultimate purchasers.

The ultimate purchasers of the slide fasteners will be manufacturers who use them in articles they manufacture. If the slide fasteners are imported in containers that are legibly and conspicuously marked to indicate the country of origin, and Customs officers at the port of entry are satisfied that they will reach ultimate purchasers in the marked containers, the slide fasteners could be accepted from individual marking under 19 U.S.C. 1304(a)(D).

The slide fasteners will be imported in cartons containing 100 fasteners each. The cartons will be legibly and conspicuously marked to indicate the country of origin. According to the importer, the fasteners will be sold in the marked containers only to manufacturers of apparel. None will be repackaged by the importer for resale to the retail market, nor will any be sold to other companies which would

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repackage them for the retail market. The ultimate purchasers will not necessarily be known at the time of importation but in these circumstances we are satisfied that the marking of the cartons will reasonably indicate the country of origin to the ultimate purchasers within the meaning of 19 U.S.C. 1304(a)(3)(D), and the individual slide fasteners may be excepted from marking.

HOLDING:

1. The assembly in China of the slide fasteners from slide fastener chain, sliders, and aluminum wire of U.S. origin, results in a substantial transformation of the U.S. components, and the finished slide fasteners will be considered to be products of China, for purposes of 19 U.S.C. 1304.

2. The slide fasteners may be excepted from individual marking under 19 U.S.C. 1304(a)(3)(D), if they are imported in cartons of 100 marked to indicate the country of origin, and they are sold only to apparel manufacturers or other ultimate purchasers in these cartons.

DON[illegible] LEWIS

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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[redacted]

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AND DATE

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

712007H

LA/3558
MAR 2-05 CO:R:E:E
720454 FBO

OCT-27 1982

720454

Dear [redacted]

This is in response to your letter of September 24, 1982, concerning alleged country of origin marking violations of certain plastic bags. The bags are imported preprinted on roll stock and are manufactured into finished bags in the United States.

It is presently the position of the United States Customs Service that the manufacturing operation of making bags from preprinted roll stock is a substantial transformation. The manufacturer of the bags is considered to be the ultimate purchaser for purposes of 19 U.S.C. 1304.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

Section 134.1(d)(1) of the Customs Regulations (19 CFR 134.1(d)(1)), holds the manufacturer to be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation, changing the character and use of the imported article which loses its identity in the manufacturing process. Substantial transformation means that the manufacturing process is performed on an item so that the item loses its identity and becomes an integral part of a new article with a new name, character and use (United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267, C.A.D. 98).

We are of the opinion in this case, and this has been verified by our local field office, that the making of bags from the preprinted roll stock changes the character and use of the imported product in such a way that substantially transforms the article to a new and different product. The manufacturer is, therefore, the ultimate purchaser. Accordingly,

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the marking of the rolls of plastic material meets the requirements of 19 U.S.C. 1304, since this marking indicates the country of origin to the ultimate purchaser. We appreciate your views on this matter, but in view of the decision in the case of United States v. Gibson-Thomsen Co., Inc., as well as other court cases defining the term "ultimate purchaser," the Customs Service cannot require the finished bags to be marked to indicate that they were made with imported plastic.

If we can be of further service to you, please do not hesitate to contact us.

Sincerely,

(signed)
Dennis Thomas

J. Dennis Thomas
Assistant Secretary
(Legislative Affairs)

[redacted]

[redacted]

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CODE AND DATE	[redacted]
SURNAME	
CODE AND DATE	
SURNAME	

DEPARTMENT OF [redacted] CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 1300 (11-13-73)

130454

DEC 1 1982

MAR-2-05 CO:R:E:E
720531 PRO

This ruling concerns the country of origin marking requirements for integrated circuits.

ISSUE:

Would the encapsulation process be sufficient further work to change the country of origin of the integrated circuit.

FACTS:

The importer is a manufacturer of electronic integrated circuits. The working part of the circuit is a tiny piece of silicon that is processed to form the circuit in the United Kingdom. The importer then encapsulates the silicon chips at offshore locations in the Far East (i.e., Hong Kong, Manila, Singapore and Taiwan, etc.). It is the view of the importer that the assembly process of encapsulation does not alter the circuit, but merely puts it into a form that enables it to be inserted into a printed circuit board.

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. Section 134.1(b), Customs Regulations, defines country of origin as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin. Substantial transformation means that manufacturing process is performed on

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an item so that the item loses its identity and becomes an integral part of a new article with a new name, character and use (United States v. Gibson-Thompson Co., Inc., 27 CCPA 267). Substantial transformation occurs when items are changed from producer goods-items that are neither used by, nor capable of use by, the retail consumer-into goods-items that have value and use to the consumer (Midwood Industries v. United States, 64 Cust. Ct. 499). The degree of technical skill or competence involved in the further work done on an item is also considered in determining whether substantial transformation has occurred.

We are of the opinion that the encapsulation process is sufficient to substantially transform the circuit, therefore, the United Kingdom would not be the country of origin for purposes of 19 U.S.C. 1304. The country of origin would be the country of encapsulation.

HOLDING:

The encapsulation process is sufficient work to change the country of origin of integrated circuits for purposes of 19 U.S.C. 1304.

[illegible]

Chief, Entry, Licensing and Restricted Merchandise Branch

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AUG 0 9 1983

MAR-2-05 CO:R:E:F
722511 FRO

722511

This ruling concerns the country of origin marking requirements for unfinished rings.

ISSUE:

Whether unfinished rings need to be individually marked with their country of origin?

FACTS:

The importer has submitted samples of unfinished imported rings to Customs. The rings come from Taiwan and are finished, polished, cleaned, plated with precision metal (gold and/or Rhodium and packaged in the United States. The importer asks whether the items must be marked "Made in Taiwan."

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides generally that all articles of foreign origin (or its container) imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. Section 134.1(b), Customs Regulations, defines country of origin as the country of manufacture, production of growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country, the country of origin.

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Substantial transformation means that a manufacturing process is performed on an item so that the item loses its identity and becomes an integral part of a new article with a new name, character and use (United States v. Gibson Thompson Co., Inc., 27 CCPA 267). Substantial transformation occurs when items are changed from producer goods-items that are neither used by, nor capable of use by the retail consumer (Midwood Industries, Inc., v. United States, 64 Cust. Ct. 499). The degree of technical skill or competence involved in the further work done on an item is also considered in determining whether substantial transformation has occured.

The process described herein by the importer amounts to a finishing operation and does not substantially change the product The goods must be marked to reflect Taiwan as the country of origin.

HOLDING:

In order to meet the requirements of 19 U.S.C. 1304, the rings must be individually marked with the country of origin.

Sincerely,

Signed Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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112251

MAR 2-05 CO:R:E:E
723427 HL

MAR 1 1 1984

Dear

This is in reply to your letter of September 30, 1983, concerning the application of Customs Regulation, 19 CFR 134.25, to the importation of bulk distilled spirits.

Customs Regulation, 19 CFR 134.25, requires that containers of repackaged J-list articles and articles incapable of being marked must be marked to indicate the country of origin of the repackaged contents by either the importer who repackages the articles or the purchaser or transferee of such articles who does the repackaging, and that the importer must certify to the district director on entry that the repackaged containers will be marked or that he will notify the purchaser or transferee of such marking requirement. The purpose of this regulation is to ensure that an ultimate purchaser in the United States is aware of the country of origin of unmarked merchandise imported and sold in containers that must be marked, notwithstanding an intervening repackaging operation.

Bulk distilled spirits are imported in large tank containers and bottled in the United States. As you indicate in your letter, country of origin labeling requirements are strictly enforced by the Bureau of Alcohol, Tobacco and Firearms. 27 CFR 5.36(e); 27 CFR 5.32. Distilled spirits imported in bulk for bottling in the United States may not be removed from the bottling plant unless the bottler possesses certificates of origin. 27 CFR 5.56. We believe that these procedures enforced by BATF will adequately ensure that the ultimate purchaser in the United States will receive notice of the country of origin of the final bottled product he purchases.

Accordingly, because BATF procedure effectively assures compliance with country of origin marking requirements, it is Customs position that the importation of bulk distilled spirits is exempt from the certification requirements of 19 CFR 134.25.

Sincerely,

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Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

FEB 23 1984

MAR 2-05 CO:R:E:F
723547 HL

[redacted]

Dear [redacted]

723547

This is in reply to your letter of October 10, 1983, as modified by verbal instructions to our office submitted by telephone on February 13, 1984, concerning the country of origin marking requirements applicable to footwear components produced in Mexico to be assembled in the United States.

The footwear components in question include: (1) a footwear upper consisting of three major pieces of leather, cut to size and shape and sewn together; these pieces include one left and one right vamp quarter piece with metal eyelets and a moc-toe piece which extends up over the instep; each of these pieces is lined with a separate piece of leather; the vamp seams are covered at the heel and toe by small leather strips sewn over the seams; in addition, the leather at the topline has been turned over to form a tubular collar; (2) an insole unit composed of a leather sock liner, a thick layer of foam rubber, and a bottom layer of woven fabric; (2) two platform wrappers which are actually two leather straps cut to size for use as platform covers.

Following importation, the subject components are assembled together and a sole is affixed. In order to avoid the tariff classification consequences set forth in Headquarters decision dated February 2, 1984, file No. 073250 c, the uppers and insoles will be separately shipped to the United States and the platform wrappers will be shipped with either component. In that decision, the Classification and Value Division held that if the uppers and insoles were shipped together, then the importation would be considered unfinished footwear under item 700.35, Tariff Schedules of the United States (TSUS), on the theory that the upper and insole constituted a disassembled upper conforming to the criteria for unfinished footwear set forth in T.D. 79-100, General headnote 1(j)(i), TSUS. This tariff classification would not apply if the components were separately shipped. Thus, we understand that the uppers and insoles will be separately shipped and the platform wrappers will be shipped with either component.

On this basis, it is our position that the subject footwear components need not be individually marked with the country of origin inasmuch as they are "substantially transformed" into footwear in the United States by the importer who is considered the "ultimate purchaser" of the components. 19 CFR 134.35. This exception from individual marking will be granted under

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19 U.S.C. 1304(a)(3)(H), provided the uppers and insoles in question are separately shipped.

We do not reach the issue of country of origin marking requirements in the case of uppers and insoles shipped together.

Sincerely,

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE form 19011 5-75

APR 0 1 1984

MAR 2-05 CO:R:E:E
725015 HL

Dear

This is in reply to your letter of March 29, 1984, requesting an exception from country of origin marking requirements in the case of steel nut blanks imported from Japan and Taiwan in unfinished condition.

As imported, the nut blanks will have special hole diameters. Following importation, a patented thread form will be machined into the hole with the resultant end product consisting of a free spinning, vibration resistant locknut. You estimate that the total average labor and tooling expenses incurred in the United States will amount to 50 percent of the cost of the imported blanks. Although you are aware that the imported product is a J-list article under 19 CFR 134.33 and therefore exempt from individual country of origin marking requirements, it is your claim that the domestic processing substantially transforms the imported blanks into new and different articles of commerce under 19 CFR 134.35, and that the certification requirements under 19 CFR 134.25 do not apply.

We agree. The proposed tooling and threading operations performed upon the imported nut blanks substantially transform the nut blanks thus exempting them as well as the finished locknuts from both country of origin marking requirements and filing of certification statements required under 19 CFR 134.25 for repacked J-list articles. The exception may be granted under 19 U.S.C. 1304(a)(3)(D), i.e., the nut blanks must be imported in containers that are legibly and conspicuously marked with the country of origin, and Customs officials at the port of entry must be satisfied that these containers will reach the domestic processor unopened, and that such nut blanks will be processed as herein described and not otherwise sold. Midwood Industries, Inc. v. United States, C.D. 4026 (1970); Headquarters decision dated December 13, 1978, file No. 709361.

Sincerely,

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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APR 24 1984

MAR-2-05 CO:R:E:E
725175 DK

[redacted]

Dear [redacted]

This is in reply to your letter of March 26, 1984, requesting a ruling concerning the country of origin marking on a printed Melody Card.

You say that it is your intention to print the cards in Hong Kong and ship them to Taiwan where the melody modules will be assembled to them.

Section 304, Tariff Act of 1930, as amended, provides in general that all articles of foreign origin imported into the United States shall be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States, with certain exceptions.

The ultimate purchasers of the Melody Cards in question will be the ultimate recipients, within the meaning of 19 U.S.C. 1304(a). Accordingly the cards must be printed to show the country of origin. The country of origin of the Melody Cards for purposes of 19 U.S.C. 1304 would be Hong Kong, which is where the cards are printed.

Sincerely,

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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D8

DATE: AUG 14 1984

FILE: MAR 2-05 CO:R:E:E
725850 HL

TO: Director, Classification and Value Division

FROM: Chief, Entry, Licensing and Restricted Merchandise Branch

SUBJECT: Catheter Components Assembled in Mexico into Kits; Components of U. S. Origin

We transmit herewith a request for a ruling to the effect that catheter components of U. S. origin, shipped to Mexico for assembly into kits and reimported, are entitled to item 800.00 TSUS treatment and are not required to be marked to indicate Mexico as the country of origin.

In responding to the issue of item 800.00 TSUS treatment, please incorporate our views on the marking issue, i.e., it is our position that the assembly of the catheter components of U. S. origin into kits in Mexico does not effect a substantial transformation for the purposes of determining the country of origin of those components under section 134.1(b), Customs Regulations (19 CFR 134.1(b)). Accordingly, the kit which is reimported into the United States after being packaged in Mexico is not required to be marked to indicate Mexico as the country of origin or assembly for the purposes of 19 U.S.C. 1304. The goods are exempt from marking under section 134,32(m), Customs Regulations, as products of the United States exported and returned.

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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SURNAME	[redacted]						
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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUN 05 1984

MAR 2-05 CO:R:E:E
725306 HL

Dear

This is in reply to your letter of May 8, 1984, concerning the application of Customs Regulation 19 CFR 134.25 (T.D. 83-155) to importations of self-clinching fasteners or their blanks.

Bolts, nuts, and washers are J-list articles; metal blanks to be plated are likewise J-list articles, i.e., pursuant to 19 CFR 134.33, such articles need not be individually marked to indicate their country of origin. However, their container must be markeddwith the country of origin of the J-list articles therein. The new regulation, 19 CFR 134.25, requires that repackages of such articles must also be marked. If self-clinching fasteners or their blanks are J-list articles, then the new regulation will apply to their importation and repacking. (Whether an article is a J-list article depends upon its tariff classification, which you can determine by contacting the General Classification Branch at Customs Headquarters or local Customs officials.)

On the other hand, if you imported nut blanks and (prior to repackaging) "substantially transformed" them by tapping and plating, then the new Customs Regulation, 19 CFR 134.25, would not apply and the new containers would not have to be marked to indicate the country of origin of the nut blanks. Plating alone would not accomplish this transformation, but tapping would indeed result in the manufacture of a domestic article from a foreign blank. See Customs Ruling 709361 (December 13, 1978). (We assume your tapping operation will involve a threading of the blank.) We also enclose Customs Ruling 725015 (April 4, 1984)(nut blanks transformed into locknuts) and Customs Ruling 723668 (December 12, 1983) (involving the application of 19 CFR 134.25 to domestic repackaging of industrial fasteners which are not substantially transformed in the United States by domestic processing, but rather imported finished in bulk).

If you have further questions, contact us at 202-566-5765 or your local Customs officers.

Sincerely,

Signed Darrell D Kast

Darrell D. Kast
Chief, Entry, Licensing and Restricted Merchandise Branch

Enclosures

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7-10-84

10 JUL 1984

MAR 2-05 CO:R:E:E
725578 HL

[redacted]

Dear

This is in reply to your letter of June 5, 1984, concerning the country of origin marking requirements applicable to automobile brake components, imported in bulk and repacked in the United States in order to be sold singly or in kits. It appears that the subject brake parts will not be sold to original equipment manufacturers.

In general, we believe that the brake parts should be individually marked to indicate their country of origin as required by section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). If the parts were marked and then repacked in the United States, it would be unlawful for the new containers to conceal the country of origin marking, or else the new containers (if sealed or bearing a U.S. address) should also be marked to indicate the country of origin of the brake part contained therein. See new Customs Regulation 134.26, effective July 2, 1984; published in the Federal Register on June 1, 1984 (49 FR 22793).

On the other hand, section 134.34, Customs Regulations (19 CFR 134.34), provides a special exception from individual marking requirements when a special arrangement is made with local Customs officers in the case of imported articles repacked in the United States. Local Customs officers at the port of entry must be absolutely satisfied that, if unmarked articles will be repacked in the United States, the new containers will adequately indicate the country of origin of the articles. This exception is within the discretion of the district director to authorize. If such an exception is authorized, as in the case of kits, the kit container must indicate the country of origin of the parts contained therein by part. If one part may be sourced from several different countries, then a multiple listing label may be used to indicate that such part of parts may be from one or more (identified) countries. The details of such a label should be discussed with local Customs officers for approval.

Sincerely,

Darrell D. Kast

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Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

OCT 1 8 1984

MAP 2-05 CO:R:E:E
725695 HL

725695

[redacted]

Dear [redacted]

This is in reply to your submissions of June 29, August 20, and September 24, 1984, concerning the country of origin marking requirements applicable to imported acrylic sheets.

Acrylic sheets, of the kind classifiable under items 771.41 and 771.45, Tariff Schedules of the United States (TSUS), are generally imported in sizes of 48 inches x 96 inches, or 48 inches x 72 inches, as well as in other sizes. Currently, the country of origin marking for purposes of 19 U.S.C. 1304 may appear by means of one adhesive sticker affixed either to the plastic itself or to the masking paper used to protect the sheet during shipping and handling, or the masking paper itself may be marked.

It is your position that a significant percentage of all imported acrylic sheets is sold to the ultimate purchaser in the United States, not in the full size sheets in which imported, but rather in cut-to-size sheets. For instance, a retail consumer will enter a hardware store and purchase acrylic sheet cut to the specific dimensions he requests. The consumer may use the cut-to-size sheets as replacement windows for his home, etc. Under these circumstances, he is unlikely to receive notice of the country of origin of the acrylic sheets simply because each sheet as imported had only one marking label affixed, and when such larger sheet was cut to smaller sizes to fill his order, there is a high probability that he will not receive a cut-to-size sheet with the sticker marking. Accordingly, you suggest that Customs permit country of origin markings on no greater than 18 inch centers vertically in vertical rows spaced 18 inches apart, with the markings staggered vertically from one row to the next. You indicate that this method of marking can be easily accomplished by pre-printing the masking paper used to protect the sheets.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires in general that every article of foreign origin or its container must be legibly, permanently, and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. The ultimate purchaser is generally the last person in the United States who will receive the article in the form in which it was imported. See section 134.1(d), Customs Regulations.

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The rationale you set forth for requiring more than one marking on a full size imported acrylic sheet is based upon your contention that a significant percentage of all imported acrylic sheets reach the ultimate purchaser in cut-to-size sheets, and therefore unmarked. The record indicates, however, that the largest percentage of imported acrylic sheet will reach fabricators and end users in full size sheets. Fabricators who substantially transform the sheet into a new and different article of commerce are considered "ultimate purchasers." See section 134.35, Customs Regulations, and United States v. Gibson-Thomsen Co., Inc., 27 CCPA 267, CAD 98 (1940). These fabricators will indeed receive notice of the country of origin. In fact, if these fabricators receive the sheets in a properly marked container, and such container reaches the fabricator unopened, then the sheets themselves may be exempted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D). This has been Customs practice for many years, and is consistent with our practice relating to the importation of glass in sheets. See T.D. 49840(2).

A great number of end users which you identify as ultimate purchasers, i.e., industrial users, municipalities, school maintenance departments, who receive imported product in cut-to-size sheets may not be ultimate purchasers at all. For instance, municipalities and schools are not the ultimate purchasers of cut-to-size sheets for window panes when such end user contracts out the installation to a contractor who does not merely sell the panes to the end user, but also installs the panes as a complete service. Customs has taken the position that such a contractor is considered to be the ultimate purchaser in similar cases and, in this case, he would be the ultimate purchaser of the acrylic sheets. If the contractor receives full size sheets, then the percentage of ultimate purchasers receiving cut-to-size sheets with no marking is further diminished.

Basically, therefore, we are not convinced that enough ultimate purchasers in the United States receive imported acrylic sheets without country of origin markings in order to justify imposing the rather burdensome marking requirement you propose - a requirement which would be contrary to the practice currently used for marking similar merchandise, i.e., glass, plywood, particle board, etc., also imported in sheets.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

725695

D13

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

NOV 1 1984

MAR 2-05 CO:R:E:E
725704 HL

Dear

This is in reply to your submission of June 26, 1984, concerning the country of origin marking requirements applicable to a pharmaceutical product (including aerosol applicator) the components of which are imported from England. The product is for use by asthmatic patients.

According to your submission, a pharmaceutical drug will be imported from England in bulk, in crystal form. Also imported from England will be the components of the aerosol applicator, i.e., a valve, an aluminum cannister assembly (cannister and cover), and a plastic actuator assembly (tube and mouthpiece cap). In the United States, the crystal pharmaceutical ingredient will be dispersed in freon (U. S. origin) and oleic acid (U. S. origin) under carefully controlled circumstances and conditions. The aluminum cannisters will be filled with the active solution. The valves will be secured to the cannisters by means of a crimping operation, and aerosol propellants (U. S. origin) will be forced into the cannister under pressure. The filled pressurized cannister will be sold together with the actuator assembly (plastic), but may also be sold separately as a refill for the plastic actuator which is reusable.

In the United States, the bulk drug of English origin is transformed into an individual dosage drug under conditions that require substantial time and effort, cost, and sophisticated technology and equipment. We consider the domestic processing to result in a substantial transformation of the imported bulk drug into a new and different article of commerce under section 134.35, Customs Regulations. Therefore, the repackaged product is not required to be marked to indicate that the active ingredient is of English origin under section 134.25, Customs Regulations. On the other hand, the plastic actuator assembly, unlike the other imported components (such as aluminum cannister and valve), never loses its identity in the final consumer product. The plastic actuator is completed by a perfunctory assembly and can be reused with a refill cannister of pharmaceutical solution. The actuator remains a separate article of commerce and the ultimate purchaser is entitled to know its country of origin under 19 U.S.C. 1304. Accordingly, the actuator assembly shall be marked to indicate that it is a product of England (with 19 CFR 134.26 applying to require marking of repackaged product); as an alternative, it may be exempted from individual marking under section 134.34, Customs Regulations, provided the retail package indicates that the plastic actuator assembly is of English origin.

D14

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If the refill (aluminum cannister with active solution) is sold apart from the plastic actuator assembly, the retail package containing the refill is not required to be marked to indicate a foreign country of origin.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

785704

THIS DOCUMENT MAY BE RELEASED TO THE
PUBLIC _____

E1

JUL 19 1984

MAR 2-05 CO:R:E:E
725818 HL

Dear

This is in reply to your letter of July 13, 1984, concerning the applicability of new Customs Regulation, 19 CFR 134.26, to importations of watches and watch products which are repackaged in the United States.

We have reviewed the sample package into which watch imports will be repacked for retail sales. The package is not sealed, but rather consists of a cardboard sleeve (open on two sides) which holds a two-piece plastic box. The plastic box is designed to permit easy access to the product so that the watch may be displayed as well as inspected by prospective consumers. The plastic box will also have an instruction booklet the context of which contains reference to a United States address to which the watch may be sent for servicing. The booklet also indicates that it is printed in the United States. We do not consider either reference to the United States to be misleading. Otherwise, the packaging bears no U. S. address.

According to 19 CFR 134.26(f), the certification requirements of the regulation do not apply to repackaging in a container that can be readily opened for inspection by the ultimate purchaser in the United States, unless such container bears a U. S. address or other potentially misleading marking. The subject packaging can be readily opened and bears no misleading addresses. Therefore, the packaging is excepted from the requirements of 19 CFR 134.26 pursuant to subsection (f).

We also note that the watch itself is marked "Assembled in Taiwan." We trust that this marking refers to the watch movement inasmuch as the country of origin of the watch is, for Customs marking purposes under 19 U.S.C. 1304, the country of origin of the watch movement (or country of assembly of the watch movement).

Sincerely,

Signed Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

E2

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

OCT 11 1984

MAR 2-05 CO:R:E:E
726103 HL

Dear

This is in reply to your submissions of August 13 and September 7, 1984, concerning the country of origin marking requirements applicable to automobile components, imported in bulk and repacked in the United States in order to be sold singly or in kits. Customs advice was previously rendered in Headquarters letter 725578. Customs position stated hereinafter supersedes the advice given in that letter.

Your company operates a distribution center in the United States. This facility receives automobile parts from both domestic manufacturing facilities and facilities located in Canada, Japan, and various other foreign countries. The domestic distribution center will handle approximately 38,400 different parts. Approximately 3,275 parts are of foreign origin. These parts will be sold individually or in kits containing from 2 to 50 parts. Sales will not be to original equipment manufacturers.

The subject automobile parts are imported in bulk and repacked in the distribution center, i.e., in individual boxes or kits. These parts may be J-list articles which are unmarked (section 134.33, Customs Regulations), or incapable of being marked (section 134.32(a), Customs Regulations), or marked. In any event, the repacked box or container must be marked to indicate the country of origin of the article therein, as required by either section 134.25 or section 134.26, Customs Regulations. In Headquarters letter 725578, we indicated that kit containers must indicate the country of origin of the parts contained therein by part. Because of the large number of part combinations in a kit, you state that identification of each part by country of origin is not feasible. You indicate, however, that you will be able to identify the specific country or countries from which the parts originate, albeit not by part. You will also be able to identify the kits which contain parts of U. S. origin.

Contrary to our position in Headquarters letter 725578, we will not require that kit containers indicate the country of origin of the parts therein by part. To the extent that it is feasible, however, you must identify the specific country or countries from which the parts in a particular kit originate. In the case of kits which are certain to contain parts of domestic origin, the following label may be used: "This kit contains articles of both U. S. and foreign origin. Articles of foreign origin are pr of (specifically identified country or countries.)" If the same part is s d from more than one country and the parts commingled so that the specific country cannot be identified, then a multiple listing label may be used as follows: "This package contains articles from country A, country B, and/or country C." E3

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You have also requested an exemption from marking in the case of 81 parts which you believe are either J-list articles (and therefore exempt from individual marking requirements under section 134.33, Customs Regulations, in any event) or incapable of being marked with ease. You state that the remaining 3,194 foreign sourced parts are capable of being marked and will be marked by the foreign manufacturer.

As you know, articles designated as J-list articles are named in section 134.33, Customs Regulations. Bolts, nuts, washers, screws, rivets, and wire are named J-list articles and are therefore exempted from individual marking requirements. Of course, the containers of J-list articles must be marked to indicate the country of origin of the J-list articles to the ultimate purchaser in the United States. Whether an imported article is a J-list article depends upon its eo nomine tariff classification. If the imported parts are classifiable as bolts, nuts, etc., then they are J-list articles and need not be individually marked. The ultimate retail package, however, should be marked as previously indicated. In the case of articles which are not J-list articles, but nonetheless difficult to individually mark, we would not object to the granting of an exemption by local Customs officials provided such Customs officials were satisfied that the retail repackages were properly marked in accordance with the advice given in this letter. See section 134.34, Customs Regulations.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

726103

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E4

CODE AND DATE						
SURNAME						
CODE AND DATE						
SURNAME						

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 8 1985

REFER TO

MAR-3 CO:R:E:E
729002 LR

Maria Teresa Pietrok
Export Manager
Adec International
2601 Crestview Drive
P.O. Box 111

Dear Ms. Pietrok:

This is in response to your letter dated April 19, 1985, requesting a ruling on the marking requirements of certain products imported from Japan.

Your company imports dental light lenses and mounting plates from Japan. These are two of numerous components of a unit known as a "dental light and arm assembly". The remainder of the components are made in the United States. Your company assembles the foreign components with the United States components and sells the completed articles to dealers and distributors. According to your letter, the imported parts are not interchangeable with any other assemblies or finished products. You advised us by phone that your company does not sell the imported components individually.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) generally provides that all articles of foreign origin imported into the United States are required to be legibly, conspicuously, and permanently marked to indicate the country of origin to an ultimate purchaser in the United States. An imported article may be excepted from individual country of origin marking requirements under 19 U.S.C. 1304 if prior to sale, the importer substantially transforms the imported article into a new and different article of commerce. See United States v. Gibson-Thomsen Co. Inc., 27 C.C.P.A. 142, T.D. 48623 (1940).

It is our position that your company does not substantially transform the imported articles prior to sale. First, assembly alone is generally not sufficient to transform an imported article. Second, the assembly process does not result in a new article of commerce. Both before and after assembly, the imported articles are components of a dental light and arm assembly and have no other use. Although the imported components are two of many components forming the finished product, the imported lens and mounting plate are major components with independent identity and functional significance. They retain their independent identity and distinct function after assembly. We believe that the quality (and the country of origin) of the lens in particular may be of special interest to a potential purchaser.

ES

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

Since the imported articles are not substantially transformed, they must be individually marked with country of origin.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

729002

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E6

PRECEDENT

DEC 3 1964

TC 363.2 c

[redacted]

PRECEDENT

Dear [redacted]

In a letter dated October 31, 1964, you requested the dutiable status of certain swivel snaps for dog and halter chains.

The sample metal swivel snaps submitted measure approximately 3 inches in length.

It is assumed that these swivelsnaps are not the product of the Communist countries listed in General Headnote 3(d), Tariff Schedules of the United States (TSUS), copy enclosed.

It is the opinion of the Bureau that this merchandise is classifiable under the provision for Harness * * * hardware, * * * not coated or plated with precious metal in item 646.97, TSUS, and dutiable at the rate of 12.5 percent ad valorem.

To insure that the merchandise will be so classified at each port at which it may be entered, this decision is being circulated to all customs officers.

Sincerely yours,

Deputy Commissioner

Enclosure 70963

[redacted]

E7

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 28 1983

CLA-2-03:S:C:D7:73-43
805090

[redacted]

Dear [redacted]

In a letter dated January 13, 1983, you inquired as to the dutiable status of certain hook and loop fabrics produced in Japan.

Samples of the two fabrics in question were submitted with your inquiry. The first item is a narrow woven fabric of nylon, approximately one inch in width. The fabric has fast edges and stiff monofilament hooks which project from one surface.

The second sample, also of nylon, is a warp knit fabric which has been brushed. This brushing or napping operation has raised and broken some of the float yarns on the surface of the fabric, creating a pile-like effect. You state that this material will be imported in widths of 63 inches. After cutting to size, the female loop and the male hook fabrics form a closure when they are pressed together.

The narrow male hook fabric is classifiable under the provision for narrow fabrics of man-made fibers, in item 347.70, Tariff Schedules of the United States, and dutiable at the rate of 8 cents per pound plus 8.7 percent ad valorem. The female brushed knit fabric is classifiable under the provision for knit fabrics of man-made fibers, in TSUS item 345.50, with duty at 16 cents per pound plus 18 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

805090

E8

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 06 1984

CLA-2-03:S:C:D7:73-562
807872

[redacted]

Dear [redacted]

In a letter dated November 23, 1983, written on behalf of [redacted] you inquired as to the dutiable status of certain narrow fabrics produced in Uruguay.

Samples of five hook and loop tapes, ranging from 5/8 inch to 2 inches in width, were submitted with your inquiry. Each width tape consists of two woven fabrics, a female or loop pile and a male or hook pile. Both fabrics have selvages forming fast edges, and will be imported in continuous lengths. After cutting to size, the two fabrics are useable as contact closures.

Hook and loop tapes, as represented by your samples, are classifiable under the provision for narrow fabrics of man-made fibers in item 347.70, Tariff Schedules of the United States, and dutiable at the rate of 6 cents per pound plus 8.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

807872

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E9

[redacted]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 05 1985

REFER TO

CLA-2-04:S:COM:N2:238-294
812869

[redacted]

In your letter dated March 6, 1985, on behalf of [redacted] you inquired about the dutiable status of [redacted] and [redacted] from [redacted]

[redacted] is a non-benzenoid [redacted] that is derived directly from [redacted] is classifiable under the provision for opium alkaloids and their compounds in item 437.1400, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of $1.12 per ounce.

[redacted] is classifiable under the provision for "... [redacted] in item 438.0200, TSUSA, and dutiable at the rate of $1.12 per ounce, which is the rate of opium alkaloids and their compounds, taken from item 437.14 (TSUS).

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

These products may be subject to the regulations of the Drug Enforcement Agency (DEA). You may contact them at 1405 I street N.W., Washington, D.C., 20537, telephone (202) 633-1000.

Sincerely,

John J. Martuge
Area Director
New York Seaport

See Next Frame E11

E10

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

ATTACHMENT 3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 13 1985

CLA-2-04:S:CSM:N2:238-294
812969

[redacted]

[redacted]

In response to our telephone conversation of April 24, 1985, Paragraph 6 of ruling 812969 dated April 5, 1985, concerning [redacted] imported from [redacted] is amended as follows:

[redacted] form of [redacted] a non-benzenoid [redacted] derived from [redacted] is classifiable under the provision for "... [redacted]" in item 438.0200, Tariff Schedules of the United States Annotated (TSUSA). It is dutiable at the rate provided such product in this subpart (opium alkloids and their compounds dutiable at $1.12 per ounce, TSUSA item 437.1400), but not less than 4 percent ad valorem.

Please be advised that copies of this amendment and the original ruling should be attached to the entry documents filed at the time this merchandise is imported.

Sincerely,

John J. Mantuga
Area Director
New York Seaport

THIS DOCUMENT [illegible] BE RELEASED TO THE PUBLIC [illegible]

RECEIVED

1985

[illegible]
Administration

E11

[redacted]

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 02 1985

REFER TO

CLA-2-03:S:COM:N3:357-1183
814710

Mr. Robert T. Stack
Siegel, Mandell & Davidson, P.C.
One Whitehall Street
New York, N.Y. 10004

Dear Mr. Stack:

Your letter of July 22, 1985, on behalf of Monette Casuals Ltd., requested this office to rule upon the tariff classification of a coat from a Far Eastern country.

The submitted woven garment is stated to be style 2092, a raincoat for ladies' wear, of fabric of 65% polyester and of 35% cotton.

Characteristics of this long-sleeved, long coat include, as follows:

1) a double-breasted, snapped, full-front opening

2) a round, stand-up collar

3) snapped sleeve cuffs

4) an open pocket on each of the fronts

5) a textile belt drawn through belt loops around the waist

6) a unit of three textile inserts, forming each shoulder

This garment is classifiable under the provision for other women's wearing apparel, not ornamented, of man-made fibers, not knit, other, other, coats, 3/4-length or longer, raincoats, women's in item 383.9035, Tariff Schedules of the United States. The rate of duty is 19¢ per lb. + 27.5% ad valorem.

This coat falls within textile category designation 635. As a product of a Far Eastern country this merchandise may be subject to quota restraints and/or a visa requirement based upon international textile trade agreements.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E12

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

814710

E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.
AUG 07 1986

REFER TO
CLA-2-03:S:COM:N3H:351-1184
814731

Mr. Y. Nakamura
Manager
UBE Industries (America), Inc.
666 Fifth Avenue
New York, N.Y. 10103

Dear Mr. Nakamura:

In your letter dated July 22, 1985, you inquired about the dutiable status of "Upilex" film from Japan.

"Upilex" is a polyamide film which has been slit into widths ranging from 8.6mm to 600mm. The furnished sample is 8.6mm in width and measures 0.001 inch in thickness. This material is described as an insulating tape which is both heat and fire proof. It will be imported without glue or other adhesive.

"Upilex" film tape will be classified according to its width as imported. Tape not over one inch in width is classifiable under the provision for strips (in continuous form), whether known as artificial straw, yarns, or by any other name, not laminated, valued over $1 per pound, in item 309.2100, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 8.6 percent ad valorem.

Tape which is over one inch but not over fifteen inches in width is classifiable as an article not specially provided for, of rubber or plastics, in item 774.5595, TSUSA. The rate of duty is 6.1 percent ad valorem.

"Upilex" film over fifteen inches in width is classifiable under the provision for film, strips, sheets ... wholly or almost wholly of rubber or plastics, which are flexible and measure not over 0.009 inch in thickness. The duty rate is 4.7 percent ad valorem in TSUSA item 771.4330.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E14

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

814734

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 13 1985

REFER TO:

CLA-2-03:S:C:M:N3-1:359-1195
814749

Mr. Alan E. Klestadt
Grunfeld, Desiderio, Lebowitz & Silverman
Two World Trade Center, Suite 2238
New York, NY 10048

Dear Mr. Klestadt:

Your letter of July 26, 1985, on behalf of your client, Beldoch Industries, Inc., requested this office to rule upon the tariff classification of a woman's sweater from Taiwan. The submitted sample will be returned as you requested.

The submitted sample, style 15426, is a woman's heavy gauge knit cardigan manufactured from 100% acrylic fibers. The long sleeved garment has a full front opening with four buttons near the waist on the placket which act as a closure. The garment also features a deep V-neck, rib knit cuffs, and a pronounced rib knit waist. It also has two pockets at the waist. The garment extends from the neck to below the waist and it is intended for wear over other wearing apparel. It is considered a sweater for tariff purposes.

On the rear of the garment, small pieces of textile yarn are added to the sweater fabric in a pattern which spells out the word "ZOOM" in large, decorative letters. This constitutes ornamentation with textile fabric, noting Headnote 3(a)(iii), Schedule 3, Tariff Schedules of the United States (TSUS).

Style 15426 is classifiable under the provision for other women's, girls', or infants' wearing apparel, ornamented: of man-made fibers: knit: blouses, body suits and body shirts, shirts, and sweaters: sweaters: other, in item 383.1880, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 37.5 percent ad valorem.

Style 15426 falls within textile category designation 646. As a product of Taiwan, this merchandise is subject to a visa requirement and quota restraints based upon international textile trade agreements.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

F2

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1 (d)(1) of the Customs Regulations [19 C.F.R. 177.1(d)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mahoney
Area Director
New York Seaport

214799

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

F3

DEPARTMENT OF THE TREASURY
U S CUSTOMS SERVICE

NEW YORK N Y

AUG 1 9 1985

CLA-2-06:S:C:M:N18:112-921
814759

Mr. Eliezer Appel
Attorney and Counselor at Law
141 South Martel Avenue
Los Angeles, Ca. 90036

Dear Mr. Appel:

In your letter of July 19, 1985, on behalf of David Ezra, you requested the tariff classification of solar panels from Israel.

The solar panels consist of several photovoltaic cells encased in a glass housing, and are used to change sunlight into electrical energy. The use of this product is beneficial in areas where DC or AC current is not practical.

The solar panels are classifiable under the provision for electrical articles and electrical parts of articles, not specially provided for: Other: Other... in item 688.42, Tariff Schedules of the United States, and dutiable at the rate of 4.3 percent ad valorem.

Articles classifiable under item 688.42, TSUS, which are the products of Israel are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mariuge
Area Director
New York Seaport

F4

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 15 1985

REFER TO

CIA-2-03:S:COM:N31:355-1203
814764

Mr. Paul Reznik
Cordovan & Grey Ltd.
110 East 9th Street, Suite B437
Los Angeles, California 90079

Dear Mr. Reznik:

Your letter of July 26, 1985 requested this office to rule upon the tariff classification of men's woven shorts and trousers from Korea and Hong Kong.

Three samples were submitted. Style "Bahama" is a pair of men's woven cotton walk shorts. It has two slant waist pockets on the front and two hip pockets with button closures on the rear. It has seven belt loops and a fly with a zipper closure. On the rear of the shorts, slightly below the waistband, there is a tab which when joined with a complementary buckle may be used to adjust the fit.

Style "Gregg" is a pair of men's woven cotton trousers. It has two side seam waist pockets on the front and two hip pockets with button closures on the rear. It has six belt loops and a fly with a zipper closure. On the rear of the trousers, slightly below the waistband, there is a tab which when joined with a complementary buckle may be used to adjust the fit.

Style "Alexander" is a pair of men's woven cotton walk shorts. It has two side seam waist pockets on the front and two rear hip pockets having flaps with a button closure. It has eight belt loops and a fly with a zipper closure. One of the front belt loops extends below the waistband and forms a small loop which may be used to hang the shorts or for some other purpose. On each side of the waistband there are tabs which, in conjunction with a buckle, may be used to adjust the fit.

None of the mentioned features of the three samples are considered ornamental for tariff purposes.

Styles "Bahama" and "Alexander" are classifiable under the provision for men's unornamented woven shorts of cotton in item 379.0210, Tariff Schedules of the United States. The rate of duty is 16.5 percent ad valorem.

Style Gregg" is classifiable under the provision for men's unornamented woven trousers of cotton in item 379.0240, Tariff Schedules of the United States. The rate of duty is 16.5 percent ad valorem.

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Styles "Bahama", "Alexander" and "Gregg" fall within textile category designation 347. As a product of Hong Kong this merchandise is subject to visa requirements based upon international textile trade agreements. As a product of Korea this merchandise is subject to visa requirements and quota restraints based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

814764

F6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 20 1985

CLA-2-06:S:COM:N1:101-926

814779

Mr. James S. O'Kelly
Barnes, Richardson & Colburn
Attorneys & Counsellors at Law
475 Park Avenue South
New York, N.Y. 10016

Dear Mr. O'Kelly:

In your letter dated July 29, 1985, on behalf of Mitsui & Co. (U.S.A.)Inc., you inquired about the dutiable status of steel side rails from Japan. You have enclosed a descriptive brochure.

The rails will be manufactured in Japan by Takebe Tekkosho Co., Ltd. according to customer specifications. Customers include U.S. truck manufacturers Kenworth, Peterbilt and Freightliner. Takebe obtains steel sheet-plate from another Japanese firm, Nippon Kohan K.K. Then Takebe presses the sheet-plate into shape, drills or punches holes in the rails, and paints them by a process of eletric deposit painting. Some of the rails may not be drilled in Japan depending upon customer specifications. Holes required for assembly will be drilled in the United States by the truck manufacturer. The side rails are specifically designed to be part of the chassis frame for heavy-duty and medium size trucks.

The steel side rails are classifiable under the provision for parts of motor vehicles in item 692.32, Tariff Schedules of the United States, and dutiable at the rate of 3.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.9(a)(1) of the Customs Regulations [19 C.F.R. 177.9(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

F1

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 13 1985

REFER TO

CLA-2-06:S:COM:N1:101-929
814789

Mr. Andrew J. Beck
Eastport Trading Co.
P.O. Box 834
Cheshire, Ct. 06410

Dear Mr. Beck:

In your letter dated July 18, 1985, you inquired about the dutiable status of motorized vehicles from Italy.

Item 1 is a motorized electric vehicle used primarily by disabled persons. The vehicle has three wheels, a handlebar, an electric motor, a solid platform for the operator's feet, and a bench-type seat. The wheel chair is chiefly used as a means of transportation out of doors in the streets or sidewalks.

Item 2 is a three-wheel electrically driven folding caddie cart, powered by a 12V - 55Ah battery, that can carry one or two bags on a golf course.

The motorized wheel chair and motorized golf cart are classifiable under the provision for other motor vehicles in item 692.10, Tariff Schedules of the United States, and dutiable at the rate of 2.6 percent ad valorem.

Item 960.15, TSUS, provided a free rate of duty for articles specially designed for the use or benefit of handicapped persons. The duty free provision expired on August 12, 1985.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

F8

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 29 1985

REFER TO

CLA-2-03:S:COM:N3:357-1222
814813

Ms. Stacy Corbin
Foreign Resources Corporation
500 Seventh Avenue
New York, N.Y. 10018

Dear Ms. Corbin:

Your letter of July 31, 1985 requested this office to rule upon the tariff classification of a jacket from Hong Kong.

The submitted, unlined, woven sample is stated to be manufactured of fabric of 100% cotton, designed for ladies' wear.

A textile flap covers the zippered portion of the full-front opening along its entire length. Snap fasteners, which are vertically placed, can close the high, stand-up collar and the waistband, the back of which is elasticized.

Four vertical pleats, which are partially sewn down, extend downwards from each shoulder to the chest area of each of the fronts. Likewise, fabric is symmetrically gathered at four locations at the lower area of each of the fronts.

One snap fastener is located on the cuff of each of the long sleeves which are detachable below each shoulder by means of snap fasteners, circularly and equidistantly placed.

As you have requested, the sample garment, which is assumed to be valued at more than U.S. $4.00, is being returned.

This garment is classifiable under the provision for other women's wearing apparel, not ornamented, of cotton, not knit, coats, valued over $4 each, other, other, other, women's in item 383.3477, Tariff Schedules of the United States. The rate of duty is 8 percent ad valorem.

The jacket falls within textile category designation 335. As a product of Hong Kong this merchandise is presently subject to a visa requirement based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

214813.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.

AUG 29 1985

REFER TO
CLA-2 03:S:CO:N3:357-1224
814825

Ms. Stacy Corbin
Foreign Resources Corporation
500 Seventh Avenue
New York, N.Y. 10018

Dear Ms. Corbin:

Your letter of July 31, 1985 requested this office to rule upon the tariff classification of a jacket from Hong Kong.

The submitted woven sample is stated to be style 8818, of fabric of 100% cotton, designed for ladies' wear.

The full-front, zippered opening extends into the round collar which can be worn either in stand-up fashion or rolled down. A self-knotted, self-fringed drawstring which is non-decorative is drawn through a tunnel loop surrounding the waist.

One open pocket is located at the lower portion of each of the fronts. A snap fastener closes the cuff of each of the long sleeves.

Textile inserts, both of textile tape into which cording is inserted and of self-fabric, are variously placed across the garment.

As you have requested, the sample garment, which is assumed to be valued at more than U.S. $4.00, is being returned.

The garment is classifiable under the provision for other women's wearing apparel, not ornamented, of cotton, not knit, coats, valued over $4 each, other, other, other, women's in item 383.3477, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 8% ad valorem.

The jacket falls within textile category designation 335. As a product of Hong Kong, this merchandise is presently subject to a visa requirement based upon international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

F11

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

518415

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 05 1985

CLA-2-03:RR:NC:N1-1:360-1260
814697

Ms. Susanne Fontana
Susanne Fontana Inc.
Customhouse Broker
P.O. Box 130116
Miami, Florida 33133

Dear Ms. Fontana:

Your letter of July 30, 1985, on behalf of your client, Ivore International, Inc., requested this office to rule upon the tariff classification of a ladies' jumpsuit from Hong Kong. A sample was submitted with your inquiry and will be returned as requested.

Your sample, style 330, is a ladies' jumpsuit manufactured from a 100% cotton cotton fabric. The jumpsuit features short sleeves, rear elasticized waist, an inverted expandable box pleat on the rear panel, two expandable breast patch pockets and front pockets below the waist with slant openings. Two tabs at the waist adjust the fit; one tab on each patch pocket and at the center rear flatten the expandable pleats; one tab at each ankle takes in excess fabric. None of the tabs contribute ornamentation.

The jumpsuit is classifiable under the provision for other women's, girls', or infants' wearing apparel, not ornamented or coated but with export other than overalls, overall, jumpsuits and similar articles, other than overalls, ..., and similar apparel: overalls, overall, jumpsuits and similar apparel, whether or not known as playsuits, women's, in item 384.5027, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 20.8 percent ad valorem.

Since the fabric exceeds textile category designation 369, as a product of Hong Kong, this merchandise is subject to a visa requirement under the international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs Office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.11(a)(1) of the Customs Regulations [19 C.F.R. 177.11(a)(1)].

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs Officer handling the transaction.

Sincerely,

John J. Maringe
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

214897

F14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK AUG 14 1985

REFER TO

CIA-2-06:S:COM:VI:105-956
814915

Mr. H. R. Cliff
Roland Marine Inc.
90 Broad Street
New York, N.Y. 10004

Dear Mr. Cliff:

In your letter dated August 5, 1985, you inquired about the dutiable status of the Turbulo oil/water separator from West Germany.

The Turbulo separator is used on board ocean-going vessels to separate oil from bilge and ballast water prior to discharing the water overboard. It accomplishes this separation in two stages, the first employing gravity, the second utilizing a filter for fine separation.

The Turbulo oil/water separator is classifiable under the provision for filtering and purifying machinery and apparatus in item 661.9560, Tariff Schedules of the United States, and dutiable at the rate of 4.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Marturge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

G1

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
AUG 26 1985

REFER TO

CLA-2-03:S:COM:N3G:345-1309
814974

Mr. Roger S. Shatafian
890 Singingwood Drive
Arcadia, Ca. 91006

Dear Mr. Shatafian:

In your letter dated August 9, 1985, you inquired about the dutiable status of a veterinary gauze bandage from Korea.

The bandage is a 100 percent cotton gauze roll 6 inches wide by five yards in length. You have submitted documents from your customers that the merchandise is used in the imported length without further cutting. They are used for wrapping horses legs and tails.

The bandage is classifiable under the provision for articles not specially provided for, not ornamented, of cotton, other in item 386.5050, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 9.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roger J. Johnston
for John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.

SEP 1 1 1985

REFER TO

CLA-2-03:S:GOM:N3H:349-1314
815007

Ms. Rose Choltko
900 Brush St., #359
Las Vegas, NV 89107

Dear Ms. Choltko:

Your letter of August 6, 1985 requested this office to rule upon the tariff classification of a furniture scarf centerpiece from the Philippines. Your sample is being returned.

The scarf centetpiece measures approximately 38 by 21 1/2 inches and is manufactured from a nylon knit fabric that has been cut to size with scalloped edges. The item has embroidered leaf and flower designs with sequins and beads attached to the designs. The embroidery, sequins, and beads are considered ornamentation for tariff purposes.

The scarf centerpiece is classifiable under the provision for other furnishings, ornamented, of man-made fibers, other, in item 365.8680, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 15.5 percent ad valorem.

The scarf centerpiece falls within textile category designation 666. As a product of the Philippines this merchandise is presently subject to visa requirements based upon international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Marturo
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 09 1985

REFER TO

CLA-2-03:S:COM:N3:357-1361
815109

Mr. Duncan A. Nixon
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, NY 10004

Dear Mr. Nixon:

Your letter of August 21, 1985, on behalf of Brooks Fashion Stores, requested this office to rule upon the tariff classification of a jacket from no specific country.

The submitted sample garment, which is pieced together from sections of contrasting denim fabric, is stated to be designed for ladies' wear, and assumed to be valued at more than U.S. $4.00.

The full-front, zippered opening of this short jacket extends through the round, stand-up collar. A textile flap, which can be secured to the body of the garment by means of snap fasteners, covers the zippered opening from the waistband to the upper edge of the neckband, behind which the stand-up collar is inserted.

Elasticized sections consist of part of the wrist of each long sleeve and of the side portions of the waistband, around which belt loops are placed.

One open pocket is located on each of the fronts and at each side of the back. One zippered pocket is located on each of the sleeves.

The sample garment has already been returned to you.

This garment is classifiable under the provision for other women's wearing apparel, not ornamented, of cotton, not knit, coats, valued over $4 each, other, other, other, women's in item 383.3477, Tariff Schedules of the United States. The rate of duty is 8 percent ad valorem.

The jacket falls within textile category designation 335. Upon importation this merchandise may be subject to quota restraints and/or a visa requirement based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

64

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Loyd Deurugh

for John J. Martuge
Area Director
New York Seaport

601518

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 0 9 1985

REFER TO

CLA-2-03:S:COM:N3-I:359-1373
815146

Mr. Scott A. Cohn
Grunfeld, Desiderio, Lebowitz & Silverman
Two World Trade Center - Suite 2238
New York, NY 10048 - 0654

Dear Mr. Cohn:

Your letter of August 23, 1985, on behalf of Orit Imports, Inc., requested this office to rule upon the tariff classification of a knit garment from Taiwan.

The submitted sample, style No. T7944E, is constructed from 75% cotton 25% polyester knit velour fabric. The long sleeved pullover dress extends below mid-thigh. The garment features rib knit cuffs, a crew neckline and two horizontal pockets with rib knit tops located below the waist. A loosely knit 2-1/4 inch wide band of rib fabric is sewn to the bottom of the garment. The dress is not ornamented for tariff purposes.

The sample will be returned as requested.

The dress is classifiable under the provision for women's, girls', or infants' wearing apparel, not ornamented: of cotton: knit, in item 383.2910, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 15 percent ad valorem.

Cotton dresses fall within textile category designation 336. As a product of Taiwan, this merchandise is currently subject to a visa requirement and quota restraints based upon international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for Dennis

John J. Martuge
Area Director
New York Seaport

815146

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

G7

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 10 1985

REFER TO
CLA-2-03:S:COM:N3C:345-1378
815150

Mr. Robert D. Tsang
Fulluck International Co., Inc.
P.O. Box 447
Alhambra, Ca. 91802

Dear Mr. Tsang:

In your letter dated August 20, 1985, you inquired about the dutiable status of jute fabric and a jute bag from the Peoples Republic of China.

You have submitted a sample piece of the jute material and have indicated in previous correspondence it is composed of 80% unbleached jute and 20% plastic (man-made fiber), the chief value being the jute. In addition, you have attached a copy of a previous ruling request response, information letter 814024, wherein you indicate the jute bag is not bleached, not colored, and not rendered nonflammable. You stated during a telephone conversation with National Import Specialist Assistant Anna Labbate, that the bag will be used as a shipping bag for potatoes and other produce. In addition, you indicate the jute fabric will be imported in various lengths and widths without lines of demarcation, weighing over 4 ounces per square yard.

The jute bag is classifiable under the provision for bags and sacks, or other shipping containers, of textile materials, of vegetable fibers, except cotton, not bleached, not colored, and not rendered nonflammable in item 385.4500, Tariff Schedules of the United States Annotated (TSUSA), with a free rate of duty.

The jute fabric is classifiable under the provision for woven fabrics of vegetable fibers (except cotton), other, weighing over 4 ounces per square yard, in item 335.8500 TSUSA, and dutiable at the rate of 3.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

John J. Martuge
Area Director
New York Seaport

G8

RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OFFICE OF REGULATIONS AND RUL

DATE 04/11/86

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DATE 04/11/86

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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OF REGULATIONS AND RULINGS

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RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OFFICE OF REGULATIONS AND RULI

DATE 04/11/86

LEGAL RULINGS AND DECISIONS MICROFICHE INDEX

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017795	297D07	020418	122C03
017878	271B08	020440	69C09
017975	146F11	020446	50A05
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036774	298B09	036967	69B09
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039189	407C11	039453	65F05
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045725	436B11	045861	251G14
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045729	436C02	045875	299A10
045731	436C04	045876	436E14
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045738	65G06	045883	71G10
045739	436C07	045883	299A12
045740	436C09	045884	436F03
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045749	436C11	045888	436F04
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045767	72A13	045912	436G06
045775	436D03	045922	436G07
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045806	436D09	045934	437A03
045806	436F12	045936	72B09
045808	184D08	045941	436G14
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045810	436D13	045947	437A06
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045820	436D14	045950	72A05
045825	436E02	045953	207B01
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046185	437B13	046271	437F02
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047102	438A08	047329	369E13
047103	207C11	047337	349B04
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047361	317C06	047537	147D01
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047433	184G14	047591	185A08
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048254	369F10	048673	71A03
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048259	207D04	048697	185D01
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048271	439G05	048726	105E07
048277	369F12	048738	107F04
048279	299C10	048746	320D07
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048288	207D06	048767	65D07
048293	131E02	048768	207D08
048296	317C07	048770	66D13
048303	299C11	048775	53B12
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049449	347F05	049658	164A05
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049457	347F06	049667	347G04
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049473	299D04	049677	283A05
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049480	369G10	049681	299D11
049482	17B03	049683	122B06
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049535	320E01	049710	207F08
049535	347F10	049716	70E01
049540	299D07	049725	348A03
049543	185E05	049727	250B12
049545	347F11	049758	69D12
049549	105D12	049761	348A05
049552	347F13	049761	370A03
049560	299D09	049769	185E13
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049583	185E07	049776	37B13
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049934	281G03	050035	440D07
049943	136A14	050039	440D08
049944	207F11	050040	440D09
049947	347G14	050043	440D10
049952	317C11	050044	440D11
049955	440A14	050048	440D13
049958	440B02	050056	440E01
049959	440B03	050057	440E02
049960	440B04	050058	440E03
049961	440B05	050058	529A05
049962	440B06	050060	65B12
049964	440B08	050061	320E04
049965	440B09	050061	440E04
049966	299D12	050062	440E06
049967	440B10	050065	440E07
049972	440B12	050066	148B10
049976	440B13	050067	348B07
049978	440B14	050067	370A09
049980	440C01	050068	61C09
049981	440C02	050069	185F05

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050072	151B10
050076	320E06
050077	440E09
050078	440E10
050079	440E12
050080	250C03
050083	440E14
050086	283A08
050088	66F06
050089	440F02
050090	440F03
050092	185F06
050097	411B04
050097	440F04
050454	320E09
050454	348B09
050642	440F05
050713	411B05
051100	164A08
051101	440F07
051102	70B03
051105	164A12
051106	440F08
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051115/051117	60G02
051116	440F12
051117	60G02
051119	440F14
051120	440G02
051122	65C09
051125	440G04
051126	246A05
051129	440G06
051132	440G07
051136	273A03
051138	440G09
051139	250C04
051143	440G11
051145	441A03
051147	70D14
051148	440G12
051150	451B03
051151	76A07

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051159	441A06
051165	441A07
051166	207F13
051168	185F08
051173	273A05
051175	441A08
051178	441A10
051179	441A11
051180	441A12
051182	441A13
051183	441B01
051185	283A09
051188	148B11
051190	17B05
051194	441B03
051195	320E11
051198	1C09
051198	70D03
051199	441B06
051200	250C06
051201	441B08
051202	441B10
051203	441B13
051204	207G01
051206	70C13
051207	441C02
051208	68D03
051209	148B14
051220	273A07
051222	441C05
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051242	123G07
051245	158B03
051247	66G11
051252	261G11
051255	250C10
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051268	273A08
051273	299D14
051278	61A11
051281	91D04
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051306	577B06	051549	250D05
051309	299E02	051551	441C01
051320	320E13	051560	441E03
051331	250C11	051563	441E05
051354	61A13	051565	283A10
051369	53E14	051568	441E06
051381	185F09	051575	441E07
051383	148C04	051579	320E14
051400	299E03	051585	185F14
051407	69D02	051589	17B07
051408	185F11	051590	441E09
051423	299E04	051597	370A12
051435	105G06	051600	250D07
051444	70D01	051606	441E11
051457	441C06	051608	320F01
051463	207G02	051608	348B12
051464	227E12	051610	17B10
051468	75D13	051614	42A03
051476	121E03	051618	164A14
051480	227E13	051618	164B03
051481	52B12	051627	320F02
051485	273A10	051631	1D04
051502	270F05	051633	17B14
051505	441C08	051634	441E13
051506	441C10	051635	441E14
051507	122B04	051637	105D14
051508	441C12	051652	283B07
051518	441C14	051653	120A13
051519	441D02	051654	441F01
051520	250D02	051655	320F03
051522	348B11	051655	348B13
051523	59C10	051656	164B05
051526	441D06	051657	164B07
051528	411B07	051658	67F11
051528	441D07	051672	411B08
051530	250D04	051673	185G02
051533	441D08	051678	320F06
051535	441D10	051682	273A14
051536	370A11	051689	370A13
051537	207G03	051691	250D09
051539	317C12	051692	1D06
051541	67F01	051695	273B01
051543	441D12	051699	250D11

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051708	116B12	051909	283B03
051711	1D07	051913	441G06
051721	441F03	051918	317D02
051727	441F06	051920	250E01
051734	283A14	051924	155G05
051735	185G04	051925	186A03
051748	185G07	051926	451B06
051750	441F08	051928	90F10
051753	320F08	051929	17C10
051755	106F08	051932	299E08
051760	91E03	051933	441G08
051786	283B01	051934	441G10
051787	150A03	051935	441G12
051788	17C02	051937	138F14
051793	299E06	051939	370B01
051794	207G05	051940	441G14
051797	441F10	051944	17C13
051802	564A06	051957	207G08
051803	185G08	051965	273B03
051812	185G10	051966	61A14
051813	131E03	051984	68G04
051815	441F11	051995	442A03
051844	116B02	051999	207G11
051845	441F14	052000	52B10
051846	17C05	052002	299E10
051847	158B05	052006	138G03
051847	545B02	052007	186A04
051848	317C14	052020	164B09
051851	250D13	052021	442A05
051857	320F09	052022	442A06
051860	118G04	052023	442A07
051866	17C07	052024	442A08
051867	320F10	052026	442A09
051868	441G03	052027	442A10
051870	70B08	052028	1D09
051874	158B07	052029	442A11
051877	577B09	052030	442A12
051880	185G13	052035	320F11
051881	207G06	052035	442A13
051901	441G04	052036	250E02
051902	159C11	052037	246A07
051903	139D11	052039	442A14
051904	131A05	052040	442B02

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052044	67C14
052045	67C14
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052047	67C01
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052050	442B06
052051	283B05
052052	317D03
052053	207G13
052054	442B08
052055	442B09
052056	164B10
052057	227F03
052058	442B12
052059	442B13
052062	65D05
052063	442B14
052065	273B05
052066	186A06
052068	442C01
052069	442C02
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052071	370B02
052072	442C05
052075	442C06
052076	442C07
052080	227F04
052082	442C09
052083	66B13
052084	442C10
052085	227F06
052089	320F12
052089	348C03
052090	442C12
052091	442C13
052095	273B07
052096	442C14
052098	207G14
052099	442D01
052100	186A07
052101	442D02
052102	442D03
052103	427A13
052103	442D04
052104	442D05
052105	186A08
052106	442D06
052123	442D07
052124	442D08
052128	61B02
052129	64B05
052130	442D10
052131	442D11
052132	442D12
052137	116B14
052138	227F08
052139	442D13
052140	186A09
052141	59A10
052141	67D04
052143	442D14
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052147	442E05
052148	442E06
052152	442E07
052153	164B12
052155	393B14
052155	442E09
052158	1D11
052159	186A10
052160	442E12
052161	442E14
052162	442F02
052165	442F04
052166	442F05
052168	299E11
052171	155C02
052174	320F13
052174	348C04
052176	411B10
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052185	442F14	052270	208A04
052186	442G02	052276	320G01
052188	89E14	052280	158B08
052189	442G04	052297	370B03
052190	299F02	052304	186A11
052190	320F14	052306	299F03
052191	68F14	052308	227F13
052194	442G05	052310	65C02
052195	208A03	052312	49E08
052196	1D13	052314	186A13
052196	65G01	052316	64A13
052197	67B10	052318	57E04
052198	411B11	052322	186B02
052198	442G07	052327	131A08
052199	442G09	052328	227G04
052200	442G11	052334	320G03
052201	442G13	052349	128F08
052202	443A03	052352	299F07
052203	443A06	052359	150A05
052204	184A14	052361	164C03
052206	227F10	052363	208A06
052207	443A09	052374	370B04
052208	443A10	052374	443B10
052209	443A12	052379	208A08
052210	59A12	052380	186B12
052211	164B13	052381	186B12
052214	443A13	052387	121G14
052219	443B01	052387	227G06
052220	261G13	052387	227G08
052221	443B02	052390	283B07
052222	427A14	052395	186B03
052223	17D01	052407	250E03
052225	443B04	052409	154C13
052227	443B06	052415	273B09
052228	164C01	052419	105E05
052233	153G01	052421	529A06
052234	443B08	052422	250E04
052236	1E04	052423	65D11
052236	57A10	052424	102D06
052237	186B12	052426	186B05
052238/053770	508B05	052429	320G06
052239	59C09	052430	121C04

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052433	227G09	052610	164C09
052435	186B06	052620	158B11
052438	17D04	052624	61B03
052445	164C04	052624	61D07
052446	17D05	052625	52B06
052447	283B08	052626	17D14
052448	186B08	052628	467B07
052450	564A07	052632	508B07
052455	273B12	052635	320G11
052[illegible]	246A08	052636	67D02
05[illegible]	478A06	05263[illegible]	67E01
052484	262A03	052638	467B09
052489	299F08	052639	186C01
052490	299F11	052644	154D02
052492	273B14	052649	443B12
052497	44A05	052650	59C07
052500	60B05	052656	1F08
052501	299F13	052657	370B09
052516	208A13	052657	467B12
052520	164C05	052664	370B10
052526	17D09	052669	69D08
052527	17D12	052670	50G11
052535	370B06	052671	186C02
052536	283B09	052672	273C02
052544	164C07	052675	59E09
052548	59D12	052675	59F03
052548	66B11	052675	60D13
052549	68F05	052675	186C05
052552	1F02	052683	65E08
052552	65E11	052690	273C04
052559	370B07	052701	164C10
052564	119D10	052709	411B14
052568	186B10	052709	467B13
052569	186B12	052714	186C07
052571	46F01	052718	164C11
052572	467B03	052719	283B11
052585	186B14	052723	273C06
052591	154D01	052725	443C01
052593	250E05	052726	147D09
052595	320G10	052730	59A13
052597	121B09	052737	87C09
052601	49F06	052741	250E07
052602	467B05	052747	17E01

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052755	299G04
052760	370B11
052761	1F09
052763	53B01
052764	164C12
052767	105F10
052768	138G04
052769	370B13
052775	208A14
052783	208B01
052784	57D10
052784	68E07
052786	508B10
052790	317D04
052791	299G05
052796	250E09
052800	508B12
052802	53B03
052803	208B03
052822	370B14
052827	221G03
052828	186C09
052830	273C07
052831	208B05
052839	69G13
052844	370C03
052845	208B07
052848	164C13
052858	118G07
052867	164C14
052868	186C11
052870	116A05
052874	68F10
052875	153F06
052878	17E02
052879	17E05
052881	1F11
052881	66F02
052884	370C02
052889	186C13
052892	273C09
052896	105C09
052897	111G05

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052906	370C05
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052943	370C06
052951	186C14
052953	67B07
052954	247A03
052956	114D12
052962	67A11
052964	81G14
052965	140G01
052968	370C07
052972	246A10
052973	246A10
052979	17E06
052979	164D03
052987	227G10
052988	250E11
052989	67F07
052989	68E10
052990	1F13
052994	164D05
053002	228A03
053004	443C03
053005	370C09
053006	208B10
053008	164D07
053011	299G07
053012	443C05
053013	208B11
053019	273C10
053027	186D01
053030	250E13
053032	76B07
053032	164D09
053032	186D02
053039	443C06
053044	299G08
053045	186D03
053050	186D04
053054	443C07
053055	155C14

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053086	443C09	053173	140G05
053088	208B12	053181	81D06
053093	164D10	053181	186D10
053094	208B13	053182	443D10
053095	186D06	053184	299G11
053096	208B14	053185	273C13
053098	320G14	053190	250F02
053100	164D12	053193	443D11
053102	443C10	053195	443D14
053103	370C11	053199	250F03
053103	443C12	053203	443E01
053106	443C14	053207	443E03
053107	[illegible]2A05	053208	151C04
053110	[illegible]E08	053216	102B08
053111	[illegible]5G03	053218	273D01
053118	[illegible]5B13	053219	299G13
053119	393C04	053223	250F07
053120	208C01	053230/053679	508C01
053128	164D14	053233	283B13
053129	299G09	053234	2A06
053131	227G12	053243	164E01
053136	321A03	053244	135F04
053139	443D01	053249	121C03
053142	411C03	053251	138G06
053143	443D02	053252	273D03
053145	370C13	053253	250F09
053147	17E10	053256	283C01
053148	443D04	053257	54D05
053153	273C11	053259	227G13
053156	508B13	053264	208C02
053157	159C14	053267	164E02
053158	451B07	053271	69D10
053159	443D06	053272	150A07
053160	1G02	053274	443E04
053160	67A07	053278	2A09
053161	1G04	053279	321A05
053162	186D08	053281	443E05
053163	443D07	053284	17E12
053164	1G06	053285	17E14
053165	1G08	053286	17F02
053165	69E07	053287	62F04
053166	1G10	053288	508C03

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053293	2A12	053539	451B09
053294	2A13	053546	283C05
053295	17F04	053549	411C09
053303	17F07	053551	443F10
053306	273D04	053552	508C04
053313	273D05	053554	496B01
053320	208C04	053556	140G08
053323	250F11	053558	101G08
053326	321A07	053563	164E05
053327	17F09	053563	186D13
053329	411C05	053570	2B04
053338	370D01	053571	127E12
053340	443E06	053573	283C06
053346	186D11	053575	17G03
053359	155D02	053579	66E01
053362	42E03	053580	443F12
053363	127E07	053586	443F13
053461	114C11	053592	2B05
053468	443E08	053595	370D03
053472	283C03	053597	273D09
053473	273D07	053600	17G05
053474	2B01	053603	119E05
053476	300A03	053611	17G06
053477	164E03	053613	17G07
053479	57C13	053616	487A07
053482	411C07	053618	2B07
053484	443E11	053621	443G01
053486	443E12	053635	451B10
053492	116D13	053637	164E07
053496	114D14	053639	443G03
053502	273D08	053642	250F12
053507	443E13	053648	451B12
053511	208C05	053651	273D10
053515	17F11	053654	120A08
053518	443F01	053660	321A09
053519	443F03	053663	122B01
053522	443F05	053667	508C09
053523	443F06	053668	577B10
053524	208C06	053671	250F13
053525	17F14	053673	300A11
053526	300A04	053676	370D08
053527	17G01	053677	186E01

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053680	67E06
053680	68E08
053681	164E08
053683	250G01
053685	164E09
053686	17G09
053694	101G12
053709	250G03
053712	273D12
053713	321A10
053716	283C08
053717	273D14
053725	411C11
053726	262A07
053729	270F06
053731	208C07
053743	273E01
053745	154B02
053751	283C09
053753	119F02
053758	105E03
053760	2B09
053764	370D10
053769	247A04
053770	508B05
053772	508C10
053773	17G11
053777	273E02
053778	186E02
053781	221G01
053783	17G12
053800	487A11
053802	208C08
053803	67A05
053806	427B03
053807	427B05
053809	250G04
053811	208C10
053813	186E03
053815	105E01
053817	164E11
053818	119D01
053821	451B14

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053831	135F06
053835	18A03
053841	443G05
053842	103G06
053843	2B10
053844	564A08
053845	321A12
053846	321A14
053848	186E04
053850	508C13
053852	18A06
053863	508D01
053871	262A09
053874	138G08
053875	2B14
053876	119F01
053879	2C01
053880	2C03
053880	66G07
053883	300A13
053884	164E12
053891	2C05
053892	158B14
053894	443G07
053895	18A08
053896	443G09
053901	300B01
053903	321B02
053905	186E07
053907	89G13
053907	186E09
053910	18A10
053911	208C12
053912	487A12
053920	228A08
053921	18A12
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053934	65D03
053935	321B04
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053937	2C06

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053950	2C07	054053	300B06
053950	61F10	054054	411D01
053952	370D11	054055	208D03
053953	321B06	054057	508D03
053956	321B08	054064	164F06
053957	321B10	054069	131A11
053959	321B12	054076	122F08
053968	164E13	054080	273E05
053969	159D03	054081	61C08
053970	140G10	054085	300B07
053971	273E03	054086	67B06
053973	52G09	054088	2C11
053978	228A10	054097	208D04
053979	185F03	054101	273E06
053980	208D01	054108	208D05
053987	186F05	054109	18B02
053992	300B02	054110	444A06
053993	164E14	054111	155C05
053994	164F01	054116	250G06
053994	164F02	054124	186F11
053997	427B07	054127	228A12
053998	186F08	054131	321C02
054002	443G11	054135	208D06
054004	370D14	054137	116B09
054005	103F10	054137	155G08
054006	411C13	054140	53B04
054010	18B01	054141	228A14
054014	564A10	054148	300B09
054015	300B03	054150	208D07
054016	228A07	054152	370E02
054025	164F03	054154	208D09
054026	444A03	054156	496B02
054027	164F05	054160	444A07
054027	186F09	054162	164F08
054028	121C01	054163	164F09
054031	577B12	054164	228B01
054035	443G13	054166	411D02
054039	69F02	054168	186F12
054040	487A13	054172	451C01
054042	321B14	054173	444A08
054045	2C09	054176	300B10
054046	63E05	054177	444A11

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054183	159D04	054285	451C06
054185	545B05	054286	164G02
054186	186F14	054287	45C11
054189	57E03	054288	18B13
054189	112B11	054289	59B05
054196	138G09	054290	228B07
054198	451C02	054297	393C10
054199	370E03	054298	508D10
054201	451C03	054305	262A12
054202	228B03	054307	250G08
054204	164F11	054315	60C11
054205	393C06	054317	478A08
054205	444A12	054320	228B08
054207	155G07	054321	208D13
054209	300B11	054324	227G02
054210	18B04	054328	2D03
054211	159D05	054329	577B14
054216	69G06	054330	147D11
054218	159D07	054332	185G05
054220	564A11	054333	135F09
054223	508D05	054334	300B14
054224	18B07	054335	59E07
054225	18B09	054336	427B10
054227	69G04	054337	18C01
054235	508D07	054339	208E01
054238	321C04	054346	155C06
054238	393C08	054347	411D03
054241	208D11	054348	208E03
054247	508D09	054352	411D05
054248	427B09	054353	321C06
054253	300B13	054355	250G09
054255	59B03	054356	427B12
054255	106D06	054357	370E05
054260	228B05	054359	393C12
054262	18B11	054374	42E06
054269	32E03	054384	138G12
054270	2D01	054385	250G11
054271	122A12	054386	18C03
054272	164F14	054390	48G03
054274	138G11	054390	48G05
054275	186G01	054390	52G07

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054431	164G03
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054443	300C05
054451	121B13
054452	273E08
054454	250G12
054455	451C10
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054463	393C13
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054521	283C13
054522	262A14
054523	148D10
054525	69G08
054529	529A08
054530	529A10
054534	496B02
054534	496B03
054536	300C08
054537	273E10
054540	262B02
054544	147D12
054546	451C12
054549	164G04
054554	186G13
054555	148D11
054557	18C07
054559	283C14
054560	411D08
054561	283D08
054564	140G13
054565	317D06
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054571	121B11
054573	545B07
054573	545B09
054583	60G06
054584	18C09
054585	2E02
054586	18C11
054587	18C14
054588	577C03
054589	164G07
054591	187A03
054592	411D09
054593	411D11
054595	273E12
054596/052571	104E08
054598	208E06
054599	321C08
054600	273E13
054605	564A12
054606	451C13
054607	427C02
054608	496B04
054609	2E03

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054614	411D13	054737	18E01
054615	393D01	054738	18F02
054616	508D12	054745	187A05
054617	18D03	054748	18F05
054619	370E10	054751	49F01
054623	262B03	054753	300C09
054630	2E09	054756	109G13
054630	159D09	054762	2F11
054631	283D09	054763	2F12
054633	246A14	054766/551627	2F14
054634	18D05	054769	564A13
054635	273F01	054773	553A05
054637	370E11	054776	147D14
054647	69G09	054777	451C14
054647	69G11	054778	18F07
054654	250G14	054781	564B01
054656	115A05	054783	131B01
054657	370E13	054784	508E01
054658	130G14	054788	262B04
054666	411D14	054789	110G01
054669	370E14	054789	164G09
054671	18D09	054790	228B10
054672	18D12	054792	158C02
054676	2E12	054792	187A07
054680	411E01	054793	36F01
054684	411E03	054794	300C12
054686	159D12	054796	208E10
054688	508D13	054799	321C10
054694	317D08	054805	496B06
054699	411E04	054806	52B08
054701	2E14	054806	69F12
054705	411E05	054807	18F12
054718	370F01	054810	393D06
054726	393D04	054812	104F01
054727	208E08	054813	394A03
054728	2F01	054820	2G05
054729	2F02	054822	37C01
054730	2F05	054824	55B03
054731	151F09	054826	251A05
054732	2F07	054827	37C04

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054836	246B02	054952	19A11
054836	251A08	054952	187A14
054839	411E07	054954	102C02
054843	300D02	054954	151G02
054845	508E04	054956	3B10
054846	18F14	054958	164G11
054846	119E09	054959	321D05
054852	74B10	054960	3B11
054853	2G09	054960	187B03
054854	147E05	054961	19A14
054855	147E07	054964	3B13
054863	529A14	054968	3C01
054864	44A06	054975	19B02
054866	321C13	054975	116C13
054873	133E14	054976	508E10
054876	49E11	054978	283D10
054877	152B14	054980	3C03
054880	18G03	054981	251A10
054885	508E05	054987	246B06
054887	2G12	054988	19B07
054889	187A08	054988	187B05
054892	187A10	054989	3C05
054895	69E13	054990	3C09
054904	3A03	054991	19B10
054911	18G06	054992	3C12
054912	19A03	054993	3C14
054914	42E08	054994	19B12
054914	44A12	054995	3D02
054915	126B13	055000	3D03
054916	3A05	055001	19B14
054916	3A08	055002	3D05
054917	3A10	055003	411E10
054918	50C03	055004	246B08
054920	19A06	055009	3D07
054920	187A12	055009	187B08
054926	3A13	055012	3D09
054926	105D04	055016	3D11
054930	3B01	055023	19C03
054930	19A08	055023	187B10
054931	49C04	055026	3D13
054933	3B04	055027	19C05
054941	3B06	055029	3E01

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055032	3E03
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055037	208E12
055038	3E05
055038	122A09
055040	3E08
055041	3E10
055049	187B12
055050	151C13
055051	3E12
055051	187B14
055052	44B03
055052	51F03
055053	19D01
055054	19D04
055055	130A11
055055	158C03
055056	3E14
055056	321D06
055059	3F02
055063	273F02
055065	3F04
055065	187C02
055066	84C12
055074	508E12
055076	3F05
055078	3F08
055079	125B13
055084	19D06
055084	187C04
055088	411E13
055090	508E14
055092	19D08
055094	19D09
055098	3F09
055098	187C06
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055104	19D13
055107	19E02
055112	411F01
055115	228B12
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055122	273F05
055124	46F13
055125	3F13
055126	19E09
055127	3G01
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055130	19E11
055131	19E13
055132	19F05
055133	187C08
055134	3G05
055135	19F08
055140	19F10
055147	19F12
055150	19G02
055151	19G05
055152	3G07
055153	3G09
055162	3G11
055164	3G12
055166	19G07
055166	121D03
055167	19G11
055168	147E09
055169	19G13
055172	72E12
055174	4A03
055179	102B14
055179	370F03
055185	147E12
055190	20A03
055193	164G13
055194	20A05
055195	20A13
055199	39A10
055200	37C07
055201	20B02
055202	56A04
055203	132A08
055205	393D10
055207	20B04
055207	187C10
055209	54F11

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055211	20B10	055291	451D06
055213	411F05	055292	85G06
055223	321D08	055293	20F02
055229	20B13	055294	487B02
055231	20C01	055295	39B05
055232	20C04	055296	109A05
055233	40B07	055299	20F06
055234	20C08	055301	20F08
055235	37C10	055302	109E02
055236	20C12	055305	78F07
055237	20D01	055306	20F11
055238	187C13	055307	20F14
055241	165A03	055308	39B01
055242	545B10	055311	137C02
055247	37D06	055317	42E13
055248	20D04	055319	20G02
055250	478A13	055319	165A09
055252	536A03	055321	208E14
055254	20D09	055325	87A06
055256	451D03	055330	251A11
055257	82F09	055331	39B08
055258	83A13	055334	42F01
055258	85A03	055336	44B09
055259	20D12	055337	78C03
055260	20D14	055342	44B11
055260	20E02	055343	37E08
055263	451D05	055344	50G12
055264	20E04	055344	54F08
055266	187D01	055345	39A12
055267	141A03	055345	54D12
055267	187D03	055345	165A12
055270/054852	74B10	055346	36F05
055271	370F05	055347	39B10
055272	20E07	055349	427C04
055276	165A06	055352	55C09
055277	37D14	055355	42F04
055277	123G09	055356	44B12
055278	37E04	055356	51F06
055279	20E10	055357	42F05
055281	20E13	055358	46D11
055281	187D09	055360	40B10
055282	44B06	055361	141A09
055289	74G06	055362	42F08

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055368	52E05	055443	79D09
055369	40B14	055444	81F08
055371	52D13	055445	187E10
055372	39C04	055446	87F06
055373	47G10	055447	55C06
055374	42G01	055450	54F03
055375	44C01	055451	48F08
055375	51F01	055452	54D09
055376	44C03	055453	55B01
055377	62D09	055475	48C02
055381/055382	44C05	055480	63C07
055382	44C05	055482	52D09
055383	283D11	055483	64A06
055385	321D11	055484	56B02
055387	40C05	055485	63B12
055388	75D11	055487	55F09
055390	64E03	055489	46B01
055390	124A04	055490	47G04
055391	42G05	055491	165A13
055392	74C06	055492	78B02
055394	187D12	055493	106D02
055396	508F02	055500	411E09
055398	133F02	055502	411F06
055399	50G01	055507	411F08
055400	40C07	055508	69F14
055401	64A09	055512	1B05
055404	46D04	055513	69G02
055405	187E01	055516	19C12
055406	54C10	055516	151B02
055407	141A13	055524	37E11
055409	63A14	055526	4A06
055411	44C08	055528	69F05
055411	51E12	055531	21A06
055412	133F06	055533	411F11
055413	148D13	055535	69F07
055428	63A11	055538	69F11
055429	84E08	055543	151A09
055429	187E06	055545	571A13
055437	88G09	055555	4A08
055438	51E05	055556	4A10
055439	50C07	055557	411F14

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055597	21B02
055599	34G01
055605	21B03
055606	151C08
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055611	20G06
055616	20G08
055618	20G10
055619	42G09
055620	20G14
055624	208F04
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055635	40C12
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055675	50E07
055679	251B04
055680	151D07
055684	103C06
055687	87A10
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055716/055717	81B07
055717	81B07

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055842	273F06
055845	411G04
055852	427C10
055853	300C14
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055862	208F06
055866	273F07
055869	208F09
055874	411G07
055884	300D04
055887	321E03
055892	300D06
055899	529B02
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055915	273F10
055920	208F11
055923	273F11
055925	228C10
055930	508F04
055931	487B06
055932	262B08
055933	370G06

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055935	508F05	056049	283E07
055942	370G08	056050	300D10
055947	370G09	056053	300D12
055954	300D08	056054	300D13
055955	393E02	056055	81D11
055958	427C12	056055	187F10
055968	508F06	056063	21B10
055970	411G09	056064	571B04
055976	370G11	056066	262B12
055977	321E04	056072	487B09
055978	262B10	056073	4C03
055984	300D09	056074	321E10
055986	251B06	056076	246B11
055987	393E04	056078	427C14
055988	321E06	056081	564B03
055989	411G12	056084	4C04
055993	283E04	056085	451D10
055994	545B13	056086	251B12
055996	508F07	056087	4C05
055998	393E06	056090	451D11
055999	412A03	056093	496B09
056000	141B06	056097	4C07
056003	496B08	056105	187F11
056005	370G12	056116	451D12
056007	187F07	056121	206F14
056008	147F04	056122	4C09
056010	251B09	056123	21B12
056012	159D14	056123	105F01
056018	4B07	056127	118A04
056022	4B08	056128	4C11
056024	4B09	056132	120B05
056026	187F09	056133	208G01
056030	321E08	056136	4C13
056033	451D09	056144	165B09
056034	165B03	056145	187F13
056036	165B04	056146	371A03
056037	370G13	056147	4D01
056038	273F12	056151	273F13
056039	155D01	056152	571B05
056042	411G14	056156	21B14
056046	4B11	056157	228C14
056046	165B05	056158	165B11
056047	4C01	056160	138G13

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057453	39F08	057549	147F09
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057621	51E09	057796	188D02
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057698	47A03	057860	83C05
057698	63G07	057864	137B03
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057706	50F03	057873	61G04
057707	55E11	057874	47E08
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058651	165F10	058746	65B07
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058968	509C07
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059656	27B01
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059669	43C14
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059681	40E13
059682	262D09
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059738	27E06
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059741	27E10
059742	27E11
059744	27E14
059746	63C11
059748	79D06
059751	27F05
059752	38A13
059756	44F02
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059758	188F14
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059762	27F07
059763	27F09
059764	51C13
059766	27F13
059767	62E05
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059853	28C11
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062757	167F08	062880	133B09
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209486	34C13	209836	430D09
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211730	237C02	212709	237C11
211733	160E10	212720	514E01
211733	177B11	212725	257C03
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211799	328F02	212808	257C09
211820	177C01	212825	328F12
211834	200G06	212830	257C11
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608777	31D03	609027	145F04
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800686	244G14	800764	245D06
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800959	259F06	801028	260B13
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800962	259F08	801030	279C02
800963	259F09	801031	260C03
800965	259F10	801034	260C04
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801151	292C07	801237	270B12
801153	269F13	801240	292C11
801154	260G01	801242	279D05
801160	260G02	801245	270B13
801166	260G04	801246	279D06
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801170	260G07	801249	270B14

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801263	279D09
801265	270C06
801266	292D07
801268	292D08
801269	507G03
801270	270C08
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801274	279D10
801275	270C13
801277	279D11
801278	279D12
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801281	279E01
801282	292D09
801283	292D10
801285	279E03
801286	270C14
801287	270D01
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801292	270D06
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801293	292D13
801295	270D09
801299	292E01
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801307	270D12
801309	279E06

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801318	279E11
801319	279E12
801320	292E06
801321	279E14
801322	279F02
801323	279F03
801325	270D14
801326	279F05
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801329	279F09
801332	292E07
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801334	292E08
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801337	279F13
801339	292E09
801341	292E10
801342	279F14
801343	279G01
801346	292E13
801347	279G02
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801351	279G03
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801353	270E03
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801355	279G04
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801393	292F06
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801399	280B03
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801401	292F08
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801409	280B12
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801420	280C07
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801426	311C03
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801438	280C14
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801453	280D11
801458	280D12
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801463	280E01
801464	280E02
801467	280E04
801468	280E05
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801470	280E07
801471	280E08
801472	292G03
801476	280E09
801477	280E10
801478	292G04
801479	280E13
801480	280E14
801481	280F02
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801542	281A04	801634	293D01
801544	281A05	801636	281B11
801545	281A06	801637	293D02
801547	293A03	801638	281B13
801548	293A05	801639	281C01
801550	311C09	801640	293D04
801551	281A07	801641	281C03
801553	281A09	801642	293D06
801555	281A10	801643	293D08
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801561	293A08	801649	293D10
801565	281A11	801650	293D12
801568	281A13	801651	293D13
801569	293A10	801652	281C04
801571	293A12	801655	281C05
801575	281B01	801656	281C06
801577	293A13	801657	293D14
801578	281B02	801661	293E01
801580	293B01	801662	281C08
801582	293B03	801665	293E03
801585	293B04	801668	311C10
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801587	293B06	801670	281C10
801588	281B03	801671	281C12
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801594	293B08	801674	293E09
801595	293B09	801676	293E10
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801598	293B11	801678	293E14
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801602	293B14	801689	286F12
801604	293C01	801690	281D01
801605	281B07	801693	281D02
801606	293C03	801694	281D04
801609	293C04	801695	281D06
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801759	311C12
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801763	281E04
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801785	294D04
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801790	294D10
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801794	294D14
801795	281E10
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801800	537D03
801801	281E13
801805	294E06
801806	294E08
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801857	295A04	801931	295E08
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801859	295A06	801934	295E10
801863	295A07	801935	295E12
801863	295A09	801936	295E14
801865	295A10	801937	311D05
801866	295A11	801938	295F01
801867	295A12	801939	295F02
801869	295A14	801941	295F03
801870	281F05	801944	295F06
801871	295B02	801947	295F08
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801874	286G08	801950	311D08
801875	295B07	801951	295F11
801876	295B08	801953	295F12
801877	295B10	801956	295F13
801881	385F01	801958	295F14
801882	295B11	801960	295G02
801883	295B13	801962	295G03
801884	295C01	801964	295G05
801885	295C03	801965	295G07
801886	295C05	801966	295G09
801887	295C07	801967	295G11
801891	295C09	801968	295G12
801892	295C10	801969	295G13
801893	295C11	801971	295G14
801894	295C12	801972	296A03
801895	295C13	801973	296A04
801900	295D01	801974	296A05
801902	295D03	801978	296A06
801906	295D05	801980	296A07
801907	295D06	801981	296A08
801909	295D08	801982	296A09
801911	295D10	801983	296A11
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801920	281F06	801986	296A13
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801997	296B05	802081	296F07
801999	296B07	802084	311E11
802000	296B09	802085	296F08
802001	296B11	802086	296F10
802003	296B13	802088	296F12
802004	296B14	802090	296F13
802011	296C01	802094	311E13
802015	296C03	802095	296F14
802016	296C04	802096	296G01
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802025	296C12	802109	311E14
802026	296C13	802112	296G09
802027	296D02	802114	296G10
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802042	311E02	802122	311F06
802045	311E03	802124	311F07
802046	311E04	802125	311F09
802047	311E07	802128	311F10
802048	296D11	802130	311F11
802050	296D12	802131	311F12
802051	296D14	802132	311F14
802052	296E01	802136	311G01
802053	311E09	802138	311G02
802057	296E02	802139	311G03
802062	296E04	802141	311G05
802063	296E06	802142	311G07
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802066	296E08	802146	311G09
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802168	312B02
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802185	312C01
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802272	312G08
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802273	312G09
802276	312G13
802277	312G14
802278	313A03
802279	313A05
802281	313A06
802287	313A07
802297	313A09
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802303	313A13
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802372	313E09
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802469	314B14
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802496	314D07
802501	314D09
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802568	385F07	802632	315D01
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802579	314G12	802654	385F08
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802584	315A05	802660	315D11
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802588	315A07	802664	315D13
802589	315A08	802666	385F09
802591	315A10	802668	315D14
802594	315A11	802670	315E02
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802594	456C01	802674	315E04
802595	315A13	802677	315E05
802596	315B01	802678	315E07
802599	315B02	802680	315E09
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802603	315B06	802698	385F14
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802605	315B10	802701	315F01
802608	455B12	802702	315F05
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802612	315C03	802715	315F11
802613	315C04	802716	315F12
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802616	315C06	802722	315F14
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802872	316D13
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802876	385G07
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RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

O F F I C E O F R E G U L A T I O N S A N D R U L I I

DATE 04/11/86

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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OFFICE OF REGULATIONS AND RULI

DATE 04/11/86

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JUN 5 1974

CLA-2:R:CV:MC DA
461.5
033220

Dear

In your letter of March 25, 1974, you asked to be advised of the dutiable status and classification of the following chemicals from the Peoples' Republic of China and East European countries.

Commodity	Tariff Item	Rate of Duty
Bicarbonate of Soda	420.72	Free
2,4- Dinitrochloro-benzene	403.60	7¢ per pound plus 40 percent ad valorem
Sebacic Acid	425.98	25 percent ad valorem
Sodium Molybdate	421.10	50¢ per pound on the molybdenum content plus 15 percent ad valorem
Chromic Acid	423.00	25 percent ad valorem

The products are said to be used as animal feed ingredients, synthesis of (organic) pesticides, dyestuffs, intermediates, rubber antioxidants, paints, printing inks, and rubber dyes.

We cannot furnish a binding decision on Basic Chromate Sulfate without more complete chemcial description and a statement regarding chief use.

If the DL - Calcium Pantothenate is being imported solely in the form of a vitamin it is classifiable under the provision for synthetic vitamins in item 437.82, TSUS, dutiable at the rate of 25 percent ad valorem.

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	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
CODE								
SUR-NAME								
DATE								

All rates of duty mentioned are column 2 rates of duty applicable to importations from the People's Republic of China and other countries not entitled to the modified rates of duty. General Headnote 3(e), TSUS, is enclosed for your information to further explain the column 1 and 2 rates of duty.

Sincerely yours,

(Signed) J.W. O'NEILL

for Salvatore E. Caramagno
Director
Classification and Value Division

Enclosure

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033220

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359.50

7 NOV 1974

CIA-2:R:CV:MC
74-036992 PR

[redacted]

Dear [redacted]

This is in reply to your letter of March 27, 1974, concerning the tariff status of two samples of material manufactured by [redacted]

The sample marked F-3993 consists of an outer layer of polyvinyl chloride type plastics material joined to a middle layer of a napped woven fabric (not of pile or tufted construction) which is lightly coated with a layer of polyurethane type plastics material on its napped surface. The sample weighs 53.4 ounces per square yard and has the following approximate composition by weight: polyvinyl chloride type plastics material -- 83 percent; polyurethane type plastics material -- 7 percent; woven fabric -- 10 percent. The woven fabric is composed chiefly of rayon with a small amount of cotton.

The sample marked F-4135 consists of a layer of polyvinyl chloride type plastics material laminated to a woven fabric which is composed chiefly of rayon and has a small amount of cotton. This sample weighs 61.1 ounces per square yard and is composed of 87 percent polyvinyl chloride type plastics material and 13 percent fabric by weight.

Both of the above described materials, when imported in material lengths, are classifiable under the provision for textile fabrics not specially provided for, including laminated fabrics, in item 359.50, Tariff Schedules of the United States, with duty at the rate of 25 cents per pound plus 30 percent ad valorem.

The merchandise described above may be subject to international

74-036992

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[redacted]

textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter with your inquiry.

Sincerely yours,

(Signed) Salvatore E. Caramagno

Salvatore E. Caramagno
Director
Classification and Value Division

74-036952

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[redacted]

A6

653.15

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 24 1975

REFER TO
CLA-2:R:CV:MA
038432 WIS

[redacted]

Dear [redacted]

In your letter dated January 21, 1975, you inquire as to the tariff status of copper coated steel wire, a product of Canada. A sample was submitted for examination.

The copper coated steel wire is a mild steel copper flashed wire. Its chemical composition is designed for porosity free welds in good to fair quality steels. The wire has applications for automatic and semi-automatic gas shielded metal arc welding, and for general welding of mild and low alloy steels with CO_2, Argon/Oxygen or Argon/CO_2 gas mixtures.

It is your opinion that the copper coated steel wire is classifiable under the provision for welding wire, coated or cored with flux, in item 653.15, Tariff Schedules of the United States (TSUS), with duty at a rate of 5 percent ad valorem. We cannot agree.

The copper coating is not used as a flux. Its prime function is to protect the steel from rust and other elements that would effect the steel during storage and prevent oxidation of the steel which in turn would cause defects in the weld. Secondly, the copper is used to furnish a smooth surface during the feeding operation between the wire feeder and the electrode holder. It should also be noted that the coating is used to improve the electrical contact between the electrode (steel wire) and the nozzle of the electrode holder. Therefore, since the copper coating of the steel wire does not act as a flux, it cannot be classified under item 653.15, TSUS.

In our opinion, if the copper coated steel wire is not composed of alloyed iron or steel as defined in Schedule 6, Part 2, Subpart B, Headnote 2(h)(ii), it would be classifiable under the provision for round iron or steel wire, other than alloy iron or steel; under 0.060 inch in diameter, in item 609.40, TSUS, with duty at a rate of 8.5 percent ad valorem; if

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0.060 inch in diameter or over, and containing not over 0.25 percent by weight of carbon, then item 609.41, TSUS, would be applicable with duty at a rate of 0.3 cent per pound. If the copper coated steel wire is composed of alloyed iron or steel, it would be classifiable under item 609.45, TSUS, and dutiable at a rate of 10.5 percent ad valorem, plus additional duties under items 607.01 - 607.04, where applicable.

Sincerely yours,

Arthur P. Schiffler

For Salvatore E. Caramagno
Director
Classification and Value Division

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A8

425.52

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

01 APR 1975

REFER TO
CLA-2:R:CV:MC AB
039221

Dear

In your letter of February 28, 1975, you asked for information about the tariff classification of eight pesticides stated to be products of West Germany.

The pesticides BAY DRW 1139 (4-Amino-3-methyl-6-phenyl-1,2,4-triazin-5 (4H)-one); BAY MEB 6447 (1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H,2,4-triazol-1-yl)-2-butanone); BAY BUE 1452 (1-(Tricyclohexylstannyl)-1-H-1,2,4-triazole) assumed to be derived in part from benzenoid products; BAY HOX 1901 (2-[(Ethylthio)methyl]phenol methylcarbamate); BAY MEB 6046 (3,4-Dichloro-a-(trichloromethyl)benzenemethanol acetate); BAY NTN 6867 (O-Methyl O-(4-methyl-2-nitrophenyl)(1-methylethyl)phosphoramidothioate) are classifiable under the provision for benzenoid pesticides in item 405.15, Tariff Schedules of the United States (TSUS), with duty at the rate of 1.7 cents per pound plus 12.5 percent ad valorem.

The pesticides BAY DAM 18654 (Methyl[1-[[(5-cyanopentyl)amino carbonyl] -H-benimidazol-2-yl] carbamate); and BAY MET 1486 (N-[5-(Ethylsulfonyl)-1,3,4-thiadiazol-2-yl]-N,N-dimethylurea are classifiable under the provision for other nitrogenous compounds, other, in item 425.52, TSUS, with duty at the rate of 1.5 cents per pound plus 7.5 percent ad valorem.

Benzenoid products which are competitive with similar products of domestic origin are subject to ad valorem rates of duty based on the American selling price of the domestic product.

Sincerely yours,

Salvatore E. Caramagno
Director
Classification and Value Division

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A9

REPLY TO COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

65315

AUG 0 8 1975

CLA-2:R:CV:MA
041236 E

Mr. Louis A. Mazzano
District Director of Customs
Detroit, Michigan 48226

Director, Classification and Value Division R:CV

Classification of Mig copper coated wire electrode. Internal Advice No. 223/75.

The sample submitted consists of steel wire with a light coating of copper and is under 0.060 inch in diameter.

The issue presented is whether the sample is classifiable under the provision for wire, electrodes and similar articles, of base metal, coated or cored with flux, of types used for soldering, brazing, welding or deposition of metal, in item 653.15, Tariff Schedules of the United States (TSUS), or is classifiable under the provision for round steel wire, other than alloy steel, under 0.060 inch in diameter, in item 609.40, TSUS. Since the provisions of item 653.15 are more specific, if applicable, than the provisions of item 609.40, it is necessary to consider first the applicability of item 653.15. In this connection, the question arises as to whether the copper coating may be considered a flux. The subject wire is used in welding.

In an unpublished decision dated April 24, 1975 (038432), involving similar wire, it was stated:

> The copper coating is not used as a flux. Its prime function is to protect the steel from rust and other elements that would effect the steel during storage and prevent oxidation of the steel which in turn would cause defects in the weld. Secondly, the copper is used to furnish a smooth surface during the feeding operation between the wire feeder and the electrode holder. It should also be noted that the coating is used to improve the electrical contact between the electrode (steel wire) and the nozzle of the electrode holder. Therefore, since the copper coating of the steel wire does not act as a flux, it cannot be classified under item 653.15, TSUS.

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We have considered the contentions advanced by the importer but they do not establish that the copper functions as a flux. Accordingly, following our prior decision of April 24, 1975, the copper coated steel wire is properly classifiable under item 609.40, TSUs.

You should inform the inquirer of this decision and may furnish him a copy.

(Signed Arthur P. Schifflin

for Salvatore E. Caramagno

[redacted]

041236

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[redacted]

All

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
CUSTOMS INFORMATION EXCHANGE

March 23, 1977

CLA-2:R:CV:MC
045891 WJA

District Director of Customs
Portland, Oregon 97209

Dear Sir:

Re: Decision on Application for Further Review of Protest #2904-5-000364

This protest was filed against your decision in the liquidation on August 1, 1975, of entry No. 45730, dated October 9, 1974. The entry was filed at the port of Columbia River - Portland, Oregon.

The entry covers merchandise invoiced as "White Machine Glazed Cap Manifold Paper", a sample of which was submitted with the protest. The submitted sample is a sheet of white tissue paper, one side of which has been glazed, and which weighs over 9 pounds but less than 18 pounds per ream. The sample possesses transparent qualities, a printed text being easily readable through it. When drawn upon with a fountain pen the paper absorbed the ink both laterally and vertically.

045891

The protestant contends that the above described paper is classifiable under the provision for other paper not specially provided for, not impregnated, not coated, not surface-colored, not embossed, not ruled, not lined, not printed, and not decorated, weighing over 9 but not over 18 pounds per ream, in item 252.79, Tariff Schedules of the United States (TSUS), dutiable at the rate of 1/2 cent per pound plus 2 percent ad valorem. Customs officers classified the entered paper under the provision for copying paper in item 252.42, TSUS, dutiable at the rate of 1.2 cents per pound plus 3.7 percent ad valorem.

The decision of this protest centers about both the description of the merchandise as entered, as well as its chief use. Definitions of "Cap" and "Manifold" are as follows:

> Cap a size of wrapping (bag) paper. 24 x 19 1/2 inches. Double bag is 39 x 24 inches, "Havon" cap is 26 x 21 inches, and "Kent" cap is 21 x 18 inches. The term is also applied to writing paper, the size being 14 x 17 inches. It is also an abbreviation for foolscap.

Dictionary of Paper, Second Edition, 1951, p. 94

A12

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> Manifold Paper (Tissue) - Paper used for copies by interleaving with carbon paper on the typewriter. It is typical bond paper made in light basis weights of 7 to 9 and sometimes 10 pounds (17 x 22 - 500). Normally it is manufactured with an unglazed or cockle finish, although sometimes it is machine glazed. Finish and porosity are important properties in addition to those normally possessed by bond paper, although in manifold paper printing quality is not as essential.

Dictionary of Paper, Third Edition, 1965, p. 288

An analysis of the description of the merchandise as invoiced, which indicates from the presence of the words "Cap" and "Manifold" that the paper is used for either wrapping or manifolding, (copying) purposes, or both, gives little indication how it should be classified.

The protestant had stated to Customs officers on the occasion of the prior importation of the same merchandise through the port of San Francisco, that the subject paper "is used in the retail trade for packaging such items as hats, shoes, handbags, etc." The purchase order on the occasion of the prior importation described the merchandise as "wrapping tissue paper."

A definition for "copying paper" as used in the TSUS, is as follows:

> Copying paper is a thin tissue formerly used widely in producing copies of letters written in copying ink. It has high tensile strength, is unsized, and absorbs ink downwards instead of laterally, rendering three or more copies. As a result of modern copying methods, this type of paper has become virtually obsolete in the United states (emphasis added).

United States Tariff Commission, Summaries of Trade and Tariff Information, Schedule 2, Vol. 3, at 11/ (1968).

We lack evidence at this time showing that the merchandise as imported, is either actually or chiefly used as "copying paper" although it appears similar to papers found classificable in item 252.79, TSUS, in previous ruling letters. From the above definition it also appears highly unlikely that the merchandise is, in fact, "copying paper". Further, the protestant's statements on the occasion of a prior importation tend to indicate that the merchandise is of a type intended to be used for wrapping hats, shoes, etc. There being nothing other than apparent incongruity in the description of the merchandise as entered to support the proposed classification of the merchandise as copying paper, we find that it is properly classifiable in item 252.79, TSUS.

045891

A13

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Accordingly, you are directed to allow the protest in full.

Your file is returned.

Sincerely yours,

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

045891

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A14

[redacted]

SEP 29 1976

CLA-2:R:CV:MC
045906 FF
Your file: 780C

[redacted]

Dear [redacted]

This is in reply to your letter dated May 5, 1976, which forwarded a letter from [redacted], concerning the tariff status of "Casino M" furniture upholstery material from Canada. One swatch was submitted.

"Casino M" is described as a vinyl plastic laminated to a needle-punched polyurethane foam/polyester fiber backing, and it is stated that the subject merchandise will be imported in rolls approximately 54 inches in width and 25 yards in length. It is further stated that the subject merchandise is comprised of polyvinyl chloride plastic which constitutes 78 percent of its weight and costs 52 cents per yard, polyurethane foam which constitutes 4 percent of its weight and costs 5 cents per yard, and polyester fiber which constitutes 18 percent of its weight and costs 37 cents per yard. It is further stated that the polyester fiber is needle-punched to the polyurethane foam, that this needle-punched material is then laminated to the polyvinyl chloride plastic, and that the exterior surface of the plastic portion is then finished by surface printing, embossing, and coating with protective lacquers. It is submitted that the subject merchandise is precluded from classification as a textile product under Schedule 3, Tariff Schedules of the United States (TSUS), by virtue of the fact that the loose polyester fibers are needle-punched directly into the polyurethane foam and therefore never exist in their own right as a nonwoven fabric. It is contended that the plastic component constitutes the greatest portion in both weight and cost and imparts the essential character of the subject merchandise and that, therefore, the merchandise is classifiable under the provision for other flexible sheets, wholly or almost wholly of rubber or plastics, not of cellulosic plastics materials, in item 771.42, TSUS, with duty at the rate of 6 percent ad valorem.

Polyester fibers are man-made fibers which are included in the term "textile materials" under Headnote 2(a)(i), Schedule 3, TSUS, a copy of which is enclosed for your reference. Based on available information, it

045906

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[redacted]

is our belief that the polyester fibers come off a card in the form of a web and that this web is in turn needle-punched to the polyurethane foam. It is our opinion based on the submitted information that the needle-punched material is a fabric in chief value of man-made fibers which is laminated to the polyvinyl chloride plastic. The subject merchandise, when imported in the piece, is considered to be a textile product in accordance with Headnote 4(b), Schedule 3, TSUS, which states as follows:

> In determining the component fibers of chief value in coated or filled, or laminated, fabrics and articles wholly or in part thereof, the coating or filling, or the nontextile laminating substances, shall be disregarded in the absence of context to the contrary.

Accordingly, the subject merchandise, as described above and as represented by the submitted sample, is classifiable under the provision for textile fabrics, including laminated fabrics, not specially provided for, of man-made fibers, in item 359.50, TSUS, with duty at the rate of 25 cents per pound plus 30 percent ad valorem.

Sincerely yours,

(Signed) James W. O'Neil

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

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[redacted]

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CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME	[redacted]	[redacted]			[redacted]		
CODE AND DATE	(8) REVIEWER	[redacted]	(10) REVIEWER	(11) REVIEWER	[redacted]	[redacted]	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-15-73) (Previous editions may be used)

[redacted]

045906

C; 640.35

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

OCT 7 1976

REFER TO

CLA-2:R:CV:MA
046583 NM

046583

[redacted]

Dear [redacted]

In your letter of July 2, 1976, you inquire as to the dutiable status of accessory tanks for nuclear power plants manufactured in Japan. Descriptive literature was submitted for examination.

The volume control tank is designed to accommodate changes in reactor coolant volume and to control reactor coolant hydrogen concentration by control of hydrogen gas overpressure. The tank has a maximum operating level of 27,525 pounds (3,300 gallons), a design pressure of 75/15 PSIG, and a normal operating temperature of 120° F. The spent resin tank is designed to store spent radioactive resins prior to sluicing them under nitrogen pressure to the drumming station. The tank has a full operating level of 29,360 pounds (3,200 gallons), a normal operating temperature of 120° F, and a design pressure of 50/0 PSIG. The reactor drain tank is designed to collect reactor coolant from miscellaneous leakoffs and drains prior to processing for re-use or disposal. The tank has a maximum operating level of 10,840 pounds (1,300 gallons), a normal operating temperature of 120° F, and a design pressure of 25/15 PSIG.

It appears that none of these tanks have provisions made for circulating heating or cooling fluids between the walls, or mechanical or thermal equipment such as agitators, heating or cooling coils, or electrical elements.

Accordingly, the volume control tank, spent resin tank and reactor drain tank are classifiable as tanks, of metal, having a capacity over 75 gallons and ordinarily installed as fixtures in industrial

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[redacted]

046583

plants or elsewhere for storage or manufacturing use, in item 640.35, Tariff Schedules of the United States , and dutiable at the rate of 6.5 percent ad valorem.

Sincerely yours,

Arthur P. Schaffner

For Salvatore E. Caramagno
Director
Classification and Value Division

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B4

APR 22 1977

CLA-2:R:CV:MC
046640 PR

[redacted]

Dear [redacted]

This is in reply to your letter of July 7, 1976, concerning the tariff status of "shoddy pads" manufactured in Taiwan.

The submitted sample is a matted padding or fabric of nonwoven textile fibers, stated to be in chief value of man-made fibers. You indicate that the merchandise is derived from new cloth which has been ground up and processed through a combing machine. Then it is apparently needle punched and lightly surface treated on both sides with a resinous substance that is not visually apparent. The product is stated to be used as an insulator pad attached to both sides of a mattress spring for the purpose of keeping the filling material in the mattress from falling into the coils of the mattress spring.

Merch ndise as represented by the submitted sample is classifiable under the provision for webs, wadding, batting and nonwoven fabrics, including felts and bonded fabrics, and articles not specially provided for of any one or combination of these products, of man-made fibers, in item 355.25, Tariff Schedules of the United States, with duty at the rate of 12 cents per pound plus 15 percent ad valorem.

The merchandise described above may be subject to international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

Sincerely yours,

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(Signed) James W. O'Neil
Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

B5

046640

MAR 22 1978

CLA-2:R:CV:MC
051306 PR

[redacted]

Dea[redacted]

This is in reply to your letter of March 17, 1977, on behalf of [redacted] concerning the tariff classification of four submitted sample materials manufactured in Canada. You advised that the merchandise will be imported either in rolls of continuous lengths, or in lengths of 36 inches for further processing in the United States into various sizes and shapes for insulation in electrical instruments and apparatus.

The sample designated Westinghouse 44783JJ Laminate (sample 1) is stated to be constructed by laminating a 0.003 inch thick mat of nonwoven polyester textile fibers to each side of a sheet of stiff polyester film, stated to be 0.014 inch thick. Each of the polyester mats comprises 7.85 percent of the merchandise by weight and the polyester film accounts for 82.73 percent of the merchandise by weight. The polyester adhesive used in the lamination process comprises the remaining 1.57 percent of the merchandise.

The sample designated Insulec 7-E6-015 (sample 2) is stated to consist of a woven fiberglass fabric that weighs 8.38 ounces per square yard, which has been coated on both sides with an epoxy varnish that weighs 6.92 ounces per square yard. We assume the varnish is a plastics material. The fiberglass fabric constitutes 55 percent of the merchandise by weight while the epoxy varnish constitutes the remaining 45 percent of the merchandise by weight. The epoxy varnish is both visible and significant and results in the merchandise resembling a stiff piece of plastic.

051306

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The sample designated Westinghouse 42343 BU (sample 3) consists of four layers of material that have been laminated together by an unidentified adhesive. The adhesive is stated to constitute 14.46 percent of the merchandise by weight. You state the outside layers of the merchandise are made of a paper-like material called Dupont Nomex .005 Aramid paper, one layer of which weighs 3.46 ounces per square yard and comprises 27.05 percent of the merchandise by weight while the other layer weighs 1.859 ounces per square yard and comprises 14.52 percent of the merchandise by weight. The inner two layers are indicated to be of a 0.003 inch thick layer of polyester film, which weighs 3.20 ounces per square yard and which comprises 25.05 percent of the merchandise by weight, and a 0.04 inch thick woven fiberglass fabric which weighs 2.43 ounces per square yard and comprises 18.95 percent of the merchandise by weight. Our information is that the aramid paper-like layers are made from man-made fibers in a wet lay paper making process. However, the paper making machines have been modified because of the additional volume of water required by the man-made fibers. Accordingly, the paper-like layers are considered nonwoven textile fabrics for tariff classification purposes.

The sample designated Insulec 4-K2-015 (sample 4) is stated to consist of a woven fiberglass fabric that comprises 21.7 percent of the merchandise by weight, which has been coated or filled with a yellow varnish material that comprises 78.29 percent of the merchandise by weight. According to informal tests conducted by a Customs laboratory, the varnish is made of linseed or fatty oil type composition and is nonplastic in nature.

Merchandise as represented by samples 1 and 3 is classifiable under the provision for textile fabrics not specially provided for, including laminated fabrics, in item 359.50, Tariff Schedules of the United States (TSUS), with duty at the rate of 25 cents per pound plus 30 percent ad valorem.

Merchandise as represented by sample No. 2 is classifiable under the provision for woven or knit fabrics, coated or filled or laminated with rubber or plastics material, of man-made fibers, not over 70 percent by weight of plastics material, in item 355.82, TSUS, with duty at the rate of 12.5 cents per pound plus 15 percent ad valorem.

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[redacted]

[redacted]

Merchandise as represented by sample No. 4 is classifiable under the provision for woven or knit fabrics of man-made fibers, coated or filled, not specially provided for, in item 356.40, TSUS, with duty at the rate of 12 cents per pound plus 15 percent ad valorem.

You indicate that all materials are originally imported into Canada from the United States for assembly and processing prior to their return to the United States. In such an event, merchandise represented by samples 1 and 3 may be eligible for classification under item 807.00, TSUS. If you desire more information in this regard, please submit samples of the merchandise in its condition as exported from the United States, detailed descriptions of the processes to which that merchandise is subjected to in Canada, and samples of the merchandise exported from Canada to the United States and we will rule accordingly.

Sincerely yours,

(Signed) JAMES W. O'NEIL

for Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

051306

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[redacted]

	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	[redacted]	(7) REVIEWER
CODE AND DATE							
SURNAME						B8	
CODE AND DATE	[redacted]						
SURNAME	[redacted]						

FEB 3 1978

359.50
355.25

CLA-2:R:CV:MC
051877 PR

[redacted]

Dear [redacted]

This is in reply to your letter of April 27, 1977, concerning the tariff status of PVC sheeting with a polyester substrate. We assume that the merchandise is a product of Canada.

The submitted sample consists of a nonwoven fabric of man-made fibers that has been laminated to a sheet of grained or embossed plastics material. The nonwoven portion is stated to be formed by needle punching polyester fibers into a sheet of polyurethane foam which weighs 0.5 ounces per square yard and is 0.04 inches thick. The resulting substrate weighs 6.5 ounces per square yard. The nonwoven fabric is then heat laminated to a preexisting sheet of plastics material, which weighs 12 ounces per square yard. The finished product weighs 19 ounces per square yard and will be imported in widths of 54 inches. All the above information was obtained from submissions accompanying your letter.

Assuming that the value of the polyester fibers exceeds the value of the polyurethane foam into which they have been needle punched, the merchandise is classifiable under the provision for textile fabrics not specially provided for, including laminated fabrics, of man-made fibers, in item 359.50, Tariff Schedules of the United States, with duty at the rate of 25 cents per pound plus 30 percent ad valorem.

051877

Sincerely yours,

Albert Loeb

Salvatore E. Caramagno
Director
for Classification and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

CODE AND DATE	[redacted]						
SURNAME	[redacted]					B9	
CODE AND DATE	[redacted]						
SURNAME	[redacted]						

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

NOV 28 1977

CLA-2:R:CV:MC
053668 PR

[redacted]

Dear [redacted]

This is in reply to your letter of September 14, 1977, concerning the tariff status of two types of material. You indicate that the merchandise will be imported from a "beneficiary developing country."

Both samples are quilted material. One is about 1/2 inch thick and is composed of a textile fiber batting sandwiched between two layers of woven textile fabrics. The three layers are stitched together with a chevron pattern. The second sample is less than 1/4 inch thick and is composed of four layers of material. One of the outside surfaces is formed by a burlap-type woven fabric and the other surface is formed by a knit man-made fiber fabric. Between these two fabrics is a batting of textile fibers and a layer that resembles tissue paper. This material is also stitched together in a chevron pattern.

We assume that the merchandise will be imported in material lengths and not made up into articles. Merchandise as represented by both samples and as described above is classifiable under the provisions for textile fabrics, not specially provided for, according to the component material of chief value in that merchandise, in items 359.10 through 359.60, Tariff Schedules of the United States (TSUS), copy enclosed. The rates of duty in column 1 are applicable to beneficiary developing countries.

For your information, an article is in chief value of a material if such material exceeds in value each other single component material of the article.

05-3668

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[redacted]

Merchandise described above may be subject to international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter, a sample of the merchandise, and a breakdown of the various components comprising the merchandise by both value and weight.

Sincerely yours,

(Signed) James A. O'Neill

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

[redacted]

[redacted]

B11

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039668

JAN 17 1978

CLA-2:R:CV:MC
054031 MG

Dear

Your letter of October 21, 1977, requests a binding decision on the classification and import duties applicable to the following products:

1. Boric Acid
2. Hexamethylenetetramine
3. Caustic Soda
4. Acetophenone

You state that you anticipate importing these products from West European and most favored nations.

Boric acid is classified by name under the provision for inorganic acids in item 416.10, of the Tariff Schedules of the United States (TSUS), and is dutiable at the column 1 rate of 0.4 cent per pound.

Hexamethylenetetramine is classified by name under the provision for nitrogenous compounds in item 425.18, TSUS, and is dutiable at the column 1 rate of 2.2 cents per pound.

Caustic soda is classifiable under the provision for sodium compounds in item 421.08, TSUS, and is dutiable at the column 1 rate of 0.2 cent per pound.

Perfume grade acetophenone is classifiable under the provision for aromatic or odoriferous compounds obtained, derived or manufactured from benzenoid sources in item 408.60, TSUS, and is dutiable at the column 1 rate of 3.5 cents per pound plus 22.5 percent ad valorem. Technical grade acetophenone is classifiable under the provision for benzenoid intermediates in item 403.60, TSUS, and is dutiable at the column 1 rate of 1.7 cents per pound plus 12.5 percent ad valorem. Benzenoid products of United States origin are subject to ad valorem rates based upon the American selling price of the domestic product.

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[redacted]

Items classifiable in items 416.10, 425.18, 421.08, and 408.60 are eligible for duty-free treatment under the Generalized System of Preferences (GSP), depending upon their country of origin and providing they meet the requirements of General Headnote 3(c)(ii), TSUS, and the Customs Regulations, copies enclosed.

Sincerely yours,

(Signed) JAMES W. O'NEIL
for Salvatore E. Caramagno
Director
Classification and Value Division

Enclosures

054031

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B13

MAY 25 1978

CLA-2:R:CV:MC
054329 BR

Area Director, New York Seaport
New York, New York 10048

Director, Classification and Value Division

Request for Internal Advice No. 174-77, concerning the tariff classification of a woman's two-piece set

The referenced Internal Advice request concerns the tariff classification of a woman's knit two-piece set manufactured in Hong Kong. The top portion of the set is a rib knit blouse-like garment that is labelled to be 40 percent wool and 60 percent acrylic. The bottom portion of the set is a culotte or gaucho-type garment that is labelled to be 90 percent wool and 10 percent nylon and is made from a multicolored plaid woven fabric. The two garments are similarly colored but are not color matched.

The top garment is made of two pieces of knit fabric that have been stitched together along the lower arm seams and the side seams. It has elbow length kimono style sleeves. The two fabrics forming the garment are stitched together at three points along the top portion of each side of the neck opening. These stitched joints hold the shoulder and sleeve areas together and form the neck opening. Stitched above each of these joints is a fabric covered button. The fabric portion of each button is knit and is the same color as the body of the blouse. The buttons perform no functional purpose or use themselves, although the stitching which holds the buttons in place may, to a small extent, serve to strengthen or reinforce each of the knitted joints. One inch wide strips of striped knit fabric has been used as capping on the unfinished edges of both fabrics at the top of the garment. The visible portion of the capping, about 1/2 inch, contains 4 stripes that extend the entire length of the capping. Two of the stripes are beige, one is black, and one is the same color as the body of the garment.

054329

B14

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The bottom garment has a waistband with 1-1/2 inch wide belt loops of matching plaid fabric. The belt is also made of the same plaid fabric. There is a plaid fabric covered button on the lower portion on each of the four belt loops. The button is stitched in place with the stitching extending through the belt loops and the body of the garment. The buttons themselves perform no functional purpose. However, the stitching which holds the buttons in place also holds the bottoms of the belt loops to the garment.

Textile fabric is one of the forms of ornamentation listed in Headnote 3, Schedule 3, Tariff Schedules of the United States (TSUS). Since the fabric covered buttons themselves perform no functional purpose, the fabric on those buttons constitutes ornamentation for tariff purposes and both garments are classifiable under the ornamented provisions of the tariff schedules.

For tariff purposes, wearing apparel sets are not classifiable as entireties, assuming other criteria are met, if (1) the components are not the same color; or (2) the components do not contain the same colored stripe or pattern or that stripe or pattern does not create a substantial visual connection between the garments; or (3) one of the garments in the set has a stripe or pattern effect and all the garments do not have the same single predominant color or color combination.

Based on the above, the two garments comprising the instant wearing apparel set do not constitute an entirety and are separately classifiable. Accordingly, each of the garments is classifiable under the provisions for other women's or girls' ornamented wearing apparel, in either item 382.02, TSUS, if in chief value of wool, or, if in chief value of man-made fibers, in item 382.04, TSUS.

You also asked for guidance on the classification of wearing apparel sets which consist of both knit and not knit components. Generally, such sets, if entireties for tariff purposes, are classifiable as either knit or not knit according to their predominate and characteristic part. See Cimbel Bros. Inc. v. United States, 7 Cust. Ct. 46, C.D. 531 (1941); Benson Manufacturing Corp. v. United States, 18 CCPA 391, T.D. 44640 (1931); T.D. 72-134; and I.A. 108/75, 041259, dated January 6, 1975.

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054329

ORR Ruling 72/429 abstracted as T.D. 72-340(27), concerns the tariff classification of garments which contain both knit and not knit parts and no part is clearly predominate and characteristic. Although that ruling concerns the tariff classification of a single garment, the reasoning there is equally applicable to wearing apparel sets which consist of more than one garment.

Accordingly, where a set of garments which is classifiable as an entirety for tariff purposes contains knit and not knit garments, neither of which is predominate and characteristic of the set, and it is necessary for tariff classification purposes to categorize that set as either "knit" or "not knit" because those are the two competing tariff descriptions under the same superior headings under equally specific superior headings which are equally applicable, General Headnote 10(d), TSUS, applies. Therefore, the article is properly classifiable under the provision with the highest original statutory duty rate, or if both original statutory duty rates are equal, then under the provision which first appears in the tariff schedules.

(Signed) Salvatore E. Caramagno

Salvatore E. Caramagno

[redacted]

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CODE AND DATE	[redacted]						
SURNAME	[redacted]						
CODE AND DATE							
SURNAME							

057429

APR 19 1978

CLA-2:R:CV:MC
054588 H

[redacted]

Dear [redacted]

Your letter of December 5, 1977, concerns the dutiable status of a product of West Germany called "Sea-Bond Denture Adhesive Cushions." A sample of the product was submitted and consisted of two sheets of nonwoven synthetic fabric with a layer of water soluble adhesive between them. The adhesive is not discernable even when the layers are separated. The cushion which is "U" shaped to fit dentures and is used to hold dentures in place without utilizing pastes or powders.

Alternative classifications for the product are suggested. It is felt that the provision for dental cements, item 495.15, Tariff Schedules of the United States (TSUS), is appropriate, as the product is used for retention purposes. However, this provision covers the ordinary type cements, which are chemical mixtures and does not contemplate a product such as "Sea Bond" which is essentially a textile fiber article.

Alternatively, you suggest that since this is a relatively new article, that item 799.00, TSUS, might apply. This provision covers any article, not provided for elsewhere in the schedules. No imported article can be classified under this item until all other classification possibilities are exhausted.

Although the product is not a cement or medicinal, it is essentially a textile article; accordingly, it is correctly classifiable under the provision for articles of nonwoven fabrics not specially provided for, of man-made fibers, in item 355.25, TSUS. The rate of duty is 12 cents per pound plus 15 percent ad valorem.

Sincerely yours,

[redacted] (Signed) JAMES W. O'NEIL

[redacted]

Salvatore E. Caramagno
for Director
Classification and Value Division

CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE	[redacted]						
SURNAME							

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-71)

054588

[redacted]

APR 24 1978

CLA-2:R:CV:MA
056279 E

056279

[redacted]

Dear [redacted]

In your letter of February 9, 1978, you inquire on behalf of [redacted] as to the tariff status of the Hudig Ironmat sprinkler system manufactured in West Germany.

The Hudig Ironmat sprinkler system is an agricultural field irrigation system. It consists of a sprinkler carriage, a drum reel, and a long length of semi-flexible polyethylene pipe, 800 or 1,000 feet. In operation the sprinkler carriage is pulled the length of a field from the drum reel by a tractor. Connecting the carriage to the drum reel is the polyethlene pipe through which water may flow. The stationary drum reel winds the sprinkler carriage towards itself as it irrigates. The drum reel, driven by a water piston, revolves slowly during operation and at the same time rolls up the pipe. The speed is adjustable. The water supplied by the delivery pipe flows through the tubular axis and the polyethylene pulling pipe to the spinkler which is installed on a 3-wheeled skid or carriage. The Ironmat has an automatic, double-acting stop mechanism for stopping the sprinkler carriage when it reaches the drum. The pipe is highly resistant to damage, but if damaged in some way it can be repaired on the spot by means of a plastic welder.

At a conference on March 30, 1978, attended by [redacted] and [redacted] it was brought out that we had previously ruled on an irrigation machine called the Touraine 90 which appeared to be similar, and held it to be classifiable under the provision for other mechanical appliances for projecting, dispersing or spraying liquids, in item 662.50, Tariff Schedules of the United States (TSUS). [redacted] in a letter dated April 12, 1978, distinguishes the Hudig Ironmat from the Touraine 90 stating that the latter machine has a water turbine drive unit to pump liquids with solids such as sewage effluent disposal and is used for that purpose. The Hudig Ironmat is equipped with a reciprocating piston pump drive which can only be used for the pumping of clear liquids, and is, therefore, restricted to irrigation use.

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C4

[redacted]

056279

Whether the apparatus pumps liquids, or liquids with solids, is not enough to put the irrigation systems into different classes. We therefore are of the opinion that the Hudig Ironmat sprinkler system is within the provision for other mechanical appliances for projecting, dispersing or spraying liquids, in item 662.50, TSUS.

[redacted] in their letter of April 12, 1978, also contend that the Hudig machine should be classified under the provision for machinery for soil preparation and cultivation in item 666.00, TSUS, or alternatively, under the provision for sprayers suitable for agricultural or horticultural use in item 662.45, TSUS.

Item 662.50 is in Subpart A of part 4, Schedule 6, TSUS. Item 666.00 is in Part 4. Headnote 1 of Subpart A provides that a machine or appliance which is described therein and also is described elsewhere is Part 4, is classifiable in Subpart A. Accordingly, if the Hudig machine were within the provision for soil preparation and cultivation in item 666.00, TSUS, it cannot be so classified.

With respect to the claim for classification under item 662.45, TSUS, the record does not establish that the Hudig machine is commonly or commercially known as a sprayer. Rather the data you submitted showns that it is an irrigation system. Accordingly, it cannot be classified under that provision of law.

In view of the foregoing, the Hudig Ironmat sprinkler system is classifiable under the provisions of item 662.50, TSUS, dutiable at the rate of 5 percent ad valorem. The plastic welders are classifiable under the provision for machines not specially provided for in item 673.50, TSUS, dutiable at the rate of 5 percent ad valorem.

Sincerely yours,

[redacted] Arthur P. Schifflin,

For Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

CODE [redacted]							
						C5	

ENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11 15 73)

420.78

MAR 3 1978

CLA-2:R:CV:MC
059088 HG

Dear

This is in reply to your letter of January 2, 1978, concerning the tariff status of a certain chemical substance. No country of origin was given. A sample was submitted.

The submitted sample is a white crystalline material which you state is boric acid. However, a Customs laboratory analysis of the sample indicates that it is refined sodium borate and not boric acid.

Merchandise, as represented by the submitted sample, is classifiable under the provision for sodium compounds, borate, other, in item 420.78, Tariff Schedules of the United States, (TSUS), with duty depending on the country of origin, either at the column 1 rate of 0.06 cent per pound or at the column 2 rate of 0.125 cent per pound. Column 2 rates of duty are applicable to products of those countries listed in General Headnote 3(e), TSUS, copy enclosed. Products of all other countries are entitled to column 1 rates of duty.

If the country of origin of the merchandise is a designated beneficiary country for purposes of the Generalized System of Preferences, the merchandise may qualify for duty free entry. A copy of General Headnote 3(c), TSUS, is enclosed for your information.

Sincerely yours,

(Signed) James W. O'Neil

Salvatore E. Caramagno
Director
Classification and Value Division

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VICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

[redacted]

25 JAN 1979

CLA-2:R:CV:MC
059429 LR

Director, Duty Assessment Division

Director, Classification and Value Division

Tariff classification of halter and short sets from [redacted]

The submitted samples are two sets of girls' halter tops and shorts from Taiwan. The first set, representative of style Nos. 2708, 4708, and 7708, consists of red, knit, 100 percent polyester shorts and a matching knit midriff top, stated to be of 60 percent cotton and 40 percent polyester. The top has thick red, white, and blue stripes, a pointed white collar, and white capping around the armholes. The red stripe is practically identical to the color of the shorts. The second set, representative of style Nos. 2709, 4709, 7709, consists of light blue, knit, 100 percent polyester shorts and a matching midriff top, also made of 60 percent cotton and 40 percent polyester. The top is white with light blue capping and shoulder straps. Pieces of overlaid light blue fabric, resembling a sail boat, have been sewn to the front with blue thread. White threads have been applied to the "sails" for decorative effect. Three rows of capping, adding necessary length, form the botton inch of the midriff top.

Each of the two sets, matched as to color and size, fall within the guidelines for classification as entireties established in J.C. Penny Purchasing Corp. v. United States, 77 Cust. Ct. 48, C.D. 4571 (1976). Assuming both pieces are imported together, each set is classifiable as a single entity.

The red set contains no features of ornamentation. However, both the white embroidery threads and the blue fabric overlays on the blue set were added primarily, if not solely, for decorative effect and constitute ornamentation within Headnote 3(a)(i)(A) and 3(a)(iii), Schedule 3, Tariff Schedules of the United States (TSUS), respectively.

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The red set is classifiable under one of the provisions for other girls' knit wearing apparel, not ornamented, depending on the component material in chief value. If the set is in chief value of cotton, it is classifiable in item 382.06, TSUS, with duty at the rate of 21 percent ad valorem, or if in chief value of man-made fibers, in item 382.78, TSUS, with duty at the rate of 25 cents per pound plus 32.5 percent ad valorem. The blue set is classifiable under one of the provisions for other infants' or girls' ornamented wearing apparel, according to component material in chief value. If in chief value of cotton, it is classifiable in item 382.00, TSUS, with duty at the rate of 35 percent ad valorem, or if in chief value of man-made fibers, in item 382.04, TSUS, with duty at the rate of 42.5 percent ad valorem.

(Signed) Salvatore E. Caramagno

Salvatore E. Caramagno

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[redacted]

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

16 AUG 1979

CLA-2:R:CV:MC
060510 MJ

This ruling classifies some upholstery fabric, a product of Columbia.

FACTS:

The sample is a swatch of non-woven polypropylene fibers laminated to vinyl sheeting. The inquirer states that the material would be sold as yard goods with a width of approximately 60 inches. The merchandise is a product of Columbia.

LAW AND ANALYSIS:

Headnote 4(b), Schedule 3, Tariff Schedules of the United States (TSUS), provides that:

> In determining the component fibers of chief value in coated or filled, or laminated, fabrics and articles wholly or in part thereof, the coating or filling, or the nontextile laminating substances, shall be disregarded in the absence of context to the contrary.

Therefore, when the vinyl on the submitted swatch is disregarded, the swatch is in chief value of man-made fibers (polypropylene), and is subject to the provisions of Schedule 3, TSUS, which covers textile materials. The nonwoven fabric

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represented by the swatch falls under the provisions in Subpart 4C, Schedule 3, TSUS, as a fabric, not specially provided for.

HOLDING:

Assuming that the product represented by the sample is imported in material lengths, it is classifiable under the provision in item 359.50, TSUS, for textile fabrics, including laminated fabrics, not specially provided for, dutiable at the rate of 25 cents per pound plus 30 percent ad valorem.

(Signed) James W. O'Neil
Salvatore E. Caramagno
Director
Classification and Value Division

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CODE AND DATE	[redacted]						
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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100117

22142

16 AUG 1979

CLA-2:R:CV:MC
060606 JH

Dear

Your letter of May 4, 1979, concerns Headquarters ruling of July 17, 1978, which classified products called "Sulfopolypeptides LS/CD-CA-2" and "Base Cerique autoemulsifiante LS/CD-CA-2."

You state that the Sulfopolypeptide is not a cosmetic. If the product does not contain any benzeniod components (except for preservatives) it would be classifiable as a mixture in item 432.00, Tariff Schedules of the United States (TSUS), with the rate of duty for other nitrogenous compounds in item 425.52, TSUS, 1.5 cents per pound plus 7.5 percent ad valorem.

Base cerique autoemulsifiante LS/CD-CA-2 if not a cosmetic would also be classified as a mixture in item 432.00, TSUS, subject to the highest rate applicable to any component material. If the component sorbitan sesquioleate is derived from coconut, palm kernel or palmoid, it is dutiable in item 465.05, TSUS, at 1.5 cents per pound plus 7.5 percent ad valorem; if it is derived from another source, it is dutiable at 1.8 cents per pound plus 7.5 percent ad valorem, under item 465.10, TSUS.

Sincerely,

(Signed) James W. O'Neil

Salvatore E. Caramagno
Director
Classification and Value Division

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21343

15 JUN 1979

CLA-2:R:CV:MC
060634 GH

Dear

Your letter of May 8, 1979, concerns the dutiable status of polyethylene imine from Japan.

Polyethylene imine is classifiable under the provision for other nitrogenous compounds, in item 425,52, Tariff Schedules of the United States. The rate of duty is 1.5 cents per pound plus 15 percent ad valorem.

Sincerely,

(Signed) James W. O'Neil

Salvatore E. Caramagno
Director
Classification and Value Division

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6 NOV 1979

CLA-2:R:CV:MC
060668 MH

This ruling concerns the Customs classification of flame retardant rayon fabric, a product of Great Britain.

ISSUE:

The classification of the submitted sample.

FACTS:

The submitted sample consists of a woven rayon textile fabric which has been laminated to a plastic film. The plastic film contains of a thin deposit of aluminum powder held to the plastic by an adhesive.

The merchandise is in chief value of the rayon fabric and is used to make heat shields, welding curtains, and safety clothing. The plastic film does not constitute over 70 percent of the weight of the merchandise and does not weigh over 44 ounces per squard yard.

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LAW AND ANALYSIS:

Items 355.60 through 355.85, Tariff Schedules of the United States (TSUS), describe woven fabrics which have been coated or filled or laminated with rubber or plastics material. Those provisions cover products weighing not over 44 ounces per square yard without regard to the quantity of textile fibers present.

The instant merchandise is laminated with a plastic film. The question presented is whether that film constitutes plastics materials within the meaning of the superior heading to items 355.60, TSUS, et seq. If not, the merchandise must be considered a laminated fabric, not specially provided for in item 359.50, TSUS.

Plastic film such as that which is present on the submitted sample is itself classifiable in sheet form as a product of plastic, in item 771.42, TSUS. See C.J. Tower and Sons of Buffalo, Inc. v. United States, 62 Cust. Ct. 643, C.D. 3840 (1969). The plastic film thus constitutes plastics material, for tariff purposes. The instant merchandise falls squarely within item 355.82, TSUS. Classification in item 359.50, TSUS, is therefore, precluded.

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HOLDING:

The instant merchandise is classifiable under the provision for woven fabrics of textile materials, laminated with sheet plastics of man-made fibers, other, in item 355.82, TSUS, dutiable at the rate of 12.5 cents per pound plus 15 percent ad valorem.

Paul H. Vigiano

Salvatore E. Caramagno
Director
Classification and Value Division

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[redacted]

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

CLA-2:RR:UCGC
060718 FJD

JUN 12 1980

Dear

In your letter of June 15, 1979, you request information regarding the tariff classification of ferrous sulphate which is a product of Canada.

Following Treasury Decision (T.D.) 66217(9), the subject ferrous sulphate is classifiable under the provision for iron compounds, sulfate (ferrous) (copperas), in item 418.92, Tariff Schedules of the United States (TSUS), and entitled to entry free of duty.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief
General Classification Branch

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28 NOV 1979

CLA-2:R:CV:MC
060795 JH

This ruling concerns the tariff classification of certain chemicals. It is assumed they are products of a country receiving modified rates of duty.

ISSUE:

The proper classification of the products.

FACTS:

This ruling concerns the following products:

1. Polyglycidal ether of o-cresol-formaldehyde novalac. Our laboratory indicates that this product contains a benzenoid or related structure. It is apparently a plastics material.

2. Nadic anhydride. This product is apparently a derivative of maleic anhydride, which is normally produced from benzenoid sources.

3. Chlorendic anhydride. This is a cyclic organic chemical [redacted] product that has a benzenoid or related structure. [redacted]

4. 2-methylimidazole. Our laboratory indicates that this is a nitrogenous compound of the variety known as imides.

5. C-11Z Azine. This is a derivative of 2-undecylimidazole. It belongs to the imidazole group of medium temperature curing agents for epoxy resins. According to our laboratory, the product is a nitrogenous compound.

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LAW AND ANALYSIS:

Headnote 1, Part 1, Schedule 4, Tariff Schedules of the United States (TSUS), provided that, except as specifically set forth in headnote to other parts of this schedule, all products described in this part are classified in this part, even if the product is more specifically elsewhere. Part 1, Schedule 4, TSUS, embraces chemicals and chemical products having a benzenoid, quinoid, or modified benzenoid structure or being derived from substances having such structure. Other chemicals are classifiable in Part 2, Schedule 4, TSUS.

HOLDING:

Polyglycidal ether of o-cresol-formaldehyde novolac is classified under the provision for benzenoid plastics materials, in item 405.25, TSUS, dutiable at a rate of 1.4 cents per pound plus 9 percent ad valorem.

Nadic anhydride is classifiable under the provision for other products which are obtained, derived, or manufactured in whole or in part from cyclic products having a benzenoid or related structure, in item 403.80, TSUS, dutiable at a rate of 1.7 cents per pound plus 12.5 percent ad valorem.

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Chlorendic anhydride is classifiable under the provision for cyclic organic chemical products having a benzenoid or related structure, in item 403.60, TSUS, dutiable at a rate of 1.7 cents per pound plus 12.5 percent ad valorem.

2-methylimidazole is classifiable under the provision for nitrogenous compounds: imides, in item 425.24, TSUS, dutiable at a rate of 5 percent ad valorem.

C-11Z is classifiable under the provision for other nitrogenous compounds, in item 425.52, TSUS, dutiable at a rate of 1.5 cents per pound plus 7.5 percent ad valorem.

(Signed) Paul G. Giguere

Salvatore E. Caramagno
Director
Classification and Value Division

060785

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15 OCT 1979

CLA-2:R:CV:MC
060799 JH

Dear

This is in reference to your inquiry concerning the dutiable status of calcuim chloride solution, apparently the product of Canada.

The calcuim chloride solution is said to be the by-product of the manufacture of soda ash. The end use of the product is as a material for blending with calcuim bromide solution for use in oil wells.

The product is described as a 38.5 percent aqueous solution of calcuim chloride, with minor amounts of calcuim sulfate and calcuim bicarbonate.

Calcuim chloride of the above description is classifiable under the provision for crude calcuim chloride in item 418.16, TSUS. It is free of duty.

Sincerely,

(Signed) James W. O'Neil

Salvatore E. Caramagno
Director
Classification and Value Division

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NOV 13 1979

R:CV:V GE
061498

District Director of Customs
Detroit, Michigan 48226

Director, Classification and Value Division
Headquarters, Washington, D.C. 20229

Decision on Application for Further Review of Protest No. 3801-8-000552, dated December 29, 1978.

This ruling concerns the dutiability of certain mercury discharge lamps imported by a United States purchaser from a related Canadian manufacturer.

Issue:

Whether the invoice prices of the subject merchandise fairly reflect the market value of the merchandise so as to establish export value under section 402 of the Tariff Act of 1930, as amended.

Facts:

The protest under consideration involves the purchase of self-ballasted mercury discharge lamps by a United States importer from a related Canadian manufacturer. The importer, whose demand for the lamps is ten times greater than the manufacturer's domestic demand, is a single selected purchaser of the subject merchandise. There is no record of sales for export to the United States to unrelated purchasers.

In reply to a request for pricing information (Customs Form 28) from your office in 1977, protestant stated that intercompany factors were used in the production of the lamps and that the unit price to non-related purchasers (if it were to sell to non-related purchasers) would be $X for a certain model lamp and $Y for a different model. These prices are higher than the invoice prices of the subject lamps. In response to a later CF 28, dated March 3, 1978, protestant submitted conflicting information, namely, that the lamps would be priced at an amount which equals the invoice prices if sold to unrelated purchasers in the United States. The Canadian manufacturer has declined to supply current cost of production, sales, and pricing figures, asserting that such information is proprietary.

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Law and Analysis:

This office is in agreement with your position that the invoice prices of the imported lamps are not fairly reflective of market value and that export value under section 402(b) of the Tariff Act of 1930, as amended, is therefore not the proper basis of appraisement. Since the subject lamps are not on the Final List, T.D. 54521, appraisement is to be made under the "new value law," section 402, Tariff Act of 1930, as amended.

The statutorily preferred basis of valuation is export value. In order to determine export value, one of the requirements which must be met is that the goods in question be "freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation." The mere fact that export sales are made only to a selected purchaser does not necessarily preclude a showing that the merchandise was "freely sold" within the meaning of export value sections 402(b) and (f)(1)(B) of the Tariff Act of 1930, as amended. However, if export value is to be established, the price must be one which "fairly reflects the market value of the merchandise."

Where, as here, there are sales only to a related selected purchaser, several aspects of the transactions may be examined to determine whether the price fairly reflects market value. The position of Customs, as explained in T.D. 78-344, is that evidence including, but not limited to, circumstances of sales, relative mark-ups of the importer and exporter, and quantities and levels of trade will be accepted to prove that the sales were made at arm's length and that the relationship between the parties does not preclude a finding that the price fairly reflects market value. Customs, in acquiescence with the decision of the Court of Customs and Patent Appeals in D.H. Baldwin Co. v. United States, 65 CCPA 67, C.A.D. 1208, 577 F.2d 704 (1978), will not look to cost of production, home market sales, and third country sales for comparison purposes in determining whether a proposed export value fairly reflects market value.

In Cascade Corp. v. United States, C.A.D. 1219 (1979), the Court of Customs and Patent Appeals found that where a related purchaser had failed to set forth details of its alleged arm's length price negotiations with the exporter, the purchaser had not satisfied its burden of showing that the prices it paid were fairly reflective of market value. The court noted that the importer had not described with

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specificity the factors considered in setting prices, had not established the mechanics for determining the claimed price, and had presented no evidence - apart from unsupported conclusory statements - that the prices were the result of arm's length negotiations.

In the situation at hand, protestant has not presented evidence to support its position. No information regarding the mechanics of determining prices, the circumstances of sale, or the respective mark-ups of the importer and exporter has been submitted. The manufacturer has stated that pricing is based on volume, so that gains in manufacturing efficiency are reflected in the pricing of the lamps. However, an explanation of precisely what the gains in manufacturing efficiency during the relevant time period were, and how these gains were "reflected" in the price, is entirely absent. The mere fact that the manufacturer enjoys economies of scale is not sufficient to establish that the prices fairly reflect market value.

The manufacturer has submitted a statement that all normal expenses and profit ratios have been factored in the price of the lamps. However, testimony that the manufacturer made profits or that prices were negotiated is not alone sufficient evidence of arm's length dealings, especially where, as here, the parties are closely related. Cascade Corp., supra.

Holding:

The invoice prices of the subject merchandise have not been shown to fairly reflect market value and export value has therefore not been established. Accordingly, you are directed to deny the protest in full.

[redacted]

(Signed) Irving W. Smith, Jr.

Salvatore E. Caramagno

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OCT 15 1980

CLA-2:RRUCV
061656 JV

Area Director of Customs
New York, New York 10048

Dear Sir:

This decision concerns a protest timely filed against your decision in the liquidation on December 15, 1978, of entry no. 217611, dated January 24, 1978, covering the importation of optical equipment from Japan exported on December 28, 1977.

ISSUES:

(1) Whether export value, section 402(b) of the Tariff Act of 1930, as amended, is the proper basis of appraising the merchandise?

(2) If export value is the proper basis of appraisement, should it be predicated on the manufacturer's prices to the exporter or on the transfer prices to the importer?

FACTS:

The importer and exporter are "related parties" within the meaning of section 402(g), Tariff Act of 1930, as amended. Neither party, however, is related to the manufacturer. The exporter or intermediary was, at the time of exportation involved herein, exclusive purchaser of such equipment in Japan at the primary level. The manufacturer also sells to secondary level distributors in Japan and to related selected purchasers in Europe. The record reveals no sales, offers, or prices of such or similar merchandise to any other purchaser for export to the United States at or about the time of exportation.

The merchandise was entered at the transfer prices, i.e., f.o.b. invoice prices, and appraised at values equal to 115 percent of such prices, on the basis of constructed value, section 402(d), Tariff Act of 1930, as amended. Protestant, through counsel, challenges both the basis of appraisement and the appraised values, claiming that the proper dutiable value for the merchandise should be at the manufacturer's prices or, alternately, at the higher transfer prices. It is claimed that sales at either level provide the proper basis for determining export value, citing United States v. Getz Bros. & Co., et al., C.A.D. 927 (1967) and United States v. Earnest Lowenstein, Inc., A.R.D. 325 (1978). As regards the appraised values, it is contended that the 15 percent advance over the entered values is erroneous in that it was not derived from the price at which such or similar merchandise was freely sold or offered for sale for export to the United States, but rather is based solely on the relationship of the parties.

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LAW AND ANALYSIS:

It is well settled that when imported merchandise is appraised on another basis of value and export value is claimed to be the proper basis, the only question open to dispute is whether the proofs establish the statutory elements of export value. Since the values arrived at by the appraising officer are presumptively correct, anyone challenging such values must prove by competant evidence facts showing the price at which the merchandise was freely sold or offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and the ordinary course of trade for exportation to the United States. The controlling language of this excerpt of section 402(b) is the term "freely sold", which is defined in section 402(f)(1) as sold or, in the absence of sales, offered (a) to all purchasers at wholesale, or (b) to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise.

The first issue to be resolved is whether the manufacturer's prices provide the proper basis for determining export value in the instant case. In this regard, counsel relies on United States v. Getz Bros., et al., supra. In that case the court adopted the manufacturer's price as the "price" within the definition of export value, on the basis that the particular facts established that at the time of sale from the manufacturer to the exporters the merchandise was being freely sold for exportation to the United States.

In Getz, the record established the existence of 25 manufacturers of similar merchandise in the country of exportation at the time involved. Sales by these manufacturers provided a basis from which to determine whether the prices to the exporter reflected market value within the statutory understanding. In the present case, however, there exists only one manufacturer, one exporter and a single sale, and no evidence that this sale created a market for the merchandise in the country of exportation. Moreover, unlike the Getz situation, there is no clear showing here that, at the time of sale to the exporter, the merchandise was predestined for shipment to the United States.

In Getz, the merchandise was sold to an American importer before it was manufactured and, as it was being manufactured, it was marked with the importer's brand. These marks were made at the request of the purchaser, usually at the time the orders were placed. The marking was done by mill personnel. The exporters or trading houses had no merchandise of their own to sell. They acted merely as agents for American importers and never placed orders with the mills for the purchase of plywood until they received orders from the importers. The record further established that all of the mills sold their export plywood in its condition as manufactured and at an f.o.b. port price. This price included the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition, packed

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ready for shipment to the United States. Hence, there was an effective control which assured the mills that the plywood was being sold for exportation to the U.S.

Accordingly, protestant has failed to show sufficient facts to establish that a sale for export took place at the manufacturer's level.

The next issue to be determined is whether the transfer prices between the related parties can establish statutory export value. Before we can adopt these prices for purposes of determining export value, two major issues must be resolved: (1) whether the transaction constitutes a "sale" within the meaning of section 402(b); and (2), if so, whether the prices in that sale fairly reflect the market value of the merchandise as required by section 402(f)(1)(b).

In J.L. Wood v. United States, C.A.D. 1139 (1974), the Court held that for purposes of sections 402(b) and 402(f), the term "sale" should be given its ordinary meaning, namely, "transfers of property from one party to another for a consideration."

The facts here establish that the importing subsidiary is a separate and distinct corporate entity (legal person), responsible for its own profits and losses. It maintains its own offices and warehouses in the United States and performs all of its own ministerial functions independent of its parent. It employees 29 full-time personnel in the United States, and maintains bank accounts in the jurisdictions where it is authorized to do business. It determines its own marketing and purchasing policies, sales prices, and selection of customers. Approval of the actual sale in the U.S. is solely within the province of the subsidiary.

Merchandise is purchased from the exporting parent based on projected or anticipated sales in the United States. Money paid to the parent is identified with specific imported shipments, rather than on a lump sum basis. The transactions are accomplished by invoicing the merchandise exported to the subsidiary with payment back to the parent. Risk of loss passes from the parent to the subsidiary at the time the merchandise is exported, and the subsidiary is named beneficiary of the ocean insurance. Finally, we note that the entry documents designated the parent as seller and the subsidiary as purchaser.

In the absence of other material facts, we conclude, in light of J. L. Wood, supra, that the subject transaction constitutes a sale within the statutory meaning.

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The remaining question is whether the resulting prices fairly reflect the market value of the merchandise. T.D. 78-118, to the extent modified by T.D. 78-344, constitutes the present position of the Customs Service regarding the criteria which may be used in determining whether the price in sales to a selected purchaser fairly reflects the market value where, as here, there are sales only to a related selected purchaser. The foregoing decisions are a response to recent decisions of the Court of Customs and Patent Appeals on the matter. What is required is that the facts establish that the transactions were at arm's length and that the relationship of the parties does not preclude a finding that the price fairly reflects market value. Evidence to prove an arm's length transaction and a fair reflection of market value includes, but is not limited to, the circumstances of sales, e.g., the manner in which the prices were determined, the relative markups of the importer and exporter, quantities and levels of trade, and the presence or absence of assists, as well as other dutiable elements of value required to be considered in appraising the merchandise undergoing appraisement.

The following factors are cited as evidence that the transfer prices fairly reflect the market value of the merchandise: New prices i.e., prices for new products or price increases for established products, are initiated by the parent. The proposed prices, which are subject to negotiation, are based on the parent's cost for the product (manufacturing cost or purchase price), general expenses, and an undisclosed projected profit. Nondisclosure of the profit prevents the subsidiary from gaining an advantage in later price negotiations. The subsidiary reviews the price offer and computes its prospective resale price by adding landed duty freight factors (i.e., insurance, freight, duty, brokerage, etc.), and the usual markup for general expenses and profit. The resale price is then compared to its competitor's price. If it appears that the importer's price is not competitive, negotiations are commenced with the parent to reduce its price so as to enable the subsidiary to maintain a competitive edge in the U.S. market.

Once prices have been established, they are set forth in a published price list. All sales will conform to the price list until a new price list is generated. The ultimate price for an item will determine the volume that the subsidiary will obligate itself to purchase. The volume to be purchased is determined solely by the subsidiary. Market conditions, product costs, and potential markup will all be weighed in determining the volume of purchases. Secondly, as in any arm's-length transaction, each side weighs it costs, profits, volume and competition to maximize sales. The resulting prices, therefore, take into account most, if not all of the factors that unrelated companies include in establishing prices through bargaining.

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As pointed out earlier, all items are sold to the importer at a profit. The profit, as does the price for export, varies depending on the particular item sold, market conditions, competiton and volume of purchases. Counsel advises that profit on the instant transaction approximated 4 percent and is reflected in the transfer prices. While at first glance this amount would appear to be nominal in comparison to the profit on resale, market conditions in foreign markets enable the parent to recoup profits that are otherwise lost or reduced through negotiations with the subsidiary.

It should be noted at this juncture that no allegation is made by Customs that the element of profit included in the transfer price is deficient so as to provide a basis for rejecting or disregarding the transaction prices for purposes of determining statutory export value. In fact, no explanation is given for the 15 percent addition to the invoice price, whether it represents an increase in profit or the addition of some other element of value not included in that price. Recent court decisions have held that the fact of a parent and subsidiary relationship between the exporter and importer does not itself preclude a finding of export value based on the transaction price. There must be something more, that is, there must be evidence that by reason of the relationship of the parties the price does not fairly reflect the market value of the merchandise. We find no such evidence here.

Another factor leading to the determination that the prices fairly reflect market value is the quantities and levels of trade. As mentioned earlier, the parent sells similar merchandise to secondary level distributors in Japan and to related purchasers in Europe. Intermittant sales are also made to other parts of the world. The U.S. subsidiary accounts for approximately 30 percent of total sales of ophthalmic instruments. Therefore, it has significant clout in the negotiating process. By the same token, since the majority of sales are made in the home market and to third countries, it provides the parent with far greater flexibility in the negotiation process with its U.S. subsidiary. This, as we pointed out above, accounts for the parent's apparent ability to reduce its profit margin on sales to the U.S. A comparison of the profits as a whole would appear to support the conclusion that negotiations between the involved parties created a true market price.

While home market sales have been eliminated by the courts as a source of comparison for export value purposes, counsel states that prices to secondary level distributors are proportionally higher than the prices to the U.S. subsidiary. We understand that home market price lists on file with your office will confirm this particular fact. The price differential arises because the subsidiary assumes many of the expenses in the United States that the parent incurs in Japan (i.e., sales, advertising, warranty, etc.). The American subsidiary sells to wholesalers as does the parent in Japan. Likewise, the subsidiary's customers sell to end users as does the parent's customers in Japan. Thus, the subsidiary is at a lower level of distribution than its parent's customers. The proportionately lower prices to the subsidiary reflects its distribution level and additional expense burden and the resulting fact that the invoices prices fairly reflect market value. Cited in this regard is United States v. Acme Steel Company, C.A.D. 851 (1964).

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Recent court decisions make it clear that sales prices for similar articles can be a guide to determine the validity of a related selected purchaser price. Moreover, the statutory formula itself provides for export value based on the prices at which similar merchandise is freely sold or freely offered for sale to the United States. Counsel has submitted copies of Japanese competitor's price lists and catalogs and copies of corporation price lists and catalogs of its exporting parent. Schedule C compares the parent's prices with the prices at which similar merchandise is freely sold in Japan for export to the U.S. The information relates specifically to current exportations. No such information exists for the date of exportation in question. Nevertheless, according to counsel, this information should be persuasive because the parent's prices have fluctuated steadily (taking into consideration currency fluctuation and production costs). It must be assumed that the same would hold true for the Japanese competitors. In any event, it is argued that the parent's prices have not changed to a degree so as to be disproportionate with the competitor's present day prices.

We agree with counsel that while this information does not conclusively establish export value for the instant merchandise based on sales of similar articles, it does tend to further support the claim that the invoice prices fairly reflect market value. It should be noted that the information submitted in this regard has not been challenged or otherwise refuted by the appraising officer.

In closing, we note that no explanation is given as to whether United States value could be satisfactorily determined based on the selling prices in the United States, or the basis for rejecting United States value in favor of constructed value. More importantly is the absence of a specific reason given for rejecting export value either at the manufacturer's prices or the transfer prices.

Based on the foregoing considerations, it is our opinion that the transaction prices were the result of arm's-length negotiations, as tested by the legally accepted criteria, and fairly reflected the market value of the merchandise.

HOLDING:

Export value is the proper basis of appraisement as reflected by the transfer prices to the importer.

Sincerely,

[redacted]

Harvey B. Fox
Director
Classification and Value Division

[redacted]

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061657B

CLA-2 CO:R:CV:G
061999 LCS
065037 LCS
064525 LCS
064798 LCS

This ruling concerns the Customs classification of artificial/synthetic surface ice-skating rinks, suitable also for other athletic/recreational uses.

FACTS:

Two separate artificial/synthetic surface ice-skating rinks, one marketed under the trade name "NEWICE" (a product of Belgium) and the other under the registered trade name "GLICE" (a product of Canada), have been presented for classification. Both systems permit the use of traditional-type blade ice skates for figure and recreational skating and hockey.

The former consists of standard panels, each measuring 4 feet by 3 feet in surface area and consisting of a notched plywood core, approximately .75 of an inch in thickness, bonded on each face with a 11-millimeter thickness of high-density polyethylene, both of which are capable of use for skating or other uses. The notched plywood core accommodates a plastic assembly "tongue" which serves to secure the panels one to another. The complete system includes, as well as the panels and assembly "tongues," an underlayment mattress of fiber material, approximately .50 of an inch in thickness, a rubber cushioning material, steel holding guard rails with related hardware, and a liquid coating/lubricating material. In assembly, the underlayment mattress, which compensates for any unevenness of the subsurface, either indoor or outdoor, is positioned and the panels assembled by use of the tongues, the surface is then girded by the rubber cushioning and the steel holding guard rails, after which the liquid lubricant is applied.

061999

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Normal usage is stated to require reapplication of the lubricant on a 7 to 10 day cycle. However, nonreapplication at the end of a cycle enables use of the surface for nonskating athletic/recreational activities (e.g., basketball, dancing, etc.)

The entire system is assumed to be in chief value of plastics material. No breakdown by cost or value of the components was provided and no description of the constituent ingredients of the conditioner/lubricant was stated.

The latter of the two specific systems under consideration, "GLICE," consists of: 1) panels, measuring 600 by 800 (assumed to be stated in millimeters), similar to "NEWICE," compromised of a notched core (assumed to be of laminated wood) bonded on each face with a plastics material surface (both of which are capable of use for skating or other uses), 2) plastic assembly rods, 3) a resilient interpolated mattress, such as "Phaltex Isorel," measuring 1.0 to 1.5 centimeters in thickness; 4) a rigid hardwood perimeter frame; and 5) "GLICE" conditioner, a liquid lubricant to reduce friction between the surface and the skate blades.

The assembly procedure is essentially the same as for the "NEWICE" system, however, the conditioner application cycle for the "GLICE" system is stated to recur biweekly.

The entire system is stated to be in chief value of plastics materials. No breakdown by component or value was provided.

Both systems stress the energy conservation, cost (both initial and upkeep), maintenance, multiple-use, and other advantages over regular ice rink systems.

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ISSUE:

Whether artificial/synthetic surface ice-skating rinks are classifiable as entireties or separately by individual component; and if an entirety, whether as: 1) ice-hockey equipment; 2) other game, sport, gymnastic, athletic, or playground equipment, and parts thereof, not specially provided for; 3) according to component material in chief value; or otherwise (item Nos. 734.00 and 735.20, Tariff Schedules of the United States (TSUS), noted in particular).

LAW AND ANALYSIS:

The resolution of the issue of whether these systems constitute entireties for tariff classification purposes presupposes that the entry or withdrawal from warehouse for consumption of the merchandise which is the subject of the particular entry comprises a substantially complete unit (i.e., one complete ice-skating rink, one-complete ice-hockey rink). In such circumstances, it is well settled that the "...separate entities, which by their nature are obviously intended to be used as a unit, ... [and] to be joined together by mere assembly, and [,] in such use ... [and] joining [,] the individual identities of the separate entities are subordinated to the identity of the combined entity, ... [the doctrine of entireties applies and] duty will be imposed upon the entity they represent." Donalds Ltd., Inc. v. United States, 32 Cust. Ct. 310, C.D. 1619 (1954).

Accordingly, based on the assumption that the substantially complete entity is entered (i.e., arrives at the U.S. port in one conveyance or on the same day, if shipped in more than one conveyance) or, if not arriving as such, is withdrawn from warehouse, both for consumption, the entity (i.e., the subject system) will be treated as an entirety for tariff classification purposes.

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In the absence of persuasive evidence that such complete systems are to be chiefly used (or exclusively used) as ice-hockey rinks, the available evidence indicates they are intended primarily for recreational skating and secondarily for other recreational athletic or sports activities. Therefore, complete artificial/synthetic surface ice-skating rinks, capable of and marketed for other nonskating uses, are most properly classifiable under the provision for other game, sport, gymnastic, athletic, or playground equipment, and parts thereof, not specially provided for, in item No. 735.20, TSUS, dutiable as a product of either Canada or Belgium at the reduced column 1 rate of duty of 9 percent ad valorem. C.I.E. 673/66, February 16, 1966, T.D. 56545(15), C.D. 492.23P, October 1, 1965, involving a complete indoor track system, and C.I.E. 2003/66, September 2, 1966, T.D. 66-169(36), T.C. 492.21 I, July 20, 1966, involving matting for cricket games, noted and followed.

HOLDING:

Artificial/synthetic surface ice-skating rinks, consisting of underlayment, plastic surfaced panels, assembly tongues, supporting and/or framing rails, etc., together with the surface conditioner lubricant, imported either as complete units, are classifiable, in the absence of persuasive evidence of a more-restrictive chief or exclusive use as ice-hockey rinks, under the provision for other-game, sport, gymnastic, athletic, or playground equipment, and parts thereof, not specially provided for, in item No. 735.20, TSUS.

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EFFECT ON PRIOR RULINGS:

CLA-2:R:CV:MC HL, 053281, November 28, 1977, is hereby overruled. Additionally, insofar as the result herein and the two C.I.E.'s cited as precedent cannot be distinguished from the result in the following two rulings, they are overruled; however, it is believed that these synthetic surfaces are not necessarily chiefly used for recreational purposes even though specific importations may be intended for such use:

1) R:CV:MA DB, 413.44, 030503, February 7, 1974, and

2) ORR Ruling 730048, June 12, 1973, R:CV:MA 413.44.F, March 8, 1973.

(Signed) Harvey B. Fox
~~Harvey B. Fox~~
Director, Classification
and Value Division

061995

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[redacted]

	(1) INITIATOR	(2) [redacted]	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 19 (11-15-73)

765.10

MAY 07 1979

CLA-2:R:CV:MSP
063033 TMP

[redacted]

Dear [redacted]

In a telephone conversation with a member of my staff on April 30, 1979, you requested information concerning the dutiable status of lithographs which you are contemplating importing from France.

Item 765.10, Tariff Schedules of the United States (TSUS), copy enclosed, provides that lithographs which are unbound and printed by hand from plates, stones, or blocks etched, drawn or engraved with hand tools may be admitted free of duty. The lithograph must also qualify as a work of art in the sense that it be a decorative, non-utilitarian article demonstrating some degree of originality or creativeness.

If the lithographs do not qualify under item 765.10, TSUS, they may be properly classifiable under items 274.50 - 274.70, TSUS, copy enclosed, and are dutiable at the column one rates of duty. Note that if the lithograph was printed more than 20 years before the date of importation, it can be entered duty free.

Also enclosed for your information is a copy of Section 10.48, Customs Regulations dealing with works of art, and the pamphlet "Know Before You Go."

063033

Sincerely,

(Signed) R. X. ARNOLD

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 30-03 (5-75)

765.10
274.50 -
274.70

CLA-2:R:CV:MSP
063044 THP

[redacted]

Dear [redacted]

In a telephone conversation with a member of my staff on May 8, 1979, you requested information regarding the dutiable status of original oil paintings and lithographs which you plan to import from various European and Mid-East countries.

Enclosed is information regarding the requirements for paintings to be entered free of duty under item 765.03, Tariff Schedules of the United States (TSUS). Note that the work must have been done completely by hand and that there are certain limitations on the types of articles which may be classifiable under item 765.03, TSUS.

Item 765.10, TSUS, provides that lithographs which are unbound and printed by hand from plates, stones, or blocks etched, drawn, or engraved with hand tools may be entered duty free. The lithographs must also qualify as a work of art in the sense that it be a decorative, non-utilitarian article demonstrating some degree of originality or creativeness.

If the lithographs do not qualify under item 765.10, TSUS, they may be properly classifiable under items 274.50 - 274.70, TSUS, and are dutiable at the column one rates of duty unless they are a product of one of the countries specified on the enclosed list. Note that if the lithograph was printed more than twenty years before the date of importation, it may be entered duty free.

Enclosed are the provisions of the Tariff Schedules of the United States and the sections of the Customs Regulations which deal with works of art and with lithographs.

Also enclosed is information regarding the Generalized System of Preferences which, if all the requirements are met, might allow for the duty free entry of lithographs not otherwise so qualifying.

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Part 177, Customs Regulations, which is also enclosed, explains the procedure for requesting a prospective ruling regarding a specific importation you might wish to make.

Sincerely,

(Signed) R. X. ARNOLD

Salvatore E. Caramagno
for the Director
Classification and Value Division

[redacted]

063044

[redacted]

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

806.20

AUG 16 1979

CLA-2:R:CV:MSP
063171 M

[redacted]

Dear [redacted]

In your letter of July 6, 1979, you asked for a review of the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to skis that are manufactured in the United States and exported to Canada for special silkscreen printing, and returned to the United States. This was the subject of our previous letter dated June 25, 1979, under file No. 063128.

A photograph was submitted showing both a plain, unprinted ski and a ski printed with the brandname "Krystal" and the logo "foam core." Generally, a printing operation performed abroad does not constitute a repair or alteration within the meaning of the tariff provision, but is a part of the total manufacturing process, a finishing operation, performed on the article abroad.

In this respect, on the basis of the information submitted, including the photograph, it appears that although foreign printing might not result in a major change, the printing of a brand name and a descriptive logo on the skis constitutes neither a repair nor an alteration. It is a form of advertising that designates and sets these printed skis apart from all others, thus in effect creating a new and different article of commerce, a particular brand of skis.

In these circumstances, we must remain of the opinion on further review that the described foreign printing will disqualify the skis from consideration under the alterations provision of item 806.20, TSUS, and they would be fully dutiable under the appropriate provision of the tariff schedules upon importation.

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CODE AND DATE	[redacted]						
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SURNAME	[redacted]						

Sincerely,

(Signed) B. X. ARNOLD

Salvatore E. Caramagno
Director
Classification and Value Division

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

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SEP 2 7 1979

CLA-2:R:CV:MSP
063320 TMP

[redacted]

Dear [redacted]

In a telephone conversation on September 24, 1979, with a member of my staff, you requested information regarding the requirements for the duty-free entry of works of art. Enclosed are copies of section 10.48 - 10.52, Customs Regulations, which outline the requirements for the importation of works of art, and Schedule 7, Part 11, Subpart A, Tariff Schedules of the United States (TSUS), which contain the tariff provisions applicable to works of art.

Item 765.03, provides for the duty-free entry of paintings which are done completely by hand. However, if the paintings are in frames, the frames will be classified separately according to their composition and will be dutiable unless otherwise exempted.

Original sculptures of any material, as the professional productions of sculptors, may be entered as works of the free fine arts under item 765.15, (TSUS).

Original has been judicially defined to mean original in design, conception, and execution, as distinguished from the works of skilled craftmen that are representative of the decorative or industrial arts.

The creations must be the productions of professional sculptors only. A standard used in determining whether a creator of a work is a professional sculptor rather than a skilled craftsman is that he be a graduate of a course in sculpture at a recognized school of art (free fine art not industrial art), or, that he be recognized in art circles as a professional sculptor by the acceptance of his works in public exhibitions limited to the free fine arts. Thus, one who has not received the formal education may nevertheless be recognized as a professional sculptor by the merit of his publicly exhibited works.

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However, each individual production, even of a recognized professional sculptor, must be of such fine quality and high artistic merit as to be recognized as examples of the free fine arts by recognized art authorities. The opinions of local art authorities may be of assistance.

The creations, whether in round or in relief, must be cut, carved, or wrought by hand or cast and the productions are limited to the first 10 castings, replicas, or reproductions.

Sculptures and statuary not covered by item 765.15, TSUS, are covered in other parts of the schedules on the basis of a variety of factors including but not limited to, their utilitarian purposes, their value, their composition, the process by which, and the place and time the articles are produced.

Item 765.25, (TSUS), provides for original works of the free fine arts not provided for in the foregoing provisions of this part, in any media, including, but not limited to, applied paper and other materials, manufactured or otherwise, such as used on collages. Although the creations may be made in any form from any materials, they must be original productions of the artists.

There is also a long standing administrative practice to distinguish between the free fine arts and the decorative or industrial arts. This distinction has been upheld by the courts which have stated that industrial or decorative artists, such as the potter, the glassmaker, the weaver, the lacemaker, the woodworker, and the jeweler all produce things which are both artistic and beautiful, but it was not the legislative intent of Congress to classify the works of those craftsmen as works of the free fine arts. While such works are quite artistic and beautiful, they are representative of the decorative and industrial arts, rather than the free fine arts.

In addition, Headnote 1(iv) to Subpart A, Part 11, Schedule 7, TSUS, copy enclosed, specifically precludes from coverage under any of the provisions therein any articles of utility. Beautiful, rare, unique and creative cigarette boxes, card boxes, clocks, picture frames, articles of jewelry and similar articles of utility are generally

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precluded from coverage under the provisions in Subpart A, Part 11, Schedule 7, TSUS. Normally, the determinative factor is not whether the importer intends to use the article in a utilitarian manner but whether the article can be used for a useful purpose.

Again, if the article in question does not meet all the requirements for classification under item 765.25, TSUS, or any other provision in Subpart A, Part 11, TSUS, then the article will be classified elsewhere according to the factors mentioned above regarding sculpture not classifiable under item 765.15, TSUS.

Also enclosed is Part 177, Customs Regulations, which outlines the procedures for requesting a ruling on a prospective transaction.

Sincerely,

(Signed) R. X. ARNOLD

Salvatore E. Caramagno
Director
for the Classification and Value Division

063320

[redacted]

[redacted]

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JUN 3 0 1980

CLA-2:RR:UC:SC
063811 EM

[redacted]

Dear [redacted]

In your letter of May 23, 1980, you asked for information about the tariff status of Distearyl Pentaerythritol Diphosphite, a product identified as Weston 618, a resin plasticizer/stabilizer, which it is proposed will be exported for processing and returned to the United States.

You explained that the chemical resin product 618 would be exported and processed abroad with a polyethylene wax to improve the quality and integrity of the product. Upon return to the United States, the product will be renamed and identified as 618MT. The exported product may be classifiable under item 428.72, of the Tariff Schedules of the United States (TSUS), while the returned product might be classifiable as a chemical mixture under item 432.10, TSUS.

Generally, all merchandise imported into the United States is subject to duty on the total quantity and value unless specifically exempted. In the described transactions, there appears to be no exemption or partial exemption that might be permitted to apply from the payment of duty under the present Tariff Schedules of the United States (TSUS), when the product 618MT is imported into the United States.

Under item 806.20, TSUS, mentioned in your letter, articles exported for repairs or alterations may be returned to the United States with duty only on the value of the repairs or alterations. However, the application of this provision is precluded in circumstances where the process performed abroad would result in a new or commercially different article with new and different characteristics and uses, or where the foreign process would constitute a part of a manufacturing process begun in the United States.

From the descriptions given, it appears that the chemical process performed abroad would result in a new and different chemical product with new and different chemical properties and

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uses, resulting in a difference in the tariff classification. This kind of processing that changes the exported product to another new product goes beyond the term "alterations" for tariff purposes, and precludes the application of item 806.20, TSUS.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief
Special Classification Branch

063811

Rec:
8/25/20
063916

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CLA-2 CO:R:CV:G
064210 JH

30 JAN 1981

Gentelmen:

This is in response to your interest in the classification of a barium sulfate product of Canada. The processing is said to include mining the barium sulfate which may contain up to 50% impurities, which impurities must be washed from the ore. After crushing the impurities are separated from the barium sulfate by a combination of magnetic separation of iron compounds, flotation and vibratory separation to remove impurities of a density different from barium sulfate. The natural barium sulfate will then be wet ground to a fine particle size by the "paddlemill" method of grinding. After grinding residual impurities will be removed by the use of an acid wash. An affidavit was submitted from Chief chemist of the importing company. He described the processing of the product substantially as described above. The ore body was described as consisting of approximately equal parts of extremely pure barium sulphate interminjled with iron carbonate. It was stated that the magnetic separation and vibratory processing resulted in a barium sulfate of

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97-98% pure. Should further processing be needed, it was added, to remove any residual iron carbonate, the barium sulfate would be leached in hot hydrocholoric acid and then water washed. The barium sulfate will then be wet ground to the described particle size and then spray dried.

It is contended that the acid wash is a cleansing process designed to free the barium from impurities and is incidental to the grinding, and, as a result does not advance the product beyond the ground stage. Therefore, it is urged that the product be classified as ground barium sulfate in item 472.12 TSUS.

It is acknowledged that the acid wash does not constitute a chemical change being affected on the barium sulfate itself. As stated in the affidavit submitted, the mining, crushing, magnetic separation and the vibrating inclined separation table, are all processes which achieve a barium sulfate which is 97-98% pure. It is at this point that such barium sulfate may go through an acid wash to remove any residual iron carbonate. Thus gaining a product which may reach U.S.P. standards without further processing. It is, therefore, evident that a specific product is desired. The tariff item refers to ground barium sulfate. The chief use of ground barium sulfate, it is understood, is as a weighting agent in oil-well drilling mud. This use does not require the purity

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of the product in question. It is noted that the ground barium sulfate also has other uses which do not demand such a high purity. Accordingly, it is concluded that ground barium sulfate contemplated by the tariff does not ordinarily undergo the chemical advancement of the product in issue.

Nor can it be concluded that the tariff item for ground barium sulfate -472.12- includes a product that has been advanced by processes in addition to grinding to such an extent that it is substantially fit for its ultimate use.

Therefore, barium sulfate which has been ground and upgraded by an acid wash as described above is classifiable under the provision for other barium compounds in item 417.80, TSUS. The rate of duty is 4.7% ad valorem.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief
General Classification Branch

064210

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7

19 MAR 1981

CLA-2:CO:R:CV:G
064952 JH

Dear

This is in reference to your inquiry concerning the dutiable status of certain mixtures used in decorative electro plating on steel articles.

A-3 solution is a mixture of E.D.T.A., sodium oxalate, caustic soda, and water. The sample is classified as a mixture in item 432.25, Tariff Schedules of the United States, TSUS, dutiable at the rate of 4.7 percent ad valorem but not less then the highest rate of applicable to any component material.

Cobalt solution is a mixture containing cobalt sulphate, E.D.T.A., caustic soda and water. This solution is also classifiable in item 432.25, TSUS.

Make-up solution is composed of potassium stannate, cobalt sulphate, E.D.T.A., caustic soda and water. This product is also classifiable in item 432.25.

Stana salt is a white powder composed of sodium stannate. This product is classifiable under the provision for other sodium compounds in item 421.62, dutiable at 4.7 percent ad valorem.

W Solution is composed of E.D.T.A., and caustic soda. This mixture is classifiable under the provision for mixtures not specially provided for in item 432.25, TSUS.

For the purposes of item 432.25 the component materials having the highest rate are sodium oxalate in item number 427.02, TSUS, dutiable at 1.2 cents per pound. Ethylene diamine tetra acetic acid is classifiable in item 425.52, TSUS, at 7.9 percent ad valorem.

Sincerely,

(Signed) A. P. SCHIFFLIN

FS

Harvey B. Fox
Director, Classification
and Value Division

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ICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 1.0 (11-15-73)

JUN 2 9 1980

CLA-2:RRUCGC
064973 JH

Dear

Your Letter of April 24, 1980, concerns the tariff status of chrome tanning salt. Chromic oxide is classifiable under the provision for other inorganic compounds in item 423.00, Tariff Schedules of the United States (TSUS). The rate of duty is 4.8 percent ad valorem. As you indicate, a product of Uruguay classifiable in item 423.00, TSUS, may be entitled to duty-free status.

Sincerely,

(Signed Arthur P. Schifflin

Salvatore E. Caramagno
Director
Classification and Value Division

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PUBLIC ____

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AUG 22 1980

CLA-2:RRUCV JV
065097

District Director of Customs
San Juan, Puerto Rico

Director, Classification and Value Division

Internal Advice Request #44/80

This request concerns the proper method of appraisement for entries of data processing equipment manufactured and exported by the importer's overseas subsidiaries.

The involved importer processes literally thousands of entries annually resulting from the operations of its overseas subsidiaries which are situated in numerous countries. Over 50 percent of the merchandise is imported through the port of Detriot. The financial data submitted to that port enables Customs to establish constructed values for the product lines of the various subsidiaries based on the utilization of generally accepted accounting principles.

Since 1974, the importer has furnished its annual report in March of each year along with a compilation of the profit of its foreign subsidiaries to the port of Detroit where the data is carefully analyzed and the constructed values computed. This information is then forwarded to the Customs Information Exchange for circulation to the appropiate ports. The effective date of appraisement has been from April 1 to March 31. The addition for profit and research and development to the transfer prices to arrive at the appraised values is derived from financial data resulting from the importer's previous fiscal year and applied to entries as of April 1 of the following year.

While you are in substantial agreement with the above method of appraisement, it is your view that the adjustment for profit and research and development should be reflected in the cost figures for the period in which such costs are actually incurred.

065097

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It is our opinion that the appraisement procedures adopted by Detroit in this case are in accordance with policy previously established by Headquarters in processing unusually large numbers of entries of multinational corporations in a similar manner where, as here, generally accepted accounting principles are utilized. See, for example, Headquarters letters R:CV::V IS 74-400231, dated October 5, 1974 and APP-6-03-0:O:D:T CW, dated March 3, 1976, copies enclosed. You will note that in such situations Customs allows for the use of the preceding calander year's cost figures in valuing the model year undergoing appraisement.

In the instant case the importer processes thousands of entries each year which must be done in accordance with statutory requirements and should Headquarters concur with your position, these entries would be subject to the withheld appraisement code for more than 1 1/4 years. However, employment of the aforementioned method, which has already been accepted by the importer and all of the involved ports would, in effect, eliminate this problem at the convenience of Customs and facilitate the work-flow while at the same time it would protect the revenue and uphold the letter and spirit of the statue. Accordingly, you are directed to adopt the same appraisement procedures.

(Signed) Irving B. Smith, Jr.

Harvey B. Fox

[redacted]

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
065255 JGH

District Director of Customs
Houston, Texas 77052

AUG 31 1983

Dear Sir:

Re: Reconsideration of Internal Advice 74/80 - Classification of Hydrogenated Pyrolysis Gasoline

The decision of March 16, 1983 (065255) stated that hydrogenated pyrolysis gasoline (HPG), a by-product of a product used as a source of benzene, was classified as a nonbenzenoid petroleum product, even though it contained about 7 percent dutiable synthetic benzenoids. The basis for that decision was that it was believed that the synthetic benzenoids produced were incidental to the main purpose of the product - i.e. - a benzene source; they were not essential to the HPG; and that there was a precedent for regarding the amount of synthetic benzenoids present as de minimis.

However, additional evidence submitted is to the effect that while benzene may be the desired product initially, the HPG cannot be regarded as an insignificant product, as it is widely used as a gasoline blending stock, and sought after for that purpose. In this connection, the ethylbenzenes produced are said to be desirable components, and once the benzene and other "crudes" are removed, the ethylbenzene in the remainder will increase, thus, enhancing its value in the desired blending stock.

Under such circumstances, it is not believed that the ethylbenzene content in the HPG in question may be considered de minimis.

Therefore, the ruling of March 16, 1983 (065255) is revoked.

The HPG described in the March 16, 1983, decision is classified as a benzenoid mixture in former item 403.90, Tariff Schedules of the United States, (now 407.16).

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

065255

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12 MAR 1981

CLA-2 CO:R:CV:G
066127 JH

Dear

This is reference to your interest in the classification of several silicone products. The description and classification of these products are as follows:

Silicone Catalyst 70 A is described as an accelerator used in the manufacture of silicone release coatings on paper, film, or foil for pressure sensitive adhesives. It is a solution of nonbenzenoid nitrogenous compounds in toluene. This product is classifiable under the provision for mixtures not specially provided for, in item 432.10, Tariff Schedules of the United States (TSUS), and dutiable at the rate applicable to nitrogenous compounds in item 425.52 at 7.9 percent ad valorem.

Silicone L-EP 6481 is said to be for the addition of silicone release coatings where a modified release is necessary. It is described as a solution of alkylpolysiloxanes in xylene. The product is classifiable under the provision for mixtures not specially provided for, in item 432.10, TSUS, dutiable at the rate of 5 percent ad valorem.

Silicone L-EP 6503 is described as for solventless application to paper as a release coating. It is a thermosetting nonbenzenoid synthetic plastics material, and is classifiable under the provision for synthetic plastics materials in item 445.56, TSUS, dutiable at 1.2 cents per pound plus 9.4 percent ad valorem.

Silicone L-EP 6504 is described as an accelerator for solventless application of silicon to paper as a release coating. The product is a mixture of trimethylol propane diallyl ether monoacetate and organic sulfer compound. It is classifiable under the provision for mixtures not specially provided for, in item 432.25, TSUS, subject to the rate of duty applicable to ether-ester of a polyhydric alcohol in item 428.47, TSUS, dutiable at 12.3 percent ad valorem.

Silicone L-EP 6505 is described as used in conjunction with bulk catalyst for solventless application of silicon to paper as a release coating. It is said to be a mixture of dimethylpoly siloxanes, ethanol, trimethlamine. This product is classifiable under the provision for mixtures in item 430.20, TSUS, at 5 percent ad valorem.

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Silicone L-EP 6506 described as a mixture with silicon L-EP 6503 to vary the release of obtained from pressure sensitive adhesives. This product is a mixture of hydrogen methyl polysiloxane, trimethylol propane diallyl ether monoacetate and methyl ester of rosin. This product is classifiable under the provision for mixtures not specially provided for, in item 432.25, TSUS, and subject to the rate applicable to trimethylol propane diallyl ether monacetate in item 428.47, TSUS, at 12.3 percent ad valorem.

Silicone L-EP 6510 which is described as an antifoam for fermentation of beer, pharmaceuticals and direct addition to food processing operations. The product is a mixture of dimethyl polysiloxane and a fatty ester of polyhydric alcohol. This product is classifiable under the provision for mixtures not specially provided for, in item 432.25, and subject to the rate of duty applicable to the fatty ester of a polyhydric alcohol in item 465.10, dutiable at 1.6 cents per pound plus 6.8 percent ad valorem.

Silicone Catalyst 70 B is a solution of tetrabutyldiaceoxytin oxide dimer in commercial xylene. The product is classifiable under the provision for mixtures not specially provided in item 432.10, TSUS, dutiable at 5 percent ad valorem.

Sincerely,

(Signed) A. P. SCHIFFLIN

Arthur P. Schifflin
Chief, General
Classification Branch

066127

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F11

09 SEP 1980

CLA-2:RRUCGC
066201 PR

Regional Commissioner
U.S. Customhouse
6 World Trade Center
New York, New York 10048

Dear Sir:

This letter concerns the tariff classification of wearing apparel sets.

After the Customs Court decision in J. C. Penney Purchasing Corp. v. United States, 77 Cust. Ct. 48, C.D. 4671 (1976), this office took the position that C.D. 4671 was not to be so liberally construed that all apparel sets would be classifiable as entireties. This position was contrary to the recommendation of the Area Director, New York Seaport. In Headquarters Ruling 059722, dated April 10, 1979, in response to a request for reconsideration by the Acting Area Director, this office thoroughly explained the judicial decisions in the area of entireties, and, while modifying the guidelines on entireties somewhat, adhered to our prior position on the application of C.D. 4671.

In a subsequent request for reconsideration of H/R 059722, file CLA-1-02,S:C:D:II-73-985, the Acting Area Director stated "We cannot accept the third criterion" because it "is completely in conflict with recent court decisions" and was taken "completely out of context." Headquarters letter of May 8, 1980, explained that Headquarters believes the paragraph in question was not taken out of context but, rather, represents a general statement of the law. Headquarters then specifically reaffirmed its holding in H/R 059722 and the principles expressed therein.

It has now come to our attention that at least some of the national import specialists in New York are choosing not to follow H/R 059722. Instead, according to information received at Headquarters, the position taken by some of the import specialists is that virtually all wearing apparel sets will be classified as entireties unless Headquarters has specifically ruled to the contrary (i.e. sweater and shirt sets, the subject of H/R 059722).

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In view of the foregoing, it is requested that you direct the national import specialists to follow the principles set out in Headquarters letters of April 13, 1979, and May 8, 1980.

The area of entireties in tariff classification is recognized to be troublesome and difficult because of the subjectivity involved in determining whether a new article possesses a character or use different than any of its parts. However, if the import specialists have real problems with respect to the application to particular articles of merchandise of the principles expressed in the Headquarters letters referred to above, they may always obtain rulings from this office through the internal advice procedure.

Thank you for your cooperation in this matter.

Sincerely,

Donald Lewis
Director
Regulations and Rulings

066 201

[redacted]

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

29 JAN 1981

CLA-2:CO:R:CV:G
066364 JCP

Chief, Duty Assessment Branch 3/4
New York, New York 10042

Director, Classification and Value Division

C.I.E. Circulars 412/61, 113/66 and Headquarters Letter
TC 456.42, October 13, 1969, Folding Slippers and Case
(Your Memorandum of July 14, 1980, CLA-2-07:S:C:R:27.240)

In your memorandum you suggested that the subject former rulings are inconsistent and that a change of practice under 19 CFR 177.10(c) is in order. Our decision in this matter follows.

ISSUE:

In your memorandum you stated that slippers imported in cases or pouches for travelers are properly classifiable under the applicable provisions for footwear in Subpart A, Part 1, Schedule 7, Tariff Schedules of the United States (TSUS). However, you apparently believe that the subject rulings leave the authority for the correct classification of slippers in pouches in doubt and also leave the separate tariff treatment of the pouches they are imported in in doubt.

FACTS:

You submitted a pair of imitation leather slippers in a zippered imitation leather case as an example of the type of merchandise at issue.

LAW AND ANALYSIS:

Under the provisions for articles of leather in tariff acts of 1913, 1922 and 1930, leather pouches containing slippers were considered entireties

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and classified as leather cases fitted with travel sets. Abs. 38313, 29 Treas. Dec. 216 (1915); Abs. 40096, 31 Treas. Dec. 160 (1916); Abs. 49892, 45 Treas. Dec. 635 (1925); C.I.E. 512/71.

In the present tariff schedules, the higher duty rate for certain sets in leather cases was carried over in Item 651.11, TSUS. Tariff Classification Study, C.I.E. 1/64, p. 456. However, that provision specifically covers manicure, pedicure, etc., sets, and does not cover the type of merchandise in question. In C.I.E. 119/66 we held that the new tariff schedules, in effect, accomplished a duty rate reduction for leather slippers in leather pouches by holding them classifiable under the provision for leather luggage, whether or not fitted with traveling or similar sets, in former item 706.04, TSUS. This ruling, which was not published as a Treasury Decision, is at variance with the designation of what constitutes luggage in Headnote 2(a), Subpart D, Part 1, Schedule 7, TSUS. A correct application of the cited headnote definition was made in C.I.E. 1762/64, Suppl. No. 1, in which a vinyl slipper pouch was not regarded as luggage. However, in that decision it was held that the Technical Amendments Act of 1965 amending General Headnote 6(b)(i), TSUS, broadened the concept of what was to be regarded as a container dutiable with its contents to include slipper pouches.

The legislative history, however, shows that the amendment to General Headnote 6 was intended merely to correct an error and to preserve a preexisting classification practice without change. Senate Report No. 430, 90th Cong. 1st Sess. (1967). In this connection, slipper pouches and certain other types of cases were not regarded as

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containers and were classified as entireties with their contents under the general principles applicable to entireties. Abs. 40096, supra; Lafayette Radio Electronics Corporation v. United States, 421 F. 2d. 751, C.A.D. 977 (1970). But there were other indications that the concept of what was to be regarded as a container was to be more liberally construed under the present tariff schedules. See, for example, Headnote 2(a)(ii), Subpart B, Part 1, Schedule 7, TSUS.

RULING:

Therefore, C.I.E. 1762/64, Suppl. No. 1, is affirmed and all footwear contained in non-leather pouches should be accorded a dutiable status which is consistent with that decision. This includes leather footwear in non-leather pouches. In this connection, C.I.E. 119/66 cannot be regarded as a classification precedent for leather footwear in non-leather pouches in view of Headnote 3(ii), Subpart B, Part 1, Schedule 7, TSUS. C.I.E. 119/66 is revoked as to footwear in leather pouches for which classification in accordance with this decision results in an equal or lower rate of duty.

As you know, the Commissioner must make a determination that an established and uniform classification practice exists before a change of practice can be proposed. Asiatic Petroleum Corp. v. United States, 449 F. 2d 1399, C.A.C.C. 1029 (1971). Since C.I.E. 119/66 was not published in accordance with the applicable regulations, it cannot serve as the basis for a finding that a uniform classification practice has been established. Accordingly, we would require further specific information concerning actual importations of footwear in leather pouches in order to determine whether a practice exists based on liquidations.

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Further action to revoke C.I.E. 115/66 either with or without a correlative change of practice action, will await your further response in this matter. If a uniform practice to classify footwear in leather cases under provisions requiring lower rates than those resulting from the application of the instant decision has not been established by liquidations, C.I.E. 119/66 would have to be regarded as revoked in its entirety.

(Signed Arthur P. Schifflin

Harvey P. Fox

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16 JAN 1981

066464

CLA-2 CO:R:CV:G
066464 ICB

[redacted]

Dear [redacted]

We have your letter of July 31, 1980, regarding the importation of gold coins.

Metal coins (including gold coins) are duty free under item 653.22, Tariff Schedules of the United States. The only question is whether the article is in fact, a coin. The general rule is whether the coin involved has been issued by a government authority for use as money. Commemorative medals which are not recognized as being used as money are not coins, even if issued by a government authority.

The Mexican 50 peso gold coin and the Krugerrand of South Africa are recognized coins and are entitled to duty free entry. We believe that the Canadian maple leafs are also duty free although our files do not show that we have ruled on them and we have no information showing their issuance as coins by the Canadian authorities.

U.S. gold medallions purchased through the Post Office would be entitled to duty free treatment under item 800.00, TSUS, as returned products of the United States. These articles are not considered to be coins as they have no use as money.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief
General Classification Branch

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

APR 3 1981

CLA-2:CO:R:CV
066869 BF

[redacted]

Dear [redacted]

This is in response to your letter of September 25, 1980, concerning the tariff classification of fruit and vegetable shapes.

The fruit and vegetable shapes have hollow bodies made by sewing together the edges of cut sections of a nonwoven textiled fabric. The shapes have a cluster of leaves attached on a stem and have glued applique faces of nonwoven fabric.

The fabrics are of a needle punched nonwoven construction. While no fiber content was furnished, it appears that the article is composed of a blend of wool and rayon. Therefore, the merchandise would be classifiable as articles of nonwoven textile material dependent on the component fiber in chief value.

If the article is in chief value of wool, it would be classifiable under the provision for nonwoven fabrics, of wool, other, (category 469) in item 355.18, Tariff Schedules of the United States (TSUS), dutiable at the rate of 16 percent ad valorem.

If the article is in chief value of rayon, it would be classifiable under the provision for nonwoven fabrics, of man-made fibers, (category 669), in item 355.25, TSUS, dutiable at the rate of 12 cents per pound plus 15 percent ad valorem.

The articles may also be subject to textile restraints under the above category numbers depending upon the country of origin.

Sincerely,

[redacted] (Signed) R. F. SCHIFFLER

[redacted] Harvey B. Fox
Director, Classification
and Value Division

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CODE AND DATE	(1) INITIATOR	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

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JAN 13 1982

CLA-2:CO:R:CV:S
067642 TL

[redacted]

Dear [redacted]

Your June 10, 1981, letter has been referred to this office for direct reply.

In your letter you requested a determination as to the proper classification of "...high-quality, limited edition prints, individually numbered and signed, of work done by Ojibway and Cree artists ..." These were described in the following paragraph:

> The prints are produced by the Serigraph or silk screen, process, in which the screens are all hand-cut, each colour individually applied, and the entire process carried out by hand. It is not, in any sense, a lithography, or an electromechanical process.

You suggest item 765.03, Tariff Schedules of the United States, (TSUS). Item 765.10, TSUS, was also suggested as the correct provision under which to classify these prints.

From the documentation submitted with this request it appears that several questions are presented:

1. Are these prints made with the use of a stencil.

2. Are these precluded from classification as works of art by the fact that they are made by a silk screen process.

Item 765.03, TSUS, is a provision for:

> Paintings, pastels, drawings, and sketches, all the foregoing, whether or not originals, executed wholly by hand....

Item 765.10, TSUS, is a provision for:

> Engravings, etchings, lithographs, woodcuts, and other prints, all the foregoing, unbound, and printed by hand from plates, stones, or blocks etched, drawn, or engraved with hand tools....

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Both 765.03, TSUS, and 765.10, TSUS, occur in Subpart A, Part 11, Schedule 7, TSUS. Each has to comply with the headnotes to Subpart A. Headnote 1(iii) precludes the classification of "articles made in any part by stencilling or by photochemical or other mechanical processes;".

The facts presented by your letter do not address the first question. However, it the prints are stencilled, Headnote 1(iii) precludes them for classification under items 765.03 and 765.10, TSUS.

The facts revealed by your letter are sketchy. However, it appears that merely because the prints are made by a so-called "silk screen" does not preclude them from classification under either item 765.03 or 765.10, TSUS, if the prints are made wholly by the hand transfer process used in serigraphy. You should be aware of the fact that the requirements of the language in these two provisions and section 10.48, Customs Regulations, must be met for duty-free entry.

Sincerely,

[Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

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APR 9 1981

CLA-2 CO:R:CV:G
068247 JH

Dear

This is in response to your letter of February 17, 1981, concerning the tariff classification of TERIC 12A3, a component of your product leather lube.

The sample was described as a polyethoxylated lauryl alcohol. Accordingly, leather lube which contains TERIC 12A3 containing the above chemical is classifiable as a mixture in item 432.25, TSUS. The rate of duty is 4.7% ad valorem.

Sincerely,

(signed) A. P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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12 NOV 1981

CLA-2 CO:R:CV:G
068628 c

This ruling concerns the tariff classification of certain footwear manufactured in Korea.

FACTS:

The samples submitted are women's slip-on casuals with flat plastic outsoles and jute wrapped plastic platforms. Sample No. F05506 has a closed toe, closed heel, espadrille style upper. Sample No. F05507 has an open toe, open heel upper which consists of three strips which come together at the top. The uppers of both samples are made from "Echelon 734" which consists of a woven nylon fabric to which ~~fabric~~ plastic dots measuring approximately 1/32 inch in diameter have been applied. These plastic dots are not connected to each other. The upper material has thin strips of plastic capping around the edges.

The inquirer maintains that the sample shoes are classifiable under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which over 90 percent of the exterior surface area is rubber or plastics in item 700.56, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 6 percent ad valorem.

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ISSUE:

Whether the exterior surface area of the shoe uppers is over 90 percent plastic.

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LAW AND ANALYSIS:

Schedule 7, Part 1, Subpart A, Headnote 3, TSUS, provides that:

> For the purpose of items 700.51 through 700.56, the rubber or plastics forming the exterior surface area specified, if supported by fabric or other material, must coat or fill the supporting material with a quantity of rubber or plastics sufficient to visibly and significantly affect the surface otherwise then by change in color, whether or not the color has been changed thereby.

Schedule 3, Part 4, Subpart C, Headnote 2(a), TSUS, provides that:

> For the purposes of the tariff schedules - the term 'coated or filled' as used with reference to textile fabrics and other textile articles, means that any such fabric or other article has been coated or filled (whether or not impregnated) with gums, starches, pastes, clays, plastics materials, rubber, flock, or other substances, so as to visibly and significantly affect the surface or surfaces thereof otherwise then by color, whether or not the color has been changed thereby.

The inquirer claims that pursuant to the Schedule 7, Part 1, Subpart A, Headnote 3, TSUS, supra, the plastic dots visibly and significantly affect the surface of the textile material. Specifically, he notes that a mere visual examination of the sample uppers demonstrates that the coating visibly affects the surface of the upper material. In addition, he states that the coating significantly affects the surface area otherwise than by a change in color. As evidence of the validity of this statement, the inquirer has enclosed a laboratory test report issued by the Shoe and Allied Trade Research Organization which indicates that the coating substantially increases the strength of the upper material.

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The inquirer has cited the case of Bruce Duncan Co. v. United States, 80 Cust. Ct. 48, C.D. 4736 (1978), as authority for his claim that the shoe uppers are of plastic. In this case the court held that certain material invoiced as fusible interlining cloth having 35,000 points or dots per square foot falls within the term coated fabrics as set forth in Schedule 3, Part 4, Subpart C, Headnote 2(a), TSUS, supra. The court in arriving at its conclusion rejected the Government's claim that the term "coated fabric" requires a continuous uninterrupted layer of coated material.

The inquirer also cites HRL 059184 dated August 22, 1979, as authority for his position. That ruling follows Bruce Duncan in that woven twill fabric with dots of non-transparent resinous plastic applied in a repeat pattern was found to be coated fabric. In reaching its decision this office stated that "Because of the special characteristic imparted to the fabric by the large quantity of plastic applied to this material, and the close proximity of the dots, the fiber is regarded as being visibly and significantly coated."

We agree with the inquirer that the dots not only produced a visible effect on the textile surface on which they are applied but they also strengthen that textile in the manner described in the laboratory report.

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However, it is our view that the result reached in the Duncan case does not compel the conclusion that over 90 percent of the exterior surface area of the shoe uppers involved is plastic. It should be noted that the classification of shoes under the tariff provisions covering rubber footwear is determined strictly by the relative weights of the shoe components and the relative surface areas of the various materials comprising the exterior surface area of the uppers. It should be noted that Schedule 7, Part 1, Subpart A, Headnote 3, TSUS, states that it is "for the purposes of items 700.51 through 700.56 ***" and not that it is for the purposes of determining whether or not textile forming the upper is considered a 'coated fabric'. This headnote is concerned about one plastic exterior surface, which is supported by a textile or other material, not a group of unconnected surfaces (the dots). On the other hand Schedule 3, Part 4, Subpart C, Headnote 2(a), TSUS, concerns textile fabrics and articles which are coated.

In conclusion, it is our view that the Duncan ruling is inapplicable in this instance. The language of item 700.56, TSUS, requires a precise measurement of the surface area of each component material comprising the uppers of the footwear. Specifically, the non-plastic areas between the plastic dots must be measured and compared with the area covered by the plastic dots in order to determine whether plastic covers over 90 percent of the exterior surface area of the uppers.

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The exterior surface area of the uppers in the sample shoes is not over 90 percent plastics. Consequently, they do not qualify for classification under item 700.50.

HOLDING:

Sample shoes, Nos. F05506 and F05507, are classifiable under the provision for footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners in item 700.59, TSUS, and dutiable at the rate of 37.5 percent ad valorem.

The tariff classification set forth above is not affected by the country of origin of the shoes. Necessarily, the rate of duty would be higher if the shoes originated in one of the communist countries listed in General Headnote 3(f), TSUS.

(Signed Arthur P. Schifflin

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

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30 JUL 1981

CLA-2 CO:R:CV:G
068672 JAS

District Director of Customs
Seattle, Washington 98714

Dear Sir:

Re: This Ruling Concerns an Application for Further Review of Protest No. 3004-0-000126, Filed on Behalf of the Importer of Certain Plastic Fish Boxes or Containers from Canada

FACTS:

These boxes or containers come in a variety of colors and are made of high density polyethylene, and are used in the fishing industry. Aboard commercial fishing vessels they are used to store freshly caught fish, crabs, eels, etc. and to protect them from crushing, rough handling etc. They have non-skid runners to permit stacking above decks as a space-saving measure. They also allow excess water to drain off. In port, the fish are weighed in these containers, auctioned off to wholesalers and transported in them to the canneries to be processed.

ISSUE:

Are the fish boxes or containers of the class or kind of merchandise chiefly used for the packing, transporting, or marketing of merchandise, and classifiable in item 772.20, Tariff Schedules of the United States (TSUS)?

LAW AND ANALYSIS:

Item 772.20, TSUS, is a chief use provision. In accordance with General Interpretative Rule 10(e)(i), TSUS, a tariff classification controlled by use is determined in accordance with the use in the United States at, or

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immediately prior to the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined. While these containers are undoubtedly used to package and transport newly caught fish, they are used in large part to store these fish on board during long periods after they are caught and while they move from place to place on the docks and to the canneries. Moreover, these containers are similar in many respects to those used for storing parts in factories for ease of accessibility and various other in-plant storage/handling operations. Consequently, evidence is lacking that the subject fish boxes or containers belong to that class or kind of merchandise chiefly used for the packing, transporting, or marketing of merchandise.

HOLDING:

The fish boxes or containers are classifiable under the tariff provision for articles, not specially provided for, of rubber or plastics, in item 774.55, TSUS, dutiable at the rate of 7.7 percent ad valorem.

You should deny the protest. Protestant should be furnished a copy of this decision. Your file is returned.

(Signed Arthur P. Schifflin

[redacted]

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

068672

05 NOV 1981

CLA-2 CO:R:CV:G
068751 JH

Dear

This is in reference to your letter concerning Headquarters decision of May 4, 1981, (065892) concerning the tariff classification of off-grade methanol.

The methanol was described as a component of dimethyl terephalate which is used in the production of polyester yarn, with the methanol being reused. As a result the methanol used was not considered a waste but was classifiable as methanol in item 427.97, Tariff Schedules of the United States (TSUS).

It is now asserted that the methanol is purified before being reused. A flow chart was submitted, and it was stated that the impure methanol, containing 95 percent methanol, 4 to 5 percent water, 0 to 1 percent ethylene glycol, is recovered from the polymerization step; that the impure methanol cannot be used for its original purposes without first purification prior to recycling and use in the esterification process. Therefore, because of the need for such purification, the product is felt to be a waste.

The question is whether methanol of 95 percent purity, which cannot be used again in a particular application without purification, is classifiable as a waste.

A tariff definition of waste is a material which has become useless for the original purposes for which it was designed, and is fit only for remanufacture into something else.

Generally, a chemical of 95 percent purity is considered a commercial grade of the chemical, with possibly various other technical grades existing of varying purities. While methanol of 95 percent purity may require purification for this particular application, there is no indication that such methanol would not be suitable for other uses. It is understood, for instance, that methanol of 95 percent purity is used as a solvent in windshield cleaners and anti-freeze preparations.

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Therefore, methanol of 95 percent purity cannot be considered a waste for tariff purposes, suitable only for remanufacture into something else, but rather is classifiable as methanol in item 427.97, TSUS.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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09 SEP 1981

CLA-2 CO:R:CV:G
068850 JH

Dear

We have reviewed our decision on the tariff classification of antimony trioxide coated with dioctylphthalate on the basis of your Aide Memoire.

Antimony trioxide is classified as an inorganic compound in item 417.50, Tariff Schedules of the United States (TSUS). Dioctylphthalate is classifiable as a benzenoid plasticizer in item 409.34. As a result the antimony trioxide coated with the plasticizer was deemed an advanced product and therefore classified as a mixture in part of a benzenoid chemical in item 413.51, TSUS.

You state that the antimony trioxide is used as a fire retardant component in synthetic resins and, because it is very dusty, it is coated with the benzenoid plasticizer, which represents 2 to 3 percent of the total weight. You add that the plasticizer is required to be used by certain regulations of the Environmental Protection Agency (EPA), but that it does not alter the physical properties of the antimony trioxide, so that you feel that the addition of the plasticizer to the antimony trioxide does not represent a processing beyond the usual commercial product.

Generally speaking, chemicals classifiable in Part 2 of the chemical schedule represent chemicals, inorganic or organic, in elemental, mixture or compound state, and are not therefore considered advanced or finished chemical products, which may have solvents, plasticizers, and/or other components added. One exception to this may be the chemical compound which has a small amount of a benzenoid chemical added which does not play a part in the ultimate function of the compound. If the benzenoid plasticizer's sole function is the reduction of dust in the area where the antimony trioxide was used, the plasticzier in small amounts may be ignored in the classification of the compound. In our original decision it was our understanding that in addition to the reducing the amount of dust present, the plasticizer when used in stated concentrations acted

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as a dispersant for the antimony trioxide powder in the manufacturing process, that the plasticizer aided in the thorough distribution of the powder throughout the final product, thus maximizing its fire retardant effect.

However, we have again researched the literature and checked with industry sources on this point and conclude that the chief use of the benzenoid chemical of the type and amount in question is as a dust suppressant, and any other plasticizer function is minimal. Accordingly, for classification purposes, the benzenoid plasticizer, in the concentration listed, is de minimis. Therefore, antimony trioxide as described is classifiable in Item 417.50, TSUS.

The decision of November 20, 1981, (060570) is hereby revoked.

Sincerely,

(Signed) K. P. SCHIFFLIN

Arthur P. Schifflin
Chief, General
Classification Branch

068850

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22 OCT 1981

CLA-2 CO:R:CV:G
068879 PR

[redacted]

Dear [redacted]

This is in reply to your letter of July 15, 1981, on behalf of [redacted] concerning the tariff status of "Turnout Clothing." The subject merchandise is worn for protection by firefighters.

The coat and pants are composed of three separate layers of fabric. These layers do not appear to be laminated together and for the purposes of this ruling we assume that they are not. Style No. 110 uses a Nomex III outer shell which has neoprene on its inside surface, a Kevlar needle-punched thermal insulation interlining which has neoprene on its outer surface, and a Nomex woven fabric lining. Style No. 115 utilizes an outer shell of woven filament Aramid Nomex which has neoprene on the inside surface, a Kevlar needle-punched thermal insulation interlining with neoprene on its outer surface, and a woven fabric Nomex liner. Nomex is said to be fire, acid, and chemical resistant, while Kevlar has the same properties as well as better tear, cut, and abrasion resistant.

The clothing is designed to protect the wearer from external heat sources and is said to offer the advantages of light weight, high heat tolerance, flame and chemical resistance, and the inability to absorb water. It is stated that the clothing is designed for firefighters and that it will be sold to the fire departments of various cities and municipalities, the armed forces, and possibly to industrial companies.

You inquire as to whether clothing made for use by professional firefighters is entitled to free entry under the provisions of item 853.10 Tariff Schedules of the United States (TSUS). This statute covers life saving apparatus imported for the use of an institution established to encourage the saving of human life. Importations by a fire department would not qualify for free entry because its primary purpose is to put out fires and not to save lives. However, a rescue squad or other special unit within the fire department, if established primarily to save human lives, may qualify and obtain free entry if the importation is for its exclusive use in life saving.

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If the subject garments do not qualify for entry under item 853.10, TSUS, they would be classifiable, if in chief value of the Kevlar needle-punched thermal insulation interlining, under the provision for articles not specially provided for, of nonwoven fabric, of man-made fibers, in item 355.25, TSUS, with duty at the rate of 12 cents per pound plus 15 percent ad valorem, or, if in chief value of the woven outer shell and lining materials, under the provision for other textile articles not specially provided for, of man-made fibers, in item 389.62, TSUS, with duty at the rate of 25 cents per pound plus 15 percent ad valorem.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

068879

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

20 NOV 1981

CLA-2 CO:R:C:G
088950 PR

This ruling concerns the tariff classification of certain bookcloth material manufactured in Holland.

FACTS:

Several swatches of material were submitted for our examination. The samples all are plain woven textile fabrics which have been laminated with a paper backing. The inquirer states that the cloth is partly coated or filled with an acrylic-starch resin. Each of the samples has a paper backing which appears to have been applied to the fabric with an adhesive. The fabric in four samples is wholly of cotton, three samples have rayon fabrics, and two samples have blended fiber fabrics which consist of linen, rayon, and cotton in various percentages. The merchandise is imported in rolls of approximately 110 yards long and is used for bookcovers or binding. The inquirer indicates that the paper is used to prevent the glue in the paste-making machine from bleeding through or penetrating the cloth.

ISSUE:

The issue presented is the proper tariff classification of the subject merchandise.

LAW AND ANALYSIS:

The inquirer believes that the subject merchandise should be classified either as a coated or filled fabric, either in items 355.60-.65, Tariff Schedules of the United States (TSUS), or in items 350.20-.45, TSUS. As an alternative, classification under the provision for reinforced paper in item 253.35, TSUS, is suggested.

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The merchandise is not classifiable as a coated or filled fabric because it has paper laminated to one side of it. Articles which, in fact, constitute more than other articles are not classifiable under the provisions applicable to those other articles. Mellon Bearings Inc. v. United States, 52 CCPA 61, C.A.D. 1240 (1965).

Merchandise as represented by the submitted samples is also not classifiable as reinforced paper because, in this instance, the paper is the reinforcing agent and not the medium being reinforced. See U. S. Jarnes & Co. v. United States, 52 Cust. Ct. 165 at pg. 162, C.D. 2464 (1964).

Accordingly, since the subject merchandise has been laminated with paper and is not specifically provided for in any other provision in the tariff schedules, that merchandise is classifiable under the provisions for other textile fabrics, including laminated fabrics, not specially provided for, in item 359.10-60, TSUS. The classification of the individual fabrics to be imported depends on the component fibers of chief value in those fabrics. If the fabrics are in chief value of cotton, the merchandise is classifiable in item 359.10, TSUS, with duty at the rate of 15 percent ad valorem; if the merchandise is in chief value of linen, it is classifiable in item 359.20, TSUS, with duty at the rate of 6.5 percent ad valorem; and, if in chief value of rayon, the merchandise is classifiable in item 359.50, TSUS, with duty at the rate of 25 cents per pound plus 30 percent ad valorem. An articles is in chief value of material if such material exceeds in value each other single component material of the article.

(Signed Arthur P. Schifflin

[redacted]

CODE AND DATE	[redacted]						
SURNAME	[redacted]						
CODE AND DATE	[redacted]						
SURNAME	[redacted]			Director, Classification and Value Division			

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

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CLA-2 CO:R:CV:G
068962 PR

Acting Commissioner of Customs
THRU: Assistant Commissioner (Commercial Operations)

Director, Classification and Value Division

Interpretation of Court Decision Concerning the Classification of Coated or Filled Fabrics

Headnote 2(c), Subpart 4C, Schedule 3, Tariff Schedules of the United States (TSUS), requires that for a fabric to be coated or filled for tariff purposes, the coating or filling material must visibly and significantly affect the surface or surfaces of the fabric otherwise than by a change in color. On September 27, 1978, the Customs Court in C.D. 4769 determined that a fabric which had the appearance of stiffness was coated or filled within the purview of Headnote 2(a). This was affirmed by the Court of Customs and Patent Appeals on November 15, 1979, in C.A.D. 1236.

In order to carry out what we believe was the intent of Congress when Headnote 2(a) was enacted, and to comply with the holding of the Court in C.D. 4769, we have prepared an interpretive T.D. for your signature, to be published in the Customs Bulletin. The proposed T.D. notifies the public that Customs is strictly interpreting the court case. It will also make things somewhat easier for our import specialists to determine when fabrics are coated or filled for tariff purposes.

068962

Harvey D. Fox

See Next FRAME

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 101 (1-1-73)

(T.D. 81-)

This notice interprets the decision in C.D. 4769, decided September 27, 1978, affirmed by C.A.D. 1236, decided November 15, 1979, which held that certain fabric was coated or filled for the purposes of Headnote 2(a), Subpart 4C, Schedule 3, TSUS.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS
WASHINGTON, D.C., AUGUST , 1981

In H. Rosenthal Co. v. United States, C.D. 4769, decided September 27, 1978, the United States Customs Court held that the fabric from which certain coats were constructed fell within the definition of "coated or filled", in Headnote 2(a), Subpart 4C, Schedule 3, Tariff Schedules of the United States (TSUS). That definition requires that for a fabric to be coated or filled for tariff purposes, the coating or filling must visibly and significantly affect the surface or surfaces thereof, otherwise than by a change in color.

The Customs Court held that it is the effect imparted by the coating material, and not the material itself, that must be visible. The Court went on to observe that the fabric before it had the "appearance of stiffness" and concluded, apparently on the basis of that stiffness, the fabric "is coated within the purview of the controlling headnote."

The appellate decision by the Court of Customs and Patent Appeals did not discuss this area except to note that the Customs Court "found the fabric surface to have been visibly affected by the coating."

Stiffness is normally the quality of rigidity which is attributable to an article or fabric. It is not a term which has a clear meaning when used in a description of the surface of that article or fabric. The absence of a specific explanation by the Customs Court in Rosenthal of how the surface or surfaces of the fabric in question were visibly

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affected by the added plastics material is causing confusion and a lack of uniformity in the classification of coated or filled fabrics. For this reason, Customs is issuing this interpretation of the decision in Rosenthal.

Considering the holding in Rosenthal and the stated basis for that holding, Customs will consider the surface of a fabric to be visibly affected by a coating or filling if (1) the coating or filling material can be separately distinguished from the fabric by the naked eye; (2) the coating or filling material imparts a shine, luster or glossy appearance, or a dull appearance, that is noticeable by a casual examination; or (3) the coating or filling material has caused the fabric to have a pronounced (obvious) appearance of stiffness. In regard to the appearance of stiffness, the fabric should appear significantly more rigid than that fabric would be if not coated or filled.

All prior rulings by the Customs Service which are in conflict with the preceding paragraph are, pursuant to the authority in section 177.9(d), Customs Regulations (19 CFR 177.9(d)), hereby revoked.

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Acting Commissioner of Customs

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11 15 73)

16 OCT 1981

CLA-2 CO:R:CV:G
069114 JH

Dear

Your letter of August 31, 1981, concerns the classification of antimony trioxide coated with dioctyl phthalate.

We have recently reviewed our decision that antimony oxide coated with a benzenoid plasticizer of not over 3.0 percent by weight, is classifiable as a benzenoid mixture in item 413.51, Tariff Schedules of the United States (TSUS). That decision was based on information that benzenoid wetting agent assisted in the distribution of the powder throughout the final product, and thus would be considered essential to the finishing of the desired product. Subsequently, additional technical information was submitted, which, together with the additional data received from industry sources, established that the chief use of the benzenoid plasticizer or wetting agent in this instance, in the amount stated, was a dust suppressant, and any other plasticizer function was minimal.

Accordingly, for classification purposes, the benzenoid component in the percentage listed is considered de minimis, and the antimony trioxide is, in fact, classified in item 417.50, TSUS.

Sincerely,

Philip L. Robins

for Arthur P. Schifflin
Chief, General
Classification Branch

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FEB 15 1983

CLA-2 CO:R:CV:G
069234 JR

Dear Sir:

Re: Request for Internal Advice 121/81

The initiator of this request seeks the proper classification of a "radioimmunoassay kit" used to detect Hepatitis Virus B antigen in the human body. The presence of certain antigens on the surface of the liver indicates the presence of hepatitis Virus B, the causal agent of the disease. Blood transfusions are a common source for the disease, so a routine screening of all blood products substantially diminishes the prevalence of the disease. See The Merck Manual of Diagnosis and Therapy (Rahway, New Jersey: 1977).

The 100 test version of the kit contains two vials each containing chimpanzee antibodies that specifically react with Hepatitis B Surface antigen. The antibodies are rendered radioactive by iodination, described below. The kit also contains 100 polystyrene tubes coated with guinea pig antibodies that also specifically react with Hepatitis B surface antigen; a negative control, recalcified human plasma that is negative for the B antigen; a positive control, human plasma that is positive for the B antigen; and 10 grams of sodium chloride that is used for washing the immune complex created by the test reaction. The chimpanzee antibody and the two controls are buffered with bovine serum and contain small amounts of a chemical preservative.

The test begins by incubating one of the coated tubes in which a sample of the patient's serum or plasma has been added. If antigen is present in the patient's sample, then it forms an immune complex with the antibody coated on the tube. The sample is then washed with the sodium chloride to remove excess antigen. The antibody derived from chimpanzees is then added. This antibody forms a "sandwich" with the guinea pig when they surround the antigen present in the patient's sample. Excess antigen is then again removed by washing.

The radioactivity of the chimpanzee antibodies is achieved by attaching radioactive iodine atoms to the gamma globulin. The radioactivity is emitted during the creation of the immune complex, and the strength of emission is compared to the standards to determine the amount of antigen present in a patient's sample. This "trace" technique is not the only method of internal measurement - e.g., enzymes could be used - but it is a superior method. McGraw-Hill Dictionary of Science and Technology, "Radioimmunoassay."

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LAW AND ANALYSIS:

1. If imported together, two or more articles are classified as an entirety, rather than separately, if they are joined or used together to form a new article which has a character or use different from that of any of the components or in which one of the components is predominant. J. C. Penney Purchasing Corp. v. United States, 77 Cust. Ct 48, 54, C.A.D. 4671 (1976). Given the variety and complexity of products imported into the United States, it is not surprising that the doctrine of entireties has been variously expressed, sometimes obscurely, so that is seems a if there were several doctrines. The difficulty in the present case is aptly described by Minature Fashions, Inc. v. United States, 54 CCPA 11, 15, C.A.D. 894 (1966): "Where, however, the several components of a unit are to any extent alone susceptible of a separate use, the question of whether their individual identities are subordinated to the newly created entity is not so readily answered." We think that this more accurately states the case here than the initiator's contention that none of the components of the kit has a useful function as a separate entity. For example, the antibodies retain a separate identity in that they could be used with other, non-kit materials for the same kind of test or for different tests. The components are not limited by the manufacturing process to use with each other.

So the precise question is whether the components of the kit, which are susceptible to separate uses, nevertheless create an entirety because they are subordinated to the identity of the kit. The kit is designed as a commercial unit in two senses: first, the doses of the antibodies and the standards are matched in a limited number so that the kit can be used for a known number of tests; second, the kit includes all the major elements needed to carry out the test. The commercial identity of the kit satisfies scientific need: because the essence of a radioimmunoassay is the comparison of a standard with an unknown concentration of antigen, the inclusion of the standard and the radioactive tracer, a technique of internal measurement, creates a product that can accomplish the scientific result, which each component imported separately cannot accomplish. In their condition as imported, the kits are not merely a collection of substances imported together for convenience, but a new commercial entity. In sum, function, use, and design of the kits show that the various components are subordinated to the commercial unit or "newly created identity" of the kits themselves and that they are therefore properly considered entireties for tariff purposes. Donalds Ltd., Inc. v. United States, Cust. Ct. 310, C.D. 1619 (1954).

2. The initiator argues that the radioimmunoassay kits are properly classified under the provision for "Viruses, therapeutic serums, vaccines, toxins, antitoxins, and analogous biological products... "in item 437.75, TSUS, with a free rate of duty. The legislative history is critical to the

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understanding of item 437.76, TSUS. The Tariff Classification Study, Schedule 4, Part 6, p. 86 states that 437.76, TSUS, covers a group of "related articles which substantially correspond with the scope of the licensing requirements of the Public Health Service and the Department of Agriculture applicable to the importation of certain biological products." These requirements are set forth in 42 CFR § 73.1 (1960):

> (q) "Biologic product" means any virus, therapeutic serum, toxin, antitoxin, or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man:
>
> (1) A virus is a product containing the minute living cause of an infectious disease.
>
> (2) A therapeutic serum is the product obtained from the blood of an animal by removing the clot or clot components and the blood cells and intended for administration by a route other than ingestion.
>
> (3) A toxin is a product containing a soluble substance poisonous to laboratory animals or to man in doses of 1 milliliter or less (or equivalent in weight) of the product, and having the property, following the injection of non-fatal doses into an animal, of causing to be produced therein another soluble substance which specifically neutralizes the poisonous substance and which is demonstrable in the serum of the animal thus immunized.
>
> (4) An antitoxin is a product containing the soluble substance in serum or other body fluid of an immunized animal which specially neutralizes the toxin against which the animal is immune.
>
> (5) A product is analogous:
>
> (i) To a virus if prepared from or with a virus or agent actually or potentially infectious, without regard to the degree of virulence or toxicogenicity of the specific strain used.

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(ii) To a therapeutic serum, if composed of whole blood or plasma or containing some organic constituent or product other than a hormone or an amino acid, derived from whole blood, plasma, or serum and intended for administration by a route other than ingestion.

(iii) To a toxin or antitoxin, if intended irrespective of its source of origin, for the prevention, treatment, or cure of diseases or injuries of man through specific immunization.

(i) "Products" includes biologic products and trivalent organic arsenicals. A product is deemed "applicable to the prevention, treatment or cure of diseases or injuries of man" irrespective of the mode of adminstration or application recommended, including use when intended, through administration or application to a person, as an aid in diagnosis or in evaluating the degree of susceptibility or immunity possessed by a person, and including also any other use for purpose of diagnosis if the diagnostic substance so used is prepared from with the aid of a biologic product.

In Certified Blood Donor Services, Inc. v. United States, 62 CCPA 66, C.A.D. 1147 (1975), the Court of Customs and Patent Appeals classified rabbit serum that contained antibodies specific to certain antigens contained in the immunoglobulin (a protein) of a patient's blood sample. The rabbit serums were imported in vials. The court, held that:

> The imported serums are "obtained from the blood of an animal by removing... the blood cells," they contain "the soluble substance... which specifically neutralizes the toxin against which the animal is immune," and they are "applicable to the prevention, treatment or cure of diseases or injuries of man" because they are used "for purposes of diagnosis." Hence, the instant diagnostic serums are analogous biologic products...

This holding is somewhat confusing because the court conflated the definitions for therapeutic serums and antioxins, but one can infer that the serums were held to be analogous to antitoxins.

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But our National Import Specialist office in New York argues that because the radioimmunoassy kits contain nonbiological components, then the kits are "more than" biological products. That office identifies the test tubes and the sodium chloride as the critical nonbiological components. It could also be argued that the iodinated antibody in the kits adds a second function to the kits, creating a "dual primary function," under the "more than" doctrine. See Pollard Bearing Corp. v. United States, 62 CCPA 61, C.A.D. 1146 (1975). A product possessing a "dual primary function" cannot be classified under a provision that describes only one of the functions; the product is then "more than" the product described by the provision.

Both arguments implicitly assume that the provision in item 437.76, TSUS, requires that the merchandise it covers consist wholly of biological products, except, perhaps, for de minimis amounts of nonbiological substances. But even if this interpretation were valid, the inclusion of the test-tubes in the kit would not preclude classification in 437.76, TSUS. The test-tubes are merely usual and ordinary containers, not separately classifiable, but dutiable as part of their contents, within the meaning of General Headnote 6(b), TSUS. Note also that the rabbit serum in Certified Blood Donors was imported in vials, which did not preclude classification in 437.76, TSUS.

More fundamentally, the legislative history shows that 437.76, TSUS, does not require a product to consist wholly of biological substances. For, as we have seen, the Public Health Service Regulations define "products" a diagnostic substances "prepared from or with the aid of a biological product." 42 CFR 73.1(g)(5)(i)). The language plainly implies that a biologic product can include more than biological substances if the resulting product is "applicable to the prevention, treatment or cure of diseases or injuries of man." By the logic of the doctrine of entireties, the product in question is not an aggregate of various components, but a unified product - a radioimmunoassay kit - that must be considered as such. The collectivity is "prepared from or with the aid of" biological substances that carry out the stipulated use by means of the substances set out in 42 CFR 73.1. Item 437.76, TSUS, is virtually a use provision, or at least eo nomine provision in which the use of the product is critical in circumscribing the covered class of products. See United States v. Quon Quon, 46 CCPA 70, C.A.D. 699 (1959). The limitation on the composition of the kit is contained in the definition in 42 CFR 73.1; additional substances should not change a kit's classification if they simply contribute to the required use carried out by a particular defined biological substance.

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The breadth of coverage created by the legislative history also shows why the iodinated antibody does not create a second function within the meaning of the "more than" doctrine. Even if the conventional application of the doctrine implies that the kit has a "dual primary function, the breadth of the legislative history negates the application. For the radioactive function - an internal measurement system critical to the kit's identity as an entirety - merely augments the function required for classification in 437.76, TSUS:"... the prevention, treatment or cure of diseases or injuries of man." The iodinated antibody serves this function, and no other, so the "more than" doctrine is inapplicable.

Pharmacia Laboratories Inc. v. United States, 82 Cust. Ct. 166, C.D. 4798 (1979), aff'd _____ CCPA ____, C.A.D. 1235 (1979) does not contradict this reasoning. The appellate court here affirmed the lower court's finding that certain radioimmunoassay kits, quite similar to the one considered here, were "more than" "usefully radioactive compounds" provided for in 494.50, TSUS. Each kit contained an antibody, a standard, and a radioactive substance. The parties did not argue, and the court did not consider, 437.76, TSUS, as a possible classification. The court held, alternatively, that these kits were "too diverse", and hence more than, usefully radioactive compounds, and that the kits did not meet the tariff definition for "compound" in Headnote 2(a), Schedule 4, TSUS. If the presence of antibodies and a radioactive substance in one kit makes it too diverse for classification in 494.50, TSUS, then it would seem to follow that the kit is too diverse for classification in 437.76, TSUS. But this inference ignores the legislative history of 437.76, TSUS, and the lack of an equivalent legislative history in 494.50, TSUS. The latter provision lacks the broad intention found in 437.76, TSUS. Antibodies and a radioactive substance in a kit may be too diverse for classification as a "usefully radioactive compound;" but they are not too diverse for classification in a provision that covers products designed for the "prevention, cure, or treatment of diseases or injuries of man." The iodination, which does not change the biological nature of the antibody, serves the same broad function as the antibody. The breadth of the legislative history limits a conventional application of the "more than" doctrine.

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For these reasons, we think the described radioimmunoassay kit is properly classifiable in item 437.76, TSUS, with a free rate of duty.

Sincerely,

(Signed) Arthur P. Schifflin

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

FEB 19 1982

CLA-2 CO:R:CV:G
069587 JH

Dear Sir:

Decision on Application for Further Review of Protest No. 3802-1-00074, filed December 29, 1981, on the classification of off-grade methanol.

FACTS:

The methanol was described as a component of dimethyl terephalate which is used in the production of polyester yarn. The methanol is recovered from the polymerization step and purified prior to recycling and re-use. The impure methanol is said to be 95 percent methanol, with 4 to 5 percent water and 1 percent ethylene glycol.

ISSUE:

Whether the off-grade methanol is considered a waste in item 793.00, Tariff Schedules of the United States (TSUS), or is classifiable as methanol in item 427.97, TSUS.

LAW AND ANALYSIS:

It is argued that the off-grade methanol is unsuitable for use in the production of the yarn and in many other applications and, therefore, because of the impurities it should be considered a waste.

For tariff purposes, the classic definition of "waste" is a term which includes manufactured articles which have become useless for the original purpose for which they were made and fit only for remanufacture into something else. Waste includes a refuse, surplus, and useless stuff resulting from the manufacture or manufacturing

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processes, and is commercially unfit, without remanufacture, for the purposes for which the original material was suitable. Harley v. United States, 14 Ct. Cust. Appls. 12.

Also a "waste" was considered by the court to be a material which has ceased, through some change, to serve its original purpose or to be what it originally was. It has neither the characteristics of the raw material nor of the finished product and is unsuited for the purposes of either in its imported condition. (C.D. 1129).

If it is "waste" of any kind, the court said in another opinion, it must be fit under that part of the definition which covers "manufactured articles which have become useless for the original purposes for which they were made and fit only for remanufacture into something else." (C.D. 4343)

The methanol in question is of 95 percent purity. Although this may be impure for the particular polyester yarn application involved, the question is whether the methanol itself is no longer suitable as methanol without further processing. A methanol of 95 percent retains the characteristics of methanol and remains suitable for many applications.

HOLDING:

Methanol of approximately 95 percent purity is not a waste but is classifiable as methanol in item 427.97, TSUS.

You are directed to deny the protest in full.

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069587

A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Protest file is enclosed herewith.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Director, General
Classification Branch

Port Director of Customs
Water & 6th Streets
Port Huron, Michigan 48060

Enclosure

069587

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CLA-2 CO:R:CV:G
069643 JH

APR 28 1982

Dear [redacted]

We have reviewed the additional evidence concerning the classification of Tryglycol Dimercaptan (DMDO), which you submitted with your letter of February 4, 1982.

We remain of the opinion that the chemical remains classifiable in item 428.47, Tariff Schedules of the United States, a provision for other ethers of polyhydric alcohols. If you have any additional information you may wish to submit, we would be happy to consider it.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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15 JUL 1982

CLA-2 CO:R:CV:G
069643 JH

Dear Sir:

Re: Reconsideration of Internal Advice 151/81 - Classification of Triglycol Dimercaptan (DMDO)

The original decision in this case (069107) (November 18, 1981), concluded that as the compound was both an ether and thiol for tariff purposes, following Headnote 1, Part 2(D), Schedule 4, Tariff Schedules of the United States (TSUS), it was classifiable in the first functional group which described it in the tariff. Accordingly, DMDO was classifiable under the provision for ethers in item 428.47, TSUS.

It is now contended that as certain recognized technical authorities regard DMDO as a thiol or mercapton, it should be classifiable in item 429.60, which includes thiols. Item 429.60 does not have an "eo nomine" provision for DMDO. The product description in the item refers to a class of compounds, "thiols," but does not list DMDO by name. Even though it may be regarded by some chemical authorities as a thiol, Customs is bound by the pertinent headnote definitions in classifying the imports in that particular section of the tariff. Headnote 1, Part 2(D), specifically states that any organic compound which is described in more than one functional group is classifiable in the first group in which it is described. There is no doubt that DMDO is first described in item 428.47, which describes polyhydric alcohols, (including glycols, polyglycols, dials, and polyols), and esters, ethers, and ether-esters and substitute derivatives of any of the foregoing.

The cases cited by the petitioner it is believed can be distinguished. In C.D. 4053 the court noted that the compound before it was among other descriptions an ether but the fact was not relevant in the issue since neither the plaintiff nor the defendant had raised it. In another case cited, C.D. 3758 classification of thioacetic as an acid in item 425.99 TSUS, follows the procedure described in the headnote, as it is an organic acid and this functional grouping was listed before the sulfur compounds.

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Accordingly even though the thiol may be the only reactive group in the compound following Headnote 1, Part 2(D), Schedule 4, the provisions for ethers is the correct classification, and the original decision in internal advice.151/81 is therefore affirmed.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

District Director of Customs
Los Angeles, California 90731

069643

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PUBLIC ——

APR 30 1984

CLA-2 CO:R:CV:G
072632 JH

Dear

This is in reference to your brief filed on the second reconsideration concerning the classification of DMDO (Triglycol Dimercapton). The decisions affirm the classification of the compound, following the direction in Headnote 1, Part 2D, Schedule 4, TSUS, under the provision for other polyhydric alcohols and esters, ethers, and ether-esters and substituted derivatives of the foregoing in item 428.47, TSUS. DMDO is technically and chemically both an ether of a polyhydric alcohol and a thiol. Organic compounds under the headnote are arranged according to functional group and the headnote is quite explicit - it is concerned solely with functional groups - so that the ether group has to be considered as well as the thiol. Despite this it is claimed that as the compound is considered a thiol or mercaptan, it should be classifiable under the provision for sulfur compounds, including thiols, in item 429.60. The latest argument maintains that the compound is known in the trade as a thiol, not a hydrocarbon or ether. Customs reliance, it is argued, on Headnote 1, Part 2D, in classifying under the first functional group in which it appears is deemed misplaced as the headnote is considered defective. It is alleged that it is not clear if the approach to the arrangement of the chemicals in Part 2D is based on structure as described in the nomenclature, processes described theoretically or processes actually demonstrated either in the laboratory or commercially. As for DMDO, it is asserted, that ether structures are not as chemically useful as the thiols, so that for Chemical Abstract procedures the thiol is the principle functional group for structural procedure.

However, it should be noted that one of the main purposes of DMDO is the production of crown ethers and without the ether functional groups crown ether could not be made. Rather than under the "first group" it is argued that a compound should be classifiable under the most reactive group. However, Part 2D is not the only place in the chemical schedules in which Congress stated a preferred method of classification. Under Headnote 2(b), Part 1B, Schedule 4, it is stated that a compound with functional groups described in two or more items under items 402.36 or 406.63, inclusive is to be classified in the latest applicable item. For example, 4-acetamido-2-aminophenol, which contains three functional groups will be classified in item 405.12 (amides), rather than in 404.92 to 405.09, inclusive (aminophenols), or in 404.84 or to 404.90 inclusive (amides), or in 403.51 (phenols). It is axiomatic that a statute should not be

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construed as to impute to the Congress the doing of a useless or vain thing, unless the words will not permit a construction which will give them some effect. Fensterer & Voss (Inc.) v. United States, 12 CCPA 105.

The fact that the tariff does not have a specific definition for "functional group" is not significant. Throughout the tariff terms are used which are not specifically defined for tariff purposes and it is intended that the usual customary or trade definition be employed. A common definition of functional group which is applicable is to be found in Organic Chemistry, second edition, Morrison and Boget, "the atom or group of atoms that defines the structure of a particular family of organic compounds and, at the same time, determines the properties is called the functional group."

A further explanation of the arrangement in Part 2D is to be found in the Tariff Classification Study. As originally setout Part 2D had the superior heading "nitrogenous compounds, and salts thereof, including alkanolamines, amides, amines, cyanohydrins, imides, isocyanates, nitriles, nitroparaffins, and polyamines." In the Fifth Supplemental Report (1963), the superior heading was shortened to the current "Nitrogenous Compounds." The explanation given was that shortening the superior heading to "Nitrogenous Compounds" did not change its scope in any way." Several groups of chemicals have been rearranged and described by structure or functional groups: for example, item 425.10 covers a variety of chemicals containing a triazine ring such as dinitrosopentamethylenetetramine and the herbicide 2-chloro-4, 6-bis (ethylamino)-S-triazine; item 425.22 provides for primary, secondary, or tertiary amides not only of the carboxylic acids but also of other acids such as sulfonic or phosphoric; item 425.40 brings together an important group of closely related compounds such as dicyandiamide, guanidine carbonate and other acyclic amidines. This is another indication it is believed of the intention to arrange the compounds by functional group.

In sum, we see no difficulty in the Congressional intention that where you have a compound with two functional groups, using Headnote 1, Part 2D, the compound must be classified under the first group which appears, which in this case is the etner of polyhydric alcohol in item 428.47. Internal Advice 151/81 and the subsequent decision of July 15, 1982, are hereby reaffirmed.

Sincerely,

[redacted] (Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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CORRESPONDENCE APPROVAL AND CLEARANCE

072632

MAR 16 1982

CLA-2 CO:R:CV:C
069712 pp

Dear [redacted]

This is in reply to your letter of February 12, 1982, concerning antiques and the application of the Textile Category Guidelines in reference to the classification of suits and apparel sets.

Contrary to the information which you received, the Customs Service is not using the Textile Category Guidelines in the five digit classification of articles of wearing apparel. These guidelines are applicable only when determinations for category purposes are necessary. However, Customs import specialists may utilize the guidelines as an aid in the classification of wearing apparel when the common or commercial designation of the articles in question is not readily apparent.

For your information, Customs has prepared a draft Federal Register notice advising the public that the Guidelines will govern the tariff classification of articles of wearing apparel classifiable in Subpart 6F, Schedule 3, Tariff Schedules of the United States (TSUS). This proposed Federal Register notice was prepared in accordance with advice received from the Office of the United States Trade Representative and will not be published until it has been reviewed and approved by both Customs and the Department of the Treasury. Because of the new provisions in the TSUS, we do not believe any changes in practice will result from the application of these guidelines. However, if the use of the Guidelines is approved and it is then determined that one or more practices have developed and that the application of the Guidelines will result in higher duty rates for merchandise subject to a practice, then, of course, Customs will comply with section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)).

In Headquarters Ruling 050722, dated April 13, 1979, Legal Determination No. 79-233, this office set out the criteria to be used in determining whether wearing apparel sets are classifiable as entireties. That ruling states that the Customs Service will usually classify wearing apparel sets as entireties if (1) the components are coordinated as to color to the extent that it is obvious that these components were designed and intended to be worn together (2) the components of the set are sold as a unit and not separately, and (3) the components, when joined together, form a new article which possesses a character or use different from that of its parts, or one of the components in the set is so predominant that the other components are merely incidental to that predominant component. See J.C. Penney Purchasing Corp. v. United States, 77 Cust. Ct. 43, C.D. 4671 (1976). We have contacted our National Import Specialist in New York and determined that they are applying these guidelines.

Suits are generally considered by Customs to constitute a specific type of apparel set which is classifiable as an entirety. Suits, whether designed for wear by women, girls, infants, men, or boys, have a general

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common and commercial meaning as a tailored outfit worn on occasions where some degree of formality is required. To be classifiable as a suit, a wearing apparel set must be composed of a tailored coat or jacket and one or two pairs of leg coverings, usually in the form of pants, but which also may be shorts, a skirt, or a culotte. A vest may also be included in a suit. In regard to men's and boys' suits, all the components of the suit must be predominantly of identical fabric, except in the case of a reversible vest, where only one side of the vest must be of such identical fabric. In the case of women's, girls', and infants' suits, we believe that the common and commercial meaning or understanding of such suits does not require that the components be predominantly of identical fabric. In those instances, the color and pattern of the fabric may be identical or may merely match or coordinate the various components comprising the suit. In all suits, the jacket must have a full front opening and sleeves of any length. In the case of women's, girls', and infants' suits, shells, blouses and other similar garments sold with the other components of the suit would not normally be considered to be part of the suit, but this is a determination which will be made on a case by case basis.

The Customs Service does not believe that the designation "Suits" in the tariff schedules includes such things as athletic uniforms, rain suits, work uniforms, jumpsuits, warm-up suits, bathing suits, or other garments which are loosely referred to as "suits." We have no indication that those types of sets were intended to be encompassed by the term "Suits" nor do we believe that there is a common or commercial acceptance of those articles as suits.

We trust that this is the information which you sought.

Sincerely,

Harvey Fox
Director, Classification
and Value Division

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[redacted]

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

28 JUL 1982

CLA-2 CO:R:CV:G
069731 JH

Dear

With your letter of February 17, 1982, you listed numerous chemical compositions, which, if we recall correctly from previous correspondence, are used as wire-drawing compounds and are made in France.

Although you submitted a scheme for expediting the classification of the products, you will appreciate that as we are bound by the tariff laws, we can only base a classification and rate of duty on the tariff. The enclosed classifications of the products we hope will facilitate the matter.

Number	Chemical Composition	TSUS No.	Rate of Duty
4296	65% Fatty ester, 30% Polybutene, 5% Silica	432.10	5% ad valorem
2693	69% Sodium Stearate, 31% lime	432.25	0.6 cent/lb plus 4.4% ad valorem (465.30)
3814	49% Aluminum and Calcium Stearate, 51% lime	432.25	5.4% ad valorem (490.32)
4457	16% Alkanolamide, 24% Amine phosphatester, 5% fatty ester, 6% mineral oil, 0.03% green colorant, 48.97% water	432.10	1.3 cents/lb plus 6.4% ad valorem (465.15)
4393	100% sodium stearate	465.30	0.6 cent/lb plus 4.4% ad valorem
4360	10% Aminoleate, 15% Amine phosphate ester, 2.5% non-ionic surfactant, 2% mineral oil, 70.5% water	432.10	5.4% ad valorem (490.32)

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4445	85% Potassium sulfate, 10% Borax, 5% sodium lignosulfate	432.25	4.5% ad valorem
4418	51% Alkanolamide, 15% Amine phosphatester, 10% non-ionic surfactant, 6% mineral oil, 18% water	432.10	1.3 cents/lb plus 6.4% ad valorem (465.15)
2770P	32% potassium stearate, 19% Mica, 9% glycol, 40% water	432.25	11.5% ad valorem (428.30)
3862	70% calcium stearate, 30% lime	490.32	5.4% ad valorem
4407	38% Calcium stearate, 52% lime, 10% calcium sulfate	430.25	5.4% ad valorem
Salvia & Salvia X	70% sodium stearate, 52% lime, 15% borax	432.25	0.6 cent/lb plus 4.4% ad valorem (465.30)
Sumac & Sumac X	81% sodium stearate, 19% borax	432.25	0.6 cent/lb plus 4.4% ad valorem
3738	64% calcium stearate, 32% lime, 5% sulfur	432.25	5.4% ad valorem
Secale	100% Sodium stearate	465.30	0.6 cent/lb plus 4.4% ad valorem
4468	50% calcium stearate, 37% lime, 2% molybdenum disulfide, 11% sodium stearate	432.25	5.4% ad valorem (490.32)
3152	23% aluminum stearate, 77% lime	432.25	5.4% ad valorem
3952	54% sodium stearate, 46% sodium bicarbonate	432.25	0.6 cent/lb plus 4.4% ad valorem
4311	25% fatty ester, 75% calcium carbonate	432.25	4.5% ad valorem

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3851	45% sodium stearate, 6% borax, 25% lime, 23% sodium bicarbonate	432.25	0.6 cent/lb plus 4.4% ad valorem
Petunia	9% aminoleate, 13.5% amine phosphatester, 3% non-ionic surfactant, 0.02% green colorant, 74.48% water	432.25	5.4% ad valorem
4031	10% mineral oil, 20% polyclefine, 10% colza oil, 5% sulfochlorinated paraffin, 49% water	432.10	5.0% ad valorem
3115P	44% potassium oleate and triethanolamine, 4% mineral oil, 2% polyglycol, 4% sodium phosphate, 2% defoamer, 0.02% red colorant, 43.98% water	432.10	12.3% ad valorem (428.47)
4020	85% sodium sulfate, 10% borax, 5% sodium lignosulfate	432.25	4.5% ad valorem
4108	51% calcium stearate, 49% lime	432.25	5.4% ad valorem
4407	10% calcium sulfate, 38% calcium stearate, 52% lime	432.25	5.4% ad valorem
4420	62% calcium stearate, 38% lime	432.25	5.4% ad valorem
4429	45% ethylene bistearamide, 55% lime	432.25	1.5 cents/lb plus 6.4% ad valorem (465.20)
4422	33% calcium stearate, 67% lime	432.25	5.4% ad valorem
4468	50% calcium stearate, 11% sodium stearate, 2% molybdenum disulfide, 37% lime	432.25	5.4% ad valorem
4036	92% mineral oil, 8% sulfochloride additive	475.45	2 cents per gallon
4321	50% mineral oil, 45% chlorinated paraffin, 5% colza oil	475.55	8.4% ad valorem
4065	90% chlorinated paraffin, 10% colza oil	432.25	18% ad valorem (429.47)

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4095	6% glycol ether, 18% potassium oleate, 39% water, 10% surface active detergent, 27% sodium phosphate silicate	432.25	12.3% ad valorem (428.47)
3108	26% potassium oleate, 17% oleyamin ethoxyle, 6% sodium sulfonate 51% water	432.25	5.4% ad valorem (490.32)

Both items 432.10 and 432.25 are mixture provisions. The rate of duty for 432.10 is 5 percent ad valorem and for 432.25 is 4.5 percent ad valorem. However, both provisions require that if a component of the mixture has a higher rate, such rate would apply. The component rate item-number is indicated in the parenthesis after the duty.

069731

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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10 NOV 1982

CLA-2 CO:R:CV:G
069961 JH

Dear Sir:

Internal Advice 44/82 - Classification of PEHA Light Bottoms

FACTS:

The products, referred to as amine bottoms, are described as the by-product residue from the distillation of ethylenediamine, diethylenetriamine, triethylene tetramine, tetraethylenepentamine and pentaethylene hexamine.

A laboratory report states that the material is composed of pentaethylene hexamine and its polymers. It is further described as being reacted without any further remanufacture or separation with polyphosphoric acid producing monomeric and polymeric pentaethylene hexamines phosphonates with a 90 percent yield. The resultant product is said to be used as a scale preventative in oil production.

ISSUE:

Whether the byproduct-residue is classifiable as a mixture of two or more organic compounds in item 430.20, Tariff Schedules of the United States (TSUS), or under the provision for waste or scrap in item 793.00, TSUS.

LAW AND ANALYSIS:

It is claimed that the tariff description of waste would include this material, for even though it is commercially usable, it is felt to be the unsought residue or byproduct of a manufacturing process and no longer suitable for it original purpose.

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Cited in support of this decision is a Headquarter's decision involving the classification of lithium chloride solution as a waste. The lithium chloride solution was found to be an effluent byproduct from a manufacturing process utilizing lithium metal to produce vitamin A. The material imported was described as a tarry substance which contains the lithium which, subsequent to importation, was recovered. Also cited was United States v. David Studner (C.A.D. 990) which involved merchandise described as being useless for its original purpose and sold and used without remanufacture. The material consisted of old, used metal print blocks which were said to be incapable for their original purpose of printing and without remanufacture were sold and used as wall decorations. The court found these to be a waste even though they were used without remanufacture. In both the "lithium case" and the print block case, the materials were, in fact, no longer suitable for their original purposes.

The "effluent byproduct" was imported to recover the lithium. This is an example of the classic situation involving the waste classification. The material itself imported was not suitable for anything but remanufacture or in this case the recovery of lithium. In the Studner case, the print blocks were no longer suitable for printing and the fact that they were utilized without remanufacture for totally new, and unrelated, purpose did not change their waste classification.

The amine bottoms in this case contain pentaethylene hexamine and its polymers. Without any remanufacture or separation, this material is reacted with polyphosphoric acid producing a monomeric and polymeric pentaethylene hexamine phosphonates with a 90 percent yield. Thus the imported product is used in the chemical reaction as imported, it is not used as a source material

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for the extraction of a constituent part. This is a material which the court in Studner case would characterize as a material which has value for the ordinary or main purpose of manufacture.

The classic definition of waste in the tariff sense involves material fit only for remanufacture into something totally different or a material which is commercially unfit for its original purpose but may be useful in another function. The imported material like many chemical compounds is the source of other chemical products. Without further separation or manipulation of the imported pentaethylene hexamine and higher polymers are reacted directly with other chemicals to produce yet a third chemical product. This is not an unusual way to produce chemicals. The "bottoms" have the characteristics of a chemical intermediate used in the manufacture of phosphonates rather than a waste material. Another example of chemicals produced in this way is the production of acetone produced from cumene. The desired product in this production from cumene is phenol with the acetone being regarded as a byproduct. Not only is the acetone made by this method not a waste, but it is understood that 80 percent of the commerically produced acetone is produced in this manner.

Therefore, the byproduct or "bottoms" in this case do not fit the tariff definition of waste.

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HOLDING:

The BHMT and the PEHA light bottoms as described above are classifiable under the provision for mixtures two or more organic compounds in item 430.20, TSUS, with a duty applicable to the provision for nitrogenous compounds in item 425.52, TSUS.

Sincerely,

(Signed Arthur P. Schifflin)

Arthur P. Schifflin
Chief, General
Classification Branch

District Director of Customs
Los Angeles, California 90731

069961

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

c13

02 SEP 1982

CLA-2 CO:R:CV:G
070017 JH

Dear

This is in reference to your letter of May 5, 1982, on the dutiable status of methanol when used directly as a fuel. You provide various situations in which methanol was mixed with other chemical compounds, and then inquire how they would be classified.

To begin with, Customs views item 427.96, Tariff Schedules of the United States (TSUS), as an actual use provision. Therefore, methanol imported to be directly used as a fuel would be classified in item 427.96 when used in a direct mixture with gasoline to make gasohol or mixed directly with other chemicals to constitute a completed fuel. However, when it is imported to be mixed with a blending component which may or may not be used as a fuel, this, in our view, is not a direct use. In this regard, your example of methanol mixed with tertiary butyl alcohol, it is understood, it is not a fuel per se and while such a blend may be combined with another component to form a fuel, by itself it is regarded as a solvent. Therefore, methanol blended with such an additive is not automatically regarded as a "direct fuel use."

Methanol used in the formulation of various gasoline additives where such additives constituted a fuel use only, would be considered a direct use for the purposes of 427.96, TSUS.

Methanol used as a pipeline de-icer would not be considered a fuel use, direct or indirect.

If you have any further questions on the subject we would be happy to answer them.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

22 NOV 1982

CLA-2 CO:R:CV:G
070081 JCH

Dear

This is in further reply to your letter of December 5, 1981, concerning the tariff classification of various grades of tungsten carbide powders mixed with as much as 26 percent titanium and cobalt powders. Some of the mixtures also contain tantalum powders. These powders are classifiable under the provision for chemical mixtures, not specially provided for, in item 432.25, Tariff Schedules of the United States (TSUS). Mixtures under that provision are dutiable at the highest rate applicable to any component in the mixture. Based on recent import valuation statistics, we estimate that the 17.5 percent ad valorem rate for titanium powders in item 626.14, TSUS, represents the rate properly applicable to the mixtures in question.

Tungsten trioxide is classifiable under the provision for tungsten compounds in item 422.42, TSUS. The column 1 rate of duty required for this provision is 11.2 percent ad valorem.

We regret the delay in responding to your inquiry.

Sincerely,

(Signed Arthur P. Schiffli

Arthur P. Schiffli
Chief, General
Classification Branch

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PUBLIC _____

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02 SEP 1982

CLA-2 CO:R:CV:G
070273 JH

Dear Sir:

Internal Advice 54/82 - classification of dehydrated Culture Media not containing benzenoid dyes or colors.

FACTS:

In general, the merchandise consists of three different types of culture media used in laboratories.

The one type, referred to as laurel tryptose broth, is said to contain tryptose, lactose, sodium chloride, potassium dihydrogen phosphate, sodium laurel phosphate, and dipotassium hydrogen phosphate.

Another type consists only of an mixture of identifiable organic compounds classified in Part 2 of Schedule 4.

The third type consists of identifiable chemical compounds and, in addition, horse or bovine serum.

ISSUE:

Whether these cultures media are classifiable as chemical mixtures or in item 799.00 as nonenumerated articles.

LAW AND ANALYSIS:

The first type mentioned, laurel tryptose broth, since it contains a mixture of organic and inorganic chemicals would be classified as a mixture in item 432.25 Tariff Schedules of the United States (TSUS).

The second type which consists solely of a mixture of identifiable organic compounds classifiable in Part 2 of Schedule 4 would be classifiable as a mixture of two or more organic compounds in item 430.20.

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As the third type contains not only identifiable chemical compounds but in addition an animal serum, it would be classifiable as a non-enumerated product in item 799.00, TSUS, in view of the inability to completely identify all of the components of mixture.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

District Director of Customs
Baltimore, Maryland 21202

070273

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D3

MAR 1 1983

CLA-2 CO:R:CV:G
070458 JH

Dear

We have reviewed the literature you submitted in regard to the tariff classification of "Dairy Aid," "Swine Aid B," and "Poultry Aid B," in the light of the analysis of the samples of the product which you provided.

The three products are similar in composition and are said to be used in controlling barn yard odors and liquifying manure solids. In composition, they are described as being made of extracts of the yucca plant, and an analysis of the sample disclosed the organic components are mainly mixtures of saponins and saponigens.

Products of this type are classifiable as mixtures not specially provided for, in item 432.25, Tariff Schedules of the United States (TSUS), and the rate of duty is 4.4 percent ad valorem but not less than the highest rate applicable to any component material. The component material with the highest rate appears to be saponins, which are classifiable under the provision for other polysaccharides in item 493.68, TSUS. The rate of duty is 7.9 percent ad valorem.

It is urged that these products be classified similarly to the products "Sept Aid," which was classified in item 799.00, TSUS. (060132, February 2, 1979). It is claimed that "Sept Aid" has a formulation identical to the three products above. From a review of that decision, it appears that it was based on the assumption that the chemical composition

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of "Sept Aid" was not completely identifiable. However, if in fact, it is identical in composition with the three above products, it also would be classifiable as a mixture in item 432.25, TSUS, with the same component rate applying.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

070458

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DS

8 DEC 1982

CLA-2 CO:R:C:G
070727 JH

Dear:

This is in reference to your request for a ruling on the classification of germanium tetrachloride.

You state that germanium dioxide (GeO_2) is purchased in Russia and made to high-purity germanium tetrachloride in France, Holland, or West Germany.

The production steps taken were outlined as: (1) a chemical transformation of dioxide to the tetrachloride; (2) several purifications steps performed to obtained the high purity desired. The processes are said to involve a reduction of germanium dioxide to the metal and then a chlorination to crude tetrachloride, with a purification accomplished by one or more distillations, followed by extraction. The end product is said to be used in the manufacture of fiber optics.

Germanium tetrachloride is said to be completely different from germanium dioxide. High purity germanium tetrachloride is a colorless, clear liquid that reacts violently with water and fumes when exposed to air, while, on the other hand, germanium dioxide is a crystalline powder that is slightly soluble in water and stable on exposure to air. Germanium dioxide (GeO_2) is said to have a molecular weight of 104.60, and the germanium tetrachloride ($GeCl_4$) is said to have a molecular weight of 214.43.

On the basis of the evidence submitted, it is concluded that these are separate and distinct compounds, with the germanium tetrachloride produced in the manner described resulting from a substantial transformation. Germanium tetrachloride in issue is classifiable under item 423.00, Tariff Schedules of the United States dutiable at 4.5 percent ad valorem.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

D6

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DE CORRESPONDENCE APPROVAL AND CLEARANCE

OCT 26 1983

CLA-2 CO:R:CV:G
070901 PR
803048

[redacted]

Dear [redacted]

This is in reply to your letter of April 29, 1982, addressed to the Regional Commissioner of Customs, New York, concerning the tariff status of two types of imitation leather material.

The first sample is stated to be a product of Belgium and consists of a nonwoven fabric which has been impregnated with polyurethane. One surface of this material has been coated or laminated with a thin layer of nontransparent rubber or plastics material that has been processed to simulate leather. The second sample, which is stated to be a product of Italy, is composed of a layer of woven rayon fabric which has been covered on one side with a layer of expanded plastics material. The top portion of the expanded plastics material has been processed to simulate leather and is nontransparent.

In United States v. Elbe Products Corp., 68 CCPA 72, C.A.D. 1267 (1981), the United States Court of Customs and Patent Appeals held that certain imitation leather materials were classifiable under a provision in Schedule 7, TSUS, which provides for film, strips, and sheets, wholly or almost wholly of rubber or plastics. The basis for the decision is that Headnote 1(vii), to Subpart 4C, Schedule 3, TSUS, which contains the provisions for coated or filled fabrics, states that articles which are specially provided for in Schedule 7 are not classifiable in that subpart. The court reasoned that the visual and tactile properties imparted to the imitation leather material by the plastic portion provides the essential character to that merchandise and, therefore, the merchandise was "almost wholly" of rubber or plastics material, thus specially provided for in Schedule 7. We do not believe that is the case in regard to either sample which you submitted. In the first sample, a layer of nontransparent plastics material provides the visual quality necessary for imitation leather. However, the tactile (feel) quality which is necessary for that merchandise is imparted by the impregnated nonwoven fabric. Therefore, the rubber or plastics material in that merchandise is not considered to provide the essential character to that merchandise. Accordingly, the

070901/803048

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merchandise is not specially provided for in Schedule 7 and is classifiable under the provision for nonwoven fabrics, of textile materials, whether or not coated or filled, of man-made fibers, in item 355.25, TSUS, with duty at the rate of 8 cents per pound plus 14.2 percent ad valorem.

Because the second type of material has a layer of expanded plastics material which provides its essential character, that merchandise is also not classifiable in Schedule 7. The provisions in Schedule 7 for film, strips, and sheets, wholly or almost wholly of rubber or plastics are found in Subpart 12B. Headnote 2(iii) to that subpart states that the provisions in that subpart do not cover articles provided for in Subpart 12A. Subpart 12A contains provisions for expanded, foamed, or sponge rubber or plastics and articles not specially provided for, wholly or almost wholly of such rubber or plastics. Thus, by reason of that headnote, the merchandise is not classifiable under the specific provision in Subpart 12B, Schedule 7. Rather, if it were classifiable in Schedule 7, it would be classifiable under a provision for articles not specially provided for, in Subpart 12A. Since it is not specially provided for in Schedule 7, Headnote 1(vii) of Subpart 4C, Schedule 3, is not applicable and the merchandise is classifiable in that subpart. The merchandise is properly classifiable under the provision for woven or knit fabrics of textile materials, coated or filled with rubber or plastics material, or laminated with sheet rubber or plastics, of man-made fibers, not over 70 percent by weight of rubber or plastics, in item 355.82, TSUS, with duty at the rate of 8 cents per pound plus 12.8 percent ad valorem.

Sincerely,

(Signed) Arthur P. Schiffelin

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

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CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE							
SURNAME							

070901/803048

CLA-2 CO:R:CV:V
071823 KP

District Director of Customs
U.S. Customs Service
610 S. Canal Street
Chicago, Illinois 60607

Dear Sir:

This is with reference to your undated memorandum regarding the classification of programmable controllers imported by Square D Company (Request for Internal Advice No. 6/84).

ISSUE:

Whether the programmable controllers described below are classifiable under the provision for other electrical apparatus for making or breaking electrical circuits in item 685.90, Tariff Schedules of the United States (TSUS), or under the provision for electrical articles, not specially provided for, other, in item 688.45, TSUS (1981), and item 688.43, TSUS (1983).

FACTS:

The inquirer imports microprocessor-based programmable controllers identified as SY/MAX-20 controllers. These articles are used for machine or process control. They accept input from push buttons, switches, and other devices, make decisions on the inputs according to a stored program, and generate appropriate outputs to output devices such as motor starters, contactors, solenoids, indicating lights, relays, and decimal readouts. Typical control applications include automated packaging and assembly machines, material handling, machine tools, wood products and paper processing, welding machines, injection molding machines, and film, chemical, food, and petroleum processing.

071823

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The SY/MAX-20 is comprised of the following types of components:

(1) Processor. This component performs the logic control functions (relay ladder logic, counting, timing, sequencing, arithmetic, etc.) in an application, based on the stored program and machine or process input/output information. It also contains the system power supply.

(2) Memory Module. This component serves as a storage device for programs designed to run the controller. The memory module plugs directly into the processor, and is interchangeable with other such modules.

(3) Rack Assembly. These devices, in conjunction with the input and output modules, facilitate the transmission of electrical signals between the input and output devices and the processor. There are 3 types of rack assemblies: (1) an input rack assembly, which provides wiring terminals for 16 input devices and serves as the mounting base for 8 input modules; (2) an output rack assembly, which provides wiring terminals for 16 output devices and accommodates 8 output modules; and (3) a combination rack assembly, which holds 4 input modules and 4 output modules, and provides wiring terminals accordingly.

(4) Input and Output Modules. These components convert voltage signals between the processor and the input and output devices encompassed within an application. The input modules accept high level AC or DC voltage signals from input devices and convert them to the low logic level signals required by the processor. The output modules convert logic level signals generated by the processor to high level AC or DC output signals necessary to drive connected output devices. Simulator modules are also available to test programs without wiring any devices to the controller.

(5) Programmer. This device is used to program, edit, monitor, or troubleshoot the SY/MAX-20 system. It is a portable, hand-held device and is connected via a cable to an interface in the processor. A larger CRT programmer, which provides additional monitoring capabilities, is also available.

LAW AND ANALYSIS:

We recently considered the tariff classification of components of a programmable controller in Customs Ruling CLA-2 CO:R:CV:V 071563 KP (March 7, 1985), copy enclosed. In that case, we reasoned that if the

071823

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programmable controller in question were imported as a unit, it would have been classifiable as an entirety under item 685.90, TSUS, inasmuch as it was electrical apparatus whose function was to control other devices by making or breaking electrical circuits. For tariff classification purposes, the SY/MAX-20 programmable controller is not materially different than the merchandise at issue in the above-cited ruling. Therefore, we believe the SY/MAX-20 programmable controller is properly classifiable in item 685.90, TSUS.

HOLDING:

The SY/MAX-20 programmable controller is classifiable under item 685.90, TSUS, which carried column 1 duty rates of 7.7 percent ad valorem in 1981, and 6.9 percent ad valorem in 1983.

Sincerely,

Russell Arnold
Chief, Value and Special
Classification Branch

071823

[redacted]

[redacted]

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[redacted]

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

MAR 1 1983

CLA-2 CO:R:CV:G
072130 JH

Dear

This is in reference to you inquiry concerning the tariff status of certain imported methanol. The methanol is said to be imported by ocean tankers in quantities of over 1 million gallons and stored in storage tanks in New Jersey, Houston, Texas and other locations. It is estimated that currently 1/3 of such imported methanol is used for fuel use and the remainder for nonfuel uses.

It is urged that the methanol be permitted to be entered under the actual use provision in item 427.96, Tariff Schedules of the United States (TSUS), and that the importer be permitted to notify Customs of any diversions and to pay duty on any methanol so diverted. It is added that the importer would comply with the "actual use" regulations by making a declaration of intent at the time of importation and providing Customs within 3 years of entry, with proof that the methanol was used directly as a fuel. The importer, it is claimed, would add additional methanol periodically to the storage tanks which would already contain previously imported methanol intended for fuel use. Such methanol would be accounted for on the "first-in - first-out basis."

It is argued that this manner of interpreting the actual use regulations is consistent with that permitted in the Canadian original motor-vehicle equipment regulation, section 10.84(d), Customs Regulations, which permits the importation of Canadian original motor vehicle equipment to be diverted from its original intended use, upon notification to Customs and payment of duties, or the arrangement for destruction of the equipment, or export of the equipment under Customs supervision. Also cited are the proposed regulations on civil aircraft and parts which would allow the importer to notify Customs and pay any appropriate duty when aircraft parts are not used on civil aircraft, proposed section 10.80(f), Customs Regulations.

General Headnote 10(e)(ii), is most explicit in stating that a tariff classification controlled by the actual use to which an imported article is put in the United States is satisfied only if such use is intended at the time of importation, the article is so used, and proof thereof is furnished within 3 years after the date of the article is entered. Section 10.133, Customs Regulations, reinforces the intent of this headnote. Section 10.134 leaves no doubt that the intent must be present at entry, in stating that entry under the actual use provision of the TSUS may be construed as a declaration that the merchandise is entered to be used for the purposes stated in that actual use provision. It goes on to state that if there is

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any doubt, the district director shall require a written declaration to be filed, if he is not satisfied that the merchandise entered under the actual use provision will be used for the purposes stated. Thus, it can be seen that the law and regulations are quite clear: There is no provision for diversion, unlike the auto provisions and aircraft regulations cited. At the time of entry "actual use" has to be intended for all the merchandise entered under that particular provision. In the instant case, only about 1/3 of the methanol is intended for direct fuel use. This does not satisfy the intent of the law.

Methanol imported under the circumstances outlined is not entitled to free entry under item 427.96, TSUS.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

072130

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D13

JUN 14 1983

CLA-2 CO:R:CV:G
072347 JH

Dear Sir:

Re: Decision on Internal Advice 15/83, Classification of SRX Polymer (Concrete Additive)

The merchandise is said to be a polymer composed largely of sulfur. The technical literature indicates that organo-sulfur additives are incorporated into concrete mixes to impart beneficial physical and chemical properties. In this case, a product called "Escopol", a petroleum residue obtained from gasoline refining, is used. It is said to be mainly a dicyclopentadiene which has been partially polymerized. It is understood that a crude unsaturated hydrocarbon mixture (Escopol) is mixed with sulfur in proportions of 80 percent sulfur and 20 percent Escopol under controlled temperature conditions of 140 degrees to 150 degrees C. An exothermic reaction takes place between the unsaturated hydrocarbons and sulfur, with no free sulfur remaining after the action.

The imported product is a mixture of organo-sulfur compounds. The variety of organic hydrocarbon components in Escopol has not been determined. Accordingly, SRX Polymer (concrete additive) is classifiable as a mixture of two or more organic compounds in item 430.20 , Tariff Schedules of the United States (TSUS). The rate of duty is 4.6 percent ad valorem.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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CLA-2 CO:R:CV:G:
072395 JH

JUL 2 2 1983

District Director of Customs
Port Huron, Michigan 48060

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3802-2-000105, on the Classification of Surchem 550

Surchem 550 is described as a fuel oil additive containing magnesium used for the purpose of controlling corrosion in boilers and turbines utilizing fuels of high vanadium content. It is said to consist of 24 percent magnesium carbonate, 10 percent magnesium hydroxide, 8 percent magnesium acetate, 15 percent magnesium sulfonate and 43 percent oil.

The protestant states that the generic composition of the lubricating oil fraction which is sulfonated is not known. It is described as a complex hydrocarbon mixture containing paraffins, naphthenes, and aromatics obtained by solvent extraction of a crude lube stock. The reaction product between this petroleum fraction and oleum is called petroleum sulfonic acid, and when neutralized with magnesium oxide is referred to as magnesium petroleum sulfonate.

The question is whether the product is classifiable as a mixture not specially provided for in item 432.10 or as a benzenoid mixture in item 413.51, TSUS. Classification under item 409.30, as a surface active agent has been suggested.

An analysis of the sample was said to disclose petroleum oil and a benzenoid surface active agent (anionic type). Magnesium sulfonate is a benzenoid surface active agent. The product's function, however, it is to prevent rust, with the magnesium sulfonate acting as a dispersant, so that item 409.30 would not apply.

Although the importer has submitted information on the composition of Surchem 550, he never submitted a detailed flow chart indicating chemical diagrams for every precursor of the ultimate product. Information on whether the manufacturing process produced synthetic benzenoids was also promised by a chemist for Surpass, but none was received. Accordingly, based on the evidence of record, it is concluded that Surchem 550 is a mixture containing a synthetic benzenoid component. It is, therefore, classifiable as a benzenoid mixture in item 413.51, TSUS. You are directed to deny the protest in full.

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A copy of this decision should be attached to the Form 19 Notice of Action furnished to the protestant.

Any portion of the original protest file submitted is hereby returned.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

Enclosure

072395

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CLA-2 CO:R:CV:G
072778 JH

SEP 14 1983

Dear

Your letter of June 1, 1983, concerns the dutiable status of certain methanol imported from Canada.

is said to import methanol from Canada into Portland, Oregon, for industrial purposes, and enter it as other methanol under item 427.97, Tariff Schedules of the United States (TSUS). A portion of the imported methanol is said to be exchanged for domestically-produced methanol. The exchanged product is said to be sold in the Gulf Coast area for use as fuel. It is, therefore, requested that Customs rule that the quantity of imported methanol, which is exchanged for the domestically-produced methanol used for fuel, be entitled to duty-free treatment under item 427.96, TSUS.

Item 427.96 applies to methanol imported only for use in producing synthetic natural gas or for direct use as a fuel.

Item 427.96 is an actual use provision. General Headnote 10(e)(ii) states that a tariff classification controlled by the actual use to which an imported article is put in the United States is satisfied only (1) if such use is intended at the time of importation, (2) the article is so used, (3) proof of use is furnished within 3 years after the date of entry. Section 10.134, Customs Regulations, states that entry under an actual use provision of the TSUS may be construed as a declaration, as the merchandise is entered to be used for the purposes stated in that actual use provision. It goes on to state that if there is any doubt, the district director shall require a written declaration to be filed, if he is not satisfied the merchandise entered under the actual use provision will be used for the purpose stated.

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In this case, the methanol is imported for industrial purposes. A portion of the imported product, subsequently, is a exchanged for domestically-produced methanol which is said to be sold to be used as fuel. In other words, it is the domestic product which is used for fuel purposes and not the imported product. With the exception of the Canadian petroleum exchange provided for in Headnote 4(a), Part 10, Schedule 4, and the drawback provisions which provide for substitution of merchandise of the same kind or quality, there are no provisions in the tariff laws which provide for exchange of domestic and imported merchandise. Accordingly, the tariff does not permit substitution for the purposes of the actual use provisions in circumstances herein described. Therefore, the imported methanol would be dutiable under item 427.97, TSUS.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

072778

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E4

MAY 15 1984

CLA-2 CO:R:CV:G
072867 JGB
806436 NY File

Dear

You have requested a classification decision on sodium chloride (salt) from Canada when shipped in nylon bags that will hold 2000 pounds of the product. You have further asked whether the reusability of the container has a bearing on whether the salt is imported in bulk, as provided by item 420.94, Tariff Schedules of the United States (TSUS), or other than in brine or bulk, as provided by item 420.96, TSUS.

The office is of the opinion that salt contained in these bags would not be classified in bulk, but would be classified in item 420.96, TSUS. Whether the container is reusable has no bearing on how the salt is classified. The dutiable status of the filled container is governed by General Headnote 6(b) where reusability is a factor.

Sincerely,

[redacted] Arthur P. Schiff[redacted]

Harvey B. Fox
Director, Classification
and Value Division

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FEB 14 1984

CLA-2:CO:R:CV:G
073221 PR
806535

[redacted]

Dear [redacted]

This is in reply to your letter of June 16, 1983, concerning the tariff classification of certain roofing material produced in France or Canada. A sample, labeled "Alpagum Decor" was submitted together with assorted literature covering that material and other similar materials.

The products in question are a group of waterproofing or roofing membrane materials, basically made from a core or substrate of a material that has been coated, impregnated, and completely incased in a modified asphalt or bitumen compound. These products generally come in rolls 1 meter wide by 10 meters long and weigh approximately 85 to 90 pounds per roll.

The types of merchandise which have a core or substrate composed only of a nonwoven mat of glass fibers are classifiable according to their component material of chief value. If the merchandise is in chief value of asphalt, classification would be under the provision for other mineral substances and articles of mineral substances not specially provided for, not decorated, in item 523.91, Tariff Schedules of the United States (TSUS), with duty at the rate of 5.9 percent ad valorem. If the merchandise is in chief value of the glass fiber mat, then it is classifiable under the provision for articles not specially provided for, of glass fiber, in item 540.71, TSUS, with duty at the rate of 8 percent ad valorem. For your information, an article is in chief value of a named material if that named material exceeds in value each other component material in the article.

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Most of the products which you intend to import have a core or substrate composed of both a nonwoven textile fabric of made-made polyester fibers and a mat of nonwoven glass fibers. Specific specifications for two of these materials were submitted. The first material, "Alparoc 180" consists of layers of asphalt compound, sand stone, a fiber glass nonwoven fabric laminated to a nonwoven polyester fiber fabric, and a polypropylene film. The second material, "Alpal Decor" consists of layers of asphalt compound, sand stone, aluminum screen, a laminate of nonwoven fiber glass fabric and nonwoven polyester fiber fabric, granels (which we assume are mate flakes), and a polypropylene film. Based on the information submitted, the aluminum screen is not the component material of chief value. In both materials, the plastic film is packing material since its sole purpose is to prevent various layers of the roofing materials from sticking together.

Both "Alparoc 180" and "Alpal Decor" are classifiable under the provision for textile fabrics, including laminated fabrics, not specially provided for, of man-made fibers, in item 359.50, TSUS, with duty at the rate of 14 cents per pound plus 24 percent ad valorem.

Sincerely,

(Signed) Arthur P. Schifflin

Harvey B. Fox
Director, Classification
and Value Division

073221/806535

E1

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 3 MAY 1984

FILE: CLA-2 CO:R:CV:G
073827 c

LC8510

TO : Area Director of Customs
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Guidelines for Determining the Scope of the Luggage Provisions of the Tariff Schedules

It has come to our attention that importers and domestic producers of luggage are uncertain as to what constitutes luggage within the purview of Schedule 7, Part 1, Subpart D, Headnote 2, Tariff Schedules of the United States (TSUS).

In view of quota restrictions being applied to certain categories of luggage, it is incumbent on the U.S. Customs Service to publish guidelines which will aid all ports in classifying such merchandise and administering the quota.

The general guidelines which are intended to supplement the definitions set forth for luggage in Schedule 7, Part 1, Subpart D, Headnote 2, TSUS, are as follows:

1. Diaper bags or bags constructed to contain wet articles, clean and soiled clothing, baby bottles and other accessories personal to a baby and mother.

2. Roll bags, also known as barrel bags or duffel bags if they have a diameter over six inches.

3. School bags and bags which have been obviously designed or intended for a student to carry books, gym or other school related items while traveling from place to place.

4. Sport bags, equipment bags, knapsacks, backpacks and all like travel bags intended for a specific sport activity or travel.

5. Toilet, shaving, cosmetic and utility bags designed to contain a man's or lady's toiletries while traveling. Usually these are lined with a waterproof liner and often have interior compartments to separate the various toilet items. Usually these are not smaller in size than 8 inches by 5 inches by 2 inches and are designed for use in travel.

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6. Insulated picnic bags and like items primarily designed to transport food and beverages and not primarily for their preservation.

7. Garment bags which are substantially constructed and designed for travel.

8. Substantially constructed open top tote bags which are designed to contain various items including clothing and personal effects while traveling, and have at least one side which exceeds 12 inches in length.

9. All other tote bags which are designed to contain various items including clothing and personal effects while traveling and exceed 12 inches by 15 inches by 3 inches or a combination resulting in a comparable capacity.

It should be noted that these guidelines are only guidelines. They are not intended to be rigid criteria. Minor variations in product construction should not be used as a basis for avoiding quota restrictions.

William P. Keppler
For Harvey B. Fox

LCS 8310

E9

JAN 29 1985

CLA-2 CO:R:CV:V
074041 LCS

District Director of Customs
Detroit, Michigan 60603

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3801-3-002425

This protest was filed on December 7, 1983, by C. J. Tower & Sons of Buffalo, Inc., on behalf of Lina's Import of Livonia, Michigan, against your decision in the classification of "candy flowers," manufactured by Confetti Mario Pelino of Sulmona, Italy, in the liquidation as follows:

Entry No.	Entry Date	Liquidation Date
83-681786	7/21/83	9/9/83

ISSUE:

Whether the candy flowers at issue are properly classifiable under the provision for:

1. Sugar, derived from sugar cane or sugar beets, principally of crystalline structure or in dry amorphous form, in item 155.20, Tariff Schedules of the United States (TSUS); or*

2. Candy, and other confectionery, in item 157.10, TSUS; or

3. Other edible preparation, not specially provided for (nspf) in item 183.05, TSUS.**

---

* Importation of merchandise classified in item 155.20, TSUS, is subject to absolute quota on a country-by-country basis, as set forth in Headnote 3, schedule 1, part 10, subpart A, TSUS. There is no quota quantity allocated to such products of Italy; furthermore, this product does not qualify as "specialty sugar" pursuant to 3(c)(ii) of the cited headnote. Accordingly, if classifiable in item 155.20, TSUS, the merchandise is subject to redelivery.

** Such merchandise appears subject to absolute quota restraint , if containing in excess of 65 percent cane or beet sugar pursuant to item 958.15, TSUS; however, note CLA-2 CO:R:CV: 073002 and 073277 LCS, 10/28/83, and 072725/072480/069077 LCS, 11/28/83, as construing item 958.15, TSUS, to be inapplicable with respect to this class or kind of merchandise (e.g., sugar-based cake icing decorations).

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FACTS:

The protestant cites its belief that the merchandise is properly classified as entered in item 155.20, TSUS, or alternatively in item 157.10, TSUS.

The concerned import specialist classified, although there is no indication of the issuance of a CF 25, Notice of Action, indicating notice of the rate advance, the merchandise in item 183.05, TSUS, based on the footnoted Headquarters ruling letter of November 28, 1983.

There is no indication in the file (apart from the N.I.S.'s comment on C.I.E. Form 12, March 22, 1984, attached thereto, that the classifying officer concluded the merchandise was composed of less than 90 percent cane or beet sugar) of a component breakdown by weight of the constituent ingredients, either by way of a laboratory analysis or manufacturer's formulation.

LAW AND ANALYSIS:

There is no evidence to support the protestant's claim of sugar content. Pursuant to the series of ruling letters cited in the second footnote, it is clear that the merchandise is properly classifiable according to the percentage of cane or beet sugar on a dry weight basis contained therein, as follows:

1. If in excess of 90 percent, in item 155.20, TSUS; or
2. If not, in item 183.05, TSUS.

The alternative position advocated by protestant (i.e., item 157.10, TSUS), is without merit, having been considered and rejected in the ruling letters cited in the footnote (see in particular those dated January 31 and July 29, 1983), together with CLA-2 CO:R:CV:G, 072367 LCS, April 19,

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1983, which dealt at length with this issue for the same class or kind of merchandise in a request for reconsideration of our January 31, 1983, ruling letter.

CONCLUSION:

Accordingly, in this particular protest decision, which is not to be considered precedential in any way, we believe that to hold for protestant and classify the merchandise in item 155.20, TSUS, thereby invoking redelivery and the possibility of subsequent penalty action, would be inequitable considering the quantity of merchandise involved and the difference in duties.

Accordingly, we agree in this instance with the conclusion of the import specialist that the merchandise contained less than 90 percent sucrose by weight and is classifiable in item 183.05, TSUS, dutiable at the column 1 rate of duty of 10 percent ad valorem.

The protest should be denied in full and the protestant should be provided with a copy of this determination.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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074041

E12

6 JUN 1984

CLA-2 CO:R:CV:G
074114 JH

Dear

This is in reference to your inquiry concerning the dutiable status of PHOSKADENT from West Germany.

PHOSKADENT Na 211-Sodium monofluorophosphate "MFP" has been imported and classified as sodium compounds, other in item 421.62, TSUS. It is your contention that the compound is classifiable under the provision for sodium compounds: Phosphate, except pyrophosphate, containing by weight not over 45 percent of water of crystallization, in item 421.16, TSUS.

You state that sodium monofluorophosphate or MFP is used in dental cream to prevent tooth decay, and that all importations have been supplied to U.S. dentifrice manufacturers for use in tooth paste. MFP, you add, is created by the chemical reaction of thermal phosphoric acid and sodium fluoride. The commercial or technical definition, you note, is that MFP is a sodium or salt-containing phosphate obtained by neutralizing phosphoric acid. It is your conclusion, therefore, that the compound is most specifically provided for in item 421.16, TSUS.

It is Customs view that Headnote 1, Part 2(c), Schedule 4, describes the method of classification of inorganic compounds, such as the one in issue, and states that inorganic compounds are to be classified according to the alphabetical listing of cations. Since sodium is a cation but the monoflurophosphate anion is not a true phosphate anion, the most specific classification in the tariff would be item 421.62, TSUS.

If you have any additional evidence to submit in this matter, we would be happy to consider it.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

E13

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

8 NOV 1984

CLA-2 CO:R:CV:G
074137 JH

District Director of Customs
Baltimore, Maryland 21202

Dear Sir:

Re: Decision on Application For Further Review of Protest #1303-3-000354
Classification of Reclaimed Red Phosphor

The material is referred to as red phosphor and it is used in the manufacture of color television tubes. This phosphor in the form of red, green and blue "dots" or "slots" is applied to the face (panel) of the picture tube. When the electron beams strike the "dots" they luminesce, creating a television picture. In use, the red phosphor is mixed with polyvinyl alcohol solution to form a slurry. The slurry is applied to the panel of the picture tube, and the portion which does not adhere to the panel in the form of "dots" is recovered. The recovered slurry is reused until such time as it becomes excessively contaminated and is no longer suitable for use in the processing.

At this point, the contaminated red phospher is recovered through a drying process from the slurry. The reclaimed red phosphor can not be reused because of the impurities and is exported to the U.S. where it is subjected to a manufacturing procedure to convert contaminated phosphor into virgin phosphor.

The steps in the coversion are essentially:

1) Dissolution of the imported contaminated red phosphor in nitric acid to form yttrium/europium nitrates;

2) Precipitation of the nitrates with oxalic acid to form yttrium/europium oxides;

3) Calcination of the oxalates to form the mixed oxides of yttrium and europium;

4) Adding appropriate fluxes to the mixed oxides and firing at a high temperature to form red phosphor;

5) Acid washing followed by water washing to remove the by-products of the washes;

6) The washed and dried product is virgin red phosphor.

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The issue is whether the imported reclaimed material is classifiable as a mixture of two or more inorganic compounds in item 423.96, Tariff Schedules of the United States (TSUS), or under the provision for waste and scrap in item 793.00, TSUS.

One of the definitions of "waste" for tariff purposes includes refuse resulting from a manufacturing process which is commercially unfit for the purposes for which the original material was suitable without remanufacture. Customs has ruled that material which is no longer suitable for its original purpose without remedial processing is a waste.

Inasmuch as the reclaimed red phosphor in this case must undergo extensive reprocessing subsequent to importation before it can be used for its original purpose, it is concluded that the need for such processing establishes the reclaimed material as a waste for tariff purposes.

You should allow the protest in full. A copy of the decision should be furnished to the protestant with the Form 19 Notice of Action.

Sincerly,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

074137

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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1 3 NOV 1984

CLA-2 CO:R:CV:G
074326 JH

Dear

This is in reference to your letter of July 19, 1984, concerning the Customs decisions on the classification of certain products known as Aqualic CA, Aqua Keep, Sanwet IM-1000, (073907, 073908, 074109).

In regard to the decision on Aqua Keep, in the original submission there was no mention of free carboxylic acid groups being present; rather the product was described as a sodium salt of polyacrylic acid. Now it is indicated that only part of the carboxylic acid groups existed in the form of the sodium salt. Following Headnote 1, Part 2D, Schedule 4, concerning the classification of organic compounds according to functional groups, as the compound might be considered both a carboxylic acid and a sodium salt of a carboxylic acid, since the acid functional group is listed first, Aqua Keep is classifiable in item 425.99, other acids, and dutiable at 4.9 percent ad valorem.

In the previous decisions, based on the information supplied, both Aqualic CA and Sanwet IM-1000 were classified as mixtures of two or more organic compounds in item 430.20, TSUS, with duty assessed at the highest component rate, which would be for item 425.99.

It is now contended that both Aqualic CA and Sanwet 1000 are compounds and not mixtures, as defined in Headnote 2(a), Schedule 4, TSUS; and that because of functional groups, Aqualic CA would be classifiable as a carboxylic acid in 425.99, and Sanwet IM-1000 as an acyclic amide in item 425.22, TSUS.

However, it is still believed that these two products are mixtures. Each is reasonably complex polymer and such polymers are seldom, if ever, homogeneous. This refers to the end-product polymer molecules and does not concern the small amounts of unreacted starting materials which are probably also present. Complex polymer molecules typically vary in the amount of cross-linking, in the order and number of each type of repeating unit and so forth. Since each variation in molecular arrangement constitutes a different chemical compound, it is concluded they are mixtures; and we, therefore, adhere to the previous decision on these two products.

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Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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13 SEP 1984

CLA-2 CO:R:CV:G
074805 JH

Mr. Daniel M. Zibman
Bureau of Domestic and International
Commerce
Department of Commerce
454 Forum Building
Harrisburg, Pennsylvania 17120

Dear Mr. Zibman:

You ask for the dutiable status of certain animal feed additives from West Germany.

The classification and rates of duty are as follows:

Commodity	TSUS Item	Rate of Duty
Magnesium (Sulfate)	419.38	3.4 percent ad valorem
Choline Chloride	439.50	3.7 percent ad valorem
Iron Sulfate	418.92	Free
Calcium-Chloride- crude	418.16	Free
other	418.18	4.2 percent ad valorem
Cornstarch	132.55	0.55 percent per lb.

We are not familiar with the product "vitamin-premixing 439/4 & 3," so we are not able to give you a decision on this.

Enclosed is a copy of our publication "Importing to the United States" which I am sure will answer many of the questions you may have on importing. Also enclosed is a leaflet which explains how to obtain an administrative determination on the classification of merchandise.

Sincerely,

(Signed) Arthur P. Schiffrin

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

F3

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PUBLIC

4 MAR 1985

CLA-2:CO:R:CV:G
074920 TLL
810255

Mr. Jim Conti
15641 Chemical Lane
Suite C
Huntington Beach, California 92649

Dear Mr. Conti:

Your letter of July 5, 1984, requesting a tariff classification ruling on 3 pair of shorts, styles A, B, and C has been forwarded to this office for reply.

Styles A, B, and C have the following features:

1. Shell - woven fabric of 65 percent polyester and 35 percent cotton.

2. Liner - full support knit fabric.

3. Waist - elasticized with functional drawstring.

4. Rear patch pocket.

5. No key or coin pocket.

6. Side seam stripes (3/8 of an inch in width).

7. A and B are made from Poplin fabric.

8. C is made from Chintz fabric.

9. B and C have side seam pockets.

In Headquarters ruling 073387, dated February 17, 1984, we provided criteria for making the distinction between swimwear and shorts. In that ruling, we stated:

> In determining whether a garment falls within the purview of swimwear and would not, therefore, be classified as shorts, if a question concerning the commercial identity of the garment arises, Customs will look to the following features.

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(1) Fabric from which the garment is made. Fabrics such as denims, corduroys, and twills are usually heavier fabrics than used in normal swimwear. Such fabrics are bulkier and absorb more water than is usually desirable for swimwear.

(2) Side inserted pockets are usually a characteristic of shorts and not swimwear. In addition, the extra fabric required adds to the water absorbancy of the garment.

(3) Cotton liners, again because of increased water absorbancy, are more often found on multipurpose or running shorts.

(4) A fly front is not a normal feature on swimwear.

The weight and absorbancy of the fabric of each garment in question is the primary criterion and may be determinative by itself. None of the other features are necessarily determinative by themselves, or even in combination. Each article of apparel should be considered as a whole and, due to the specific nature of swimwear, if a garment is not readily identifiable as swimwear, it is a multipurpose garment and should be classified as shorts.

Applying that criteria to the garments you submitted, we find the tariff classification to be determined by the presence (or lack thereof) of the side inserted pockets. In this regard, style A does not contain any side inserted pockets. Consequently, we believe the chief use of style A is for swimwear and we would classify it in item 379.9570, Tariff Schedules of the United States (TSUS), with duty at the rate of 19 cents per lb. plus 27.5 percent ad valorem. The category designation is 659.

Styles B and C are shorts that have three open pockets including two which are side inserted. As garments with this feature have never been ruled to be swimwear by our office, and as we believe the styling of garments B and C, with multiple open pockets, allows for use as shorts, we do not believe styles B and C would be chiefly used as swimwear. Additionally, styles B and C are not readily identified as swimwear and therefore would be considered as shorts. Accordingly, we would classify styles B and C in item 379.9585. The category designation is 647.

Style A is subject to a visa requirement and style B and C are subject to a visa requirement and quota restraint because they are products of Taiwan.

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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Import restraints are imposed by the U.S. Customs Service under directives of the Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, D.C. 20230. Further advice or information pertaining to those agreements may be obtained from the Chairman of the committee.

As requested, your samples are returned herewith.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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6211.11, HEO
6208.23.E030

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2 4 OCT 1984

CLA-2 CO:R:CV:G
075077 JH

Area Director of Customs
New York Area Seaport
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-3-009782, Aquamicron A and C - Supplement #1

In a decision of July 31, 1984, it was decided that Aquamicron A and C, mixtures of inorganic and organic chemicals classifiable in item 432.25, TSUS, with the rate of duty applicable to methanol in item 427.97, TSUS.

Inadvertantly omitted was the classification of "cellosolve" said to be a trade name for ethylene glycol monomethyl ether. This would be dutiable under item 428.47, TSUS.

The protest is allowed to this extent.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

See 499E7

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F1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JAN 1 2 1988

REFER TO
CLA-2:CO:R:CV:G
075215 JLV

075215

Area Director of Customs
6 World Trade Center
New York, New York 10048

Re: Classification of malleable cast-iron fittings: determination as to operations which are not subsequent to the casting process

Dear Sir:

This letter is to advise you that certain machining operations and straightening operations do not constitute an advancement in condition subsequent to the casting process for certain malleable cast-iron fittings.

ISSUE:

Whether certain cleaning, grinding, and straightening processes, performed after annealing in order to eliminate warpage resulting from the annealing and to condition the surface and to remove excrescences from castings, are properly considered to be processes which do not constitute an advancement subsequent to the casting process?

BACKGROUND:

In Victaulic Co. of America v. United States, Court No. 79-5-00283, the issue was presented as to whether cleaning, grinding, and straightening, performed after an annealing process, were an advancement in condition by operations or processing subsequent to the casting process for purposes of classification of certain malleable cast-iron fittings under item 610.74, Tariff Schedules of the United States (TSUS).

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Based on the statements of technical experts and the legal arguments at issue, the government stipulated in the above case that the named operations were not an advancement after the casting process.

In ORR Ruling 796-68 (letter dated November 4, 1968, file TC 423.371 AS), concerning similar merchandise, we held that malleable castings were advanced subsequent to the casting process by machining operations which, although not a fine grinding, consisted of the removal of burrs, fins, gates, sprues, or risers. The castings were ready for use in their condition as imported. This ruling was affirmed in Headquarters letters of February 25, 1972, and April 18, 1978 (files 012581 and 056405, respectively).

There are other rulings concerning processing operations which constitute an advancement subsequent to the casting process. See, for example, our letter of July 9, 1971, file 011736 (removal of burrs, fins, gates, sprues, and risers from malleable cast-iron Klambon-type couplings).

LAW AND ANALYSIS:

The tariff provisions are specific. They refer to fittings which are cast-iron and malleable. The current provisions are contained in item 610.70 and 610.74, TSUS. The types of processing that determine which provision is applicable to a malleable cast-iron fitting are those operations or processes that are subsequent to the casting process (emphasis supplied). Similar language is contained in the provisions for forgings (currently items 606.71 and

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606.73) in which the operative language is "not machined, not tooled, and not otherwise processed after forging" (emphasis added). Although there is no judicial precedent on those types of processes that are subsequent to casting, there are judicial decisions on the issue concerning forgings. E. Dillingham, Inc. v. United States, 61 Cust. Ct. 33, C.D. 3522 (1968); J. Gerber & Co., Inc. v. United States, 62 Cust. Ct. 368, C.D. 3773 (1969); and W. R. Pilbin & Co., Inc. v. United States, 63 Cust. Ct. 200, C.D. 3897 (1969). Although these decisions are not controlling, they are instructive in view of the fact that trimming, cleaning, and deburring were not considered processes subsequent to forging.

The casting process for malleable cast-iron fittings includes more than just the pouring of castiron into a mold. If the term "malleable cast-iron fitting" is to have any commercial significance, it must include fittings that have been made malleable by annealing after being cast. A fitting, although designed to be made malleable by annealing, cannot be classified as such if it is not malleable at the time of importation. Therefore, annealing is not an advancement of a malleable cast-iron fitting by a process subsequent to the casting process.

With regard to steel castings, the removal of risers and gates and surface imperfections is considered to be part of the casting process even when performed after heat treatment. They are surface finishing operations (chipping, grinding, sandblasting, and related operations). See The Making,

075215

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Shaping and Treating of Steel, "Castings - Steel and Iron," 8th edition, United States Steel Corporation, ed. Harold E. McGannon, at page 1014. Based on additional information from the industry, the casting process for iron castings is similar. That is, the finishing of a casting by grinding or machining to remove surface imperfections and excrescences, or to straighten after a heat treatment process is not an operation that is subsequent to the casting process.

We distinguish, however, those operations that constitute drilling, threading, galvanizing or electroplating, or, possibly, certain types of machining to form specialized shapes or joints. These operations are considered to be subsequent to the casting process. Headnote 1, Part 2 of Schedule 6, TSUS, is noted, and any operation named in that headnote and which constitutes an operation subsequent to casting, would be considered an advancement for purposes of items 610.70 and 610.74, TSUS.

HOLDING:

Cleaning and grinding to remove rough edges, excrescences, sprues, risers, burrs, and similar imperfections resulting from the casting process, are incidental to the casting process; similarly, straightening to correct deformation from annealing of a casting is incidental to the casting process. These operations, therefore, are part of

075215

the casting process and do not constitute an advancement of a malleable cast-iron fitting by operations or processes subsequent to the casting process for purposes of tariff classification.

However, any machining (drilling, surface shaping, threading), galvanizing, or similar finishing operation would constitute, for tariff purposes, an advancement "in condition by operations or processes subsequent to the casting process." The terms of limitation in items 610.70 and 610.74, TSUS, create a specific context against which Headnote 1, Part 2 of Schedule 6, TSUS, must be read.

EFFECT ON OTHER RULINGS:

This ruling revokes prior letter rulings dated November 4, 1968 (file TC 423.371 AS; ORR Ruling 736-68); letter ruling of February 25, 1972 (file 012581); letter ruling of April 18, 1978 (file 056405); and letter ruling of July 9, 1971 (file 011736); and any other ruling that is inconsistent with the specific holding of this decision.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

075466

CLA-2 CO:R:CV:G
075466 EMS

Louis S. Schoichet, Esquire
Siegel, Mandell & Davidson, P.C.
One Whitehall Street
New York, New York 10004

Dear Mr. Schoichet:

This is in response to your letter dated December 27, 1984, requesting on behalf of Avon Products reconsideration of a New York ruling dated October 5, 1984, file No. 810275, which found that certain empty plastic containers for makeup manufactured in Holland were classifiable as luggage in item 706.6240, Tariff Schedules of the United States Annotated (TSUSA). You presented additional arguments concerning the classification of this merchandise in submissions dated October 28, 1985 and December 4, 1985. In addition, a conference to discuss this matter was held on November 12, 1985. A sample filled with makeup, as well as a an empty one, and a brochure containing advertisement of this merchandise were provided.

The merchandise in question consists of an empty rigid plastic container which will be imported to be filled with makeup products by Avon. It will contain 8 eye shadows, 2 brush-on blushers, 1 eye liner pencil, 1 mascara plus applicators and a pop-up mirror. The container is advertised in Avon's brochure as "Ultra Wear Colors-to-Go Makeup Kit" and is described as measuring 4 1/4" x 2 3/4" x 1 3/4" when closed and 10" x 4 1/2" x 1" when open. The advertising claims that this merchandise is "great on a trip, at the office or on a dressing table." The cosmetic kit is not refillable.

You claim that this merchandise is not classifiable as luggage but should be considered a container chiefly used for the packing, transporting or marketing of merchandise classifiable in item 772.20, Tariff Schedules of the United States (TSUS) or alternatively as a household article not specially provided for, in item 772.15, TSUS. You also contend that this merchandise is not appropriately considered a flat good for tariff classification purposes since it is too large to be considered similar to the exemplars of flat goods enumerated in Schedule 7, Part 1, Subpart D, Headnote 2(c).

We agree with you that this merchandise should not be considered luggage for tariff classification purposes. Schedule

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7, Part 1, Subpart D, Headnote 2(a),TSUS, defines luggage as follows:

2. For the purposes of the tariff schedules--

(a) the term "luggage" covers -

(i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffel bags, and like articles designed to contain clothing or other personal effects during travel; and

(ii) brief cases, portfolios, schoolbags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', sample, etc.), and like containers and cases designed to be carried with a person, except handbags as defined herein.

The merchandise in question is not an article named in section (i) or (ii) of the luggage headnotes. Furthermore, while the makeup kit is advertised as "great on a trip" it is our view that it is not primarily used as a travel article. Rather, we believe that this merchandise is more appropriately classifiable as a flat good. Schedule 7, Part 1, Subpart D, Headnote 2(c), TSUS, provides that:

(a) the term "flat goods" covers small flatwares designed to be carried on the person, such as banknote cases, billcases, billfolds, bill purses, bill rolls, card cases, change purses, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches and similar articles.

It is our view that this merchandise is more similar to the "compact" referred to in Headnote 2(c) than to the travel goods contemplated by Headnote 2(a). A compact is defined in Webster's New World Dictionary (2d ed.1974) as "a small cosmetic case,

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usually containing face powder and a mirror." This merchandise is both small and used to contain cosmetics. It easily fits into a handbag indicating portability. In fact, Avon's description of this merchandise as "Ultra Wear Color-to-Go Makeup Kit" suggests that it is designed to be carried on the person. Thus, we cannot agree with your contention that this merchandise is too bulky to be carried on the person and to be considered a flat good.

Contrary to your contention, we do not believe that this merchandise is more specifically described as a container, of rubber or plastics, chiefly used for the packing, transporting or marketing of merchandise in item 772.20, TSUS, or as a household article in item 772.15, TSUS. While we must agree that it is a container, it is our view that it is not chiefly used for the packing, transporting or marketing of merchandise. Powder boxes, rouge containers and jars are examples of cosmetic containers ruled to be classifiable in item 772.20, TSUS. See Headquarters Ruling Letter (HRL) dated August 2, 1979, file No. 062145. Additionally, since we have concluded that this merchandise is specifically described as a small flat good designed to be carried on the person, it is not classifiable as a household article not specially provided for in item 772.15, TSUS.

In view of the foregoing, this merchandise is classifiable under the provision for flat goods in item 706.61, TSUS, dutiable at the rate of 20 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

075466

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV - 8 1985

REFER TO

CLA-2:CO:R:CV:G
075485 JLV

075485

Mr. Art Bornstein
Associated Forwarders, Inc.
66 Coronado Avenue
Kenner, Louisiana 70062

Dear Mr. Bornstein:

In your letter of December 20, 1984, you requested a ruling on the tariff classification and country of origin marking requirements for a product described as a flange and threaded fitting (or threaded closure device).

The merchandise in issue is a two-piece closure for containers. One component consists of a flange with an internal threading. The second piece consists of an externally threaded plug or closure to be used with the flange. Each piece is fitted with a rubber gasket. You state that the two-piece closure is to be used as a drain, closure, or vent in numerous types of containers, such as industrial tanks or tubs, and commercial-size lobster or crawfish pots.

The imported closures are not fittings for purposes of classification under the provision for pipe and tube fittings of iron or steel in Subpart B of Part 2, Schedule 6, Tariff Schedules of the United States (TSUS). They are not used to join lengths of pipe, change direction of a pipe system, provide a means of branching a pipe system, or to close the end of a pipe system.

In a letter ruling abstracted as T.D. 56237(15) a similar closure for steel drums was classified under the provision for other articles of iron or steel, not specially provided for, in item 657.20, TSUS (currently item 657.25).

Although the merchandise in issue is imported as a "two-piece" closure, it is not classifiable as an entirety for tariff purposes. The court in Hancock Gross Mfg., Inc. v. United States, 60 Cust. Ct. 558, C.D. 3459 (1968) held that strainers and bases for sinks were not entireties because they performed separate functions. In this case the flange performs a function by providing a fitting or base for either a plug or a valve or a vent. The plug functions strictly as a plug and may be used with the flange or possibly with other fittings or bases.

G2

However, for tariff purposes, the flange component and the plug component are both classifiable under the same tariff provision. Each of the imported components is classified under the provision for articles of iron or steel, not specially provided for, not coated or plated with precious metal, in item 657.25, TSUS.

In view of the fact that these closure devices are not pipe or tube fittings within the provisions for fittings of iron or steel in Schedule 6, Part 2, Subpart B, they are not subject to the marking requirements under Section 207 of the Trade and Tariff Act of 1984. Further, the closure devices are also excepted from country of origin marking requirements. These closures are to be processed in the United States by an importer or for his account in such a way that they will become part of a container or other article. Therefore, pursuant to Section 134.22(a), Customs Regulations (19 CFR 134.22(a)), the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked with the country of origin of the article.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

RETURN TO THE

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

NOV 22 1985

REFER TO
CLA-2:CO:R:CV:G
075521 JLV
811664 NY

075521

Mr. John Klingman
Compagnie d' Affretement
et de Transport U.S.A., Inc.
74 Trinity Place
New York, New York 10006

Dear Mr. Klingman:

In your letter of November 30, 1984, you requested a ruling on the tariff classification of a B70 Renault cab chassis from France.

The B70 Renault cab chassis will be fully driveable at the time of importation. It will be used to produce both commercial and recreational or passenger vehicles. According to the technical information submitted by you, the two models of the B70 cab chassis have a gross vehicle weight rating (GVWR) of 3.5 tons (metric) and 4.5 tons. By using a conversion of 2.208, the following weights for gross vehicle rating apply: 7,728 pounds and 9,936 pounds. Therefore, the GVWR for each of the models is less than 10,000 pounds. The particular cab chassis in issue is also called a cutaway chassis. The purpose of a cutaway cab chassis is to allow for completion into a walk-through van or for the addition of a separate van body behind the cab. The cab in this case is usually mounted directly over the engine. Furthermore, as stated by you in your request, the cab chassis will be used to manufacture cargo vans, passenger vans, and motor homes.

The intended use of the cab chassis is not controlling. Therefore, although the cab chassis will be used in the production of various types of vehicles, it is classifiable under the provision which describes the class or kind of article in which it is included. The competing provisions, in this case, do not include actual use provisions. The B70 cab chassis, in its condition as imported, is a truck cab chassis. It is of the class or kind of cab chassis that is chiefly used in the production of trucks.

RETURN TO THE

G4

The B70 cab chassis is a lightweight cab chassis for purposes of tariff classification. Therefore, pursuant to T.D. 80-137, and the court's decision in Toyota Motor Sales, U.S.A., Inc. v. United States, 7 CIT ___, 585 F. Supp. 649 (1984), affirmed at Appeal No. 84-1326 (CAFC, 1985), which upheld both the change of practice and the classification of lightweight cab chassis in item 692.02, Tariff Schedules of the United States (TSUS), the B70 cab chassis is classified as an unfinished truck in item 692.02, TSUS.

Sincerely,

B.7+

Harvey B. Fox
Director, Classification
and Value Division

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GS

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

NOV - 6 1985

REFER TO
CLA-2 CO:R:CV:G
075556 JLV

075556

District Director of Customs
511 N.W. Broadway
Portland, Oregon 97209

Re: Decision on Protest and Application for Further Review No. 2904-4-000090, Dated June 26, 1984

Dear Sir:

The above protest and application for further review were timely filed against your action in classifying certain coupling links under the provision for articles of iron or steel, not coated or plated with precious metal, in item 657.25, Tariff Schedules of the United States (TSUS). The merchandise was entered on entry No. 84-408432-1, dated January 31, 1984, liquidated on May 4, 1984. This ruling is our decision on the classification issue.

FACTS:

Although the records concerning the importation of the merchandise under protest are ambiguous, the supporting documentation submitted by the importer and accepted by you is sufficient to identify the merchandise as BS alloy connecting links, part No. 05104. This particular link is a two-piece link with a pin or shank. It is approximately 5/8 inch in diameter and weighs approximately 2.7 pounds each. This description is not disputed by Customs.

The protestant claims that the coupling links are properly classifiable under item 664.10, TSUS, as parts of overhead traveling cranes.

ISSUE:

Are the coupling links classifiable as parts of overhead traveling cranes, or are they more specifically provided for under another tariff provision?

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LAW AND ANALYSIS:

Chain slings are classifiable as chains. Headquarters ruling letter dated June 1, 1979 (file 057895), is on point. A coupling link is a chain part which is used as a connecting device to attach chain sections. Under the facts submitted in the case, the coupling links are designed for use with 5/8 inch alloy chain in the assembly of chain slings.

The tariff classification of chain, or chains, the links of which are of stock essentially round in cross-section, and parts thereof, of 3/8 inch or more but under 3/4 inch in diameter, is item 652.30, TSUS. Because the coupling links in issue are parts of chains or chain slings, and because chains are specifically provided for, classification as part of a chain sling is more specific than as part of lifting equipment. Border Brokerage Co., Inc. v. United States, 64 Cust. Ct. 458, C.D. 4020 (1970).

HOLDING:

The coupling links are classifiable as parts of chain in item 652.30, TSUS. This classification is not the claimed provision nor the assessed provision. Because the rate of duty under the correct classification is less than the rate under either the claimed provision (item 664.10) or the assessed provision (item 657.25), you should allow the protest. A copy of this decision should be given to the protestant when notice of action is given on Customs Form 19.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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RECEIVED TO THE

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

AN 1 1986

REFER TO

CLA-2 CO:R:CV:G
075584 JCH

075584

District Director of Customs
2 India Street
Boston, Massachusetts 02109

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 04011000540

The above-captioned protest and application for further review were filed against the tariff classification of ophthalmogical measuring apparatus which was the subject of entry No. 81-348406 filed in 1981. The merchandise is a product of Switzerland. Our decision follows:

ISSUE:

Duty for the merchandise in question was liquidated at the 1981 column 1 rate of 21.3 percent ad valorem for optical ophthalmic instruments and parts in item 709.05, Tariff Schedules of the United States (TSUS). It is claimed that the 1981 column 1 rate of 5.6 percent ad valorem for electro-medical apparatus in item 707.17, TSUS, is applicable, or, in the alternative, that the 1981 column 1 rate of 15.5 percent ad valorem for electro-surgical apparatus in item 717.15 is applicable. The main issue thereby presented is whether the imported merchandise qualifies as optical goods within the definition in Headnote 3, Part 2, Schedule 7, TSUS.

FACTS:

The imported merchandise consists of an incomplete station or module of a dual station ophthalmic measuring system which

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in its complete configuration is known as the Octopus Perimeter. This apparatus is primarily used to define the field of peripheral vision and to identify variations within the peripheral boundaries. Using more traditional methods, apparatus consisting of a perimeter, projector and telescope, field of vision is manually determined and plotted. The Octopus is a totally automated system substituting a television camera for the telescope and providing fields in computer graphics form together with printouts of other diagnostic analyses derived from computer programming.

The station consisting of the control console, computer and CRT monitor is not included in the importation. The station including the attached patient chair, projection mirrors, perimeter, referred to as a cupola, and associated background illumination components, servomechanisms, etc., constitutes the imported merchandise, except the TV camera unit, and also presumably the focusing optics, are added after importation. Counsel for the protestant has submitted numerous articles, monographs and similar materials relating to perimetry.

LAW AND ANALYSIS:

Headnote 3, Part 2, Schedule 7, defines "optical instruments" as those "which incorporate one or more optical elements" not used "solely for viewing a scale or for some

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other subsidiary purpose." It would appear that more traditional permimeter systems would qualify as optical goods under that definition by virtue, among others, of the optics in the viewing telescope. See, for example, our decisions of January 4, 1978, file No. 054679; February 14, 1980, file No. 061873; and April 24, 1968, file no longer available. See also the Tariff Classification Study, Explanatory Materials, C.I.E. 1/64, Vol. 2, pp. 544 and 545.

The fact that the imported article is merely part of a larger system would not prevent it from being regarded as optical apparatus in its own right. See Norman G. Jensen, Inc. v. United States, 77 Cust. Ct. 9, C.D. 4668 (1976); Rank Precision Industries, Inc. v. United States, 85 Cust. Ct. 34, C.D. 4866 (1980), rev'd on other grounds, 68 CCPA 78, C.A.D. 1269 (1981). Nor can lack of optical elements in an article's condition as imported be a basis for avoiding an optical goods classification if it constitutes an optical instrument once the missing elements are installed in it. Swift Instruments, Inc. v. United States, 4 CIT 88 (1982), aff'd, 714 F. 2d 161 (Fed. Cir. 1983). See also General Headnote 10(h), TSUS. Therefore, the main issue involved in this protest is whether the optical elements serve more than a subsidiary purpose and, if so, whether they meet the so-called fourth Engis requirement that optical goods must aid vision. For specifics regarding

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the Engis criteria see Engis Equipment Company v. United States, 62 Cust. Ct. 29, C.D. 3670 (1969).

Aside from any optical elements which may be present in the general illumination system for the apparatus, an optical system consisting of mirrors exists for projecting a spot or other image into the perimeter. Those mirrors, together with a lens system, presumably constitute the system for determining the position of the spots on the patient's visual periphery or other pertinent location and for other observations regarding the examined eye. Our previous decisions, as indicated above, suggest that in manual perimeter systems, the analogous projection and focusing elements are more than subsidiary and impart an optical characterization to the equipment of which they are a part.

The main claim here, then, is that the electronic components together with programs and servomechanisms associated with automatic operation, when combined with the optical elements, make the total apparatus more than optical. However, it is our view that the very purpose of Headnote 3 was to prevent such a result and to provide for the accommodation of articles which combine electrical and optical features in the new specific breakouts for them in the TSUS, thereby altering the optical goods criteria in the old cases at least to that extent. In this connection,

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in United States v. Ataka America, Inc., 64 CCPA 60, C.A.D. 1184 (1977), it was held, in effect, that merchandise could not be optical and other than optical at the same time.

It should be further noted that a major component in the completed apparatus is a TV camera, and a major portion of the optics serve as the lens system for that camera. The fact that cameras of various types are specifically provided for in the TSUS does not alter the fact that they are, and have always been regarded as, optical instruments with their lenses constituting the dominant or primary component. In our opinion, the instant lenses are not reduced to a subsidiary status merely because the total apparatus is more than a camera. Taking this into consideration together with the clearly optical nature of predecessor manual perimeter equipment and the intention to provide in the TSUS updated provisions for optical goods embodying modern applications combining optical and electrical technolgies, we are of the opinion the optics in the instant apparatus are more than subsidiary.

It has been our further view that such combinations meet the fourth Engis criterion if they merely aid vision indirectly. This position has reference to the specific acknowledgment of the "indirect" aiding of vision in United States v. J. Bliss & Co., 29 Treas. Dec. 717, 724, T.D. 35980 (1915). In fact,

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the main feature which consititutes indirect aiding of vision as opposed to direct aiding of vision with respect to the instant merchandise is that a TV camera and CRT are between the eye and the lens. It is further our opinion that the automatic production of visual field diagrams in computer graphics form also indirectly aid vision by being a substitute for the diagrams which would otherwise have to be plotted manually from actual optical eyepiece observations.

Additionally, concluding that the instant appartatus was not optical because vision was not directly aided would require holding, in effect, that the TV camera which is part of the apparatus was not optical. In any case, it is our opinion that the image observed on the CRT for the instant apparatus is no less a direct observation than the image also produced by electronic means in electron microscopes which are clearly provided for as optical instruments in item 708.78, TSUS. Therefore, it is our view that the production of images in computer graphics form and on a CRT monitor satisfy the fourth Engis aiding-vision criterion claimed to be applicable here.

With respect to the claim that the merchandise is electro-surgical apparatus, it is our understanding that position is no longer being pressed.

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HOLDING:

For the foregoing reasons, we find that your classification of the Octopus Perimeter component in its incomplete form under the provision for optical ophthalmic instruments and parts in item 709.05, TSUS, was correct. Therefore, you are instructed to deny the protest in full provided the patient chair, chair motor, and mounting rack for both were not included in the importation. If the latter were included, their separate value should be determined and they should be separately classified under the provision for mechanical clinical furniture in item 727.02, TSUS, which required a column 1 rate of 5.1 percent ad valorem, and the protest should be denied except to the extent any such separate classification would result in a partial allowance. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

G14

06 DEC 1984

CLA-2 CO:R:CV:G
075234 JH

Dear

Your letter of October 11, 1984, concerns the dutiable status of methanol shipped from Canada through the United States to a destination in Canada.

It is stated that the methanol is shipped from Kitimat, British Columbia, to Portland, Oregon, and then to Vancouver, British Columbia.

In answer to your questions, if the methanol is transshipped from one point in Canada to another through the United States, the law provides that this is not an importation, if the regulations are complied with. It is suggested that you contact Customs officials at Portland for further information. If butyl alcohols are added to the methanol in the United States, it would be dutiable as a mixture.

While under the tariff law, exemptions from duty are not generally available, it might be noted that methanol imported into the United States only for use in producing synthetic natural gas or for direct use as a fuel is free of duty in item 427.96, TSUS. Methanol imported for other purposes is classifiable in item 427.97, TSUS, and dutiable at 18.6 percent ad valorem.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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18 MAR 1985

CIA-2 CO:R:CV:G
075765 JH

Dear

Your letter of February 14, 1985, concerns the classification of a certain baddeleyite which was the subject of a stipulation entered into in the case of Corning Glass Works v. United States, Civil Action No. 81-8-01094.

The processing of the ore is essentially as follows: Copper-rich ore is blasted out of the mine and crushed; crushed ore is subjected to a flotation process, in which the copper ore is floated off, with the residue subjected to a water and magnetic separations. After further air blasting and aqueous separation, a concentration rich in zirconium oxide and a uranium-thorium complex results. The baddeleyite (zirconium oxide) is then separated from the uranium-thorium materials. Further processing of the uranium-thorium minerals by leaching with nitric acid, which solubilizes the uranium-thorium, leaves a residue of 90-95 percent zirconium oxide. This product is then dried and blended with the other baddeleyite earlier produced to obtain a baddeleyite of 98-99 percent zirconium oxide.

The zirconium oxide resulting from the series of processing steps outlined above is not deemed a waste, since although perhaps not the primary product, it is, nonetheless, deemed a desired product.

In view of the facts in this case, the method of production, which involved chemical extraction, its high purity, and that it is known in the trade as zirconium oxide, it is concluded that the baddeleyite produced in this manner and of this purity, is classifiable as zirconium oxide in item 422.80, TSUS. This conclusion is based on the facts in this case and not intended as a general rule for classification of material of this type.

Sincerely,

[redacted] Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
[redacted] Classification Branch

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

CORRESPONDENCE APPROVAL AND CLEARANCE

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

15 MAY 1985

REFER TO
CLA-2:CO:R:CV:G
075811 PR

Andrew E. Mishkin, Esq.
Beveridge & Diamond, P.C.
1333 New Hampshire Ave., NW.
Washington, D.C. 20036

Dear Mr. Mishkin:

This is in reference to your letters of March 11 and 12, 1985, on behalf of U.S.A. Peninsular, Inc., concerning the country of origin of certain sweaters.

In the first situation presented, a front panel of a sweater is knit in Hong Kong, the back and sleeve panels are knit in China, and the assembly and finishing operations are done in the United Kingdom. In order to properly respond to this question, additional information should be submitted. In this regard, your attention is directed to Section 12.130, Customs Regulations, published March 5, 1985, 50 F. R. 8710. See specifically Section (d)(2).

The other three factual situations presented are connected in that only two countries or territories are involved in the production of the subject sweaters and in each instance all the panels of the sweaters are assembled and the completed garment is finished in Hong Kong. The three situations are as follows:

1. front panel knit in Hong Kong and back and sleeve panels knit in China.

2. back panel knit in Hong Kong and front and sleeve panels knit in China.

3. long sleeve panels knit in Hong Kong and front and back panels knit in China.

Without samples and more detailed descriptions of exactly what is done in each country, we are unable to definitively respond to your questions. In determining the country of origin of sweaters, the parts of which are knit in two countries with one of those countries also being the assembling country, Customs will apply the criteria set out in the final textile rules

075811

PUBLIC _____ RELEASED TO THE

of origin, section 12.130, Customs Regulations (19 C.R.F. 12.130), effective April 4, 1985. Utilizing that criteria, we believe that a substantial portion of the garment must be knit in the assembling country for that country to be the country of origin of the sweater.

It is Customs' view that the knitting in the assembling country of a sweater's long sleeves and either the front or back (whichever gives the garment its distinctive character) would clearly make the assembling country the country of origin. In most cases, the knitting of two of the garment's major portions — e.g. long sleeves, the front, or the back -- in the assembling country will make that country the country of origin. If, of the major portions, only one is knit in the assembling country, then the origin determinations must be made on a case by base basis. In this regard, Customs will usually focus its attention on either (1) the front panel (or panels) on which patterns, fancy work, or other work or features of unusual complexity may be found, or (2) both long sleeves, to the extent they impart a particular visual characteristic to the garment (e.g., raglan sleeves). In some instances, the back panel may also be considered if the back is determinative of the character of the garment. Thus, for example, where only long sleeves are knit in the assembling country and are combined with a patterned or fancy front (knit elsewhere) which provides the garment with its main visual characteristic, then the assembling country will normally not be deemed to be the country of origin of the sweater.

In the case of sweaters, the principal portions of which consist of identical fabric with nothing that particularly distinguishes one portion from another, then the assembling country, following the general rule previously stated, will usually be the country of origin if two of the principal portions are knit there. Situations in which less is done are impossible to address without a detailed statement of the applicable facts. Absent such facts, our reaction is that the knitting of only one of the principal portions of such a sweater in the assembling country normally will not result in that country being considered the country of origin unless Customs is presented with evidence establishing that the portion knit there is clearly more significant than the others, considering its complexity, the time and technology involved in its construction, and any other factors which may be relevant.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO
CIA-2 CO:R:CV:G
075847 c

075847

31 DEC 1985

Mitchell R. Scher, Esq.
Grunfeld, Desiderio, Lebowitz & Silverman
Two World Trade Center
Suite 2238
New York, New York 10048-0654

Dear Mr. Scher:

This is in response to your letter dated March 1, 1985, requesting a tariff classification ruling on a nylon drawstring bag. You do not indicate the country of origin. However, the sample that was provided along with your request indicates that it was manufactured in China.

The sample is a nylon bag with a drawstring at the top. It measures approximately 7 inches high and 3-1/2 inches at the base and resembles a duffle type ditty bag. The bag has a padded interlining and a backing of man-made textile materials. However, it does not have a lining. You indicate in your letter that these bags will be used as packaging for Leggs pantyhose at the point of sale.

You contend that this merchandise is most appropriately classified as flat goods in item 706.3900, Tariff Schedules of the United States (TSUS). Schedule 7, Part 1, Subpart D, Headnote 2(c) states that:

> The term "flat goods" covers small flatwares designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change purses, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles.

Thus, this headnote explains that the term "flat goods" covers "small flatwares designed to be carried on the person," and lists a number of exemplars that are commonly carried in this manner. It is our view that the instant merchandise is not the type of article which is designed to be carried on the person.

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Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS, provides that the term luggage covers:

> Travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling haversacks, duffle bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel.

The instant merchandise is in fact designed to contain clothing or other personal effects during travel. It is our observation that use of the nylon drawstring bag as a container for Leggs pantyhose is secondary to its primary use as a container for personal articles after removal of the pantyhose.

It is our opinion that this merchandise is properly classifiable under the provision for luggage of other textile materials in item 706.4152, TSUS, and dutiable at the rate of 20 percent ad valorem. The applicable textile quota category number is 670. If this merchandise is a product of Taiwan, it will be subject to textile quota restraints.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

075817

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

NOV 27 1985

REFER TO
CLA-2:CO:R:CV:G
075869 JCH

075869

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 38014001114

The above-captioned protest and application for further review were filed against your classification of merchandise containing optical fibers which was the subject of entry No. 84-644429 filed at the port of Detroit in 1984. The country of exportation was Canada. Our decision follows:

ISSUE:

The merchandise was entered under the former provision for mounted optical elements in item 708.29, Tariff Schedules of the United States (TSUS), which required a column 1 rate of duty of 13.5 percent ad valorem in 1984. The alternative 1984 rates claimed in the protest are 4.5 percent under the provision for electrical articles, not specially provided for (n.s.p.f.), in former item 688.43, TSUS, 8 percent under the provision for non-optical measuring instruments in item 711.88, TSUS, and 6.8 percent for non-optical electrical measuring, checking or analyzing instruments and apparatus in item 712.49, TSUS, or the foregoing rates as applicable under the parts portions of these provisions. The main issue raised in the protest is whether the various components imported with the optical fibers make them more than optical elements.

A9

FACTS:

The merchandise is invoiced as fiber optic illuminator cables with viewer ports and in 375 and 500 foot lengths. They are used to transmit diffracted light in various colors from a water level gage in a pressure vessel to a remote viewing station. Colored light which is allowed to pass from the gage through the cables illuminates the corresponding level indicators at the remote location.

LAW AND ANALYSIS:

The Customs Service has consistently regarded fiber optic cables and their mountings or fittings as optical goods. This position has been ratified by the telecommunications product breakouts in the Trade and Tariff Act of 1984, 98 Stat. 2949, which established the present specific provision for fiber optic cables whether or not mounted or with or without fittings in item 707.90, TSUS, without any changes in rates.

We do not agree that the ports imported with the merchandise make the cables more than optical elements. If not regarded as parts of the fittings or mountings for the cables, the ports could be regarded as separate optical elements in their own right subject to the same rate of duty. To permit one optical element to be the basis for considering another element as more than an optical element would be contrary to the principle of United States v. Ataka America, Inc., 64 CCPA 60, C.A.D. 1184 (1977). It was held in that matter than an article could not be optical and other than optical at the same time.

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The alternative provisions claimed to be applicable here do not contemplate optical goods. With respect to the further claim that the merchandise is measuring apparatus, its main function is to view a gage remotely, and it is the viewed gage, not the viewing apparatus, that performs a measuring function.

HOLDING:

For the foregoing reasons, we find that your classification of the instant merchandise under the provision for mounted optical elements in former item 708.29, TSUS, is correct. Accordingly, you are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

075869

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

NOV 20 1985

REFER TO
CLA-2 CO:R:CV:G
075870 JAS

075870

District Director of Customs
610 S. Canal Street
Chicago, Illinois 60607

Dear Sir:

This is our decision on Application for Further Review of Protest No. 3901-4-001375, dated February 28, 1985, concerning certain basket drive pulleys from Taiwan.

FACTS:

Memoranda of law from counsel representing the protestant, dated December 19, 1984, and July 24, 1985, together with a blueprint sketch, describe Whirlpool part 359698, designated as a "pulley for basket drive," but also referred to as a clutch disc pulley.

From submitted literature on the standard Whirlpool washing machine, it appears that as the wash cycle ends a timer causes the spin solenoid to energize, resulting in a series of mechanical actions which cause the clutch to engage with the spinning drive pulley, the subject of this protest. At the end of the spin cycle the timer de-energizes the spin solenoid which causes a cam bar to move forward, thus raising the clutch shaft and the brake yoke. This action lifts the clutch plate from the pulley, thereby engaging the brakes to bring the spin basket to a stop.

Essentially, the spinning and braking action in the washing machine is accomplished, according to the literature, by three interrelated assemblies mounted on the spin tube. First, the spin drive pulley, the article presently under consideration, rests on the base flange of the spin tube but is not secured to the tube and rotates free any time the motor is

A12

running. Second, the clutch plate, which is secured to the spin tube, engages the drive surface of the pulley to make the spin basket rotate at high rpm, thus causing the water to drain away. Third, the brake assembly, consisting of two spring loaded brake drums and brake yoke, also secured to the spin tube, performs the braking function.

The instant entry was liquidated by Customs officers in Chicago under the provision for pulleys, shaft couplings, and parts thereof, in item 680.95, TSUS. Protestant's counsel maintains that the proper classification is under the provision for clutches and parts thereof, in item 681.21, TSUS, or, if the pulley function and clutching function are found to be co-equal, then classification under the provision for machinery for washing textile filaments, yarns, fabrics or made-up textile articles, and parts of such machinery, in item 670.43, TSUS, is appropriate.

ISSUE:

Is the protested article within the eo nomine provision for pulleys; does it perform primarily a clutching function making it classifiable as a clutch; or is it more than either, making it classifiable as a washing machine part?

LAW AND ANALYSIS:

Either of counsel's proposed classifications as "parts" would be subject to General Interpretative Rule 10(ij), TSUS, which requires classification in a specific tariff provision if one is found to exist. Pulleys are generally regarded as wheels with flat, crowned, or grooved (as in a sheave) rims, used to change the direction and point of application of a pulling force or to transmit motion or energy. See A. N. Deringer, Inc. v. United States, 62 Cust. Ct. 734, C.D. 3856 (1969), and related cases.

A13

We conclude that the protested merchandise falls squarely within the common meaning of the term "pulley" for tariff purposes. It must be determined however, whether the so-called "more than" doctrine applies here so as to negate classification as a pulley. The essential argument in this regard is that the spinning clothes basket must have an on-off capability to function effectively, and that the friction surface (also referred to as the clutching surface) of the pulley, which completes the basic function of the clutch mechanism, performs this function and, therefore, is the predominant feature of the pulley or, at least, imparts an additional co-equal function.

Our examination of the subject article and attending literature lead us to conclude that it is primarily designed to transmit power from the washing machine motor to the spin basket. This is essentially the function of a pulley. It has not been subjected to an additional process of manufacture so as to invest it with a new function, i.e., as a clutch part. Pollard Bearings Corporation v. United States, 75 Cust. Ct. 149, C.D. 4619 (1975), United Carr Fastener Corporation v. United States, C.D. 2648, aff'd C.A.D. 913 (1967), and E. Green & Son (New York), Inc. v. United States, C.D. 3985, aff'd. C.A.D. 1032 (1971), are cited for purposes of distinction. The fact that an article designed as a pulley and used as such, but which also completes a clutching function, despite the absence of any special design features appropriate to that purpose, leads us to conclude that any such function of the pulley is clearly subordinate. Counsel's reference to the pulley's "drive surface" which smoothly transmits power to the spin basket is not persuasive, as such surfaces are common to most pulleys.

A14

We therefore conclude that by primary function and design, the clutch disc pulley under consideration is properly classifiable under the provision for pulleys, in item 680.95, TSUS.

HOLDING:

The protested merchandise is classifiable in item 680.95, as indicated. The protest should be denied. A copy of this decision should be attached to the Form 19, Notice of Action to satisfy the notice requirements of section 174.30(a), Customs Regulations, as amended by section 174.30(a), Customs Regulations (19 CFR 174.30(a)).

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

B1

PUBLIC

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

075883

DATE: [illegible]

FILE: CLA-2:CO:R:CV:G
075883 JCH

TO : Area Director of Customs
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 31/85 Concerning the Tariff Classification of Woven Wool Fabrics Claimed to be Upholstery Fabrics (Your Memorandum of March 12, 1985, File Ref. CLA-2-03:S:COM:N3H:352-512)

The subject IA request was initiated by the importer in a letter dated July 20, 1984. Since that time counsel has participated in this matter. The merchandise is produced in Italy. Our decision follows:

ISSUE:

It is claimed in the IA request and subsequent submissions that various textile products are classifiable as woven wool upholstery fabrics valued over $2 per pound in item 357.15, Tariff Schedules of the United States (TSUS). The 1984 column 1 rate of duty required under that provision was 19 cents per pound plus 7 percent ad valorem. The competing rate is 30 cents per pound plus 38 percent ad valorem under the more general provision for woven wool fabrics valued over $2 per pound but not over $9 per pound in item 336.62, TSUS.

To resolve this tariff competition, it must be determined whether the fabrics at issue are of a multipurpose type or a class or kind of fabric chiefly used for upholstery.

B2

FACTS:

In the submissions and exhibits provided in this matter by both the importer and Customs personnel 16 different fabric names have been referred to. However, apparently with respect to at least 9 of them Customs is not or is no longer contesting the claim that they are upholstery fabrics. With respect to three fabrics, Astoria, Panama and Salem, the Customs position with regard to them is not clear, nor is the nature of any objections to that position specified in the submissions by the importer and counsel. Accordingly, with respect to those fabrics, this IA is not shown to meet the requirements of 19 CFR 177.11(b)(4) limiting our review to situations where there is a bona fide difference of opinion, and the tariff classification of those fabrics will not be considered in this decision.

In fact, in counsel's latest submission of November 6, 1985, it is indicated that only the tariff classification of fabric Diana (claimed to be the same quality as Colombo) and fabric Cremona remain in question. Samples of these have been provided. Diana is a predominantly blue plaid twill stated to be 70 percent wool, 20 percent polyamide fibers and 10 percent other fibers (O.F.). Customs Laboratory report dated December 26, 1984, shows this fabric to weigh 8.07 ounces per square yard and have medium duty abrasion resistance at 9000 cycles. Breaking strength of the warp was 50 pounds and the filling 44 pounds. A report from the Wool Bureau Technical Services Center shows this fabric has an

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abrasion resistance of 50,000 cycles. A report from the Better Fabrics Testing Bureau, Inc., shows Colombo had an abrasion resistance of 20,000 cycles using the Wyzenbeek test and ASTM D 3597 as modified by using No. 10 cotton duck as an abradant.

Cremona is a plain-weave plaid in which reds, blues and beiges may be used as predominant colors. It is also claimed to have the same fiber composition as Diana. Customs Laboratory report dated December 26, 1984, shows it weighed 8.73 ounces per square yard and had less than light-duty abrasion resistance at 3,000 cycles. It was also shown to have breaking strength of 40 pounds in the warp and 42 pounds in the filling. Casual examination of the yarns of both Diana and Cremona disclosed no discernable fiber separation at five reverse twists per inch. It has been further indicated that both fabrics undergo further processing after importation for necessary surface characteristics.

A submitted copy of specifications of the International Wool Secretariat shows that upholstery fabrics may contain 70 percent wool and between a 5 and 30 percent non-wool fiber content. Specifications for abrasion resistance are shown to be 20,000 rubs and breaking load more than 40 kg. In a letter dated October 24, 1985, from the Wool Bureau, Inc., it was stated it was determined that replacing the traditional wire screen abradant used in testing upholstery fabrics with a No. 10 cotton duck abradant would produce results more realistically related to actual service requirements. A copy

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of an undated bulletin promulgating this change has also been submitted. Similar information dated October 31, 1985, from the Better Fabrics Testing Bureau, Inc., has been submitted. Additionally, evidence is in file showing the importer in question is a supplier to the upholstering and related trades.

LAW AND ANALYSIS:

Counsel has cited various authorities for the proposition that the classification standard applicable to upholstery fabrics is chief use. In this connection, United States v. The Carborundum Company, 63 CCPA 98, C.A.D. 1172 (1976), has been cited for its guidelines in chief use determinations. Chief use, of course, involves two correlative but separate components, use and the class or kind of merchandise to which the use relates. See General Headnote 10(e)(i), TSUS. In the exhibits and written arguments submitted in this matter and in an oral presentation during a conference on October 3, 1985, 10 specific factors have been set out for us as appropriate considerations for determining chief use and defining class or kind as they may be applicable to the fabrics in question and to upholstery fabrics in general. Of those factors, two concern such considerations as channels of trade or those more specifically related to use while the remaining eight deal specifically with the identification of physical characteristics by which upholstery fabrics as a class or kind may be objectively distinguished from other fabrics.

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The first factor submitted for our consideration is weight. It is claimed that the point of demarcation between wool upholstery fabrics and other wool fabrics is 8.3 ounces per square yard. The second factor is abrasion resistance as defined in the exhibits together with strength and other considerations related to service. The third factor is bolt width. It is claimed that upholstery fabrics more typically are supplied in 54-inch widths while apparel fabrics are more typically supplied in 60-inch widths. The fourth factor is color and design. It is claimed that apparel fabric fashions are recognizable and distinguishable from upholstery styles for such characteristics as seasonal colors, etc.

The fifth factor deals with pattern location. It is claimed that stripes for upholstery fabrics are placed horizontally and other designs are off-center. The sixth factor is fiber content. It is claimed that apparel fabrics are more typically 100 percent pure wool or otherwise more purely blended, that upholstery fabrics, by contrast, may typically be as low as 70 percent wool with up to 10 percent O.F., and that blends of this type in the price ranges involved could not compete in the apparel fabric market. The seventh factor is yarn twist. It is claimed that yarns for upholstery fabrics typically have 9 turns to the inch for greater strength, while apparel fabrics typically have 5 turns to the inch for better draping qualities and crease resistance. The eighth factor deals with surface characteristics. It is claimed that upholstery fabrics are

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typically treated with a chemical or other process to make them non-pilling.

The remaining factors dealing with use rather than the identification of class or kind include distribution and sale to furniture manufacturers and other establishments which will not use the fabrics for apparel. The tenth and last factor concerns sourcing. It is claimed that upholstery mills supply merchandise in fewer pieces per pattern than an apparel fabric mill would supply. However, the submissions and exhibits in this matter include no evidence showing the fabrics have been supplied in the circumstances contemplated by this last factor.

Nor are the fabrics shown to comply with the eighth factor dealing with surface qualities since these are created after importation and the products do not have the necessary non-pilling characteristics in their condition as imported. However, at least Diana may be in conformance with the claimed fifth factor dealing with pattern location since its pattern has been reported as asymmetrical.

Compliance of either fabric with the fourth factor dealing with color and design is problematical. While we are aware of the use of plaids in interior decoration themes, such as those illustrated in the House Beautiful Home Decoration magazine (Spring ed., 1985), we can perceive no coloristic effects or other subtleties in the plaids represented by the samples dedicating them to interior

decoration uses to the exclusion of apparel uses. Even reliance on the third factor dealing with bolt width is problematical since actual measurements showed some variations in fabric widths.

With respect to the second factor dealing with abrasion resistance and related service considerations, Customs Laboratory examination showed the fabrics were far below the 20,000 cycle standard. While private laboratory tests produced widely divergent results by substituting a cotton duck abradant, the submissions suggest that the use of such an abradant is a comparatively recent change in testing methods. While in our use of testing standards for tariff classification purposes we generally will not dispute changes made in those standards from time to time by the non-governmental agencies monitoring the standards, changes in testing standards cannot be permitted to significantly alter the preexisting scope of a tariff provision. The disparity in the testing results at issue here shows that just such a result would ensue here if we departed from the traditional methods in the laboratory evaluation of fabrics. With respect to the first factor dealing with weight, only Cremona is on the upholstery quality side of the claimed dividing line.

In conclusion, evidence of sales to upholsterers, etc., cannot be determinative in this matter unless those sales are shown to relate to fabrics which as a class or kind have

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physical characteristics distinguishing them from other fabrics. While we would not allow compliance with only one of the factors relating to the identification of class or kind determine classification, we would not withhold classification as an upholstery fabric if something less than all of the identified factors plus any other factors which may be pertinent were complied with. However, there must be a combination of at least some factors persuasive of the existence of a class or kind chiefly used for upholstery. Further, some of the factors must be regarded as more important than others, and compliance with one may not merit the same degree of consideration as compliance with another.

HOLDING:

Of the factors discussed above, fabric Diana may only be in compliance with the fifth, sixth, seventh and ninth factors dealing with pattern location, fiber content, yarn twist and trade distribution. However, we find that is countered by noncompliance with the more important factors relating to fabric weight and abrasion resistance. While Cremona may be in compliance with the weight factor, and may be in compliance with the sixth, seventh and ninth factors also, we find that is outweighed by noncompliance with the abrasion resistance factor as well as others, such as those dealing with design, color and surface characteristics which are not convincing of a class or kind of fabric chiefly used for upholstery. Accordingly, we find these fabrics, if not over $9 per pound, are properly classifiable as other than

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upholstery fabrics in item 336.62, TSUS. A copy of this decision should be made available to counsel for the internal advice applicant.

John T. Rich

Harvey B. Fox

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

DEC 18 1985

REFER TO
CLA-2:CO:R:CV:G
075932 PR

075932

District Director of Customs
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Application for Further Review of Protest No. 3801-5-000031, dated October 5, 1984

This protest is against your decisions in the liquidations on July 13, 1984, of entry Nos. 467678, dated August 23, 1983, and 469845, dated September 19, 1983. The protest concerns the classification of "woven polybags."

The submitted sample is a shipping bag made from woven man-made fiber strips. The exterior of the bag has been coated or laminated with a plastics material. This coating or lamination is not uniform over the entire surface of the bag. Rather, there are gaps in the coating which appear to make up approximately 10 percent of the surface area of the bag. Printed on the exterior portion of the bag in black letters are words indicating that the bag is intended to hold 100 pounds of kidney beans. The transparent man-made fiber strips are clearly discernible in the open uncoated areas. In addition, it appears that the man-made fiber strips comprising the bag can be seen through the white coating or filling plastics material.

The importer believes the merchandise should be classified under the provision for containers of rubber or plastics, chiefly used in the packing, transporting, or marketing of merchandise, in item 772.20, Tariff Schedules of the United States (TSUS). The merchandise was classified and liquidated under the provision for bags and sacks, or other shipping containers, of man-made fibers, in item 385.53, TSUS. The basis for the importer's position is Headnote 5, Schedule 3, TSUS, which provides, in essence, that in determining the classification of any article which is wholly or in part of a fabric coated or filled, or laminated, with nontransparent rubber or plastics, the fabric shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that the nontransparent rubber or plastics forms the outer surface of such article.

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As can be seen from the above description of the subject merchandise, (1) we do not believe that the white plastics coating or laminating material is nontransparent since the man-made fiber strips can be seen through it, and (2) the gaps in the coating or laminating material allow the underlying fabric to be seen. It is our view that the legislative history of Headnote 5 clearly requires that the Headnote not be applicable to merchandise unless the textile character of that merchandise is obscured by the coating or laminating material. That is not the case in this instance. Accordingly, the merchandise was properly classified in item 385.53, TSUS.

You should deny the protest in full. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

075932

B12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

CLA-2 CO:R:CV:G
075992 JGB
812827 (N.Y.)

075992

26 DEC 1985

Mr. J.A. Fanok
Attorney
Panasonic Industrial Co.
J. Fanok Services, Inc.
61 Broadway
New York, New York 10006

Dear Mr. Fanok:

You have requested a ruling on the tariff classification of a hand-held pocket-sized terminal, Model PT01, which we understand to be a product of Japan, manufactured by Matshushita Electronic Industries.

The terminal is a sophisticated electronic device that is provided by a bank for use by its account holders. The device marketed as a pocket terminal operates in a manner similar to the permanent tellers currently in use by banks, in that a depositor may be informed electronically of general information about the bank's accounts and services as well as specific information about the depositor's accounts. For example, the account balance, the last five deposits, the interest earned to date, and the maturity date for savings products are provided by the device on command. The device will also transfer funds from one account to another and is apparently designed to be capable of paying bills, getting stock market information, canceling payments, changing the account address and the like. Product literature, however, shows that the bank presently does not have its computers programmed to provide this information to the remote terminals.

The device is battery-operated and transmits and receives information through a telephone line. Access to telephone lines is obtained by the use of modular jacks at each end and a telephone cord. The keyboard contains 24 keys, 10 of which are numbered 1 to zero and spaced like a standard push-button telephone. Various commands are marked on other keys such as "DISPLAY", "INFO", and "ENTER." The keys serve to transmit commands to the bank's computer and the numbered keys along with various computing command keys operate like a hand calculator. The visual display panel running horizontally along the top of the six rows of keys appears to be of the LCD variety, although this information does not appear in the literature submitted.

B13

The issue is whether any of the function-related tariff items describe this article, or whether, failing that classification, the article must be relegated to the basket provision for electrical articles, item 688.42, TSUS.

Classification in item 676.20, TSUS, the provision that includes electronic calculating machines specially constructed for multiplying and dividing, employing solid-state circuitry, is not appropriate because the classification does not include the principal function of sending and receiving information or data, or the manipulation of that data in the bank's host computer records.

The article also appears to be disqualified from classification in item 673.30, TSUS, under "Office machines, not specially provided for" as a data processing machine or as an other office machine. Its selling point, according to the instruction brochure, seems to be that it is portable and hand-held to be used in the "privacy of [the] home or office, when traveling or anywhere." Therefore, it does not meet the headnote standards for office machines which require the article to "have a base for fixing or placing them on a table, desk, wall, floor or similar place." Headnote 2(a), Subpart G, Part 4, Schedule 6. Moreover, this article by its description appears principally to be not so much a data processing machine as it is an accessory to a data processing machine operated by the bank on their premises.

The superior heading, "Electrical telegraph...and telephone apparatus and instruments..." provides the most appropriate and specific classification of the article. The predominant characteristic of the pocket terminal is its ability to receive and transmit information from a computer by use of a telephone line. The article is not reasonably described as a computer itself, but rather as a sender/receiver of information, allied functionally with telegraph and telephone apparatus.

After due consideration, this office has determined that the mathematic function performed by the calculator is subordinate to the function of the terminal. The operation of the calculator uses some of the same electronic components as the terminal, the same power source, the same keyboard and same display panel. But the addition of the calculator function

B14

does not alter the principal function of the article, nor is the calculator function integral to the sending/receiving function of the device, distinguishing the result in our ruling no. 071018 SC, issued March 7, 1983. Therefore, in our view, the calculator function cannot be seriously considered as significant to the terminal and the classification of the article as "Other" terminal apparatus is the most specific classification. The hand-held pocket terminal is classified in item 684.66, TSUS, with a Column 1 rate of duty of 5.3 percent ad valorem for products of Japan.

075992

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
076053 jlj

12 DEC 1985

District Director of Customs
Patrick V. McNamara Building
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3801-4-000229

This protest was filed against your decision in the liquidation of certain entries covering shipments of Abiform Forms Paper 65 produced in Canada.

This ruling concerns the correct tariff classification and value of the paper.

FACTS:

The paper involved is Abiform Forms Paper 65, an uncoated paper produced by Abitibi-Price, Inc. of Canada. Both its classification and its value are being contested by the protestant.

ISSUE:

What is the correct classification of this paper? What is the correct value of this paper?

LAW AND ANALYSIS:

We note initially that similar classification issues concerning Abiform Forms Paper 65 were dealt with in Customs Headquarters Ruling Letter (HRL) 074564 of November 26, 1984, which concluded that Abiform Forms Paper 65 (now known as Abiform 65) was classified as a writing paper in item 252.75, Tariff Schedules of the United States (TSUS). This protest makes additional claims.

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The Detroit district director argues that the paper is classifiable in accordance with the chief use of similar and identical grade papers. He observes that Treasury Decision 72-207 and Legal Determination 82-0071 concluded that paper chiefly used for conversion into computer and business forms is classifiable as writing paper in item 252.75, TSUS. Inasmuch as the paper in question seems to be used solely for conversion into business forms, he contends that it is classifiable under the provision for writing paper weighing over 18 pounds per ream, in item 252.75, TSUS.

The protestant claims that the subject paper is a newsprint grade with a high brightness which is used in the commercial printing market. The protestant asserts, at page 2 of its protest statement, that:

> The product under discussion, Abiform, ... complies with the descriptive specifications for standard newsprint paper set out in Treasury Decision 56349 dated January 22, 1965, except that it is sometimes sold in weights less than 28.5 pounds and greater than 35 pounds per ream to accommodate the commercial printing market.

Customs Laboratory Report No. 3-84-20141, dated January 31, 1984, advises that some Forms Paper 65 conforms to the laboratory tests for standard newsprint paper. (One of the specifications of T.D. 68-265(20), i.e., the size of the rolls in which the paper is imported, is not ascertainable by the laboratory and therefore is not mentioned.)

T.D. 68-265(20) updates T.D. 56349 and contains the standard newsprint specifications referred to by the protestant and by the laboratory. It is the most recent statement of finding made by the Customs Service as to the chief use of paper meeting those specifications. That portion of the subject paper produced and marketed as Abiform Forms Paper 65 or its variants which meets all of the specifications of T.D. 68-265(20), including the size of the rolls in which the paper is imported, is

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therefore classifiable under the provision for standard newsprint paper in item 252.65, TSUS.

It remains to be determined whether the chief use of the balance of the subject paper is as writing paper. T.D. 72-207 and Legal Determination 82-0071 indicate that such paper is writing paper because it is chiefly "converted into computer output forms and business forms for the recordation of data by pen, pencil, typewriter or similar device, etc." In other words, if the chief use of a paper is in making computer printout forms and business forms, then the paper must be classified as a writing paper. Inasmuch as the Detroit import specialist has found the subject paper to be chiefly used for conversion into business forms, and the protestant has not shown that the paper belongs to a class or kind of paper not so chiefly used, the balance of the paper is classifiable as a writing paper in item 252.75, TSUS. See HRL 074564 of November 26, 1984.

To recapitulate, that portion of Abiform 65 which meets all of the standard newsprint specifications set forth in T.D. 68-265(20) is classifiable as standard newsprint in item 252.65, TSUS. The remainder of the Abiform 65 — which does not meet all of the standard newsprint specifications but which meets the characteristics of the class or kind set forth on page 3 of HRL 074564 — is found to be chiefly used for business forms and is classifiable as writing paper in item 252.75, TSUS.

An additional claim made by counsel for the protestant is that an estimated 390 entries of Abiforms Forms Paper 65 were liquidated under the provision for book and printing paper not specially provided for in item 252.67, TSUS, during 1982 at the Customs ports of Sault Saint Marie, Michigan and Buffalo, New York. He cites Heraeus-Amersil, Inc. v. United States, Slip Op. 85-60 of June 6, 1985, in support of his assertion that this number of entries establishes a practice of classification.

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With regard to counsel's claim of a uniform and established practice, we have been advised by the Champlain, New York, import specialist who handles this paper that he never classified Abiform Forms Paper in item 252.67, TSUS, and that, beginning in early 1983, he always classified Abiform Forms Paper 65 under item 252.75, TSUS, as a writing paper.

Heraeus-Amersil, Inc. v. United States, supra, found that a uniform and established practice existed because of the liquidation of more than 300 entries over a 10 year period of like or similar merchandise classified under the same tariff classifications. The Heraeus-Amersil court stated that the factors to be considered when looking for a uniform and established practice are the number of entries resulting in the alleged uniform classifications, the number of ports at which the merchandise was entered, the period of time over which the alleged uniform classifications took place, and whether there had been any uncertainty regarding the classification over its history. The court was particularly impressed with the fact that seemingly uniform liquidations had spanned a period of 10 years.

In the instant case, the alleged uniform liquidations all took place within one year. We note, furthermore, that while counsel for the protestant claims that an estimated 390 entries were liquidated under item 252.67, TSUS, in 1982, he can in fact cite only four specific entries which were liquidated between October 1, 1982, and October 20, 1982, under item 252.67, TSUS. In view of the short time period involved, the fact that counsel can produce only four actual liquidations, and the fact that a third port, Champlain, New York, began liquidations under item 252.75, TSUS, in early 1983, we find that no uniform and established practice existed with regard to the instant paper. In view of the finding of the

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Court of Customs and Patent Appeals in Washington Handle Co. v. United States, 34 CCPA 80, C.A.D. 346 (1946), that 28 liquidations at two ports over a two year period did not constitute a practice, counsel has produced insufficient evidence to convince us that there was a uniform and established practice.

The importer also protests the assessment of duty on the value of "foreign inland freight" contained as part of the price actually paid or payable for the merchandise. In this regard, it appears from the file that all sales of the merchandise in question were made on an F.O.B. mill basis (according to commercial invoices) or on an ex-factory basis (according to a CF 6431 in the file and a conversation by a member of this office with Mr. Finland of Detroit Customs). Additionally, it appears that the price actually paid or payable for the merchandise in each invoice included a total amount for inland freight within Canada plus freight within the United States. Apparently, only the freight within the United States was allowed as a nondutiable charge.

Initially we note that our regulation regarding the dutiability of foreign inland freight was amended in T.D. 84-235, published in the Federal Register on November 29, 1984. Additionally, the section of the above T.D. relating to its effective date indicated that the amendment would be applicable to all entries of merchandise for which liquidation was not final on the date of the T.D.'s publication. Accordingly, the amendment to our regulation applies to the entries being protested.

Finally, although prior to the publication of T.D. 84-235, foreign inland freight was always dutiable if it was part of the price actually paid or payable for the merchandise, such is not necessarily the case under the amended regulations. In this regard, Headquarters Telex 13149, dated February 4, 1985, indicates in paragraph B.1.:

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B. C.I.E. or F.O.B. Transaction. Foreign inland freight expenses are non-dutiable charges if the terms of sale for the merchandise are C.I.F. or F.O.B. and if: the charges are separately itemized and claimed; the claim and the amount is both appropriate and reasonable; the foreign inland freight is freight from:

1. The point or place where the buyer or importer assumes the responsibility for the merchandise to the point or place where the merchandise enters the Customs territory of the United States.

Additionally, paragraph A. of the same telex indicates that all foreign inland freight costs are non-dutiable if the terms of sale for the merchandise are "ex-factory." Since it appears that the transactions in the protested entries fall within either paragraph A. or B.1. of the above telex, the charges for foreign inland freight should be allowed as nondutiable if the claimed amount thereof is found to be reasonable and appropriate.

HOLDING:

With respect to the appraised value of the merchandise, the charges for foreign inland freight should be allowed as nondutiable if the claimed amount is reasonable and appropriate, as indicated above. The protest is allowed in part with regard to this issue.

With regard to the classification issue, any of the paper covered by the protest which meets all of the specifications of T.D. 68-265(20) for standard newsprint should be reliquidated in item 252.65, TSUS; the protest is approved in part with regard to the classification issue concerning this paper. With respect to the classification of the balance of the paper covered by this protest, which has been found by the Detroit import specialist to be chiefly used for conversion into business forms, the protest must be denied. Classification under the provision for writing paper in item 252.75, TSUS, is correct for such paper.

076053

PUBLIC

A copy of this decision letter should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

John T. Rath

For Harvey B. Fox
Director, Classification
and Value Division

076053

C8

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

CLA-2 CO:R:CV:G
076077 JLV

076077

Chief, Customs Information Exchange
U.S. Customs Service
6 World Trade Center
New York, New York 10048

Re: Decision on Difference of Opinion Reported on Customs Form 6431, Dated October 10, 1984, From Buffalo Concerning Double-Walled Chimney Pipes

Dear Ms. DeGaetano:

In your memorandum of April 23, 1985, you forwarded the difference of opinion for our decision. This ruling is our decision on the classification issue.

FACTS:

The merchandise in issue consists of several types of double-walled pipes and pipe fittings designed for use as chimney flues for various kinds of stoves. Samples submitted are representative of the typical construction for the pipes and fittings:

1. No. 258-H: single wall pipe with fluted end for insertion into another section of pipe; the seam is made by interlocking edges and crimping at certain points.

2. No. 258-D: Double wall pipe with aluminum flue and carbon steel casing; inner pipe is secured by rivet (and, in addition, by crimping) to casing in such a manner as to leave an insulating air space.

3. No. 258-F: Double wall connector with stainless steel flue and carbon steel (painted) casing; flue secured by three rivets to casing so that an insulating air space is formed.

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4. No. 258-B: Double wall insulated connector with stainless steel flue and casing; insulation is fibrous material; the ends of the connector are formed into male and female ends by spacers which are riveted to the casing and, on the male end, overlap the flue liner and appear to be swaged with the liner to form an additional bond.

ISSUE:

The sole issue is whether or not the method of manufacture is such that the double wall chimney pipe is more than pipe or tube within the meaning of Part 2, Schedule 6, Tariff Schedules of the United States (TSUS).

LAW AND ANALYSIS:

Although numerous administrative decisions are cited in support of both opinions, no case is on point. The controlling principles are found in the statutory headnotes to Part 2 of Schedule 6. Although Headnote 1 appears to define the processes by which the basic products in Part 2 are formed as "rolled, forged, drawn, extruded, cast or sintered," the language also reads "[u]nless the context requires otherwise." In this case, Headnote 3(e) of Part 2 provides a broader context for pipes and tubes.

In J. C. De Jong & Co., Inc. v. United States, 62 Cust. Ct. 605, C.D. 3832 (1969), the court held that a tube produced from two separate tubes by cold reducing (drawing) an outer tube over an inner tube to bond them together was a tube within the meaning of Headnote 3(e), Part 2, Schedule 6,

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TSUS. The method of manufacture of the double wall pipes, in this case, is different, but does not require a conclusion that they are not pipes within the meaning of Headnote 3(e). The flue and casing, in each case, are functionally bonded together.

The use of a fibrous insulation as packing between the flue and casing of No. 258-B does not preclude classification as pipe. This insulation is similar in effect to glass linings or asphalt coatings used on other pipes and tubes which have been classified in Part 2 of Schedule 6. See, for example, letter ruling of August 14, 1975 (file 040621), on glass liner bonded to inner wall of steel tube; T.D. 66-94(40) concerning steel pipe coated with tar enamel, wrapped with felt, and finished with Kraft paper.

HOLDING:

Double wall chimney pipes and connectors, whether or not filled with an insulating material, are classified in Part 2 of Schedule 6, as pipes and pipe fittings.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 20 1985

REFER TO

CLA-2 CO:R:CV:G

076163 c

076163

Mr. Charles Garland
Import Manager
E.S. Originals, Inc.
20 West 33rd Street
New York, New York 10001

Dear Mr. Garland:

Your letter dated May 2, 1985, addressed to our New York office concerning the dutiable status of a PVC based material which has been sprayed or coated with leather particles, has been referred to us for a direct reply to you.

We have been advised that this material will be used as the entire upper of a cemented, slip-on shoe with a plastic sole. The shoe will be over 50 percent by weight of plastics and in chief value of plastics.

A laboratory analysis of a sample of the material involved states that the material was manufactured by the following process:

> A layer of uncured PVC type plastic was spread on one surface of a plain woven man-made fiber fabric. The PVC plastic was heat cured, releasing a gas forming agent and creating a closed cell foamed structure. The exposed surface of the foamed PVC plastic was then coated with resin/adhesive material and "chopped-up" leather fiber was "sprayed" over the tacky surface and then cured.

We would not consider the instant material as a plastic because the manufacturing process described above is analogous to textile fiber flocking on plastic which is considered for tariff purposes as a textile surface area.

This material is not considered to have a fiber surface due to two definitions. Schedule 7, Part 1, Subpart A, Headnote 2(q), Tariff Schedules of the United States (TSUS), defines "fibers" as including animal fibers. However, a textile dictionary definition of "animal fibers" does not include leather fibers which were defined elsewhere.

C12

This material is not a leather surface because it does not meet the tariff definitions of leather found in Schedule 7, Part 13, Subpart B, Headnote 1(a), TSUS, and Schedule 1, Part 5, Subpart A, Headnote 1(a), TSUS.

Noting that the material constituting the surface of the upper is not considered plastic, fiber, or leather, it must be considered to be "other" material.

In view of the foregoing, it is our position that an open toe, cement construction shoe which is over 50 percent by weight of plastic and which has the subject material constituting its upper is dutiable at the rate of 37.5 percent ad valorem under item 700.59, TSUS.

Sincerely,

Arthur P. Scheffler

For Harvey B. Fox
Director, Classification
and Value Division

C13

076163

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

DEC 19 1985

REFER TO
CLA-2 CO:R:CV:G
076288 PR

076288

This ruling is in response to a Request for Internal Advice, No. 49/85, concerning the tariff status of certain shorts.

ISSUE:

The issue presented is whether the subject garments are classifiable under the provision for other men's or boys' wearing apparel, of man-made fibers, ornamented, knit, in item 379.2340, Tariff Schedules of the United States Annotated (TSUSA), as swimming trunks, with a textile category designation of 659, or in item 379.2350, TSUSA, as shorts, with a textile category designation of 647.

FACTS:

Two samples were submitted, styles T-2441 and T-2442. Both are boxer style shorts that are made from a lightweight nylon tricot fabric. Each has a full elasticized waistband with a functional inside drawstring, a full support nylon tricot liner of the same color as the outer shell, side leg slits, and nylon tricot capping along the edge of each leg opening. The leg openings of each garment appear to be oversized. Style T-2441 is ornamented by a rectangular-shaped textile label affixed to the left front area of the garment and by an overlaid strip of nylon tricot fabric of contrasting color which extends down each side seam. Style T-2442 is ornamented by a similar rectangular-shaped decorative label on the left front of the garment. The styles are stated to be designed for wear by large boys and were imported in sizes small, medium, and large.

C14

There is nothing on the garments which appears to dedicate them to the exclusive wear of men or boys. On the contrary, when viewing the garments, they are similar to garments sold in sporting goods stores as running shorts for women. However, for the purposes of this reply, we will assume that these garments are, in fact, identifiable as being intended for the exclusive wear of boys. Otherwise, the issue presented would not necessitate the following discussion since boxer-style shorts of the kind here represented are not within the class or kind of garments commonly or commercially known as women's or girls' swimwear.

LAW AND ANALYSIS:

On February 17, 1984, this office issued ruling 073387, concerning the tariff classification of men's boxer-style shorts made from woven fabric. In that ruling, it was stated that the term "swimwear" connotes garments which are intended for wear in water and which are predominately used in that manner. It was further stated in that ruling that if a question concerning the commercial identity of a garment arises, in determining whether the garment is swimwear or shorts, Customs will look at the following features:

(1) The fabric from which the garment is made,

(2) The presence of side inserted pockets, which are usually a characteristic of shorts and not swimwear.

(3) The presence of cotton liners, which are more often found on multipurpose or running shorts; and

(4) The presence of a fly front, which is not a normal feature on swimwear.

These criteria were followed by warning that while the fabric of each garment is the primary criterion and may be determinative by itself, none of the other features are necessarily determinative by themselves, or in combination. Each article of apparel should be considered as a whole and,

D1

due to the specific nature of swimwear, if a garment is not readily identifiable as swimwear, it is a multipurpose garment and should be classified as shorts. While ruling 073387 dealt with garments made from woven fabrics, the criteria stated in that ruling is general in nature. The importer now contends that the subject merchandise meets all the criteria contained in ruling 073387.

The criterion in ruling 073387 concerning the fabric from which the garment is made discusses woven fabrics. However, it is equally applicable to knits. Information available to Customs is that various domestic manufacturers and importers believe that lightweight nylon or polyester tricot shorts are designed for running or as activewear garments and are not desirable for use as swimwear. Tricot fabric tends to be quite clingy, which could result in embarrassment to the wearer. Accordingly, we conclude that the fabric from the instant garments are made is not a fabric normally used in the manufacture of swimwear. It is our view that the subject merchandise clearly falls within a class of articles commonly and commercially known as activewear or running shorts. Although these garments may be used in the water, as cut-off jeans sometimes are, they are not normally used in swimming.

We are cognizant of our ruling 054606, dated March 10, 1978, which characterized a blue knit boxer-style garment as swim trunks. The liner in that garment was white, which seems to be a characteristic of swim trunks, rather than matching the color of the exterior of the garment. Since Customs will classify each garment according to its own characteristics, the language in the preceding paragraph is not intended to convey the impression we believe swim trunks cannot be made of knit fabric. However,

076288

D2

the garment which was the subject of ruling 054606 was not constructed of fabric similar to that from which the instant merchandise is made and is, therefore, not pertinent to this determination.

Two additional questions raised by the importer must be addressed. First, the importer alleges that its representatives met with Customs officials in July and August 1983 and were orally advised that garments with a full separate liner, a drawstring, and nonabsorbent material suitable for swimming would be classified as swimwear. Based on this information, they ordered the subject merchandise.

It is noted that, aside from the fact that our National Import Specialist has no record of any such meetings, the importer indicates it was represented by a customhouse broker who has, or should have, ample knowledge on how to obtain a written ruling from the Customs Service. Oral statements by Customs employees, even those at the Headquarters level, are not binding on the Customs Service.

The second additional issue to be resolved is that the importer believes its merchandise falls within the purview of a letter from Headquarters, dated May 2, 1984. In that letter, our ruling 073387 was amended because of some confusion in the area of men's woven shorts to reflect that it was not applicable to men's or boys' shorts which would have been, prior to that ruling, classified as swimwear, provided that sufficient evidence is presented to the responsible import specialist showing that the merchandise in question was ordered prior to February 17, 1984. In this regard, the importer has presented evidence which purports to show that the subject merchandise was ordered prior to February 17, 1984.

D3

It does not appear to this office that the subject merchandise falls within the purview of the May 2, 1984, amendment to our ruling 073387. Our information is that there existed no confusion on the classification of knit running shorts and that garments similar to the subject merchandise were not normally or usually classified as swimwear prior to ruling 073387. While some shipments of this merchandise may have inadvertantly been classified as swimwear, to our knowledge, most, if not all, of this merchandise imported prior to February 17, 1984, was classified as shorts and not as swimwear. Accordingly, the subject merchandise does not fall within the express terms of the May 2, 1984, amendment to ruling 073387.

HOLDING:

The subject merchandise is classifiable as shorts and, if identifiable as being intended exclusively for the wear of men or boys, is classifiable in item 379.2350 (now item 381.2350) with a textile category designation of 647.

Harvey B. Fox
Director, Classification
and Value Division

076288

D4

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

076339

DATE: 29 NOV 1985

FILE: CLA-2:CO:R:CV:G
076339 JCH

TO : Area Director of Customs
Jamaica, New York 11430

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 29/85 Concerning the Tariff Classification of an Incomplete CAT Scanner System (Your memorandum of March 1, 1985, K:C 0090 CLA-2-K:C:D I/III EM)

The subject internal advice request was initiated by counsel for the importer in a letter dated February 8, 1985. This merchandise is a product of West Germany. Our decision follows:

ISSUE:

The merchandise was entered in 1984 under the provision for apparatus based on the use of X-rays in item 709.63, Tariff Schedules of the United States (TSUS). The 1984 column 1 rate of duty required under that provision was 2.3 percent ad valorem. A notice was issued of advancement to 4.9 percent ad valorem, the rate for electro-medical apparatus covered by item 709.17, TSUS. The main issues for resolution are whether the imported modular medical equipment which is less than a complete computer assisted tomography (CAT) scanner system may be regarded as an entirety and, if so, whether it constitutes more than X-ray apparatus.

D5

FACTS:

The imported merchandise is an incomplete CAT scanner system consisting of the scanning gantry, power cabinet, patient table and main diagnostic control unit. These components are considered to be an incomplete system because the central computer unit and other ancillary or peripheral equipment which are necessary for a complete system are supplied domestically.

LAW AND ANALYSIS:

In our decision of September 26, 1983, C.S.D. 84-37, we held that the basic components of a complete CAT system were classifiable as an entirety under the provision for electro-medical apparatus in item 709.17. Certain ancillary or peripheral equipment, however, was not considered part of the entirety and was separately classifiable. While we are urged to reconsider that decision, the lengthy discussion in that matter is self-explanatory and any recapitulations of the facts or rationale contained therein would serve no useful purpose. No modifications in that decision will be made at this time.

Given, therefore, that a complete CAT scanner system is an entirety, anything short of the complete system would technically not be an entirety. It is axiomatic that there

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is no such thing as an incomplete entirety. Franklin Industries, Inc. v. United States, 1 CIT 349 (1981); United States v. Baldt Anchor Chain & Forge, 59 CCPA 122, C.A.D. 1051 (1972).

As separately classifiable merchandise, the scanning gantry would qualify for classification as X-ray apparatus. In our opinion, there is no authority to support any view that X-ray apparatus must be complete or that item 709.63 excludes merchandise which is part of a larger article or system. While the patient table would ordinarily be classifiable separately as medical furniture, we find that it also must be classified under item 709.63. In accordance with Headnote 1(xii), Subpart A, Part 4, Schedule 7, TSUS, X-ray tables must be classified under item 709.63 whether or not they are imported as entireties with X-ray apparatus. We also find the power supply is similarly classifiable whether or not an entirety with X-ray apparatus.

However, the tariff classification of the diagnostic control unit is controlled by General Headnote 10(ij), TSUS. Under that rule, a specific provision for a part must prevail over a parts provision. In this connection, the provision for control panels in item 685.90, TSUS, is a specific provision for the purpose of application of the headnote. J. E. Bernard & Co. v. United States 59 Cust. Ct. 31, C.D. 3060 (1967).

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HOLDING:

In view of the foregoing, the "more than" rule is not applicable since the merchandise is not regarded as an entirety. We find that the instant scanning gantry, power cabinet and patient table are separately classifiable under the provision for X-ray apparatus and parts in item 709.63, TSUS.

The main diagnostic control unit is separately classifiable under the provision for control panels in item 685.90, TSUS. The 1984 column 1 rate of duty required under that provision was 6.5 percent ad valorem. Nothing in this decision should be construed as changing the classification of any ancillary or peripheral equipment the classification of which is otherwise controlled by our classification of the articles which were components of the merchandise which was the subject of C.S.D. 84-37 and that we did not regard as an entirety with an otherwise complete CAT scanning system.

A copy of this decision may be made available to the internal advice applicant.

William P. Schaffer
for Harvey B. Fox

D

JUN 13 1985

CLA-2:CO:R:CV:G
076356 PR

Mr. Herbert T. King
Oriental Pacific (U.S.A.) Inc.
475 Fifth Avenue
New York, New York 10017

Dear Mr. King:

This is in reply to your letter of May 23, 1985, concerning the country of origin of certain sweaters partially knit and completely assembled in Hong Kong.

Without samples and more detailed descriptions of exactly what is done in each country, we are unable to definitively respond to your questions. In determining the country of origin of sweaters, the parts of which are knit in two countries with one of those countries also being the assembling country, Customs will apply the criteria set out in the final textile rules of origin, section 12.130, Customs Regulations (19 C.F.R. 12.130), effective April 4, 1985. Utilizing that criteria, we believe that a substantial portion of the garment must be knit in the assembling country for that country to be the country of origin of the sweater.

It is Customs' view that the knitting in the assembling country of a sweater's long sleeves and either the front or back (whichever gives the garment its distinctive character) would clearly make the assembling country the country of origin. In most cases, the knitting of two of the garment's major portions -- e.g. long sleeves, the front, or the back -- in the assembling country will make that country the country of origin. If, of the major portions, only one is knit in the assembling country, then the origin determinations must be made on a case by case basis. In this regard, Customs will usually focus its attention on either (1) the front panel (or panels) on which patterns, fancy work, or other work or features of unusual complexity may be found, or (2) both long sleeves, to the extent they impart a particular visual characteristic to the garment (e.g., raglan sleeves). In some instances, the back panel may also be considered if the back is determinative of the character of the garment. Thus, for example, where only sleeves are knit in the assembling country and are combined with a patterned or fancy front (knit elsewhere) which provides the garment with its main visual characteristic, then the assembling country will normally not be deemed to be the country of origin of the sweater.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

In the case of sweaters, the principal portions of which consist of identical fabric with nothing that particularly distinguishes one portion from another, then the assembling country, following the general rule previously stated, will usually be the country of origin if two of the principal portions are knit there. Situations in which less is done are impossible to address without a detailed statement of the applicable facts. Absent such facts, our reaction is that the knitting of only one of the principal portions of such a sweater in the assembling country normally will not result in that country being considered the country of origin unless Customs is presented with evidence establishing that the portion knit there is clearly more significant than the others, considering its complexity, the time and technology involved in its construction, and any other factors which may be relevant.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

076356

[redacted]

THIS DOCUMENT MAY BE RELEASED TO [redacted]
PUBLIC _____

CODE AND DATE	1 INITIATOR	2 REVIEWER	3 REVIEWER	4 REVIEWER	5 REVIEWER	6 REVIEWER	7 REVIEWER
SURNAME							DLC
CODE AND DATE	[redacted]	8 REVIEWER	9 REVIEWER	10 REVIEWER	11 REVIEWER	12 REVIEWER	13 REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY [redacted] CORRESPONDENCE APPROVAL AND CLEARANCE

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

NOV 27 1985

REFER TO
CLA-2 CO:R:CV:G
076391 jlj

076391

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-002286

This protest was filed against your decision in the liquidation of six 1983 entries covering shipments of hiking boots produced in South Korea.

This ruling concerns the correct classification of the hiking boots.

FACTS:

The merchandise at issue is certain nylon and rubber hiking boots sold under the "Pro-Players" label, styles "Flap Hiker" and "Basic Hiker." A sample of the "Basic Hiker" was submitted along with the protest. Counsel for protestant exhibited a sample of the "Flap Hiker" at a conference at Headquarters. These boots were liquidated under the provision for footwear which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics, other footwear, other, other, other, valued over $3.00 but not over $6.50 per pair, in item 700.67, Tariff Schedules of the United States (TSUS).

Counsel for the protestant claims that the merchandise should be classified under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being either rubber or plastics, having uppers of which not over 90 percent of the exterior surface area is rubber or plastics, designed to be

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worn over, or in lieu of, other footwear as a protection against water, oil, grease, or chemicals or cold and inclement weather, in item 700.57, TSUS.

ISSUE:

Are these hiking boots designed to be worn as a protection against water, oil, grease, chemicals or cold and inclement weather?

LAW AND ANALYSIS:

Counsel for the protestant argues that the instant footwear was intended to be protective against inclement weather by virtue of the following features:

(1) The waterproof sole and foxing, and waterproof front and rear bumpers;

(2) the packed foam cells on the interior of the upper, lined with nylon tricot;

(3) the gusset tongue; and

(4) the traction soles for use on snow and ice.

Counsel attaches eight affidavits from the importer's retail customers stating that the two boots at issue were purchased for sale during the winter months and that their sales people were advised to sell the boots as protective footwear against cold or wet weather.

Counsel further argues that Customs Headquarters Ruling letter (HRL) 072089 of May 10, 1983, HRL 072175 of August 23, 1985, and New York letter 808574 classified similar footwear as protective footwear.

It is the opinion of Customs that the hiking boots at issue are not designed to be worn as protective footwear but are designed to be athletic-type casual footwear. This conclusion is supported by the athletic designations, names and labels involved — i.e., "Pro-Players," "active sports shoes," "Basic Hiker," "Flap Hiker" and "provide comfort and wear

016391

D12

for the foot in action." The Pro-Players "Flap Hiker," which counsel displayed at the Headquarters conference, appeared October 3, 1985, in a New York Daily News advertisement for athletic shoes which described the "Flap Hiker" as a "nylon sport boot."

Counsel cites HRL 072089 and HRL 072175 for the proposition that protection against cold is sufficient to warrant classification in item 700.57, TSUS. We agree, but the merchandise involved in HRL 072089 and HRL 072175 was quite different from the hiking boots at issue here. In HRL 072175, a substantial fleece lining was present to afford protection against the cold. In HRL 072089, the boot had a water-repellent nylon upper, a tricot synthetic nylon interlining, a foam rubber insulation between the inside and outer fabrics and a pile-lined removable sole to protect the foot. The thin foam of the instant merchandise coupled with its sheer tricot lining offers minimal protection against the elements. HRL 072089 and HRL 072175 do not apply to the instant merchandise because they deal with dissimilar merchandise.

It is also suggested that the hiking boots in question are virtually identical to the footwear which was the subject of New York letter 808574. There are a number of differences between the footwear in New York letter 808574 and the instant merchandise, however:

(1) The present items are marketed as hikers and sports shoes and are marked with such designations.

(2) The boots in letter 808574 were for children, who do not generally participate in the sport of hiking.

(3) The boots in letter 808574 had a fleece-type lining which, in effect, rendered them protective footwear having an athletic look.

(4) The present hiking boots are clearly suitable for year-round hiking, while letter 808574 dealt with items which were clearly designed for cold weather use.

D13

076391

It is argued that the rubber/plastic waterproof bottoms of the hiking boots offer protection against rain or snow. Although the vulcanized foxing band does provide incidental protection up to the top of the band, there is no protection offered against cold or wet for the remaining portion of the shoe. The fabric upper is not treated to resist water, so that the shoe as a whole does not offer protection against the elements.

It is asserted that the foam in the fabric upper affords a greater degree of protection against cold than an uninsulated upper would. This is true, but the foam is so minimal in amount that it serves mainly to provide stability and support to the upper rather than to protect the wearer against the cold.

It is contended that the gusset tongue improves protective ability against cold or inclement conditions. The gusset tongue, however, is located on the nylon portion of the upper which allows water penetration, so no real protection against inclement weather is offered.

Finally, it is maintained that the traction soles improve performance of the hiking boots on snow or ice. This traction sole, however, is common to all hiking shoes, which are ordinarily used to climb on different terrain, trek through mud, or trail-blaze bramble-strewn paths. The performance of the traction soles may be better than ordinary leather soles on snow or ice, but that was not the intent of the designer of the shoes. The hiking boots are suitable for year-round use.

With regard to the affidavits submitted by the protestant's clients, it is conceivable that these shoes could be worn in inclement weather, but their primary function is as casual athletic leisure shoes or as athletic-type hiking boots. The tags and labels on the items make no reference to any protective features but point to casual or athletic use. The only

076391

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advertisement presented portrays "Flap Hiker" among other athletic footwear and describes it as a "nylon sport boot." The label inside the tongue refers to these styles as "Pro-Players Active Sports Shoes." The slight tricot foam lining would not influence the purchaser to buy these shoes for warmth.

We find that the instant merchandise is similar to the boots in New York letter 809452 of June 14, 1984, which were classified in item 700.67, TSUS, based on the fact that the thin lining would provide minimal protection against the cold. The present footwear is similar in that it has only a thin foam-backed tricot lining which does little more than provide body to the nylon upper.

Looking at the overall character of the instant hiking boots to determine whether they were designed as protective footwear, we see no physical design features which enable us to distinguish the instant footwear from year-round outdoor shoes. We find that the instant footwear is intended for year-round hiking, athletic or leisure use and that it is classified in item 700.67, TSUS.

HOLDING:

The instant footwear is classified in item 700.67, TSUS. The protest should be denied in full. A copy of this decision letter should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

E1

116916

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

076409

4 DEC 1985

REFER TO
CLA-2:CO:R:CV:G
076409 jlj

Steven P. Kersner, Esq.
Brownstein, Zeidman and Schomer
1401 New York Avenue, N.W., Suite 900
Washington, D.C. 20005-2102

Dear Mr. Kersner:

In letters dated November 5, 1985, and June 6, 1985, you requested a tariff classification ruling covering a men's overcoat for your client, Winer Industries, Inc. You submitted a sample overcoat along with your letter.

The sample is a men's overcoat, a 3/4 length cold weather coat. The label inside the coat states that the shell is composed of 65 percent polyester and 35 percent cotton, the body lining of 85 percent acrylic and 15 percent wool, the sleeve lining of 100 percent nylon, and a filler of 65 percent olefin and 35 percent polyester. The component of chief value appears to be man-made fibers. The coat has a zipped and snapped full front opening, two upper and lower front pockets, adjustable tabs at the sleeves, and front and rear yokes.

Inserted into the seams of the front yokes are folded strips of textile material approximately 1-3/4 inches in width when folded. These strips function as pocket closures.

Inserted into the horizontal seam of the rear yoke is a folded strip of textile material (a flange) approximately 1-3/4 inches in width when folded. The issue is whether this folded strip constitutes ornamentation for tariff purposes.

You state that the coat is manufactured by the "cut and sewn" method, which allows an extra piece of fabric to be attached to the inner shell. You claim that the coat is manufactured with this extra strip of material in order to give the coat additional strength and warmth. You maintain that this method of manufacture also elimates bulkiness from the garment. You argue that the extra strip of material is primarily functional and utilitarian and that it is not ornamentation.

E2

Along with your letter of November 5, 1985, you submitted an affidavit from the designer of the garment, who maintains that the extra strip of material is designed and constructed to enhance the strength and flexibility of the garment. She claims that it is necessary to have a 1-3/4 inch flange to assure the wearer proper support, strength and flexibility when the wearer is engaged in outdoor activities. Finally, she says that the extra strip of material on the garment is neither designed nor intended to ornament the overcoat, pointing out that the flange is the same color as the overcoat and that it appears on the back of the overcoat.

The addition of the strip of material appears to us to be unnecessary for any functional or utilitarian purpose. The strip is similar to a large piece of piping; it could have been omitted from the coat without any dire consequences. Its size is such that it is not capable of adding much strength or warmth to the coat. The coat would have been slightly less bulky without the extra strip. Any functional aspects of the extra strip of material are purely incidental.

The strip does enhance the appearance of the back of the coat inasmuch as it is more attractive than a simple seam would be. We therefore find that the additional strip constitutes ornamentation for tariff purposes.

The coat is classifiable under the provision for other men's wearing apparel, ornamented, of man-made fibers, not knit, coats, other, in item 381.31, Tariff Schedules of the United States (TSUS), dutiable at the 1985 rate of 34.2 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

076409

E3

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

NOV 27 1985

REFER TO

CLA-2 CO:R:CV:G
076458 jlj

857470

District Director of Customs
250 N. Water St.
P.O. Box 2748
Mobile, Alabama 36652

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1901-4-000032

This protest was filed against your decisions in the liquidations of nine entries covering shipments of baby seats produced in Taiwan.

This ruling concerns the correct classification of the baby seats.

FACTS:

The merchandise at issue is metal baby seats, described on the invoice as "901 High Chairs [7184 Easy Seat]." The broker for the protestant states that the item is "a seat with weight limitations designed for babies and young children. Said seat has spaced arms which can be slipped onto a table, bar counter, or shelf to hold the child during mealtime or any other time when the babytender desires or needs to have the child where he will be safe and visible." She says that although the baby seat is called a high chair, it is not a chair because it has no legs nor pedestal to support it. She claims that the baby seat should be classified under the provision for metal articles not specially provided for, of a type used for household, table, or kitchen use, articles of base metal, of iron or steel, not enameled or glazed, other, other, other, in item 654.00, Tariff Schedules of the United States (TSUS).

E4

The Mobile import specialist liquidated the merchandise under the provision for articles of iron or steel, not coated or plated with precious metal, other articles, other, other, in item 657.25, TSUS. He contends that the baby seats are not chiefly used in the household and therefore are not classifiable as household articles.

ISSUE:

Is the metal baby seat properly classifible as a metal household article or as an other article of metal?

LAW AND ANALYSIS:

The protestant's broker argues that the baby seats should be classified as articles not specially provided for, of a type used for household, table or kitchen use, because she believes that the chief use of the imported article is in the household. She reasons as follows:

(1) The small homes, trailers, and apartments of today limit the space for furniture, therefore this collapsible foldaway seat is most useful in modern homes.

(2) Few relatives or friends keep baby chairs available, but this seat would be ideal for visiting tots.

(3) She called many restaurant supply companies and found none which stocked such an article, just regular high chairs and booster seats.

(4) Similar slip-on seats are available in discount stores, general merchandise stores, and catalogues which cater to family trade.

(5) She eats frequently in restaurants, but she has never seen such a slip-on seat in a restaurant. (She asked several restaurant managers and was advised that only regular high chairs and booster seats were permitted because of the danger of lawsuits.)

(6) The instant seats are ideal for picnic tables in public recreation areas and for the tailgates of trucks and station wagons.

076458

E5

Customs Headquarters Ruling Letter (HRL) 073808 of March 28, 1984, ruled that a similar item, known as "Sitten Pretty," a table-edge seat for infants and children, was chiefly used in restaurants. HRL 073078 stated that: "...we do not believe the article finds its chief or even principal use in the household, that use being only incidental. Its chief use, we believe, would be in restaurants. Absent evidence of chief use in the household, we hold that term inapplicable to the instant merchandise." HRL 073078 held that the aluminum Sitten Pretty seat was classifiable under the provision for other articles of aluminum, currently in item 657.40, TSUS. The instant baby Easy Seats are of iron or steel, lack legs and are quite similar to Sitten Pretty. While the broker's arguments sound reasonable, she failed to submit actual hard evidence as to the chief use of the seats, therefore we find that they are covered by HRL 073808.

We find that the instant baby seats are properly classifiable as other articles of metal, in item 657.25, TSUS.

HOLDING:

The instant baby Easy Seats are classified in item 657.25, TSUS. The protest should be denied in full. A copy of this decision should accompany the CF 19 Notice of Action.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

076458

E6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

19 DEC 1985

CLA-2 CO:R:CV:G
076463 JB

076463

Mr. Marcus Suggs
Vice President
National Travelware, Inc.
10154 Culebra Road
San Antonio, Texas 78251

Dear Mr. Suggs:

This is in response to your letter of April 20, 1985, which requests binding classification rulings regarding a plastic buckle imported separately and a strip of polypropylene webbing and that same plastic buckle which are combined to form a belt. You also request a ruling with regard to marking of the buckle if it is imported in bulk. Your written submission indicates that the buckle is manufactured in Taiwan and the webbing is a product of the United States. The buckle and webbing will be made into belts in Costa Rica. In an oral amendment to this information, you state that the webbing also is a product of Taiwan.

The sample provided is a plastic buckle and a belt made of woven polypropylene. The buckle has been permanently attached to the belt by a sewing function. The belt is approximately 1.5 inches wide and 48 inches long. The written request for ruling includes no information as to the use of the belt. Evidence in the record indicates that you have made oral representations to the effect that the belt will be used by sportsmen to attach and secure small pouches and other gear. It is presumed that the belt is in chief value of polypropylene textile.

It is the view of this office that the belt will not be chiefly used as wearing apparel, i.e, that which is worn for comfort, decency or adornment, but rather as a means for carrying objects for use by sportsmen or joggers. Accordingly, the belt with buckle is properly classifiable under item 389.62, Tariff Schedules of the United States (TSUS), as articles not specially provided for, of textile materials: other articles, not ornamented: of man-made fibers: other, dutiable at the rate of 8 cents per pound plus 11 percent ad valorem. It should be noted that articles classified under item 389.62 are not eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act (CBERA).

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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Buckles, when imported separately without the belt, are classifiable under the provision for buckles and buckle slides, and parts thereof, under item 745.45, TSUS. Articles classifiable under item 745.45, TSUS, which are the products of Taiwan, are eligible for entry free of duty under the Generalized System of Preferences (GSP). Such duty-free treatment is conditioned upon compliance with all applicable entry and documentation requirements. Failing GSP qualification, it should be noted that duty rates on articles imported under this item have been temporarily reduced to 4.7 percent ad valorem pursuant to item 947.40, TSUS. This latter provision is in effect for buckles entered on or after January 1, 1985, through December 31, 1985.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 304), and section 134.11 of the Customs Regulations (19 CFR 134.11), require that, unless excepted by law, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the U.S. the English name of the country of origin of the article, at the time of importation into the Customs territory of the U.S.

The subject buckle, which is claimed to be a product of Taiwan, displays no indication of such origin. Rather the buckle shows the abbreviation N.Y, N.Y. 10018 on its reverse side. In light of the above law and regulation, such marking is inadequate. If imported in bulk from Taiwan, each buckle would have to be marked legibly, indelibly and permanently to indicate such origin.

Sincerely,

John T Reid

For Harvey B. Fox
Director, Classification
and Value Division

076463

E8

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

CLA-2 CO:R:CV:G
076479 JAS

076479

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

This is our decision on Application for Further Review of Protest No. 3801-5-001171. At issue is consumption entry 83-714753, dated May 2, 1983, liquidated November 9, 1984. The merchandise at issue is a ring forging machine from West Germany.

FACTS:

Submitted literature describes a process for producing seamless industrial rings. A billet is surface smoothed, cut to length and rounded if required, after which it is preheated and placed in an upset forging press. This flattens the piece to doughnut shape making it more suitable for subsequent rolling. While in the press the workpiece is center pierced to make a ring blank called a preform. The blank is then preheated again and moved to the rolling machine, the subject of this protest, where it is slipped between an inner roll and a larger, powered work roll. When the powered roll revolves, the free turning inner roll presses against the preform, thinning the ring wall while increasing the inner and outer diameters to make seamless rolled ring forgings. After importation, these are made into gears, bearing races, flanges etc.

The concerned entry was liquidated under the provision for rolling mills and parts thereof, in item 674.20, TSUS, because the described operation was determined by your office to be a rolling process subsequent to forging. Protestant maintains that the proper classification is under

E9

item 674.35, as a metal-forming machine tool because the involved process involves a forging process and the provision in item 674.20 covers mills that produce billets, slabs, bars etc., rather than forgings.

ISSUE;

Whether the subject machine performs a forging function or a rolling function.

LAW AND ANALYSIS:

"Forging" normally involves the plastic deformation of metals at elevated temperatures into desired shapes by compressive forces exerted through a die. "Rolling" normally connotes a process of reducing or changing the cross-sectional area of a workpiece by the compressive forces exerted by rotating rolls. Both are hot working processes. The degree of deformation, in the case of rolling, is measured by the percent reduction in thickness of the workpiece or, in the case of forging, by the percent reduction in cross-sectional area.

Roll forging, a process to which protestant refers in negating the applicability of item 674.20, is described in submitted literature as resembling that performed in rolling mills to reduce, for example, billets to bars. Squeezing the heated product between two rolls reduces its cross-sectional area. The literature suggests that any material that is forgeable by other processes (i.e. drawing, extruding) can be accomodated in a roll forging machine.

In our opinion, the upset forging and center piercing produce a forged product which is then suitable for rolling. Despite protestant's assertion that the rolled ring forging machine is an integral part of the forging process, it must be classified for tariff purposes by function and design, under the tarif provision which most narrowly and specifically describes it.

E10

076479

The provision in item 674.20, TSUS, describes merchandise eo nomine. Such provisions include all forms of the named article, in the absence of a contrary legislative intent, judicial decision, or administrative practice. There are rolling mills used in the making of primary forms of iron and steel (i.e., bar rolling mills), the type to which protestant refers. However, there are also ring rolling mills such as the one here. There is no evidence to indicate that Congress intended to limit the provision in item 674.20 to the former while excluding the latter. In this context the term "mill" is viewed broadly to include individual, single metal-working machines, as well as machines in tandem. Note Customs Cooperation Council Nomenclature (CCCN) Heading 84.44, the language of which is substantially similar to the provision in item 674.20, and materials thereunder. Despite the fact that the subject article is a metal-forming machine tool, it is specifically provided for in item 674.20, TSUS.

HOLDING:

The instant ring forging machine is eo nomine provided for in item 674.20, TSUS. The protest should be denied. A copy of this decision should be attached to the Form 19, Notice of Action, to satisfy the notice requirements of section 174.30(a), Customs Regulations.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

071679

E11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

CLA-2 CO:R:CV:G
076571 JGH

10 DEC 1985

076571

Beverly L. Pevsner, Esq.
Beiley & Pevsner
7600 Southwest 57th Avenue
Suite 107
Miami, Florida 33143

Dear Ms. Pevsner:

Your letter of July 9, 1985, concerns the dutiable status of mixed xylenes. No country of origin was given.

You request a ruling on mixed xylenes containing up to 50 percent by weight ethylbenzene. It is your opinion that such a mixture is considered xylene by the trade.

In a summary of the literature on the subject, it was found that technical publications, such as Mansville Chemical Products Synopsis, indicate that a typical mixed xylene stream could contain up to a maximum of 20 percent ethylbenzene. From a canvass of domestic producers it was found that the typical ethylbenzene content of mixed xylenes was no higher than 25 percent.

Accordingly, it is concluded that mixed xylenes containing over 25 percent ethylbenzene are classifiable as a benzenoid mixture in item 407.16, TSUS. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. The component material with the highest rate is alkylbenzenes classifiable in item 402.36, TSUS, and dutiable at the rate of 0.8 cent per pound plus 17.3 percent ad valorem.

It should be noted that item 407.16 is a GSP item, so that if the product is from a GSP country and all the requirements are met, it would be free of duty.

Sincerely,

John T. Lark

Harvey B. Fox
Director, Classification
and Value Division

E12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

DEC 13 1985

REFER TO
CLA-2 CO:R:CV:G
076601 c

076601

T. T. Dalgliesh
President
Columbia Games, Inc.
Suite 581-810 West Broadway
Vancouver, BC
Canada V5Z4C9

Dear Mr. Dalgliesh:

In a letter dated July 9, 1985, you inquired as to the dutiable status of certain book materials produced in Canada. Samples were submitted for examination.

The merchandise involved consists of booklets sometimes referred to as expansion modules. These modules are prepackaged game reference materials containing maps and descriptions of fictional worlds, environmental scenarios, character generation and development, and background informational resources for use in fantasy role play games such as Dungeons and Dragons. The booklets can be viewed as aids or accessories to these fantasy games. They provide inspiration, guidelines, game rules and a fantasy world. In effect, they are a base from which game role play can be extended. The modules offer specific features to help introduce gamemaster and players to a game, promote personal development in role play campaigns and suggest further possibilities and situations in the game play.

You point out that the merchandise is presently being classified by U.S. Customs under the provision for game equipment in item 735.20, Tariff Schedules of the United States (TSUS). However, you believe that the merchandise is not a game because the booklets are designed only to be read and are not an independent source of game play. Furthermore, the booklets do not contain rules, gameboards, dice, pawns, etc., or any materials normally associated with games.

It should be noted that in fantasy role-playing games, there is no real winning or losing as such, unless a character is killed. However, there are definable progress levels toward objectives. Within the framework of a given set of rules, players contest and compete by assuming character personalities of fantasy world inhabitants, accumulating points for ingenuity, bravery, confronting obstacles and challenges, avoiding and surviving dangers in a fantasy, hostile environment. Progress is measured in terms of experience levels gained. Survival and self-aggrandizement constitute success in these role playing games.

E13

Although the imported articles are books and can fall within the provision for books, not specially provided for in item 270.25, TSUS, it is our view that the doctrine of relative specificity requires classification of the instant merchandise under item 735.20, TSUS, as game equipment, if in fact the merchandise satisfies the phrase "game equipment."

Generally, the doctrine of relative specificity means that an item will be classified under that provision of the tariff schedules which most narrowly and definitely described it.

Schedule 7, Part 5, Subpart D, Headnote 1, TSUS, provides in part that "This subpart covers equipment designed for indoor or outdoor games, sports, gymnastics, or athletics ***." The issue presented is whether the HARN fantasy game role play booklets constitute equipment within the meaning of that term as used in the cited headnote.

The case of Cruger's (Inc.) v. United States, 12 Ct. Cust. Appls. 516, T.D. 40730 (1925), concerning the classification of polo caps and helmets is relevant to the issue here. In that case the court stated that "The word equipment means things or supplies needed for a special purpose or service... the term 'equipment' includes the necessary adjuncts of a service and imports the outfit needed or required to accomplish a special object or purpose.... Articles which are not necessary or requisite for a special purpose or service and the use of which is dictated by fad, fancy, or fashion, cannot therefore properly be called equipment."

The term "equipment" was construed more broadly in American Astral Corp. v. United States, 62 Cust. Ct. 563, C.D. 3827 (1969), wherein the court stated "for the statutory designation of 'equipment' is satisfied once it is shown that an article is specially designed for use in the game or sport."

Undoubtedly, the subject HARN modules are specifically designed for use as a complement to, or an enhancement of, fantasy role-play game activity. They perform a real function in the actual play of the game. In our opinion the modules are game material and can be defined as game equipment regardless of the fact that the vehicle used to present the material is in book form.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

E14

076601

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

31 DEC 1985

REFER TO

CLA-2 CO:R:CV:G
076603 JGB
814016 (N.Y.)

076603

Mr. Thomas C. White III
President
Newhit Industries, Ltd.
766 Ouellette Ave.
Windsor, Ontario N9A 1C2
Canada

Dear Mr. White:

You have requested information on the duties applicable to a textile bag with drawstring top to be used in the sale of trademarked "Ron BACARDI Gold Reserve." The bag is to be made of three textile pieces sewn together in Haiti. The legend is embroidered on the front panel of the bag. The bag measures approximately eleven inches by five inches, apparently for the 750 ml bottle. You note that you intend to import bags for all the standard sizes of liquor.

You note that the plan is to construct the bag of parts made in the United States and that brushed or napped knitted man-made fiber fabric will be used. In the alternative, you expect to have the bag constructed of a material in chief value of cotton.

The bag has no substantial use other than in the marketing of the liquor. The embroidery causes it to be ornamented. Therefore, as a textile article, and not otherwise provided for, if in chief value of man-made fibers, it would be classified in item 386.13, Tariff Schedules of the United States, the provision for "Articles not specially provided for, of textile materials: ...other articles ornamented: Other: Other, Of man-made fibers," dutiable at 15 percent ad valorem. This item is eligible for duty-free treatment under the Generalized System of Preferences (GSP) as a product of Haiti upon compliance with applicable regulations.

If the bag is of cotton, whether all cotton or a blend where cotton is in chief value, it would be classified in item 386.04, TSUS, dutiable at 28 percent ad valorem as an ornamented textile article not specially provided for. This item is not GSP-eligible. Neither article, whether of man-made or cotton fibers, is eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act.

F1

With regard to your question on item 807, TSUS, the embroidery operation appears to be an advancement in value or an improvement in condition and would disqualify the panel on which it appears for 807 treatment. However, the remaining panels would be subject to 807 treatment, upon compliance with applicable regulations.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

076603

26 AUG 1985

CLA-2 CO:R:CV:G
076605 JGH

Dear

Your letter of June 25, 1985, to Customs at New York, concerning the dutiable status of a mixture of ethanol and acetaldehyde, has been referred to this office for reply.

You state that you are studying the possibility of importing a mixture of 59 percent ethanol and 41 percent acetaldehyde. Subsequent to importation, the mixture would be processed with the acetaldehyde purified for use as a raw material and the ethanol sold for use as a gasoline blending component.

Prior to August 2, 1985, a mixture such as this probably would have been classified as an organic mixture in item 430.10, TSUS, dutiable at the rate for acetaldehyde of 8 percent ad valorem. However, it is now Customs position that even though the imported product remains classifiable as a mixture, since the ethanol is intended for fuel use, the mixture would be dutiable under item 427.88, TSUS, at the rate of 3 percent ad valorem plus 60 cents per gallon under item 901.50, TSUS.

Sincerely,

(signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE
PUBLIC

3

10 SEP 1985

CLA-2 CO:R:CV:G
076674 JGH

[redacted]

Dear [redacted]

Your letter of July 10, 1985, to the Customs port at New York has been referred to this office for reply.

You request that a mixture of about 92.5 percent ethanol with 7.5 percent toluene or benzene, intended as an octane enhancer for motor fuel, be classified as a mixture in item 432.10, TSUS, subject only to a 5 percent ad valorem rate of duty.

Prior to August 2, 1985, mixtures of this type were classified under the provision for mixtures of fuel grade ethanol in item 432.10, TSUS, with a 5 percent rate of duty. However, this issue has been reviewed and it is now Customs position that such a mixture, while still classifiable as a mixture, would also be subject to a duty of 60 cents per gallon under item 901.50, Appendix to the Tariff Schedules, since the ethanol mixture is, in fact, intended for fuel use. Therefore, an ethanol mixture of this type would be classifiable in item 432.10, TSUS, and dutiable at the highest component rate, which in this case is the rate for item 427.88, of 3 percent ad valorem plus 60 cents per gallon under item 901.50.

Sincerely,

(Signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

[redacted]

CODE AND DATE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
SURNAME	[redacted]						
CODE AND DATE			REVIEWER	REVIEWER			REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100.1 (5-73)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DEC - 9 1985

REFER TO
CLA-2 CO:R:CV:G
076692 c
814532

076692

Mr. Ron Sias
RSW International, Inc.
80 Wall Street
New York, New York 10005

Dear Mr. Sias:

Your letter dated July 2, 1985, addressed to our New York office concerning the dutiable status of a three piece luggage set produced in Taiwan, has been referred to this office for a direct reply to you.

The set identified as style No. 84-157 consists of a 26 inch pullman, a 22 inch carry-on and a garment bag. Samples of each piece of the set have been submitted along with detailed individual component material value breakdowns.

The issue involved here is whether the value of the leather components is to be disregarded in determining the component material of chief value of the luggage samples.

Schedule 3, Headnote 3(a), Tariff Schedules of the United States (TSUS), provides that "applique work, beads, bugles, spangles, bullions, and other forms of nontextile ornamentation applied to a textile fabric or other textile material shall be disregarded in determining the component material of chief value of such fabric or other article."

It is our view that the name patches on the three items of luggage constitute applique work which is to be disregarded in determining the component material of chief value of the luggage.

In order to constitute ornamentation for tariff purposes, the courts have held that a feature must enhance, adorn, decorate, or embellish an article (Blairmoor Knitwear Corp. v. United States, 60 Cust. Ct. 388 (1968) in an acceptable trade sense (Rifkin Textiles Corp. v. United States, 62 Cust. Ct. 316 (1969)). The feature must be more than merely incidentally decorative (Endicott Johnson Corp. v. United States, 82 Cust. Ct. 49 (1979)) and its ornamental character must outweigh any functional purpose it may serve (Blairmoor, supra).

The remaining leather features present on the luggage are not considered ornamentation for tariff purposes because their functional purposes outweigh their ornamental characteristics or they are not decorative in a commercially meaningful manner. As a result their value should be included in a chief value determination.

If the pieces comprising the set are in chief value of leather, they would be classifiable under the provision for luggage of leather other than reptile leather in 706.13, TSUS, and dutiable at the rate of 8.5 percent ad valorem.

However, if the pieces are in chief value of textile material, they would be classifiable under the provision for luggage of other textile materials in item 706.4152, TSUS, and dutiable at the rate of 20 percent ad valorem. The applicable textile quota number is 670. Inasmuch as the pieces are products of Korea, they would be subject to textile quota restriction.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

076692

F6

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: NOV 21 1985

FILE: CLA-2 CO:R:CV:G
076713 LDD

076713

TO : District Director of Customs
Buffalo, New York 14202

FROM : Director, Classification and Value Division, Headquarters

SUBJECT: Request For Internal Advice 61/85 On Interlining Fabric From Canada

This internal advice request concerns the tariff classification of interlining material used to provide body to the shoulder area of men's suit and sport jackets. It is a woven fabric having a 100 percent cotton warp and 100 percent polyester fill.

It is your indication that a visit to the factory where this material is produced showed that the material is sprayed with a plastic resin which appears to visibly impart a stiffness, as indicated by the "before" and "after" samples submitted. The coating is applied to aid shrinkage control and to help interlock the warp and filling yarns. It has been established that the man-made polyester is the component fiber of chief value. The only issue to be decided is whether the fabric is coated or filled.

It is our determination that in light of T.D. 81-219, the coating on this fabric imparts a noticeable stiffening effect which would allow a finding that this is a coated or filled fabric for tariff purposes. Accordingly, because this material is determined to be in chief value of a man-made fiber, it would be classifiable under the provision for same, coated or filled with rubber or plastics, in item 355.82, TSUS.

Harvey B. Fox

Harvey B. Fox

F1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

CLA-2:CO:R:CV:G
076717 TLL

076717

Mr. John I. Stofko
President
Carbocol Inc.
P.O. Box 5483
Beaverton, Oregon 97007

Dear Mr. Stofko:

This is in reply to your undated letter received in Headquarters in early August, 1985, regarding the classification of "Carbocol". You submitted additional information to New York Customs on December 10, 1985. That information was forwarded to Headquarters on December 25, 1985.

You indicate that Carbocol, Inc. intends to enter raw sugar into a foreign trade zone (FTZ) at the Port of Portland, Oregon. At the FTZ, four different formulas, trade-named Carbocol, will be created by artificially mixing the raw sugar with United States manufactured chemicals.

You indicate that the formulas are new technology applied to any kind of wood bonding such as in plywood or composite board production and that "Carbocol" is a sugar (or starch) to which an acidic catalyst, buffer, stabilizing or otherwise modifying agent is added and that it is not a glue, adhesive, plastic, thermoplastic or thermosetting resin. You suggest that classification should be in item 155.40, Tariff Schedules of the United States (TSUS).

This tariff item provides for sugars, syrups, and molasses, derived from sugar cane or sugar beets which contain over 6 percent by weight soluble non-sugar solids. However, the statutory language of this provision specifically prohibits including any foreign substance in the 6 percent portion which has been added or developed in the product. Since the aluminum sulfate, sodium hydroxide, and the ammonium sulfate are foreign substances which have been added, classification under item 155.40, TSUS, would be precluded.

F8

In the instant matter, various formulas ranging from a low of 61% raw sugar to a high of 90% raw sugar are mixed with various chemicals to reach a total of 100%. According to information which you furnished, "Carbocol would be shipped from the Free Trade Zone to wood products manufacturers for application as binder."

The submitted United States Patent renders an explicit description of how Carbocol is utilized to bond materials such as wood in the manufacture of plywood and board from particulate wood. In manufacturing such products, the Carbocol replaces the traditional adhesives, and forms a bond between pieces of wood that is at least comparable to the strength of bonds achieved by hitherto used adhesives.

In the manufacture of plywood, for example, it is only necessary to cover a surface of a wood veneer with Carbocol, bring such surface into contact with the surface of another veneer which may or may not have a coating of the bonding composition so that there is an interfacial layer of the bonding composition between the surfaces to be bonded, and press them at an elevated temperature. Similary, various forms of wood particles, coated with Carbocol, can be so pressed under heat in order to produce various boards.

In its imported condition, Carbocol is a composition that falls within the tariff description of a cement (adhesive). It is a substance capable of holding materials together by surface attachment even though it is used ordinarily in solution and under the application of heat, and it is not imported in the form in which applied. It is classifiable under the provision for cements, not specially provided for, in item 494.60, TSUS, with a 1986 rate of duty of 2.2 percent ad valorem.

We suggest you contact Mr. John Da Ponte, Executive Secretary, Foreign Trade Zones Board, U.S. Department of Commerce, Room 1519, Washington, D.C. 20230, in order to determine the permissibility of this proposed operation in a foreign trade zone.

Sincerely,

Arthur P. Schaffner

1 Sec Harvey B. Fox
Director, Classification
and Value Division

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076917

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

DEC 31 1985

REFER TO

CLA-2:CO:R:CV:G
076743 JLF
814514

076743

Mr. C. Arnone
Manager
ICA Americas, Inc.
Wilmington, Delaware 19897

Dear Mr. Arnone:

Your request of July 11, 1985, for the proper classification of a product known as Peek Grade 380, a benzenoid thermoplastic resin which you propose to export to Europe to be processed by filtering, has been referred to us for reply.

You state that the foreign processing will consist of melting the exported resin and filtering out certain unwanted gels and black specks from the molten material. The removal will make the resulting product suitable for most critical wire coating applications and will increase the particle size. Previously its use was limited to thick coatings and non-critical wire coatings.

The issue presented by your request is whether Peek Grade 380 is properly entitled to tariff treatment under item 806.20, Tariff Schedules of the United States (TSUS), which provides for articles returned to the United States after having been exported for repairs or alterations.

Customs has previously ruled that distillation of a chemical results in a new and commercially different product from the undistilled chemical thus making the distilled product ineligible for treatment under item 806.20, TSUS.

We are of the opinion that the foreign processing renders the new grade of Peek Grade 380 a new and different product with new improved uses and characteristics. These changes would preculde tariff treatment as an alteration under the provisions of item 806.20, TSUS.

F10

The returned product would be classifiable as a benzenoid thermoplastic resin in item 408.88, TSUS, and fully dutiable at the 1986 rate of 6.7 percent ad valorem.

Sincerely,

Arthur J. Scheffler

for Harvey B. Fox
Director, Classification
and Value Division

076743

F11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
076753 JGH

076753

12 DEC 1985

Arnold B. Rosenthal
Alpac Marketing Services, Inc.
10 Presidential Boulevard, Suite 203
Bala Cynwyd, Pennsylvania 19004

Dear Mr. Rosenthal:

Your letter of August 9, 1985, concerns the dutiable status of 4 xylene streams containing varying amounts of ethylbenzene.

Stream (1) is said to contain 17 percent ethylbenzene; (2), 29 percent ethylbenzene; (3), 24 percent ethylbenzene; and (4), 35 percent ethylbenzene.

A review of the literature on xylenes reveals that the streams almost always contain some ethylbenzene. The Mansville Chemicals Products Synopsis indicates that a typical mixed xylene stream could contain up to a maximum of 20 percent ethylbenzene. The Dewitt Spec Book of Chemical Product Specifications also indicates a maximum of 20 percent ethylbenzene. From domestic producers it was indicated that the typical ethylbenzene content of mixed xylenes was no higher than 25 percent.

Accordingly, it is concluded that mixed xylenes should contain no higher than 25 percent ethylbenzene. Therefore, the classification of the streams you list would be as follows:

	Streams	TSUS Items	Rate of Duty
(1)	17 percent ethylbenzene	401.74	Free
(2)	29 percent ethylbenzene	407.16 (402.36)	0.8 cent per pound plus 17.3 percent ad valorem
(3)	24 percent ethylbenzene	401.74	Free
(4)	35 percent ethylbenzene	407.16 (402.36)	0.8 cent per pound plus 17.3 percent ad valorem

F12

It should be noted that item 407.16 is a GSP item, so that if the product is from a GSP country and all the requirements are met, the product would be free of duty.

You note that all the above streams meet either ASTM D 843 or 845. We also recommend that mixed xylenes meet the specifications for Nitration Grade Xylene (ASTM D 846) or Ten-Degree Xylene (D 486).

As to the other product, the C_9/C_{10} stream from Portugal, it would be classified as a benzenoid mixture in item 407.16, TSUS.

Sincerely,

John T. Lail

For Harvey B. Fox
Director, Classification
and Value Division

076753

F13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DEC 13 1985

REFER TO

CLA-2 CO:R:CV:G
076761 EMS

District Director of Customs
Boston, Massachusetts 02110

Dear Sir:

Re: Decision on Application for Further Review of Protest Nos. 0401-4-000931 and 0401-4-000932

Protest No. 0401-4-000932 was filed against your decision in the liquidation on September 14, 1984, of entry No. 84-346106-8 dated August 20, 1984, covering a shipment of women's athletic footwear. The file on Protest No. 0401-4-000931 was not forwarded to Headquarters.

FACTS:

The merchandise involved in Protest No. 0401-4-000932 consists of women's athletic footwear. Customs classified this merchandise under the provision for "other footwear: other: other" in item 700.95, Tariff Schedules of the United States (TSUS). Protestant claims that this merchandise is in chief value of leather and should be classified under the provision for leather footwear in item 700.35, TSUS.

ISSUE:

Whether this merchandise is classifiable under the provision for other footwear in item 700.95, TSUS, or under the provision for leather footwear in item 700.35, TSUS.

LAW AND ANALYSIS:

The component material breakdown for the footwear involved in this protest establishes that it is in chief value of rubber and plastic.

076761

Specifically, the cost breakdown submitted shows that $1.43 is attributable to rubber and plastics while $1.31 is attributable to leather. The $1.43 figure is the sum of the costs associated with rubber and plastics ($1.28) plus EVA and outsole cementing ($.15). Thus, classification in item 700.35, TSUS, is not appropriate. In addition, classification in item 700.35, TSUS, is not appropriate since the merchandise consists of women's footwear and item 700.35, TSUS, is a provision for men's footwear.

HOLDING:

In view of the foregoing, the merchandise involved in Protest No. 0401-4-000932 was properly classified in item 700.95, TSUS. You should deny this protest in full. With regard to Protest No. 0401-4-000931, assuming that the merchandise is identical to that involved in Protest No. 0401-4-000932 and that the protest was properly filed we would reach the same conclusion.

A copy of this decision should be attached to the Form 19 Notice of Action to be sent to protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JAN 27 1986

REFER TO
CLA-2 CO:R:CV:G
076764 c

076764

District Director of Customs
301 South Ashley Drive
Tampa, Florida 33602

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1801-4-000020

This protest was filed against your decisions in the liquidation on February 6, 1981, of entry No. 79-908839 dated August 10, 1979, entry No. 79-905768 dated May 1, 1979, and entry No. 79-907774 dated July 2, 1979.

FACTS:

Certain Finalist canvas upper tennis shoes, style No. 951 (men's) and style 950 (women's), were classified in liquidation under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics in item 700.60, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 percent ad valorem.

Pursuant to Schedule 7, Part 1, Subpart A, Headnote 3(h), TSUS, style No. 951 (men's) and style No. 950 (women's) covered by entry No. 905768 were appraised on the American selling price of the Uniroyal Court Ace U-Throat which was $11.00 less 2 percent (men's) and $10.15 less 2 percent (women's). The same styles covered by entry Nos. 908839 and 907774 and exported after June 1, 1979, were appraised on the American selling price of the same domestic shoe which was $12.00 per pair less 2 percent (men's) and $11.00 per pair less 2 percent (women's).

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The protestant maintains that the imported footwear is not legally similar to the domestic prototype and, therefore, is not subject to American selling price appraisement for the following reasons:

(1) The Uniroyal Court Ace and the imported footwear are markedly different in material and construction.

(2) The Uniroyal Court Ace was sold in different channels of distribution than the imported footwear.

(3) The imported footwear and the domestic prototype were sold in different types of stores and to different types of purchasers and did not compete with each other.

The protestant also makes the following arguments against American selling price appraisement in this instance:

(1) There was no like or similar domestically produced article being freely offered for sale for domestic consumption to all purchasers in the principal market of the United States in the ordinary course of trade and in the usual wholesale quantities at the time the merchandise was exported.

(2) No domestic producer has ever certified a price it would have received for such merchandise when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities at the time of exportation of the imported articles.

(3) The appraisement is invalid because Customs failed to comply with the notice requirements of section 152.24, Customs Regulations. See HRL 069080.

The protestant claims that the entries were liquidated more than one year after the date of entry in contravention of Section 504, Tariff Act of 1930. Also, if liquidation was extended, such extension was implemented without notice to the surety in violation of section 159.12(b), Customs Regulations.

The protestant also claims that the demand on surety for payment of additional duties resulting from liquidation of the subject entries is unenforceable by reason of the equitable doctrine of laches.

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Specifically, it is alleged that there was an unreasonable delay between the payment of estimated duties and the liquidation of the subject entries which resulted in the demand for additional duties.

ISSUE:

1. Was the Uniroyal Court Ace U-Throat freely offered within the purview of section 402a(g), Tariff Act of 1930, as amended?

2. Is the imported footwear legally similar to the Uniroyal Court Ace U-Throat?

3. Did Customs fail to comply with the notice requirements of section 152.24, Customs Regulations?

4. Are entries liquidated by operation of law in regard to a surety on those entries if Customs fails to send that surety notices of extensions of the liquidations of those entries as required by section 159.12(b), Customs Regulations?

5. Was Customs guilty of laches because of the delay between the payment of estimated duties and the liquidation of the subject entries which is said to have resulted in the demand for additional duties?

LAW AND ANALYSIS:

With respect to the claim that the Uniroyal Court Ace U-Throat was not freely offered and that its price was not certified, it is to be noted that pursuant to section 152.24(c)(1), Customs Regulations, Uniroyal has certified the price at which they freely offer their shoes to all purchasers in compliance with sections 402 and 402(a), Tariff Act of 1930, as amended. It is also to be noted that the protestant has failed to produce any evidence which would substantiate their allegations.

For the purpose of determining similarity in American selling price cases, four tests have been used as guides: (1) similarity of material; (2) commercial interchangeability; (3) adaptability to the same use; and (4) competitive character.

It is our observation that the evaluations provided by the experts are basically contradictory. Mr. M. S. Field, the president of the importing firm considered the Court Ace to be "vastly superior" to the import in his letter dated March 28, 1980. Robert Chase of the Keds Corp. states that the Court Ace is "more durable and provides a longer service life" and has a superior fit than the import in his January 1983 affidavit. However, S. T. Harrison of the Keds Corp. disparages the Court Ace as a "non-performance canvas shoe and marketed as casual foot covering."

The fact that Uniroyal carried the Court Ace in the Pro Keds line, which contains unquestioned serious athletic shoes instead of their Keds or Uniroyal lines, indicates that Uniroyal was trying to sell this shoe to tennis players. We do not consider the shoe section of a tennis pro-shop to be a different channel of trade than the athletic shoe area of a department store, but to be a segment of the same athletic footwear channel of trade.

As to similarity in material and construction, both the imported shoes and the domestic prototypes are tricot lined and have injection molded bottoms. However, the import is of stitched shell molded construction while the domestic shoe is of superior simultaneous molded construction. Both the imported models and the domestically produced models have two-piece stitched uppers and synthetic rubber soles.

It is our view that the differences noted by the protestant are either minor or of no interest or imperceptible to potential purchasers. For these reasons we do not consider them significant enough to preclude a finding of similarity.

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We do not agree with protestant's claim that the appraisement is invalid because Customs failed to comply with the notice requirements of section 152.24, Customs Regulations. First, Mr. Field, president of "the Finalist" informed Mr. William Ingersoll of our Tampa office in a letter dated October 29, 1979, that "when I was first notified of this matter by Mr. Roc (sic) in New York, we contacted him and he told us the shoe they were comparing it against." Secondly, the protestant did receive notice of the Area Director's determination of American selling price through our Tampa office as he concedes in the cited letter to Mr. Ingersoll.

The issue of whether failure to notify the surety of extensions of liquidations renders the liquidations null and void and requires that the entries be liquidated as entered is currently the subject of a court action (Old Republic Insurance Company v. United States of America, Court No. 83-10-01450).

It is our position that failure to notify the surety of extensions of liquidations does not invalidate either the extensions or Customs' final liquidations. Consequently, the surety would be liable under its bond for any additional duties owed on liquidation.

The protestant's claim that the demand on the surety for payment of additional duties is unenforceable by reason of the doctrine of laches is without merit. Laches has been defined as an inexcusable, unreasonable, or prejudicial delay in the assertion of a right to the disadvantage or injury to another. It is our view that the delay between payment of estimated duties and liquidation of the entries was not unreasonable and did not cause injury to the protestant.

The protestant has asked that in the event Customs decides not to approve this protest that it withhold action on such protest pending a court decision in the case of Old Republic Insurance Co. v. United States, Court No. 83-10-01450. Inasmuch as the actual trial of the issue has not commenced, we will not withhold our decision in this matter.

HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

18 DEC 1985

REFER TO
CLA-2 CO:R:CV:G
076818 JCH

076818

This decision concerns the country of origin of roofing nails in coil or cartridge form for use in nailing machines.

ISSUE:

The issue in this matter is whether nails made in Japan but joined together in coils or cartridge form in Hong Kong for use in nailing machines may be regarded as products of Hong Kong for the purpose of avoiding the application of voluntary export restraint agreements with Japan to the merchandise.

FACTS:

Galvanized wire roofing nails completely finished with points, barbs and heads are manufactured in Japan and exported to Hong Kong. In Hong Kong the nails are processed through a proprietary high speed welder collator. In this process, 120 nails are joined by two parallel wires. The nails are also coated with a chemical which is described as providing them with a high degree of anti-withdrawal, and the nails are then rolled up into coils which are packaged. A submitted cost analysis shows that 45 percent of the value of the final product is added in Hong Kong.

LAW AND ANALYSIS:

The Customs Service has had occasion to review and discuss the concepts involved in substantial transformation in different contexts recently. See C.S.D. 84-17, C.S.D. 85-47, and T.D. 85-158. These decisions, together with the administrative and judicial precedents cited therein, contain informative discussions of the doctrine of substantial transformation thereby making extensive additional discussion at this time unnecessary.

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In a nutshell, in order for a substantial transformation to be regarded as having taken place a new article must emerge from a manufacturing process which has a new name, character and use. Value added in the process, while a legitimate consideration, is not the sole criterion, particularly if finding the country where the processing occurs is the country of origin will mislead the public.

With respect to the instant situation, the merchandise produced in Japan is nails. Except for a change in color, the nails themselves remain unchanged during the Hong Kong processing into coils. They still emerge as nails and are ultimately used as nails to join the very same materials they would join if they were not provided in coil or cartridge form. The sole difference is that in one form the nails are for a roofer using a conventional hammer and in the coil form are for a roofer using a nail hammering machine. Further, although also not a single determining criterion by itself, the nails whether or not in coil form are classifiable under the same applicable TSUS nail provision and subject to the same rate of duty.

HOLDING:

For the purpose of the application of voluntary export restraint agreements the described nails which in their condition as imported are packaged in coils for use in nailing machines would not be regarded as a product of Hong Kong. However, it is our further finding that in reporting

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quantities for statistical purposes, the weight of joining wires may be subtracted from the aggregate weight, and only the weight of the nails themselves reported.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 22 1985

REFER TO

CLA-2 CO:R:CV:G
076819 EMS

076819

John B. Pellegrini, Esq.
Ross & Hardies
575 Fifth Avenue
New York, New York 10017

Dear Mr. Pellegrini:

This is in response to your letters dated August 21, 1985, and September 19, 1985, concerning the appropriate tariff classification of boys' and girls' outerwear to be manufactured in Korea. Samples of the garments to be imported were provided along with your inquiries.

The samples are composed of a nylon shell, a nylon lining and have an eight ounce polyester fiber-filled insulation. The garments feature a collar and a 12 inch zippered opening at the right side seam. The garments also feature pockets at the waist and on the breast and elasticized wrists and waistband. The garment which was the subject of your August 21, 1985, letter features a V-neck opening while the garment which was the subject of your September 19, 1985, letter features a zippered opening at the neck. You indicate that the importer intends to alter these garments subsequent to importation by creating a full front opening and inserting a zipper.

The question presented by your inquiry is whether these garments are classifiable as pullovers as you urge in item 381.9838, Tariff Schedules of the United States (TSUS), if boys, and item 384.9405, TSUS, if girls, or as unfinished jackets in item 381.9530, TSUS, if boys, and item 384.9155, TSUS, if girls. Customs has recently ruled in Headquarters Ruling Letter (HRL) dated April 25, 1985, file No. 075657 that pullover garments similar to those at issue but not featuring front or side zippers did not have a commercial reality as pullover jackets in their condition as imported and were, therefore, properly classifiable as unfinished jackets.

It is our view that the sample with the V-neck opening and no front zipper has no commercial reality as a pullover and that the sample with the front zipper does have a commercial reality as a pullover as evidenced by similar garments which you purchased and presented to us. A garment of the weight of these garments would not feature an open V-neck opening without a closure. This conclusion is supported by an examination of the purchased garments that you submitted as well as the extract from "Nordic Trade" magazine which depicts a heavyweight pullover with side and front zippers.

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In view of the foregoing, the sample with the V-neck opening and no front zipper is classifiable as an unfinished jacket in item 381.9530, TSUS, (category 634) if boys, dutiable at the rate of 17 cents per pound plus 27.5 percent ad valorem and item 384.9155, TSUS, (category 635) if girls, dutiable at the rate of 19 cents per pound plus 27.5 percent ad valorem. The sample with the front zipper is classifiable as a pullover in item 381.9838, TSUS, (category 659) if boys, dutiable at the rate of 8 cents per pound plus 20.5 percent ad valorem and item 384.9405, TSUS, (category 659) if girls, dutiable at the rate of 8 cents per pound plus 20.5 percent ad valorem.

Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

24 DEC 1985

CLA-2 CO:R:CV:G
076853 JAS
812208

076853

Mr. Roy Parsons
Cincinnati Milacron
Plastics Machinery Division
4165 Halfacre Road
Batavia, Ohio 45103

Dear Mr. Parsons:

In your January 23, 1985, letter to the Regional Commissioner of Customs, New York, you inquire as to the tariff classification of certain partly finished platens from unspecified foreign countries. Blueprints, photos and other materials were submitted.

These platens or press blocks are flat plates for use in the clamping unit of a plastics injection molding machine. The literature indicates that, as used in the clamping units of the 250 ton and 1000 ton molding machines, these carbon steel platens vary in size from 38 inches by 38 inches, 65 inches by 65 inches, 79 inches by 63 inches, up to 65 inches by 85 inches. They enter the U.S. with large holes rough drilled in their middle, apparently to facilitate positioning of the platens so that, after importation, additional holes can be drilled. The drilling of the holes prior to importation also saves freight charges and you receive scrap credit for the holes.

After importation, the platens' surface areas will be milled 1/2 inch on all sides and the center holes will be precision machined from a minimum 3 inches to a maximum 18 inches in diameter, to achieve final dimensions. In addition, both moving and stationary platens used in the 250 ton machine will require 98 additional threaded holes while the moving platens will require 13 knockout holes of one size and 10 of another size. The 100 ton machine will require platens with 188 additional threaded holes of one size and 29 slightly larger holes. The various holes, including the center holes, are precision drilled to accomodate tie rods, for attachment of the molds, and for knockout of molded articles.

In accordance with accepted principles of Customs law and interpretation, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished, unless the context of the particular provision requires otherwise. In our opinion, the center hole punching sufficiently advances the platens beyond the tariff definition for Plates and sheets, in Schedule 6, Part 2, Subpart B, Headnote 3(g), Tariff Schedules of the United States (TSUS). Hole

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punching is not among the permitted advancements listed in Part 2, Headnote 1, TSUS. Consequently, the merchandise is advanced beyond the status of a basic shape or form.

Item 678.35, TSUS, is a provision covering machines used for molding or otherwise forming rubber or plastics articles, and parts thereof. A tariff provision covers an article or parts thereof whether finished or unfinished. In order to be considered for tariff purposes as unfinished parts of injection molding machines, the platens must be shown to have been advanced or dedicated to a point where their use as the article or part of the article or class of articles provided for is clear, or their utility for any other possible purpose has been destroyed. The center hole drilling is believed sufficient in this regard. In our opinion, the condition of the platens as imported is such that they are dedicated to and commercially fit for use only as parts of injection molding machines, and are clearly recognizable as such, in unfinished form.

The subject articles would be classifiable in item 678.35, TSUS, dutiable at the rate of 4.3 percent ad valorem.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

Enclosures

076853

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

24 OCT 1985

REFER TO

CLA-2:CO:R:CV:G
076879 PR

076879

This ruling concerns the determination of the country of origin of certain shop towels.

ISSUE:

The issue presented is whether the processing of the subject merchandise in Cyprus is sufficient to change the country of origin of Chinese fabric.

FACTS:

A sample of the subject merchandise was submitted. It is a coarse woven rectangular shaped cotton fabric that measures 17-3/4 inches by 27 inches. The edge along one of the long sides of the fabric is a selvage edge. The other three edges are finished by overlocking stitching. According to the inquirer, the fabric is woven in China and shipped to Cyprus. In Cyprus the fabric is cut to size with special machines, the nonselvage edges are overlocked, and the merchandise undergoes linking, stamping, and packing. We are not aware of what the linking and stamping consist of, however, they do not appear to have a major impact on the merchandise. The machinery utilized in Cyprus is stated to be (1) yarn folding machines, (2) cutting tables, and (3) fifteen special Yamato sewing machines. The work will be performed by twenty operators, of which fifteen will be required to be skilled workers.

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LAW AND ANALYSIS:

In accordance with Section 12.130(b), Customs Regulations (19 CFR 12.130(b)), merchandise is a product of a particular foreign country if it is wholly the growth, product or manufacture of that foreign country, or, where it is processed in two or more countries, it is a product of the country in which it last underwent a substantial transformation. A textile or textile product is considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

In regard to the subject merchandise, the fabric which was woven in China may have uses other than shop towels, however, such uses would appear to be very limited. The substantive operations or processing performed on the merchandise in Cyprus appear to be fairly simple cutting and overlocking operations. These are minor when compared with the weaving operation performed in China and do not change the character of the fabric. Essentially all that is done in Cyprus is the sectioning of the fabric into rectangles.

HOLDING:

In view of the foregoing, it does not appear that the subject merchandise has undergone a substantial transformation (i.e., a new and different article of commerce resulting from

076879

a substantial manufacturing or processing operation) in Cyprus. Accordingly, the merchandise is a product of China for tariff purposes.

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

DEC 13 1985

REFER TO

CLA-2:CO:R:CV:G
076893 JGB

076893

District Director of Customs
127 N. Water Street
Ogdensburg, New York 13669

Dear Sir:

Re: Decision on Protest and Application for Further Review of Protest No. 0712-5-000150, dated January 22, 1985

This protest was taken against your decision in the liquidation on October 26, 1984 of entry 08-84-489316 made August 15, 1984 and the liquidation on October 30, 1984 of entry 08-85-494142 made October 22, 1984. This protest concerns the classification of catalog number 10-910, Plastic Pattern Blocks.

ISSUE:

The protestant claims that the blocks are properly classified under the dual provisions in items 774.5595/ 960.70 Tariff Schedules of the United States Annotated (TSUSA). Item 960.70 is a duty-free provision. The rate of duty under item 774.55 is 6.5 percent ad valorem.

Item 960.70 provides for "Patterns, models (except toy models), globes, and wall charts of an educational, scientific or cultural character; mock-ups or visualizations of abstract concepts such as molecular structures or mathematical formulae; materials for programmed instruction; and kits containing printed materials and audio materials and visual materials or any combination of two or more of the foregoing (however provided for in schedules 1 to 7)." Item 774.55 is the provision for "articles not specially provided for, of

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rubber or plastics: Other: Other." If 960.70 applies, the entries should be duty-free. If it does not, both you and the protestant agree that the proper classification is as articles, n.s.p.f. The issue, therefore, is whether any of the provisions in 960.70 describe the instant merchandise.

FACTS:

The instant merchandise is described in the manufacturer's catalog as "Plastic Pattern Blocks" for use in schools "for investigating geometric forms and relationships, to explore symmetry, congruence and angle measure." The set of plastic blocks "consists of 250 pieces of six shapes and six colors and includes two flexible plastic mirrors."

There is agreement that these blocks are apt to be used in an educational setting and that they would be useful as a teaching device. Also, the manufacturer's catalog shows a variety of educational supplies described and presented to provide evidence that the merchandise is not a toy or game, but, rather, an instructional device. Some of these articles have been eligible for duty-free treatment under item 870.30, TSUS.

LAW AND ANALYSIS:

The protestant argues in part that the Nairobi Protocol to the Florence Agreement is designed to permit duty-free entry of educational, cultural, or scientific materials. Therefore, it is argued, item 960.70, Appendix to the TSUS, should apply.

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We agree that item 960.70 is intended to cover goods of an educational, scientific and cultural character, but we do not understand the language to cover all goods of an educational, scientific or cultural character. Instead, we are limited by standard principles of statutory construction to apply only the words and phrases contained in the provision and nothing more.

A close reading of the language of item 960.70 fails to find words to describe the plastic blocks. They are not patterns, globes or wall charts, nor are they mock-ups or visualizations of abstract concepts such as molecular structures or mathematical formulae. Even though the manufacturer calls the product a pattern, it is not a pattern in the sense of a model from which something else can be made. Moreover, there is no evidence that they are materials for programmed instruction and they do not constitute kits with the required combination of video, audio, or printed materials. By contrast, see our ruling no. 073085, dated May 29, 1985, pertaining to kits under this provision.

The additional claim that these materials may have been eligible for classification in item 870.30, upon presentation of the proper certificate, is not relevant to classification in item 960.70. These two items are not co-extensive, as may be seen by a comparison of the language.

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HOLDING:

The plastic pattern blocks should be classified in item 774.55. You should deny the protest. A copy of this decision should be returned to the protestant along with the Customs Form 19.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

076893

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 26 1985

REFER TO

CLA-2 CO:R:CV:G
076906 jlj
814581

076906

Mr. Robert Prach, Traffic Manager
H. H. Brown Shoe Co., Inc.
630 Third Avenue
New York, New York 10017

Dear Mr. Pratch:

You asked our New York office whether an incomplete work boot from South Korea would be considered a shoe or a shoe upper. A sample was supplied along with your letter. Both your inquiry and your sample were transferred to this office.

The item in question consists of a six-inch high, leather, seven-eyelet, tie boot upper which has been fully lasted to a cardboard insole and has a plastic welt strip sewn to a lip on the insole. A triangular piece approximately 3-3/4 inches long and 3/4 inches wide at its widest point has been excised from the insole and sponge sockliner in the heel area.

The issue presented is whether this item is classifiable as unfinished footwear in item 700.35, Tariff Schedules of the United States (TSUS), or as an upper (a part) in item 791.27, TSUS. Inasmuch as the article has achieved its final size and shape, is easily recognizable as an article of footwear, and needs only the addition of an outsole and filler for the wedge-shaped cut-out in the heel area in order to become complete footwear, the only question remaining is whether the triangular hole prevents the article's classification as unfinished footwear.

In T.D. 79-100, 13 Treas. Dec. 247 (1979), it was held that lasted leather uppers are to be classified as unfinished footwear when the fundamental character of the footwear has been attained. T.D. 79-100 also stated that lasted leather footwear provides a layer or two of protection between the foot and the flooring. Subsequent rulings have stated that uppers requiring backpart lasting in which a piece of material was absent from the midsole or insole did not provide the layer of protection required by T.D. 79-100. However, Customs Headquarters Ruling Letter (HRL) 073078 dealt with an upper having a slit under the heel in which only sewing (and no additional material) was required to close the bottom. In that case, it was ruled that such an item was fundamentally no different from one in which the sewing was performed prior to importation, therefore the item was held to be unfinished footwear.

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The common element in the prior rulings was that the items involved were tubular moccasin-type uppers in which a piece of leather formed the midsole/insole and also turned up to form part of the upper as well. This represents an important distinction from the instant item in which the upper has been lasted to a cardboard insole (i.e., the instant upper is formed, pulled tight over a last, and is sewn to the insole while affixed to the last). Therefore, unlike the tubular moccasins which were to be backpart lasted in the United States, there is no shaping, working, shrinking or other forming that takes place on the instant article during the finishing operation in the United States. The boot is fully lasted in its imported condition and will be merely held in place on a last while bottoming takes place.

It is our view that the wedge-shaped hole, which serves no utilitarian function, does not prevent this article from being classified as unfinished footwear. Unlike the above-mentioned tubular constructions, the hole does not facilitate shaping the upper in the United States. We believe that the instant sample is classifiable as unfinished footwear, in item 700.35, TSUS.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

076906

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 21 1978

REFER TO

CIA-2 CO:R:CV:G
076937 SM

Mr. R. D. Rogers
W. Y. Moberly, Inc.
Box 164
Sweetgrass, Montana 59484

Dear Mr. Rogers:

You have requested a ruling on a Customs transaction involving an article known under the trade name of "Super-Proofer." For future reference, please note that rulings under 19 CFR section 177.2 are usually given in the case of prospective transactions and not in the case of specific matters presently under consideration by a Customs Service field office. Transactions pending before an office by reason of arrival, entry, or otherwise are normally resolved by that office. A field office may be requested to forward the question to the Headquarters office for consideration under the procedures in section 177.11. In the present case we will deal with your request as if a ruling on a prospective transaction had been made.

As you describe the Super-Proofer, it is a plastic frame with hollow windows that will hold strips of 35mm film in flush contact with a piece of photographic paper to make a contact proof of the negatives, which are exposed with light from an enlarger.

The Super-Proofer cannot be properly classified under item 722.86, contact printers. The Super-Proofer will not, by itself, print anything but requires at least an external light source to produce proofs of negatives. The McGraw-Hill Encyclopedia of Science and Technology (1977) indicates that contact printers are "boxes containing lamps and a glass top on which a negative is placed...." The Encyclopedia of Practical Photography states that a contact printer is:

> ...a glass-top box with exposing lights and a safelight...inside and a hinged pressure cover over the glass. Switches on the front control the lights.... In the simplest printer, only one light intensity is available.... In more sophisticated printers there may be a great number of small exposing lamps....

Customs Ruling 056574 described a contact printer capable of superimposing; posterizing; producing multiple images; reducing, intensifying, or canceling colors; and producing other special effects; and held it classifiable under item 722.86. The degree of sophistication of that article is not necessary for classification as a contact printer; however, the Super-Proofer does not appear to be the equivalent of even the simplest devices known as contact printers.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

The Super-Proofer would seem to be more accurately described as a contact printing frame. It may represent, for certain purposes, a technological improvement over existing glass frames. It does not, however, thereby become a contact printer. The Super-Proofer is properly classified under item 722.94, other photofinishing equipment for still pictures.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

076937

THIS DOCUMENT MAY BE RELEASED TO THE
PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

076946

REFER TO

CLA-2:CO:R:CV:G
076946 jlj
814836

26 DEC 1985

Mr. John Casanas
J. M. Rodgers Co., Inc.
90 West Street
New York, New York 10006

Dear Mr. Casanas:

Recently you inquired about the tariff classification of an infants' high top shoe from Hong Kong. You submitted a sample along with your letter.

The sample submitted has a vinyl upper with a fold-down imitation fur collar which occupies over 10 percent of the exterior surface area of the upper. There is an adjustable strap closure on the shoe, which has a closed toe and back. The shoe is a California construction in which a plastic strip (i.e., the insole wrap) has been sewn to the upper and then turned under and cemented to the insole. It is valued at $1.75 per pair.

The issue is whether the sample meets the requirement of item 700.61, Tariff Schedules of the United States (TSUS), that the sole be "affixed to the upper exclusively by an adhesive." (If the shoe does not meet this requirement, then it is classifiable in item 700.64, TSUS). It is the stitching of the insole wrap to the upper which causes a problem in meeting the "affixed...exclusively by an adhesive" requirement of item 700.61, TSUS.

It is our position that item 700.61, TSUS, is not applicable. The insole wrap is an intermediary piece between the sole and the upper, which are not in direct contact with each other. Inasmuch as the wrap indirectly connects the sole and the upper, it could be said that the sole is affixed to the upper by means of the strip. Although technically the sole has been cemented onto the shoe, the stitched part of the wrap helps attach the sole and the upper. We note that if the stitching holding the insole wrap to the upper is removed, the sole is no longer in contact with the upper. This indicates that the shoe is not exclusively of adhesive construction. Inasmuch as the language of item 700.61, TSUS, requires that

A14

the sole be "affixed...exclusively by an adhesive, " this shoe fails to meet the exclusively adhesive requirement of item 700.61, TSUS.

In reference books on footwear construction methods, California construction is listed in a separate category from cement footwear. See How American Shoes Are Made, U.S. Machinery Corporation, Boston (1961), Footwear Construction Methods of Identification, American Footwear Industries Association, Arlington, Virginia, and the Manual of Shoemaking, C. & J. Clark, Ltd., England (1976).

The sample shoe is classified in item 700.64, TSUS, dutiable at the 1985 Column 1 rate of 48 percent ad valorem.

Sincerely,

Arthur P. Schiffelin

for Harvey B. Fox
Director, Classification
and Value Division

076946

B1

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

CLA-2 CO:R:CV:G
076951 JAS
812801

076951

Mr. H. S. Hanks
Dennison Manufacturing Company
300 Howard Street
Framingham, Massachusetts 01701-0344

Dear Mr. Hanks:

In your letter of September 6, 1985, you request reconsideration of our letter to you of August 29, 1985 (075938), concerning a paper product called Cham Tenero sheet.

In our letter of August 29, we stated that the product, also referred to as 55 GSM HiFi thermo base, would be classifiable under the tariff provision for simplex decalcomania paper, not printed, in item 254.30, Tariff Schedules of the United States (TSUS). You now state that, as imported, the subject paper is completely unlike and unsuitable as a decalcomania paper and must receive your patented wax-like transfer coating (Therimage) after importation to impart decalcomania qualities to the paper.

On page 2 of our August 29 letter we concluded that as imported, the subject paper was in condition, without further processing, to receive decalcomanias, thus warranting classification in item 254.30, TSUS. This was an incorrect statement, one which no doubt prompted your September 6 letter.

In your letter of January 31, 1985, the subject merchandise is described as a base paper coated with clay on one side specifically designed as a base sheet for Dennison's patented Therimage transfer coating which is applied after importation. This patented process involves a wax-like transfer layer over which an ink image (the decalcomania or decal) is printed. Transfer of the design is accomplished by the application of heat and pressure. It is our position that the Therimage heat transfer process is a decalcomania process. The present record supports the conclusion that by design and function the 55 GSM HiFi thermo base is exclusively used as a carrier for decalcomanias. Classification in item 254.30, TSUS, is therefore appropriate.

B2

Our letter to you dated August 29, 1985 (075938), is modified as indicated, but is otherwise affirmed.

Sincerely,

Arthur P. Schaffler

For Harvey B. Fox
Director, Classification
and Value Division

076951

B3

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

NOV 27 1985

REFER TO
CLA-2:CO:R:CV:G
076964 c

076964

James Caffentzis, Esq.
Fitch, King and Caffentzis
Attorneys and Counselors at Law
116 John Street
New York, New York 10038

Dear Mr. Caffentzis:

In a letter dated September 10, 1985, you requested that this office revoke the result reached in New York Ruling Letter No. 813143 dated May 2, 1985, concerning the dutiable status of the Snugli quiet book produced in Korea.

In the cited ruling our New York office held that the Snugli quiet book is classifiable under the provision for other toys in item 737.95, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 9.6 percent ad valorem or entitled to duty free treatment under the Generalized System of Preferences, if otherwise qualified.

The Snugli quiet book was described in the cited ruling as follows:

> The article is made of blue corduroy material measuring 8 inches by 10 inches. White fabric leaves are sewn to the corduroy covers, with an activity sewn onto each page. The various play activities are: matching felt colored balloon shapes by means of velcro attachments, lacing and tying a shoelace on a blue furry shoe, moving the hands on an orange felt clock, braiding three strands of black yarns, assembling felt shapes to form a clown's face, working a zipper on a blue felt pocket, matching red felt geometric shapes and manipulating colored beads attached to yellow braided cord. The article is of the class or kind of merchandise used chiefly for the amusement of children.

B4

It is your opinion that the merchandise is properly classifiable under the provision for toy books, including coloring books and books the only reading matter in which consists of letters, numerals, or descriptive words in item 737.52, TSUS, and entitled to duty free entry.

It should be noted that the merchandise involved consists of various play activities a child can physically manipulate such as matching felt shapes, lacing and tying shoelaces, braiding strands of yarn, working a zipper, etc. It is our observation that the predominant feature of the article is the physical activity in which a child manipulates the product rather than glancing at pictures or reading letters, numerals or descriptive words. Although the article is in a book format in so far as there are "pages", it is subordinate to the play value of the activities involved. The presence of a front cover, back cover and pages, are merely a convenient format to incorporate what is otherwise an activity toy.

In view of the foregoing, it is our position that the Snugli quiet book was properly classified under item 737.95, TSUS, as other toys.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

076964

35

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

29 NOV 1985

REFER TO
CLA-2 CO:R:CV:G
076981 DW
814930

076981

Mr. Robert F. Brands
Vice President-Marketing
Shampoo Sponge International
1 Rockefeller Plaza
New York, New York 10020

Dear Mr. Brands:

Your letter dated August 7, 1985, addressed to our New York office that requests the tariff classification of a shampoo-wax sponge from Sweden has been referred to Customs Headquarters for a response.

The sample accompanying your request is a rectangular sponge with the following dimensions: 175 millimeters long, 95 millimeters wide, and 35 millimeters high. It is made from expanded polyether plastic material that has been impregnated with shampoo and wax ingredients. The sponge which is stated to be the component material in chief value is folded and enclosed in a cylindrical plastic sleeve with a printed paper wrapper. From the advertising claims on the wrapper, it appears that the sponge expands when immersed in water, thereby allowing the user to shampoo and wax the car in one operation.

The issue presented by your request concerns whether the article is classifiable in item 770.80, Tariff Schedules of the United States (TSUS), the provision for expanded, foamed, or sponge rubber or plastics, and articles not specially provided for wholly or almost wholly of such rubber or plastics.

General Headnote 9(f)(iii), TSUS, states that the term "almost wholly of" means that the essential character of the article is imparted by the named material, notwithstanding the fact that significant quantities of some other material or materials may be present. Generally, a material imparts the essential character of an article if it is "...indispensable to the structure, core, or condition of the article..." United China & Glass Co. v. United States, 61 Cust. Ct. 386, C.D. 3637 (1948).

In T.D. 67-6(9) dated December 9, 1966, we stated that a polyurethane foam mitt containing a small amount of detergent that is used for washing and polishing automobiles was classified as expanded, foamed, or sponge rubber of plastics, and articles not specially provided for wholly or almost wholly of such rubber or plastics, of polyurethane in item 770.40, TSUS.

B6

Likewise, the essential character of the shampoo wax sponge is imparted by the sponge material. The soap and wax ingredients are additives that improve the sponge but do not alter the essence of the article.

Accordingly, the shampoo-wax sponge is classifiable under the provision for articles not specially provided for wholly or almost wholly of sponge rubber or plastics in item 770.80, TSUS, with duty at the rate of 8.1 percent ad valorem.

Sincerely,

William Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

186970

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DEC 31 1985

REFER TO

CLA-2:CO:R:CV:G
076999 DFC

076999

Mr. Mitchell Chukerman
Schwarz Paper Company
8338 North Austin Avenue
Morton Grove, Illinois 60053

Dear Mr. Chukerman:

In a letter dated July 29, 1985, you inquired as to the dutiable status of a vinyl garment bag produced in Taiwan. A sample was submitted for examination.

The sample garment bag is made of 4 mil thick PVC which has a crinkle pattern simulating artificial leather. It measures 38" long x 23" wide and has a full length nylon coil zipper closure. The seams are reinforced with PVC edging and polypropylene stitching. There is a clear plastic view window in which a business card may be inserted. The front of the bag is imprinted with the name of a retail store. The bag is designed to hold a garment by means of a clothes hanger which protrudes from an opening in the top. The bottom edge of the sample is sewn, but on actual importation it will be open and furthermore, the zipper will be omitted and there will be no opening in the front.

The issue presented is whether the sample garment bag is classifiable under the provision for other luggage of other materials in item 706.62, Tariff Schedules of the United States (TSUS), or is classifiable under the provision for other household articles not specially provided for, of rubber or plastics in item 772.15, TSUS.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS, provides that "For the purposes of the tariff schedules (a) the term 'luggage' covers -- (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags and like articles designed to contain clothing or other personal effects during travel."

It has been consistently our position to view substantiality of construction as essential to a finding that an article is designed for travel. An examination of the sample bag reveals that it is substantially constructed, noting that the seams are reinforced with PVC edging and polypropylene stitching.

BS

In view of the foregoing, it is our position that garment bags represented by the sample are classifiable under the provision for other luggage of other materials in item 706.62, TSUS, and dutiable at the rate of 20 percent ad valorem.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

076699

B9

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: DEC 18 1985

FILE: CLA-2 CO:R:CV:G
077006 TLL

077006

TO : District Director of Customs
Baltimore, Maryland 21202

FROM : Director, Classification and Value Division

SUBJECT: Classification of Chewing Gum Base; IA 34/85

The question presented here is whether the imported material is sufficiently advanced to be classified as an unfinished chewing gum under item 182.32, Tariff Schedules of the United States (TSUS), or is merely an ingredient of such gum. If it is an ingredient, it would be classified under item 183.05, TSUS, as other edible preparations.

The gum base is a product which is made from elastomers, antioxidants, plasticizers, fillers and softeners. The processing of each batch of gum base requires highly sophisticated machinery and skilled technicans. Each batch is manufactured to be a specific type of gum, such as bubble gum or nonstick gum. Once manufactured, the character of the imported gum cannot be changed by further processing. After importation, the gum base is melted and mixed with flavors and sweetners and formed into individual pieces of gum. The weighing and melting of the gum base takes more than 70 percent of the domestic processing time.

Insofar as Customs law is concerned, it is axiomatic that a thing may be classified for tariff purposes under an eo nomine provision for the article if that thing has been so far processed toward its ultimate completed form as to be dedicated to the making of that article or that class of articles, or has been so far advanced beyond the stage of materials as to be dedicated to and commercially fit only for use as the particular article. American Import Co. v. United States, 26 CCPA 72, 74, T.D. 49612 (1938) and cases cited; Finn Bros. Inc. v. United States, 59 CCPA 72, C.A.D. 1042, 454 F. 2d 1404 (1972) and cases cited.

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Inasmuch as the imported product is for all intents and purposes chewing gum, the proper classification for this product is as chewing gum under item 182.32, TSUS.

Please advise the importer of our decision on this matter.

Arthur P. Schaffner
for Harvey B. Fox

077006

B11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

DEC 13 1985

REFER TO
CLA-2 CO:R:CV:G
077007 c

District Director of Customs
600 Central Avenue
Great Falls, Montana 59401

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3304-5-000015

This protest was filed against your decision in the liquidation on December 21, 1984, of entry No. 84-332968-9 dated May 14, 1984, covering a shipment of food bins, gravity dispensers and bag dispensers produced in Canada

FACTS:

The food bins are plastic containers commonly used to hold food products in a "health food" type store. These bins hold bulk food products offered for sale. The shopper is able to open the container and remove the desired quantity to be purchased.

The gravity dispensers are also plastic containers for holding food products in "health food" type stores. These containers allow the food products to be dispensed when a shopper pulls a lever at the bottom of the container.

The bag dispenser is a plastic container that holds plastic bags and allows the shopper to pull off a bag which will be used to hold purchased bulk food products.

This merchandise was classified in liquidation under the provision for other articles not specially provided for, of rubber or plastics in item 774.55, Tariff Schedules of the United States (TSUS).

B12

The protestant claims that the merchandise is classifiable under the provision for containers, of rubber or plastics, with or without their closures, chiefly used for the packing, transporting, or marketing of merchandise in item 772.20, TSUS.

ISSUE:

Are the food bins, gravity dispensers and bag dispensers chiefly used for the packing, transporting, or marketing of merchandise?

LAW AND ANALYSIS:

T.D. 56199(14), T.D. 56478(77) and T.D. 56484(77), have been cited by protestant in support of its position that the merchandise is classifiable under item 772.20, TSUS. These rulings are not relevant to the issue inasmuch as they were concerned with the tariff classification of various dispensers, none of which was classified as a container.

The protestant has also cited the case of Poland Brothers, Inc. v. United States, 64 Cust. Ct. 248, C.D. 3986 (1970), in support of its claim. This case involving the classification of vinyl garment bags which were sold to retail stores which provided them free of charge to purchasers of men's suits is also not relevant to the issue because the garment bags were held not to be the containers provided for in item 772.20, TSUS.

In the case of Imperial Packaging Corp. v. United States, 2 CIT 250, (1981), the court interpreted the term "merchandise" as used in item 772.20, TSUS, as referring "to products which are still in the stream of commerce," rather than articles which are personal effects or commodities in the hands of the ulimate consumer.

The subject containers are used by the store for loose bulk goods. They remain in the store and are not purchased with their contents. These containers are not involved in the marketing process because the

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merchandise is in loose bulk condition (unpacked) and bagged only after leaving the "stream of commerce." The bins and dispensers allow the purchaser to serve himself. Furthermore, the bag dispenser is not a container because the bags are not "merchandise" but packaging material given away free by the store after the bulk merchandise is purchased. It enables the purchaser of the merchandise to obtain his own take home carrier for merchandise already purchased.

HOLDING:

The subject containers are not the containers provided for in item 772.20, TSUS, because they are for storage and are not chiefly used for packing, transporting or marketing of merchandise.

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Scheffler

for Harvey B. Fox
Director, Classification
and Value Division

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B14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

4 DEC 1985

CLA-2 CO:R:CV:G
077052 JEH
NY Reference:
812445

077052

Mr. Matthew Walsh
Cambridge Design Corporation
1031 Northern Boulevard
Roslyn, New York 11576

Dear Mr. Walsh:

This is in reference to your letter of February 7, 1985, regarding the tariff classification of two pouches from Korea.

The smaller pouch is constructed of rayon and has a flocked exterior surface. It has a nylon zipper closure, is unlined, and does not have a gusset. It measures approximately 7 inches by 3-3/4 inches.

The larger pouch has an exterior surface of nylon and is equipped with a waterproof lining, foam padding, nylon zipper, and a 15-inch swagger handle. The pouch measures approximately 9-1/2 inches by 7 inches.

You advised the National Import Specialist that both pouches will be imported empty. The pouches are sold to a firm which uses them as containers for previously packaged manicure sets.

The issue involved is whether these pouches are classified as luggage in item 706.41, Tariff Schedules of the United States (TSUS), and subjected to textile quota restraints or as flat goods in item 706.39, TSUS.

Schedule 7, Part 1, Subpart D, Headnote 2, TSUS, provides:

2. For the Purposes of the tariff schedules --

(a) the term "luggage" covers --

(i) travel goods, * * * and like articles designed to contain clothing or other personal effects during travel, and

(c) the term "flat goods" covers small flatwares designed to be carried on the person * * *.

The term "designed to be carried on the person" has been interpreted to include articles carried in the pocket, in the handbag, or on the person.

The smaller pouch, designed to be carried on a person, meets the definition of the term "flat goods." Therefore, the pouch is classifiable under the provision for flat goods, of textile material, in item 706.39, TSUS, and dutiable at the rate of 20 percent ad valorem.

The larger pouch with its waterproof lining would seem to be designed to carry more than just a manicure set. In fact, a manicure set contained in the the smaller pouch would fit into the larger bag with room for additional items. We have held that articles with waterproof linings similar to the larger pouch, such as toilet, cosmetics, shaving and utility bags designed to contain men's and ladies toiletries while traveling, were classified as luggage. Further the larger pouch does not meet the definition of the term "flat goods." Therefore, the larger pouch is classified as luggage.

The larger pouch whether imported with or without the swagger handle, is classifiable under the provision for luggage, of textile materials, in item 706.4152, TSUS, and dutiable at the rate of 20 percent ad valorem.

Textile quota category 670 is applicable to both articles. However, luggage produced in South Korea and classified in item 706.4152, is currently subject to textile quota restraints.

Sincerely,

Harvey B. Fox
Director, Classification
and Value

070252

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 22 1985

REFER TO

CIA-2 CO:R:CV:G
077057 TLL

District Director of Customs
55 E. Monroe Street
Chicago, Illinois 60603

Re: Application for Further Review of Protest No. 3901-5-000619

Dear Sir:

This application for further review was filed against your decision in the classification of battery separator paper as an article of paper under item 256.90, Tariff Schedules of the United States (TSUS). The product imported is a strip of paper under 4 inches wide, taken from a roll, and is approximately 0.006 inch thick. A sample of the product was submitted with the protest. Protestant suggests that classification of this product under item 251.51, TSUS, as paperboard, not specially provided for, would be appropriate.

The applicable headnotes, Subpart B, Part 4, Schedule 2, TSUS, provide:

> Subpart B headnotes:
>
> 1. This subpart covers paper and paperboard, in rolls and sheets, not cut to size or shape, and not made up into articles finished or not finished * * * *.
>
> 2. For the purposes of this subpart, paperboard described in items * * * and 251.51 under 0.012 inch in thickness shall be deemed to be paper.

The imported battery separator paper is excluded from classification in item 251.51, TSUS, because the product is less than 0.012 inch in thickness and, by the terms of the headnote, is not paperboard.

Even if it were paperboard, and of sufficient thickness, it would be excluded from Subpart B (which contains item 251.51) by the terms of Headnote 1 of the subpart, in that it is imported cut to size or shape. As stated in Headnote 2(b) of Part 4, TSUS, the term "cut to size or shape" means paper or paperboard in rolls or strips not exceeding 6 inches in width.

077057

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In reviewing this application for further review, we also note that it now appears that the term "slitted" as it occurs on the CF 6431, forwarded by Chicago to New York and the term "slit width" as it appears on the specification sheets provided by the importer are not equivalent to the term "slits" that appears in Headnote 2(b) of Part 4, TSUS. Rather, "slit width," probably refers simply to the width of the paper itself.

Consequently, it is our opinion that the liquidated classification is not correct and the correct classification is under the provision for other paper, cut to size or shape, in item 256.30, TSUS.

You are directed to deny this protest except to the extent reclassification of the merchandise under item 256.30, TSUS, results in a partial allowance. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur R. Shaffner

for Harvey B. Fox
Director, Classification
and Value Division

L50440

TO THE

C4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2:CO:R:CV:G
077058 TLL

077058

District Director of Customs
300 S. Ferry Street
Terminal Island
San Pedro, California 90731

Re: Application for further Review of Los Angeles Protest
2704-4-004277

Dear Madam:

This application for further review was filed against your decision in the classification of a "Happy Thanksgiving" card under item 274.05, Tariff Schedules of the United States (TSUS). Protestant suggests that the item in question is a care card and classifiable under item 274.80, TSUS, as printed matter not specially provided for, other, printed on paper in whole or in part by a lithographic process, over 0.020 inch thick.

The cards involved are lithographically printed cards which are attached to a plastic pick inserted in a floral container. The front of the card consists of pictorial matter (grapes on a vine) and the greeting, "Happy Thanksgiving." Half of the inside of the card advises the recipient, "You've just received a thoughtful floral gift." It also contains advertising material for these products. The second half of the inside of the card consists of a blank space for amplifying the sentiment on the front of the card and identifying the giver of the gift. The back of the card sets forth plant instructions, a guarantee, the name of the company, a trademark and trademark notice, a copyright notice, and information that the imported product is printed in Japan.

The superior heading to items 274.00 and 274.05, TSUS, provides for the classification of "Greeting cards, valentines, tally cards, place cards, and all other social and gift cards, including folders, booklets, and cutouts, or in any other form, finished or not finished, and with or without envelopes." Item 274.00 TSUS, then provides for those items "Without greeting, title, or other wording." Item 274.05, TSUS, then provides for the classification of those items " With greeting, title, or other wording."

An eo nomine designation, without limitation or a shown contrary legislative intent, judicial decision, or administrative

CS

practice, and without proof of commercial designation, will include all forms of the article. Nootka Packing Co. v. United States, 22 CCPA 464, T.D. 47464 (1935); Crosse & Blackwell Co. v. United States, 36 CCPA 33, C.A.D. 393 (1948) and cases cited; T.M. Duche & Sons, Inc. et al. v. United States, 44 CCPA 60, C.A.D. 638 (1957).

Without deciding whether or not the imported product is a greeting card, it appears clear to us that this particular card is a gift card. It is a card which accompanies a gift.

Consequently, classification under item 274.05 is correct.

You are directed to deny this protest. A copy of the decision should be attached to the Form 19, Notice of Action, to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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c6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO
CLA-2 CO:R:CV:G
077062 TLL

Chief, Customs Information Exchange
United States Customs Service
New York Seaport
6 World Trade Center
Room 450
New York, New York 10048

Dear Madam:

A Customs Form 6431, July 18, 1984, from the port of Portland, Maine, concerning entry No. 84-204847, dated July 10, 1984, relates to a difference in the classification of potatoes from Canada. This case is not listed in the most recent list of differences in CIE N-42/75, Suppl. 43, August 1985. The file was transmitted to Headquarters on September 25, 1985.

FACTS:

The imported merchandise are peeled tablestock (Kennebecs) potatoes in bulk. After importation, these potatoes will be cut into french fries. We are advised that there is a normal market for peeled potatoes.

The import specialist in Portland, Maine is of the opinion that peeling potatoes reduces them in size; the concerned NIS does not consider them reduced in size. New York Ruling 811957, dated February 15, 1985, classified peeled potatoes under item 137.25, Tariff Schedules of the United States (TSUS), if within the quota allotment, and under 137.28, TSUS, if outside the quota provision.

ISSUE:

Whether the peeled potatoes are reduced in size within the meaning of the superior headings contained in Subpart A, Part 8, Schedule 1, TSUS.

DISCUSSION OF LAW:

Subpart A, Part 8, Schedule 1, TSUS, provides for the classification of "vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved)."

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The question of what constitutes a reduction in size for purposes of this subpart has been litigated on several occasions. See North Pacific Canners and Packers, Inc. v. United States, 74 Cust. Ct. 87, C.D. 4590 (1975). In that case, the court held that "reduction in size" meant "a reduction in size beyond the point that such vegetables are reduced in size as an incident to placing them in a marketable condition." Under this authority, Headquarters ruled in Headquarters Ruling Letter (HRL) 069795, dated March 12, 1982, that frozen whole tomatoes (including the meat, pulp, seeds, and core) which had been peeled subsequent to their initial freezing were not "reduced in size" for tariff classification purposes, since the instant merchandise was the sole determinant as to what constituted the "marketable condition" of frozen whole tomatoes.

Under authority of HRL 069795, New York Ruling Letter 811957, dated February 15, 1985, was issued holding that peeled whole potatoes are subject to classification under the provision for potatoes, white or Irish: fresh, chilled or frozen (but not reduced in size nor otherwise prepared or preserved) item 137.25, TSUS, if within the quota provision, and item 137.28, TSUS, if outside the quota provision.

CONCLUSION:

New York ruling letter 811957 is correct. Peeling potatoes does not reduce them in size but merely puts them in marketable condition. The potatoes in question are subject to classification under item 137.25, TSUS, or item 137.28, TSUS, as appropriate.

Sincerely,

John T. Rath

Harvey B. Fox
Director, Classification
and Value Division

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071962

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

077065

DATE: 07 [illegible] 1986

FILE: CLA-2:CO:R:CV:G
077065 JCH

TO : District Director of Customs
Los Angeles, California 90731

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 66/85 Concerning the Tariff Classification of Wool Fabrics Claimed to be for Upholstery. (Your Memorandum of July 5, 1985, MAN-1-L:C:D:X-II EDW/mf)

The subject internal advice request was initiated by counsel for the importer in a letter dated January 28, 1985. The merchandise is made in Scotland. Our decision follows:

ISSUE:

It is your position the fabrics in question are classifiable under the provision for woven wool fabrics valued over $9 per pound in item 336.64, Tariff Schedules of the United States (TSUS). The 1985 column 1 rate of duty required under that provision is 12 cents per pound plus 34.7 percent ad valorem. It is claimed in the IA request that the merchandise is classifiable as woven wool upholstery fabrics valued over $2 per pound in item 357.15, TSUS. The 1985 column 1 rate of duty required under that provision is 12 cents per pound plus 7 percent ad valorem.

To resolve this tariff classification competition, it must be determined whether the fabrics at issue are of a multipurpose type or of a class or kind chiefly used for upholstery.

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FACTS:

This IA request concerns woven fabrics in 12 qualities for which samples have been provided. Ten of the samples are 100 percent wool while one is a combination of wool and linen and another a combination of wool and silk. It is indicated that the fabrics all come in 60-inch wide bolts, and it has been stated that none of the fabrics have been treated with any chemicals or coatings. The fabrics generally are in assorted muted tones consisting mainly of pinstripes, plaids and checks.

A private test report showing heavy-duty abrasion resistance using a cotton duck abradant in accordance with the so-called Wyzenbeek test has been submitted, but the number identifying the tested sample does not correlate with any of the identification numbers of any of the submitted samples. Another test report shows that four of the 100 percent wool samples meet California fire resistance standards. A statement has been submitted by a customer of the importer supporting the claim made that the fabrics in question are exclusively used for upholstery. Customs laboratory examination of four qualities of the fabrics showed weights per square yard of 5.07, 6.69, 11.57 and 9.66 ounces. The samples more specifically bear the names: Heavy pinstripe, Iverness Checks, Heatherweave, Lindsay, Carnegie Check, True Gienurquhart Check, Coastal Checks, Marsh District Check, Pinstripe, Linen Blend, Castle Blend and Lord Elcho.

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LAW AND ANALYSIS:

We have previously pointed out that classification under the TSUS provisions for upholstery fabrics are determined by chief use. In this connection, counsel, among other authority, has referred to United States v. The Carborundum Company, 63 CCPA 98, C.A.D. 1172 (1976), for its pertinence to chief use determinations. Chief use, of course, is only meaningful when the class or kind of merchandise to which the chief use relates has been identified. In other words, defining class or kind and establishing chief use are correlative but separate considerations. Therefore, assertions in this matter that the instant fabrics are sold exclusively to upholsterers, while pertinent to use, do not establish class or kind. Class or kind pertains to the specific physical characteristics of the fabrics which make them objectively distinguishable as a class or kind from other fabrics.

Consequently, counsel has called our attention to a number of factors which it is contended we should regard as pertinent in describing various physical characteristics distinguishing upholstery fabrics from other fabrics. Even the price factor counsel has referred to, while not relating directly to physical characteristics, may be pertinent insofar as it may presuppose general quality characteristics associated with the upholstery goods market. But no one of the characteristics by itself can be found not to be common

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C11

to a given quality of apparel fabric. Therefore, in identifying a class or kind of woven wool fabrics which are upholstery fabrics, we must look to the various physical factors as they may exist in combination with other pertinent factors.

With respect to price insofar as it may be pertinent, upholstery fabrics tend to be identified with more expensive textile products. However, no information has been provided in the IA request showing the cost of the samples or any basis for comparing their costs to those of apparel fabrics of similar composition, weight or other common features which may be pertinent for cost comparison purposes. Next, counsel relies on the weights of the fabrics for a distinction claiming, in effect, that the samples are either too heavy or too light for apparel purposes. We disagree with the view that lightness in weight is a legitimate factor to be considered either by itself or in combination with other factors in defining class or kind for woven wool upholstery fabrics. Heaviness, by contrast, even though a characteristic common to fabrics for such items as coats, would be a pertinent characteristic in combination with other characteristics useful in defining class or kind. However, it is our opinion that of all the fabrics, only Heatherweave at 9.66 ounces per square yard and Carnegie Check at 11.57 ounces per square yard are in a weight range characteristic

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C12

of wool upholstery fabrics. But those weights would only be persuasive of classification as upholstery fabrics if combined with other physical characteristics also associated with upholstery qualities.

Another characteristic which counsel has identified and which may be regarded as pertinent to class or kind is bolt width. However, contrary to the information counsel has provided, 60-inch bolts are more typical of apparel fabrics, while 54-inch bolts are more the norm for upholstery fabrics. With respect to strength and abrasion resistance, certainly pertinent factors in identifying class or kind, the submitted test data is for a quality not represented by any of the samples.

Counsel has further referred to a distinction based on patterns woven into the fabric rather than printed on after weaving citing our decision of October 30, 1980, IA 118/80, file No. 066533. However, as indicated above, upholstery fabrics as a class or kind cannot be identified by any single characteristic. The method of design formation would only be persuasive in combination with other factors persuasive of a class or kind used for upholstery. Further, with respect to design, counsel has suggested that on the basis of taste and other considerations the fabrics at issue are not suitable for apparel. However, there is nothing in the conventional pinstripe, check, etc., configurations of the samples which

097065

C13

would suggest to the layman that the samples are upholstery fabrics and not apparel fabrics. In fact, the fabrics are completely lacking in coloristic effects or designs which ordinarily would be associated with interior decoration motifs and not with apparel fashions.

Finally, counsel has cited fire resistance as a pertinent consideration. However, it is not shown that the tested samples have any more fire resistance than is inherent in any wool fabric. In fact, the fabrics have not only not been treated for fire resistance, they have not been treated for hard surface or non-pilling qualities which are characteristic of upholstery fabrics.

HOLDING:

While it is claimed, in effect, that the fabrics are actually used for upholstery, the applicable tariff classification standard is chief use of the class or kind that the fabrics represent, and the instant fabrics are not shown to have physical characteristics by which they may be identified as a class or kind distinguishable from fabrics not used for upholstery. Therefore, the fabrics which are valued over $9 per pound are properly classifiable under item 336.64, TSUS. A copy of this decision should be furnished to the IA applicant.

John T. Rath

For Harvey B. Fox

C14

071705

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

21 NOV 1985 CLA-2 CO:R:CV:G
077067 c

077067

Mr. Marc S. Bluestein
Vice President-Finance
Mercury International Trading Corp.
75 Forbes Boulevard
P.O. Box 430
Mansfield, Massachusetts 02048

Dear Mr. Bluestein:

In a letter dated March 25, 1985, we ruled that an artificial suede boot for men is classifiable depending on its value in item 700.61, Tariff Schedules of the United States (TSUS) (if valued not over $6.50 per pair), dutiable at the rate of 37.5 percent ad valorem, 700.62, TSUS (if valued over $6.50 but not over $12.00 per pair), dutiable at the rate of 90 cents per pair plus 20 percent ad valorem, or item 700.63, TSUS (if valued over $12.00 per pair), dutiable at the rate of 20 percent ad valorem.

We have reconsidered the classification of the subject footwear and have concluded that classification under items 700.61 through 700.63, TSUS, is not appropriate. Specifically, footwear soles which overlap the upper other than at toe or heel are precluded from classification thereunder. It is our observation that the six inch long toe bumper, which appears to be part of the molded outsole, overlaps more than the toe.

Information before us is that the trade meaning of "toe" includes items which go much farther back in the shoe, as in a "steel toe" in safety work footwear, and items which end before the toes even begin, as in the "toe" inserted in the quick release mechanism of a ski binding. We have found only one use of the phrase "at the toe" in our trade reference. That is on page 247 of the "Manual of Shoemaking." The photo on page 249 makes it clear that, in that context, "at the toe" means only a vertical line about 1/100 inch wide at the front tip of the shoe. It is improbable that such an extremely restrictive definition would have been intended by Congress, but such a use by the trade indicates that it is unlikely the trade would also apply the phrase "at the toe" to a six inch long "toe bumper" present on the instant boot and also indicates that the phrase "at the toe" has no <u>one</u> trade meaning. A review of dictionaries also indicates that there is not one clear common meaning for "at the toe."

The Summary of Trade and Tariff Information, Rubber Footwear, USITC Publication 841, March 1981, at page 6, states in pertinent part that "items 700.61-700.63 provide for footwear that is held to the foot with the use of laces, buckles, or other fasteners and that is of cement construction, and is primarily intended to cover "joggers."

D1

In view of the expressed legislative intent that items 700.61-700.63, TSUS, cover primarily joggers, it is our opinion that "at the toe" means the small area of the toe covered by the flat sole of a cemented jogger where it overlaps the upper.

In view of the foregoing, it is our opinion that the hiking boot is properly classifiable under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics: other: footwear with soles which overlap the upper other than at the toe or heel: other: valued over $3.00 but not over $6.50 per pair in item 700.67, TSUS, and dutiable at the rate of 90 cents per pair plus 37.5 percent ad valorem or at the rate of 90 cents per pair plus 20 percent ad valorem under item 700.69, TSUS, if valued over $6.50 but not over $12.00 per pair.

This ruling is applicable to the subject footwear entered or withdrawn from warehouse, for consumption, on or after the date of this letter.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

D2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON D.C. 20229

REFER TO

CLA-2 CO:R:CV:G
077073 JRH
Your Reference:
73-2844
NY Reference:
814850

077073

07 6

Mr. Benjamin C. Lu
Director
Coordination Council for North American Affairs
4301 Connecticut Avenue, NW, Suite 420
Washington, D.C. 20008

Dear Mr. Lu:

This is in reference to your letter of November 29, 1984, regarding the tariff classification of a cosmetic bag from Taiwan.

The sample submitted i a circular cosmetic bag measuring approximately 5-1/4 inches diameter and 3-1/2 inches in height. The bag has an exterior surface of nylon and an interior coating of plastic. A nylon tape zipper encircles the circumference of the bag allowing the top portion to open up. A self-material top handle is used to carry the article.

The issue involved is whether the bag is classified as luggage in item 706.41, Tariff Schedules of the United States (TSUS), and subject to textile quota restraints or as a flat good in item 706.39, TSUS.

Schedule 7, Part 1, Subpart D, Headnote 2, TSUS, provides:

2. For the purpose of the tariff schedules --

(a) the term "luggage" covers --
(1) travel goods, * * * and like articles designed to contain clothing or other personal effects during travel, and

(c) the term "flat goods" covers small flatwares designed to be carried on the person * * *.

D3

The term "designed to be carried on the person" has been interpreted to include articles carried in the pocket, in the handbag or on the person.

The sample submitted has a plastic lining and a carrying strap which would indicate that it was designed to be carried by a person rather than on a person. Therefore, the subject bag does not meet the definition of the term "flat goods".

The bag is classifiable under the provision for luggage, of other textile materials, in item 706.4152, TSUS, and dutiable at the rate of 20 percent ad valorem.

Bags of this type of material fall within textile category designation 670. As a product of Taiwan, this merchandise is subject to a visa requirement and quota restraints.

Sincerely,

John T. Rath

Harvey B. Fox
Director, Classification
and Value Division

D4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

31 DEC 1985

CLA-2 CO:R:CV:G
077105 DW
814970

077105

Mr. Mark S. Rodack
M & R Imports Inc.
6920 Central Highway
Airport Circle Industrial Park
Pennsauken, New Jersey 08109

Dear Mr. Rodack:

We are responding to your letter of August 7, 1985, that was referred by the New York Seaport, concerning the tariff classification of a decorative pillow. A sample was provided following a telephone conversation on November 5, 1985.

The sample pillow, manufactured from a fabric that is a blend of cotton and polyester, measures 7 by 3 3/4 inches and is surrounded by a ruffle with eyelet embroidery that is approximately 1 3/4 inches wide. The pillow is stuffed with polyurethane foam. A textile overlay in the shape of a rectangle with a scalloped edging is attached to the front of the pillow and bears the following message: "A daughter is a special person." A textile loop stitched to the back of the pillow is used to hang the item.

The issue presented by your request is whether the sample merchandise is classifiable as a pillow for tariff purposes in item 727.86, Tariff Schedules of the United States.

A pillow is defined in the American Heritage Dictionary, 1976 ed. as "1. A cloth case, stuffed with something soft, such as down, feathers, or foam rubber, and used to cushion the head during sleep. 2. A decorative cushion." A cushion is defined in the same text as "1. A pad or pillow with a soft filling, used for resting or reclining. 2. Anything resilient used as a rest, support, or shock absorber." As the foregoing definitions make clear, the subject article is not considered to be a pillow because it is too small to be used for resting or supporting the body.

In tune with these definitions, Customs has ruled on numerous occasions that miniature pillows that are too small to support the head or other part of the body are classifiable as articles not specially provided for, of textile materials. See Headquarters Ruling Letter (HRL) 046377 dated October 21, 1977, and New York Ruling 803199 dated June 25, 1982.

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The presence of the textile loop for hanging the article indicates that the article is designed to be hung on a wall. Thus, the article is appropriately described as a wallhanging. We have previously classified wallhangings under the provision for textile furnishings. See Headquarters Ruling Letters 045156 dated August 3, 1976, and 030030 dated January 23, 1974.

In accordance with these rulings and assuming the sample merchandise is in chief value of man-made fibers, it is classifiable under the provision for other furnishings ornamented, of man-made fibers, wallhangings, in item 365.8940, Tariff Schedules of the United States Annotated. The textile category is 666. Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

D6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JAN 27 1986

REFER TO
CLA-2 CO:R:CV:G
077112 DFC

077112

Ms. Angela DeGaetano
Chief, CIE
U.S. Customs Service
6 World Trade Center
New York, New York 10048

Dear Ms. DeGaetano:

A Customs Form 6431 dated November 28, 1984, received in this office on October 16, 1985, from the port of Blaine, Washington, concerns entry No. 972888 dated September 12, 1984, covering a shipment of puffy stickers manufactured in Canada. This difference of opinion is not listed in the list of differences circulated as CIE N-42/75, Suppl No. 43 of August, 1985.

The sending port maintains that the puffy stickers are properly classifiable under the provision for other toys, not specially provided for in item 737.95, Tariff Schedules of the United States (TSUS). The National Import Specialist would classify this merchandise under the provision for other articles not specially provided for, of rubber or plastics in item 774.55, TSUS.

The sending port asserts that the stickers meet the definition of toys set out in Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, because they are chiefly used for the amusement of children. Also it is pointed out that the back of each sample states "Collectible, Reusable, Fun, Tradable stickers."

As support for its position the sending port cites the case of The United States v. Topps Chewing Gum, Inc., 58 CCPA 157, C.A.D. 1022 (1971), which enunciated the principle that "if the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement." It is claimed that the stickers in issue do in fact provide the same kind of enjoyment that playthings give.

It appears that the decorative buttons which were the subject of the Topps case, supra, were inherently amusing because of the humorous sayings and/or the design features

D1

printed thereon, i.e., a "one-eye monster". An examination of the descriptive material provided indicates to us that many of the puffy stickers are not amusing in themselves. For example, two hearts joined together, a large heart pierced by an arrow, a rainbow, etc. It is our view that the puffy stickers involved do not provide the same kind of frivolous enjoyment for children that they would derive from objects commonly thought of as toys. Although a close case, on balance, the articles seem to be more in the nature of decorations and are not toys.

In view of the foregoing, it is our position that the puffy stickers are properly classifiable under the provision for articles not specially provided for, of rubber or plastics in item 774.55, TSUS.

Sincerely,

Arthur P. Griffin
for Harvey B. Fox,
Director, Classification
and Value Division

D8

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

DEC 13 1985

REFER TO
CLA-2 CO:R:CV:G
077116 c
814524

077116

Mr. R. L. Thompson
Re-Nell Manufacturing Co.
P.O. Drawer 137
Dallas, Georgia 30132

Dear Mr. Thompson:

In a letter dated July 3, 1985, you inquired as to the dutiable status of certain PVC garment bags manufactured in Taiwan. Samples were submitted for examination.

The three samples submitted are not identified by style number. Each of the garment bags is manufactured of PVC which is 3 mil. thick. Two of the bags are nontransparent while the third is transparent. Each bag has a full length nylon coil zipper front and PVC edging reinforcing the seams. The garment bags are carried by the person by means of a clothes hanger which will protrude through a slot at the top. We understand that such merchandise is given as a premium with the purchase of a garment as well as sold at retail in its own individual packaging.

The issue presented is whether the sample garment bags are classifiable under the provision for other luggage of other materials in item 706.62, Tariff Schedules of the United States (TSUS), or are classifiable under the provision for other household articles not specially provided for, of rubber or plastics in item 772.15, TSUS.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS, provides that "For the purposes of the tariff schedules (a) the term '<u>luggage</u>' covers -- (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel."

It has been consistently our position to view substantiality of construction as essential to a finding that an article is designed for travel. We also look to how the bags are advertised, bought and sold. Specifically, the bags in issue are made of such thin material that minimum pressure would cause the seams to split and a slightly sharp object would pierce the vinyl and damage the contents. Although garment bags represented by the samples are used for travel purposes, it is our view that they are designed primarily for storage in the home.

D9

In view of the foregoing it is our opinion that garment bags represented by the samples are chiefly used in the home and are therefore classifiable under the provision for other household articles not specially provided for, of rubber or plastics in item 772.15, TSUS, and entitled to duty-free treatment under the Generalized System of Preferences, if otherwise qualified.

You state a suspicion that certain of your competitors have been importing garment bags similar to the samples which you have submitted under item 772.20, TSUS, as containers, of rubber or plastics, with or without their closures, chiefly used for the packing, transporting, or marketing of merchandise. Information before this office is that your competitors are not importing their garment bags under item 772.20, TSUS.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

071116

D10

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

077116

DATE: DEC 13 1985

FILE: CLA-2 CO:R:CV:G
077116 c
814524

TO : Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Your Memorandum dated October 9, 1985 (Your File CLA-2-07-S:COM:N3G-341-1094-814524) Concerning the Tariff Classification of Polyvinyl Chloride Garment Bags

You ask that Headquarters Ruling Letters (HRL) Nos. 075391 and 075785 dated February 28 and March 19, 1985, respectively, be revoked inasmuch as they conflict with HRL No. 075233 dated December 17, 1984. You state that the merchandise ruled on was the same in all the cited rulings.

HRL No. 075233 held that certain PCV suit bags are classifiable under the provision for other luggage of other materials in item 706.62, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 percent ad valorem. This result was based on literature submitted by the inquirer describing the bags as being designed for travel. Also, these bags were advertised as travel bags and appeared to us at the time to be substantially constructed for that purpose.

The vinyl garment bags or suit covers and the bridal gown cover which were the subject of HRL Nos. 075391 and 075785 were held to be classifiable under the provision for other household articles not specially provided for, of rubber or plastics in item 772.15, TSUS. The rationale for these holdings was that it has been consistently our position to view substantiality of construction as essential to a finding that an article is designed for travel. We also look to how the bags or covers are advertised bought and sold. It was our observation that the samples were of insubstantial construction because they were composed of such thin material that minimum pressure would cause the seams to split and a slightly sharp object would pierce the vinyl and damage the contents. Further, even though the bags may on occasion be used for travel purposes, it appeared that their primary use is for in-shop or home storage.

D11

075116

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS, provides that "For the purposes of the tariff schedules -- (a) the term 'luggage' covers -- (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel."

The basic fact to be ascertained following the cited headnote is to determine whether the garment bags or covers and bridal gown covers are "designed to contain clothing or other personal effects during travel." It is our opinion that bags and covers which were the subject of HRL Nos. 075391 and 075785 were not designed for travel purposes even though they may have been advertised as being susceptible to such use. Such advertising is not conclusive as to their design purpose.

It is our view that substantiality of construction is the key to a determination that an article is designed for travel purposes. We believe that substantiality of construction was the distinguishing feature between the vinyl bag, style No. G-340, and the textile bag, style No. 4040, which compelled the conclusion that the latter bag was designed for travel purposes in HRL 075391.

We have not misapplied the concept of chief use in classifying the subject merchandise. Once a determination had been made that certain of the bags or covers involved were not designed for travel, it was necessary to determine whether they were chiefly used in the household or elsewhere to arrive at a proper classification.

In view of the foregoing, we must conclude that our observations regarding the vinyl bags which were the subject of HRL No. 075233 dated December 17, 1984, were erroneous. It is now our opinion that the travel and suit bags involved therein are chiefly used in the household and are classifiable under the provision or other household articles not specially provided for, of rubber or plastics in item 772.15, TSUS. Therefore, HRL No. 075233 will be amended to reflect the conclusion reached herein.

Your exhibits are being returned under separate cover.

Arthur P. Schaffner
For Harvey B. Fox

D12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DEC - 9 1985

REFER TO

CLA-2:CO:R:CV:G
077131 DW

077131

Mr. Diego A. De Obaldia
Vice President
Fanasa
Apartado 2130
Panama 1, R. P.

Dear Mr. De Obaldia:

We are responding to your request for a ruling on the country of origin of certain polypropylene bags. Your letter of October 3, 1985, replying to our letter of August 26, 1985, contained additional information on the processing operations performed in Taiwan and Panama. At a meeting at Customs Headquarters on October 17, 1985, the matter was discussed in greater detail.

You state that tubular rolls of cloth are manufactured wholly in Taiwan. The manufacturing process consists of extruding resin into flat tapes that are stretched and annealed in specialized equipment and wound into yarn bobbins that are placed in creels that feed circular looms. The looms produce the tubular cloth which is wound into rolls of about 2,000 meters.

The unmarked tubular cloth is shipped to Panama where it is placed on a cutting/printing and folding machine that costs about $250,000 and is set up for the specific bag to be manufactured. The unfinished bags are then sent to the sewing department where workers stitch the bags on 16 sewing machines costing $2000 apiece. Afterwards the bags go to the revision department where 16 workers check and count the bags in stacks. Finally, the bags are wrapped in bales. You have indicated that the cost to process the cloth is $0.08 per bag and the cost of the cloth itself is $0.132. The value added by the processing in Panama is stated to be 60 percent of the cost of the tubular cloth.

You claim that the tubular cloth has undergone a substantial transformation in Panama into a new and different article. This is so, you argue because the tubular cloth

D13

and the finished bag are classifiable in discrete tariff provisions.

Next, you claim that the tubular cloth is not readily identifiable as being intended for a particular commercial use. That is, you state that the cloth can be used for a variety of purposes: package wrapping; shading in agriculture; and earth filling conditioning.

In determining the country of origin of textiles and textile products that consist of materials produced or derived from, or processed in, more than one country, the imported article is considered to be a product of that country where it last underwent a substantial transformation.

The court in Uniroyal, Inc. v. United States, 3 C.I.T. 220, 542 F. Supp 1026 (1982), aff'd. per curiam, 702 F. 2d 1022 (1982), stated that a substantial transformation will result in an article having a name, character or use differing from that of the imported article. Conversely, the same court recognized that minor processing will not result in a change in the name, character, or use of the article. Uniroyal, at p. 224. And, the courts long have noted that whether an article has undergone a substantial transformation is a determination that depends on the circumstances in each case. Grafton Spools, Ltd. v. United States, 45 Cust Ct. 16, C.D. 2190 (1960).

Turning to the merchandise at hand, we believe the essence of the completed bag is the polypropylene tubing woven in Taiwan. It is there that the most complex manufacturing processes are performed.

The cutting to size, printing, and sewing performed in Panama are minor processing operations. We continue to believe that any other uses for the tubing are extremely limited. These bags are made from tubular woven fabric that is in the finished width of the bag. Thus the fabric is readily identifiable as being intended for a particular use. Accordingly, under section 12.130,(e)(2)(ii), Customs Regulations, cutting to length and overlocking does not result in a substantial transformation of the tubing. Then too, printing information on one side of the bag will not result in a substantial transformation under section 12.130(e)(1)(i), Customs Regulations. To effect such a substantial transformation under the regulations, usually the fabric must be dyed and printed and accompanied by at least two finishing operations.

D14

071131

Even though the tubing and the completed bags are classifiable in separate tariff provisions, that is not considered to be decisive in ascertaining the country of origin of an article. This is consistent with the decision in Rolland Freres, Inc. v. United States, 23 CCPA 81 (1935) where the court made the following observation:

> While the fact that by a manufacturing effort expended on an article its tariff status may have changed is a proper matter to consider along with other circumstances in arriving at a conclusion as to whether the article has been "manufactured or produced", it certainly should not be a controlling consideration.

Likewise, the Customs Service has echoed this interpretation of the effect of a change in tariff classification in our administrative rulings. For example, in C.S.D. 80-10 (1980), we modified a prior ruling 049912 dated April 1, 1977, to reflect the position that the country where merchandise first becomes susceptible to its final tariff classification is a factor for consideration and not determinative in ascertaining the country of origin of that merchandise.

In sum, a substantial transformation of the tubing does not occur in Panama. Therefore, the country of origin of the polypropylene bags is Taiwan.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

E1

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 31 1985

REFER TO
CLA-2 CO:R:CV:G
077153 JAS

District Director of Customs
Charleston, South Carolina 29402

Dear Sir:

This is in response to an Application for Further Review of Protest No. 1601-3-000119, dated December 19, 1983, filed on behalf of the importer of certain papermaking machine components from Italy.

FACTS:

At issue in this protest is the tariff status of five 1981 entries covering components of a machine for making linerboard, which the importer/protestant now attempts to aggregate under the tariff provision for machines for making cellulosic pulp, paper, or paperboard, in item 668.00, TSUS. These components are merely stated to have been imported "in several shipments over a period of time," there being no further description of the components or the particular machine in the papermaking process with which they are used. It does appear, however, that the components arrived by plane and vessel. The Italian manufacturer's packing list, however, describes, among other things, drying cylinders complete with bearings and bearing housings, a steel felt roll with similar housings, reel spools, and a series of bench boards, otherwise undescribed. It is unclear whether this comprises all or only a part of the protested merchandise.

The importer/protestant, has attempted to aggregate these shipments under tariff item 668.00, TSUS. The appraising officer, on the other hand, has merely stated that the components contained in each shipment are to be classified, in their condition as imported, in accordance with General Interpretative Rule 10(ij), TSUS, under relevant tariff provisions. It is

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077153

unclear from the file however, whether in the absence of a specific provision covering any or all of these parts, they would, or have in fact been classified and assessed with duty as parts, in item 668.06, TSUS.

ISSUE:

Can the doctrine of entireties be applied where components of a complete machine arrive within the Customs territory in separate shipments?

LAW AND ANALYSIS:

One of the most basic and uncontroverted principles of Customs jurisprudence, in classification and appraisement matters, is that merchandise must be classified in its condition at the time of importation i.e. brought within the Customs territory of the United States with intent to unlade. See United States v. Schoverling, 146 U.S. 76. This principle has often been cited as the basis upon which the so-called "single shipment" rule has been predicated. Certain parts of a completed article shipped on different conveyances on the same or different dates cannot be classified and assessed with duty as that article, even if a single tariff item number would encompass it. See University of Chicago v. United States, 2 Cust. Ct. 358, C.D. 159 (1939), and related cases. This principle was restated administratively in C.I.E. 642/60, dated May 18, 1960, wherein it was held that paper machinery purchased under a single contract but imported in different shipments may not be classified as an entirety for classification purposes, even though destined for installation in a single plant. Most recently, the Court of International Trade has stated that where a complete machine is disassembled in the country of exportation for transportation purposes only, and the majority of its

E3

components are shipped aboard one vessel, while the remaining components are shipped aboard another vessel, classification as a complete machine under a single TSUS item number cannot be accepted under the doctrine of entireties as long as all of the components are not imported in one shipment. See Franklin Industries Inc. v. United States, 1 C.I.T. 349, Slip Op. 81-55 (1981).

Our response to I.A. 218/79, dated March 24, 1980 (061761), to I.A. 198/79, dated September 8, 1980 (061630), and to Protest Review Decision of May 12, 1982 (069670), all of which you cite, serve as sufficient authority to classify the various components at issue here.

HOLDING:

Each shipment of components of papermaking machine parts should be classified and assessed with duty, in its condition as imported, in accordance with the cited decisions, as found to be appropriate. The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to satisfy the notice requirements of section 174.30(a), Customs Regulations, as amended by T.D. 80-271.

Sincerely,

Arthur P. Schaffin

for Harvey B. Fox
Director, Classification
and Value Division

071153

E4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

4 DEC 1985

REFER TO

CLA-2 CO:R:CV:G
077163 DW
815330

077163

Mr. C. F. McFeeters, Jr.
A. N. Deringer, Inc.
45 Rockefeller Plaza
Suite 3120
New York, New York 10020

Dear Mr. McFeeters:

Your letter of September 6, 1985, concerning the tariff classification of a cotton shoe mitt from Pakistan has been referred from the New York Seaport. A sample was provided with your request.

The submitted sample described as a shoe mitt with hang tape is manufactured from 100 percent cotton fabric, and is used to polish shoes. It is a rectangular piece of fabric that after being folded and sewn on three sides measures approximately 6 1/2 inches by 5 1/2 inches. The remaining side is left open to permit the insertion of a hand. The hang loop does not constitute ornamentation for tariff purposes.

The issue presented is whether the shoe mitt is classifiable as a cotton polishing cloth in item 385.30, Tariff Schedules of the United States (TSUS).

In Jeffrey Martin, Inc. v. United States, 62 Cust. Ct. 533, C.D. 3821 (1969), the Customs Court considered the scope of the eo nomine designations of item 385.30, TSUS. The precise question before the court was whether an article invoiced as "Superior Car Polishers" was a polishing cloth for purposes of item 385.30, TSUS.

The court stated that it was not sufficient for purposes of item 385.30, TSUS, that an article be used for polishing, mopping, or dusting. The article also must be a "cloth." The merchandise at bar, a strip of cloth slipped over the prongs of a handle was held to be more than a cloth according to the common meaning of that word.

The court also held that the merchandise was not within the legislative understanding of what constituted polishing cloths, citing the following language in the Summary of Tariff Information, 1929:

> Polishing cloths and dust cloths are small squares of napped cotton cloth, usually flannel, used in the household for polishing and dusting furniture or other articles. (at p.1578)

ES

With regard to a dust cloth consisting of an 18 inch square of a woven fabric that had been folded and sewn on three sides, Customs ruled in C.I.E. 150/67, dated February 1, 1967, that it was classified as an article not specially provided for, of textile materials.

Again in a ruling dated January 26, 1979, file No. 055334, we decided that an article invoiced as a "cloth ball polisher" used for cleaning bowling balls that is sling-shaped with a wide opening at the top so that the bowling ball may be placed into the polisher was not within the common meaning of the term "polishing cloth."

Based on the foregoing judicial and administrative decisions which we believe govern the classification of the shoe mitt, the shoe mitt is not a cloth for tariff purposes. Therefore, it is classifiable under the provision for, other articles, not ornamented, of cotton, other, in item 386.5300, TSUS.

There are no quotas on this merchandise. The information concerning quotas is correct as of this writing; however, importers are strongly advised to verify the quota and visa information with their local Customs office just before exportation because the requirements vary as old agreements expire and new agreements are implemented.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

071163

E6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077167 c

077167

Ms. Sheila Rasimowicz
Johnson and Johnson
Baby Products Company
Skillman, New Jersey 08558

Dear Ms. Rasimowicz:

In a letter dated September 17, 1985, you inquired as to the dutiable status of crib arch shells and straps manufactured in Hong Kong. Samples were submitted for examination.

The sample crib arch shells and straps will be attached to baby cribs to hold toys. These shells measure approximately 7 inches by 38 inches and are made of polyethylene woven fabric. Plastic straps with velcro strips are permanently attached to the shells and serve as a means of fastening the shells to the cribs. It appears that the textile material is the component material of chief value of the samples. There are three oval shaped flaps sewn onto the underside of the arch. Velcro strips on these flaps hold display straps to which toys are attached and displayed over the baby. A flexible material which was not submitted with the samples will be inserted into the arch.

You suggest that this merchandise is classifiable under the provision for skins for toy figures of animate objects in item 737.51, Tariff Schedules of the United States (TSUS).

Schedule 7, Part 5, Subpart E, Headnote 5, TSUS, provides that "For the purposes of items 737.26 and 737.51, 'skins' are the outer coverings or shells of those dolls or toy figures which, if imported stuffed or filled, would be classified in items 737.23, 737.28, 737.30, and 737.47, but do not contain stuffing or filling in the torso when imported."

The crib arch shells are not classifiable under item 737.51, TSUS, because they do not fit within the definition of "skin" set forth above. Also, they are not in themselves used for the amusement of children.

It is our position that the crib arch shells are classifiable under the provision for articles not specially provided for, of man-made fibers, not ornamented, other in item 389.62, TSUS, and dutiable at the rate of 4 cents per pound plus 10 percent ad valorem.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

E1

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

077172

DATE: NOV 20 1985

FILE: CLA-2 CO:R:CV:G
077172 JCH

TO : District Director of Customs
Savannah, Georgia 31401

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 152/82 Concerning the Tariff Classification of a Vortex Flowmeter (Your Memorandum of September 1, 1982, File Ref. MAN-1-CV WDW)

The subject internal advice request was initiated by the importer in a letter dated July 6, 1982, and counsel subsequently participated in this matter on behalf of the applicant. The merchandise is a product of Japan and consists of various versions of a pipe line flowmeter in which the in-flow detection apparatus consists of a shedder bar. The actions of vortices created in the flow against the bar cause the emission from a piezoelectric element in the bar of electrical impulses which, in effect, are proportional to the rate of flow. The amplitude of the pulses is also useful for such purposes as regulating cut-in and cut-off actions.

In one version, such as for underground pipe lines, the in-line flowmeter body has an attached transmitter element which sends modified signals to an above-ground module mounted on a pole or other remote location and containing electronic components. The electronics convert the signal to a useable analog or digital form. In another version, all electrical conversions and readouts may be contained in a component attached directly to the in-line flowmeter body. In a third version, only an analog readout may be provided at the in-line flowmeter body attachment, and the converting and readout apparatus for use of the signal in digital form are located at a remote site.

It is indicated that the described flowmeters do not meet the requirements for electrical measuring apparatus in Headnote 2(a), Subpart D, Part 2, Schedule 7, Tariff Schedules of the United States (TSUS), as claimed by the importer, and, therefore, are classifiable under the specific provision for flowmeters in item 711.75, TSUS. However, it is our position that frequency as a varying electrical parameter in rate measuring apparatus does not necessarily disqualify merchandise from the cited headnote definition. Taking that into account together with the general use and method of operation of the instant merchandise, we find that each of the three described versions of the instant vortex flowmeter is classifiable under the provision

F.8

for electrical measuring, checking or analyzing instruments and apparatus, and parts of such apparatus, in item 712.49, TSUS. The column 1 rate of duty required under that provision in 1982 was 8.1 percent ad valorem.

Please furnish a copy of this decision to counsel for the IA applicant Louis S. Shoichet, Esq., Tompkins & Davidson, Counselors at Law, One Whitehall Street, New York, New York 10004.

Arthur P. Scheffler
for Harvey B. Fox,

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E9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

CIA-2 CO:R:CV:G
077199 JCH
815579

077199

Ms. Clare M. McGarry
Director of Purchasing
Miller Supply Corp.
151 South Fulton Avenue
White Plains, New York 10606

Dear Ms. McGarry:

This is in further response to your letter of September 25, 1985, which the New York Region has forwarded to us for reply.

In the letter you inquired as to whether the formation of roofing nails in Hong Kong into coil or cartridge form consisting of 120 nails each for use in nailing guns altered their ordinary dutiable status under the applicable nail provisions in Subpart D, Part 3, Schedule 6, Tariff Schedules of the United States. It is our position that nails in coils for use in such guns or nailing machines have the same dutiable status they would have in their condition before being joined together into the coils.

Sincerely,

John T. Nach

Harvey B. Fox
Director, Classification
and Value Division

E10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077213 JGH

21 NOV 1985

077213

Mr. Peter Kovacs
Kelco
8355 Aero Drive
San Diego, California 92123

Dear Mr. Kovacs:

Your letter of October 22, 1985, concerns the dutiable status of various alginate products.

Classification of the products is as follows:

Commodity	TSUS No.	Rate of Duty
Ammonium Alginate	425.09	3.3% ad valorem
Potassium Alginate	426.84	3.3% ad valorem
Sodium Alginate	426.88	4.7% ad valorem
Alginic Acid	493.68	6.9% ad valorem

All of these compounds are entitled to be entered free of duty or at a reduced duty rate upon compliance with the law and regulations if products of:

1. A country whose products are entitled to treatment under the Generalized System of Preferences;

2. A country whose products are entitled to treatment under the Caribbean Basin Economic Recovery Act;

3. A Least Developed Developing Country;

4. U.S.-Israel Free Trade Area.

Sincerely,

John T. Lizl

For Harvey B. Fox
Director, Classification
and Value Division

E11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

DEC 13 1985

REFER TO
CIA-2 CO:R:CV:G
077216 c

077216

District Director of Customs
Boston, Massachusetts 02109

Dear Sir:

Re: Decision on Application for Further Review of Protest Nos. 0401-2-001153, 1152, 1119, 1117 and 1118

These protests were filed against your decisions in the liquidations of the following entries.

Protest No.	Entry No. and Date		Date of Liquidation
0401-2-001153	317434	8/5/82	8/31/82
0401-2-001152	317433	8/5/82	8/31/82
0401-2-001119	317400	8/5/82	8/20/82
0401-2-001117	317398	8/4/82	8/20/82
0401-2-001118	317399	8/4/82	8/20/82

FACTS:

The athletic footwear involved, manufactured in Korea, was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather and are therefore properly classifiable under the provision for other footwear, of leather, for men, youths, and boys in item 700.35, TSUS.

ISSUE:

Do the component cost breakdowns submitted show that the shoes are in chief value of leather?

LAW AND ANALYSIS:

In all instances the "sole part labor" is the critical item on the detailed cost breakdowns. It is our position that this term is the 'stockfit' i.e., putting together the pieces of the bottom after making

E12

them into the appropriate shapes. Since we presume that all the pieces of the bottom are rubber or plastics, it follows that the joining costs should be added to the rubber and plastics costs. When this is done, the component of chief value changes from leather to rubber and plastics in each case.

HOLDING:

The athletic footwear was properly classified as liquidated under item 700.95, TSUS.

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner
For Harvey P. Fox
Director, Classification
and Value Division

017216

E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

29 NOV 1985

REFER TO
CLA-2 CO:R:CV:G
077246 jlj
815599

077246

Ms. Joan Padduck
Morse Shoe International
555 Turnpike Street
Canton, Massachusetts 02021

Dear Ms. Padduck:

Your letter of September 11, 1985, requesting a tariff classification for plastic shoes from Taiwan or South Korea, was referred to this office for reply.

The footwear at issue is your pattern number P/N 6G-12539C-F322 (girls' size in blue) and P/N 6C-12539C-F322 (girls' size in pink). They are both children's athletic shoes with slightly rolled, calendared soles and uppers with a vulcanized rubber bumper in front and back. You state that the toe bumpers and heel bumpers encircle the shoes by approximately 39.5 percent and 40 percent, respectively.

The only issue is whether or not these shoes have foxing-like bands. The instant footwear has a calendar sole with a slightly rolled sole which gives the shoe the appearance of the sole overlapping the upper. We do not consider the rolled sole construction to be a foxing-like band because the sole has been rolled up onto the surface of the upper so little that when viewed from the side the edge of the soling material is seen (instead of the calendared bottom of the soling material).

In T.D. 83-116, 17 Treas. Dec. 229 (1983), it was found that foxings and foxing-like bands "must encircle or substantially encircle the upper." Inasmuch as the "mini-bands" on the instant footwear do not substantially encircle the upper, we do not consider them to be foxing-like bands either.

The instant footwear is classified under the provision for other footwear having uppers of which over 90 percent of the exterior surface area is rubber or plastics, other, in item 700.56, Tariff Schedules of the United States (TSUS), dutiable at the rate of 6 percent ad valorem.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

E14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

27 DEC 1985

CLA-2 CO:R:CV:G
077259 DW

Mr. Diego A. De Obaldia
Fanasa
Apartado 2130
Panama 1, R.P.

Dear Mr. De Obaldia:

You have inquired about the country of origin of polypropylene bags that are assembled in Panama from flat woven cloth manufactured in an unnamed country in the Orient.

You were advised by a member of my staff in a telephone conversation on December 23, 1985, that your letter of October 3, 1985, provides detailed information on the weaving of the cloth in the Orient but lacks information on the processing operations performed in Panama.

To determine the country of origin of the polypropylene bags, we need to know (1) how the cloth is cut into components and the components stitched together to form a complete bag, and by whom (2) complete descriptions of the machines involved, the skills required to operate those machines and to do any other processing, (3) the capital investment involved with each processing operation, and (4) data concerning the time and costs involved with each processing operation.

Upon receipt of the additional information, we will consider your request.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
077276 DFC
815541

077276

M. Barry Levy, Esq.
Sharretts, Paley, Carter
& Blauvelt, P.C.
Eighty Broad Street
New York, New York 10004

Dear Mr. Levy:

Your letter dated September 23, 1985, addressed to our New York office concerning in part the tariff classification of five clown hats manufactured in Hong Kong, has been referred to this office for a direct reply to you. Samples of the clown hats were submitted for examination.

The samples submitted are five bowler type hats. They are made of plastics except for lengths of man-made material simulating hair which extend down from underneath the hats.

It is our position that headwear represented by the samples is classifiable, if in chief value of plastics, under the provision for other headwear, of rubber or plastics in item 703.72, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 2.4 percent ad valorem or entitled to duty free treatment under the Generalized System of Preferences, if otherwise qualified. If the hats are in chief value of manmade fibers, they would be classifiable under the provision for other headwear of man-made fibers in item 703.16, TSUS, and currently dutiable at the rate of 12 cents per pound plus 9.5 percent ad valorem.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

F2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 22 1985

REFER TO

CLA-2 CO:R:CV:G
077299 JGH
815667

077299

Mr. John J. Scanlon, Jr.
Kemp, Smith, Duncan & Hammond
Attorneys at Law
Post Office Drawer 2800
El Paso, Texas 79999

Dear Mr. Scanlon:

Re: JS #85-0353

Your letter of October 4, 1985, concerns the tariff status of wire screening made in Mexico.

On the basis of the samples submitted and manufacturing description, the screening will be classifiable as wire screen, not cut to shape, woven (of simple warp and weft construction), in items 642.50 through 642.78, TSUS, depending on mesh size and composition.

Enclosed is a copy of the tariff schedule provisions covering these items.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

Enclosure

43

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

CLA-2 CO:R:CV:G
077325 JLF
813039

077325

2 JAN 1986

Edward C. Norman
Norman Associates
170 Castleair Drive
Kennesaw, Georgia 30144

Dear Mr. Norman:

Your request of March 18, 1985, for a tariff classification of narrow fabric edgings has been referred to us for a reply.

The edgings are described as being just under a half-inch in overall width, made in a single operation, and come in continuous lengths. Style 36 43 consists of a heavy metallic yarn with an 8-ply spun rayon yarn core that racks or snakes back and forth forming tight loops that create the outward dimensions of the material. Each group of 10 single-ply multifiliment core metallic yarns are used as two "single yarns," which are laid on top of the large yarn and coiled within the loops formed by this larger yarn. The yarn configuration is held together by two parallel rows of chain stitching spaced approximately one quarter of the distance from each edge.

Style 36 83 is composed of two metallic plied yarns, laid down in opposition to one another, which alternately form long and short loops that mesh, creating an asymmetrical scalloped appearance along both edges. A 13 strand metallic flat braid racks back and forth between the "indentations" of the scallops on top of these yarns. The three "yarn" systems and their design are held together by two parallel rows of chain stitching also one quarter of the distance from the edges.

An examination of the samples shows that they are neither knit nor woven. Because Headnote 2(a)(i), Schedule 3, Part 4A, Tariff Schedules of the United States (TSUS) requires that narrow fabrics must be knit or woven, the articles cannot be classified as narrow fabrics.

Inasmuch as the articles will be used to hem blouses and shirts and are known, bought and sold in the trade as edgings or trimmings, they are classifiable under item 357.70, TSUS, which provides for other trimmings. As products of England they are dutiable at the 1986 rate of 10.5 percent ad valorem.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

DEC - 9 1985

REFER TO

CIA-2 CO:R:CV:G
077343 JAS

077343

Mr. Arthur Young
Arthur Young, Clarkson Gordon & Co.
P.O. Box 251
Royal Trust Tower
Toronto-Dominion Centre
Toronto, Canada M5K 1J7

Dear Mr. Young:

In your letter of April 25, 1985, you inquire as to the tariff classification of certain automotive wire harness assemblies. Specifically, you seek clarification of the applicability of the Automotive Products Trade Act of 1965 (APTA), to the situation you describe.

Essentially, wire of Canadian origin is stripped and cut in Canada and terminals of United States origin attached at both ends to make wire sets. Blocks (otherwise undescribed), tape and tubing of United States origin are sent to Canada where they are batched with the wire sets into knocked down sets and shipped to your client's subsidiary in Mexico for assembly. It is the tariff status of the completed harness assemblies as they enter the U.S. that is the subject of this inquiry.

You indicate that such merchandise from Mexico would ordinarily be classifiable under the provision for ignition wiring sets and wiring sets designed for use in motor vehicles and craft provided for in Part 6 of Schedule 6, under item 688.12, Tariff Schedules of the United States (TSUS). However, you maintain that the wire harnesses are "Canadian articles" as defined in General Headnote 3(c)(ii), TSUS, inasmuch as they were completed in Canada with the use of U.S. and Canadian components, and were imported indirectly into the Customs territory, in accordance with General Headnote 3(c)(i), TSUS. Consequently, you conclude that the duty-free provision for ignition wiring sets which are Canadian articles and original motor-vehicle equipment, in item 688.13, TSUS, represents the proper classification.

Schedule 6, Part 6, Subpart B, Headnote 2(a), TSUS, defines "original motor-vehicle equipment," as used in the schedules with respect to a Canadian article, as:

> A Canadian article which has been obtained from a supplier in Canada under or pursuant to a written order, contract, or letter of intent of a bona fide motor-vehicle manufacturer in the United States, and which is a fabricated component intended for use as original equipment in the manufacture in the

> United States of a motor vehicle, but the term does not include trailers or articles to be used in their manufacture (emphasis added).

Therefore, aside from the question of whether the subject wiring sets are Canadian articles and whether they are imported indirectly into the Customs territory of the United States, they do not qualify as original motor-vehicle equipment, within the cited headnote, because they were obtained from a supplier in Mexico, not Canada. For this reason, the duty-free provisions of item 688.13 do not apply.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

077343

Fk

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO
CLA-2:CO:R:CV:G
077348 C

24 DEC 1985

District Director of Customs
U.S. Customhouse
1 E. Bay Street
Savannah, Georgia 31401

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1703-3-000138

This protest was filed against your decisions in the liquidations on January 28, 1983, of entry No. 82-253424 dated February 24, 1983, entry No. 82-255545 dated May 3, 1983, entry No. 82-256434 dated June 8, 1982, and entry No. 82-256627 dated June 18, 1982.

FACTS:

Certain athletic footwear produced in Korea was classified in liquidation under the provision for other footwear in item 700.95 Tariff Schedules of the United States (TSUS).

The protestant claims that the various styles of athletic shoes are classifiable according to gender and value per pair under item 700.35 or item 700.45, TSUS.

ISSUE:

Does the documentation provided by the protestant show that the footwear is in chief value of leather?

077348

LAW AND ANALYSIS:

As to the footwear covered by stock No. 73264, we disagree with your analysis but concur with your classification under item 700.95, TSUS. The cost of the leather claimed by the maker per Exhibit A is $1.1514. The maker apparently overstated the cost of the leather material in that he included salvaged waste in the "total purchased" and overstated slightly the "leather present". The appropriate corrections reduce the leather material cost to approximately $.90, not $.8395. Also, you indicate that the comparison for chief value purposes should be between the leather material cost and the rubber and plastics material cost. Actually, all costs incurred prior to "final assembly" must be allocated to the subassemblies. Therefore, the comparison of costs is as follows:

Leather	Rubber and Plastics
$.90 material	$.833 material cost
.052 cutting cost	.023 cutting cost
.243 trimming cost	.223 trimming cost
	.189 labor process sole part
$1.195	$1.268

We agree that all the stock numbers cited in Part D of your CF 6445 reply should remain classifiable under item 700.95, TSUS. In particular, we agree that those styles for which no component material of chief value breakdowns have been submitted should be classified under item 700.95, TSUS.

071348

The importer has an affirmative obligation to supply the cost breakdowns pursuant to instructions contained in Headquarters telex 10378.

HOLDING:

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

817348

F9

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: DEC 19 1985

FILE: CLA-2 CO:R:CV:G
077368 DW

077368

TO : Area Director of Customs
New York Seaport
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Reconsideration of Headquarters' Ruling Letter (HRL) 074944

We are responding to your memorandum dated April 26, 1985, requesting that this office reconsider HRL 074944 dated December 17, 1984, where a woven camisole that extends straight across the bustline and reaches to the waist with shoulder straps was considered to be beyond the scope of the common meaning of the term "blouse" which lexicographic authorities agreed includes certain garments that cover the body from the neck to the waist.

It is your view that woven camisoles are considered to be blouses, because they are designed to be seen and worn on the upper part of the body with pants, skirts, or under jackets. You state that this conclusion is substantiated from interviews with importers and two domestic trade associations who upon examining garments similar to those ruled upon in HRL 074944 decided that they were blouses. In opposition to the prevailing view was the statement of another importer of women's blouses who said the camisoles were not blouses.

Specifically, you disagree with our conclusion that the camisole was excluded from the common meaning of the term "blouse" because it did not cover the body from the neck to the waist.

We did not mean to imply that to be classifiable as a blouse, a garment must extend to the neck. Obviously, blouses can and do have a variety of necklines including inter alia, turtle, U, V, scooped, and plunging necklines. It is, however, the presence of a neckline that is common to all blouses. That much is apparent from the definition of the term "blouse" in the lexicons cited in HRL 074944, and was our reason for excluding the camisole from the common meaning of the term "blouse."

We adhere to our position that a garment that extends straight across the chest with narrow shoulder straps does not have a neckline. This position is supported by the classification of similar styled women's knit camisoles. The National Import Specialist for women's knitwear informs us that such garments are classifiable as tops rather than blouses.

F10

In the "Textile Category Guidelines for Fabrics and Garments Reported Under Textile Agreements" published as C.I.E. 36/79 on September 1, 1979, "a tube-type garment (which may or may not be waist length) having a straight top with or without attached shoulder straps, and off-the-shoulder tops do not, strictly speaking, have a "neck-area" as required by the "Shirt" and "Blouse" guidelines and would be included [as a top] here."

Knit camisoles are specifically provided for in the tariff schedules as tops. There is no corresponding description for camisoles under the provisions for women's woven wearing apparel. The tariff provision for blouses is not a basket provision but an eo nomine designation that excludes garments that do not have necklines. Woven camisoles lacking necklines are not classifiable as blouses.

Accordingly, the camisoles are properly described and classified as other women's wearing apparel, not ornamented, of man-made fibers, not knit, other in item 383.92 (now 384.94), TSUS. Thus, HRL 074944 is affirmed.

Harvey B. Fox

074944

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

DEC 23 1985

REFER TO

CLA-2 CO:R:CV:G
077377 TLL

Salvatore E. Caramagno, Esq.
Ross & Hardies
1090 Vermont Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Caramagno:

This is in reply to your letter dated October 30, 1985, submitted on behalf of your client, Itex Corporation, regarding the status of New York Ruling (NYR) 811337 dated December 12, 1984. That ruling held that an orange beverage consisting of diluted orange juice concentrate having a brix value of 10.8 to 11.2 was classified under item 166.40, Tariff Schedules of the United States (TSUS), as a beverage, not specially provided for.

We wish to advise you that NYR 811337 is not in accordance with the current views of the Customs Service as to what is considered to be concentrated orange juice, and what should be classified under item 165.29, TSUS. Accordingly, under authority of 19 CFR 177.9(d)(1), we are hereby revoking NYR 811337, effective upon receipt of this letter. We are reviewing the effect of this revocation in accordance with 177.9(d)(2) and will advise you in this matter as soon as possible. Our reasons for revoking the ruling are as follows.

Items 165.27 and 165.29, TSUS, as amended by the Trade and Tariff Act of 1984 (P.L. 98-573) provided as follows:

Fruit Juices,* * *:

* * *

Citrus fruit:

* * *

Orange:

165.27	Not concentrated and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree)	.20¢ per gal.
165.29	Other	.35¢ per gal.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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Orange juice was not previously provided for by name in the tariff schedules, but is now eo nomine provided for in the Tariff Schedules by reason of the 1984 amendment, either as (in effect) natural unconcentrated orange juice in item 165.27 or as orange juice in any other form in item 165.29. Item 165.29 encompasses the product which was the subject of NYR 811337 not only because it is specifically provided for but also because of the expressed intent of Congress to preclude avoidance of a higher duty and to tax all forms of orange juice other than natural juice at the higher rate. See Senate Report No. 98-308, 98th Cong. 1st. Sess. (November 10, 1983), at pages 12 through 13.

An eo nomine designation, without limitation or a shown contrary legislative intent, judicial decision, or administrative practice, and without proof of commercial designation, includes all forms of the article. Nootka Packing Co. v. United States, 22 CCPA 464 (1935). Consequently, the diluted orange juice concentrate described in NYR 811337 is properly included within the provision for other orange juice, item 165.29, TSUS.

In ascertaining what is or is not orange juice, we believe that Customs is not required to follow the FDA definition of orange juice; however, the FDA definition of orange juice accurately reflects the common and commercial definition of what is or may be an orange juice. 21 CFR 146.135 defines orange juice as "the unfermented juice obtained from mature oranges of the species citrus sinensis." This is the definition of orange juice, as distinguished from the listing of products containing orange juice set forth in the FDA regulations. Therefore, this will be the definition the U.S. Customs Service will follow for orange juice, that is, "the unfermented juice obtained from mature oranges of the species citrus sinensis."

No established and uniform practice for the classification of this product exists.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE
PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DEC 13 1985

REFER TO

CLA-2 CO:R:CV:G
077391 Bsk

077391

Area Director of Customs
New York Seaport
New York, New York 10048

Re: Internal Advice Request 56/85; Classification of an NC Tooling System

Dear Sir:

This ruling is issued in response to the request for internal advice filed by importer Stanley Sheppard Co., Inc., (Sheppard) of Berlin, Connecticut. Sheppard requests review of your classification of tooling systems used with machining centers. The merchandise under review was the subject of Entry 1001-85-344972-4 which was first presented to Customs on March 8, 1985. Customs rejected the entry stating that all articles entered were classifiable as accessories used principally with machine tools ... : Other: Accessories: Other, under the provisions of item 674.5600, Tariff Schedules of the United States Annotated (TSUSA). This internal advice is our decision on the classification issues raised as to products specifically included in the above-noted entry.

FACTS:

The following products were included on the invoice accompanying the entry. Customs proposed classification of these articles and the importer's suggested classification are as follows:

Article	Customs	Importer
Oil Feed Holders	674.56	674.50
Reduction Sleeves	674.56	674.50
High Speed Spindles	674.53	674.53 or 674 50
Reduction Collets	674.56	674.50
Oil Feed Tappers	674.55	674.55 or 674.50
Right Angle Heads	674.56	674.55 or 674.50

Article	Customs	Importer
Stop Blocks	674.56	674.53
Auto Tappers	674.55	674.55 or 674.50

The importer has submitted descriptive catalogues and has challenged each Customs proposed classification. He has identified the tooling system as being specifically designed for use with the machining center.

All of the above products originally were attempted entry by the importer under the provisions of item 674.55, TSUSA, as accessory machines used principally with machine tools. The classification was rejected because none of the items are machines in themselves.

In response to Customs reclassification of the products, petitioner presents alternative classifications (listed above) to those originally claimed in the rejected entry.

The oil feed holders and reduction sleeves are used to hold drills, specifically those which are designed to permit coolant (generally oil) flow during the drilling. The oil feed holder is designed with a hole to permit coolant flow directly to the cutting tool. The reduction sleeve is used to hold smaller tools to be used with the oil feed holder.

High speed spindles are used to hold small diameter cutting tools which require a cutting speed higher than can be attained with the standard machine tool spindle. Reduction collets hold smaller tools within the high speed spindle.

Oil feed tappers combine oil feed holders and tapping heads. The tapping heads are cutting tools used for making threads.

Auto tappers consist of an adapter, a tapping head and a tap collet. The taps are held in a tension and compression collet-type holder.

Right angle heads are devices that enable a machining center to hold a tool at a 90 degree angle. It is designed to hold other tool holders.

Stop blocks are articles that are tapped and permanently mounted to the spindle flange of the machining center. They are used to properly position some of the different tool holders. Their use is essential when non-standard tooling is used. They do not hold tools but maintain a fixed position.

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ISSUE:

Are the above-described articles classifiable as tool holders, accessories used principally with machine tools, or parts of machine tools?

LAW AND ANALYSIS:

Customs has suggested that the articles in question be classified as accessories for machine tools rather than as tool holders or parts of machine tools.

The definition of tool holders found in the second edition of the Tool Engineer's Handbook has been recognized by ruling. See HQ letter dated June 9, 1978, (File No. 048787). This authority defines a tool holder as a "device for holding a cutting tool in a definite position with respect to the tool slide of a machine tool." Item 674.50, TSUSA, is an eo nomine provision for tool holders.

An accessory is an article which is used in conjunction with a machine, but such use is optional and unessential. C.I.E. 957/65. The object or device need not be essential in itself but it adds to the effectiveness of something else. United States v. C.F. Liebert, 59 CCPA 43, C.A.D. 1035 (1971). By comparison, parts are component, constituent and integral parts of articles without which such merchandise will not function. United States v. Antonio Pompeo, 43 CCPA 9, C.A.D. 602 (1955). A provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part. General Headnote 10(ij), TSUSA.

The oil feed holder is specifically used to hold drills. The reduction sleeve is used in conjunction with the oil feed holder to permit flexibility in the size of tool held. The principal and predominant use of these articles is to hold a cutting tool in a definite position with respect to the tool slide of the machine tool. They fit, very specifically, in the definition of tool holders and must be classified such. The coolant flow feature enhances the tooling operation, but does not serve to elevate the oil feed holder to anything more than a tool holder. The reduction sleeve, while listed in descriptive literature as an "accessory" of the oil feed holder, is, in fact, a tool holder. ORR Ruling 73-71 classified tool holders holding other tool holders under the provisions of item 674.50, TSUSA. Accordingly, the correct classification for these products is that of tool holders under the provisions of item 674.50, TSUSA.

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High speed spindles and reduction collets are used predominantly as tool holders. As with the oil feed holders and reduction sleeves, the subject articles permit higher efficiency of the tooling function. They are not "more than" tool holders. High speed spindles and reduction collets are also classifiable as tool holders under the provisions of item 674.50, TSUSA. The high speed spindle cannot be classified as a part because of the more specific tool holder classification provision.

The oil feed tappers and auto tappers hold taps in a tension and compression collet-type holder. The oil feed tappers have much the same coolant flow features as the oil feed holders. Tension and compression springs are indicated in the descriptive literature provided by the importer on these articles. Accordingly, oil feed tappers and auto tappers also are classifiable as tool holders under the provisions of item 674.50, TSUSA. The suggested classification under item 674.55 must be rejected because neither the oil feed tappers or auto tappers can be considered to be machines in themselves.

Right angle heads are used to hold other tool holders at a 90 degree angle to aid in flexibility of use. In accordance with ORR Ruling 73-71, they are classifiable as tool holders under item 674.50, TSUSA.

Finally, stop blocks, as the importer notes, are permanently fixed to the spindle flange of a machining center. Their use is essential when non-standard tooling is used. In these certain applications, stop blocks do more than add to the effectiveness of the machining center. Inasmuch as no specific tariff classification provision exists for these articles, they are most properly classified as other parts of machine tools: other parts, under the provisions of item 674.53, TSUSA.

HOLDING:

The following articles used with an N/C machining system are classifiable as tool holders under the provisions of item 674.50, TSUSA: oil feed holders, reduction sleeves, high speed spindles,

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reduction collets, oil feed tappers, right angle heads and auto tappers. Stop blocks, which are permanently affixed to flanges in the tooling system, are classifiable as parts of machine tools under the provisions of item 674.53, TSUSA.

EFFECT ON OTHER RULINGS:

T.D. 67-113(1) held that a taper spindle installed in a machine tool in order to obtain greater speed from the spindle is classifiable as accessories for machine tools under item 674.55, TSUSA. In that case the spindle was an optional attachment only used when greater speed in spindles was required. The decision did not indicate whether the spindle was used in a multifunction machining center.

This decision overrules T.D. 67-113(1) in holding that spindles used to hold cutting tools when greater drilling speeds are required are classifiable as tool holders under item 674.50, TSUSA.

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

DEC 23 1985

REFER TO

CLA-2:CO:R:CV:G
077393 JGH

District Director of Customs
2039 Federal Office Bldg.
909 First Ave.
Seattle, Washington 98174

Dear Sir:

Re: Internal Advice No. 69/85, Classification of Water Transmitted by Pipeline

Point Roberts, Washington, located at the tip of a peninsula which extends southward from the Canadian mainland below Vancouver, B.C., is said to be accessible by land only through Canada.

Since only a limited amount of potable water from wells is said to be available, it is intended either to have water delivered by pipeline from Canada across the land border or through a seabed pipeline from Blaine, Washington. The first alternative is the most economical. The water is intended to be used not only for drinking but also for washing and all the other normal uses for water.

The issue is whether the product is classifiable in item 166.10, TSUS, the provision for all mineral waters, natural, imitation or artificial.

Headnote 1, Part 12(b), Schedule 1, TSUS, states that the subpart (in which item 166.10 appears) covers only products fit for use as beverages. It is argued that since the water need only be capable of being used as a beverage to be classified as a beverage, the fact that it may have a variety of uses does not preclude classification as a beverage. The Tariff Classification Study notes that Part 12 covers only products which are fit for use as beverages or for beverage purposes.

While Headquarter's decision of January 20, 1984, (072700) is relied on for classifying potable water intended for beverage use under item 166.10, TSUS, the exact description of the water in that case was not given. In this

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case there is no indication that the "potable water" is the mineral waters or table waters described in the Tariff Summaries as being classified in item 166.10, TSUS. In fact from the description of the article, it appears similar to the water classified by Customs and court decisions for over 80 years. In T.D. 23923 (1902) it was stated that "in our opinion natural water is a crude mineral both chemically and according to common understanding, and would, therefore, be free of duty under paragraph (614, crude minerals)," a predecessor provision for item 523.81, TSUS, the provision for crude mineral substances. In 1957, Customs held ordinary drinking water to be a crude mineral substance in paragraph 1719, Tariff Act of 1930 (TC 464.622). In 1984 it was ruled that plain water was classifiable as a crude mineral substance in item 523.81, TSUS (075152).

Therefore, it is concluded that the water delivered by pipeline in this case, if "plain water", is classifiable as a crude mineral substance in item 523.81, TSUS, free of duty. However, if it has been chemically treated, by chlorination or fluoridation, for example, it is no longer a crude mineral, and would be classified under the provision for other mineral substances, not decorated, in item 523.91, TSUS, dutiable at 5.6 percent ad valorem.

Sincerely,

Russell X. Arnold
Chief, Value and Special
Classification Branch

076393

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

26 DEC 1985

CLA-2 CO:R:CV:G
077458 JNB

District Director of Customs
610 South Canal Street
Chicago, Illinois 60607

Re: Decision on Protest and Application for Further Review No. 3901-5-000524, Dated April 11, 1985

Dear Sir:

The above-noted protest and application for further review were filed by counsel for protestant Sugino USA, Inc., of Schaumberg, Illinois. At issue is the classification of self-feeding drill units. These drill units were the subject of Consumption Entry No. 84-754495-2, dated September 25, 1984. The importer classified them as machine tools: metal working machine tools: drilling machines, not used or rebuilt, valued under $2,500, under the provisions of item 674.31, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4.7 percent ad valorem. Customs reclassified the articles as parts of, and accessories used principally with, machine tools: other parts, under the provisions of item 674.53, TSUS, dutiable at the rate of 5.3 percent ad valorem. The entry was liquidated at the latter classification and duty rate on January 11, 1985. The subject protest was filed in a timely manner after liquidation.

While not the subject of the protest, we also note that articles known as synchro tappers were included in the subject entry and were classified as parts of machine tools under item 674.53, TSUS. This decision will also review the classification of these articles.

FACTS:

As described in the Tool and Manufacturing Engineers Handbook, 4th Edition, Chapter 9, p. 9-13 (1985), self-feeding drill units, also known as automatic drill units, conduct drilling functions without the requirement of operation by hand (unlike the drill press They can be mounted on drill stands or fixtures and have the advantage of portability. The stroke, speed, thrust and feed are set prior to use, and the entire drilling operation is automatic and repetitive. The units have the capability of accepting multiple spindle drillheads in order to produce two or more holes simultaneously.

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These self-feeding units come in four basic types: electromechanical units with air feed, air powered units, mechanical units, and hydraulic units. In the subject protest, two models, the SFA and SFB, are air powered. Model ESB is electromechanical. Model MPSU is a mechanical unit.

As noted, synchro tappers were classified by the importer as parts of, and accessories used principally with, machine tools: other parts, under the provisions of item 674.53, TSUS. Synchro tappers are lead-screw tapping units. They provide automatic machining operations and can work alone or in tandem with other self-feeding units.

ISSUES:

Are the self-feeding units properly classifiable as metal working machine tools under item 674.31, TSUS, or as parts of machine tools under item 674.53, TSUS?

Are synchro tappers properly classifiable as parts of machine tools under item 674.53, TSUS, or under some other TSUS item number?

LAW AND ANALYSIS:

ORR Ruling 683-70, dated June 24, 1970, classified self-contained drilling and tapping units, described as being mounted on fixtures with external actuation required, as parts of machine tools under item 674.53, TSUS. It is upon this ruling that Customs classification of the subject drill units is based. The 1970 ruling does not delineate the reasoning for such classification.

Counsel cites the definition of a machine tool as provided in Headnote 1, Schedule 6, Part 4, Subpart F, TSUS, which states:

> "For purposes of this subpart ...
> (a) the term 'machine tool' means any machine used for shaping or surface-working ...
> (i) metals (including metallic carbides)
> ... whether by cutting away or otherwise removing the material ..."

It is averred that the subject articles qualify for such definition in that they are used for surface work on metal and that they are machines. Case law is cited as supporting a finding that the self-feeding units are, in fact, machines.

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There is no "judicial determination" of what a machine is. It remains simply a question of common meaning and each case must be decided on the basis of its own facts, technical and legislative. United States v. IDL Mfg. & Sales Corp., 48 CCPA 17, C.A.D. 756 (1960). However, the Columbia Encyclopedia definition of a machine, i.e. a device which may be either simple or complex, whose function is to increase the intensity of an applied force, or to change its direction, or to change one form of motion or energy into another form, has been recognized by courts on more than one occasion. United States v. IDL, supra., 48 CCPA at 23. Nord Light, Inc. v. United States, 49 CCPA 12, C.A.D. 786 (1961).

The subject drilling units fit, in our view, the Headnote definition of machine tools. There is no dispute that they perform work on metal. In addition they qualify as machines because they are complex articles that increase the intensity of an applied force, i.e. the drill heads. That they are not self-actuated, rather relying on external power sources, is not determinative in their classification as machine tools. Articles need not be self-actuating in order to be classified as machines. Nord Light v. United States, supra., at p. 15.

This office has held that the administrative review of protests is nonadversarial in nature. Headquarters Ruling Letter dated January 6, 1984 (Control No. 070686). As such, the scope of a decision letter on a protest is not limited to issues raised specifically by the protestant. Customs may consider and rule on issues sua sponte, if it would result in a rate of duty more favorable to the protestant. It is under this authority that review of the classification of the synchro tapper is made.

The synchro tapper also qualifies as a machine tool under the above-noted definition. It is clearly used to perform surface work on metal. It is a self-contained unit that falls within the definition of a machine. Accordingly, its classification as parts of machine tools is erroneous. However, because it performs a tapping function, it does not qualify as a boring, drilling or milling machine. Classification under items 674.31, 674.33 or 674.34, TSUS, is precluded.

HOLDING:

Self-feeding drill units, whether or not self-actuated, are classifiable as machine tools: metal working machine tools: drilling machines, not used or rebuilt, valued under $2,500, under the provisions of item 674.31, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4.7 percent ad valorem.

Synchro tappers are properly classifiable as metal-working machine tools: other, under the provisions of item 674.35, TSUS, dutiable at the rate of 5.2 percent ad valorem.

Accordingly, the protest, as it regards the classification of the self-feeding drill units, should be allowed. Protestant should also be informed of the reclassification of the synchro tappers. A copy of this decision should be given to the protestant when notice of action is given on Customs Form 19.

EFFECT ON OTHER RULINGS:

ORR Ruling 683-70 is overruled insofar as it deals with the classification of self-contained drilling and tapping units.

Sincerely,

Arthur R. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

DEC 31 1985

CLA-2 CO:R:CV:G
077508 DW
814669

077508

Mr. Russ Hoffer
Sears Merchandise Group
Department 733X
Sears Tower
Chicago, Illinois 60684

Dear Mr. Hoffer:

Your letter dated July 22, 1985, requested the tariff classification of a cover specially designed for sewing machines.

The sample submitted with your request is a textile cover stated to be in chief value of man-made fibers that has the following dimensions: 16 1/2 inches by 12 inches by 6 inches. One pocket is coextensive with the side panel. Another pocket spreads across the gusset. Spanning the top panel is an aperture measuring approximately 9 1/2 inches by 3 inches through which a sewing machine handle is inserted. This permits a user to grasp the handle and carry the sewing machine when the cover is slipped over the machine.

On September 24, 1985, during a telephone conversation you indicated that the cover is designed to fit a variety of sewing machines geared for home use.

Your proposed classification for the cover is under the provision for other articles not specially provided for, of textile materials, not ornamented, of man-made fibers, other, other in item 389.6270, Tariff Schedules of the United States Annotated (TSUSA).

The National Import Specialist asserts that the proper classification for the cover is under the provision for luggage, of textile materials, whether or not ornamented, other, other in item 706.4152, TSUSA. A variety of articles that are considered to be "luggage" are enumerated in Headnote (2)(a), Part 1D, Schedule 7 of the tariff schedules:

2) For the purposes of the tariff schedules -

(a) The term "luggage" covers --
(i) travel goods, such as trunks, hand trucks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel; and

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(ii) brief cases, portfolios, school bags photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', samples, etc.), and like containers and cases designed to be carried with the person, except handbags as defined herein;

Without question the subject sewing cover is not described by the designated articles in either subsection of the headnote, nor as like articles designed to contain clothing or other personal effects during travel for purposes of subsection (i) of the headnote.

The theory advocated by the National Import Specialist is that the sewing machine cover is a like container and case designed to be carried with the person. Definitions of the term "case" are cited to demonstrate that the sewing machine cover is a "like" case.

We disagree with this approach to ascertaining the article's classification. The exemplars enumerated in subsection (ii) of the luggage headnote are all receptacles for holding objects. A characteristic common to all the exemplars is the presence of a base on which the object to be contained is placed. If an article is to be classified under the luggage provisions, it must hold an object. The sewing machine cover, by contrast, is an article that fits over a sewing machine. We would suggest that it is comparable to a dust cover. Therefore, the sewing machine cover is not "like" the cases or containers described in the headnote.

Thus, the sewing machine cover is classifiable in item 389.6270, TSUSA. Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

DEC 31 1985

CLA-2:CO:R:CV:G
077387 c

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Mr. Walter Mugavin
52 Sunset Drive
Yonkers, New York 10705

Dear Mr. Mugavin:

In our letter to you dated December 17, 1984 (our file 075233-810972), we held that certain garment bags manufactured in Korea and represented by samples designated as items A, B and D are classifiable under the provision for other luggage of other materials in item 706.62, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 percent ad valorem.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS, provides that "For the purposes of the tariff schedules -- (a) the term 'luggage' covers -- (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel".

Our rationale for classification under item 706.62, TSUS, was predicated on the following:

(1) The garment bags like the exemplars set forth in the headnote are "travel bags" designed to protect clothing while traveling,

(2) the garment bags were advertised as "travel bags", and

(3) they appeared to be substantially constructed for this purpose.

We have reconsidered our position in this matter and it is now our opinion that the garment bags are properly classifiable under the provision for other household articles not specially provided for, of rubber or plastics in item 772.15, TSUS, and dutiable at the rate of 4.7 percent ad valorem or entitled to free entry under the Generalized System of Preferences, if otherwise qualified.

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The rationale for reversing our previous holding as to the classification of the garment bags is as follows:

(1) It has been consistently our position to regard substantiality of construction as essential to a finding that an article is designed for travel,

(2) in this instance our original observation that the bags were substantially constructed for travel purposes was erroneous,

(3) we now perceive these bags to be of insubstantial construction which precludes their being "designed to contain clothing or other personal effects during travel,"

(4) the fact that the garment bags were advertised as being designed for travel is not conclusive as to their design purpose, and

(5) the bags are chiefly used in the household for storage purposes.

Sincerely,

Arthur P. Scheffler
for Harvey B. Fox
Director, Classification
and Value Division

071387

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

07 JAN 1986

CLA-2 CO:R:CV:G
077530 JNB

077530

Ms. Sylvia Perez
M.G. Maher & Company, Inc.
442 Canal Street
New Orleans, Louisiana 70130-2390

Re: Classification Ruling on Synthetic Ropes

Dear Ms. Perez:

This is in response to your letter of October 4, 1985, which requested a ruling from this office concerning the classification of synthetic ropes with spliced eyes on one end. The ropes are the product of Korea.

The four types of rope to be imported are described as follows:

1) "Poly" 8-strand braid, 2-3 inches in diameter, imported in 540- and 720-foot lengths, having 6-foot spliced eyes on one end, with a claimed chief use as steamship mooring lines.

2) "Poly" 3-strand twisted rope, 1 and one-half to 4 inches in diameter, imported in 200-, 300-, and 600-foot lengths, having 3- and 6-foot spliced eyes, with a claimed chief use as towing lines.

3) Nylon 8-strand braid, 3-6 inches in diameter, imported in 200-, 300-, and 600-foot lengths, having 3- and 6-foot spliced eyes, with a claimed chief use as "snatch lines" for towing rigs and barges.

4) Nylon 3-strand twisted rope, 1 and one-half to 4 inches in diameter, imported in 200-, 300-, and 600-foot lengths, with 3- and 6-foot spliced eyes, with a claimed chief use as "snatch lines" for towing rigs and barges.

No samples of the "poly" products were provided. The term "poly" is not defined in your submission. For purposes of this ruling, it is assumed that "poly" refers to polypropylene.

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Initially, it should be noted that Customs, through publication of T.D. 85-153, reclassified certain polypropylene rope and twine made from fibrillated plastic film or strips over one inch wide as cordage of man-made fiber under Schedule 3, Tariff Schedules of the United States (TSUS), rather than as articles of plastics under Schedule 7, TSUS. Assuming the subject polypropylene ropes to be comprised of fibrillated plastic film over one inch wide, classification under Schedule 7 is precluded. This reclassification became effective December 20, 1985.

For classification purposes, the term "cordage" is defined in Headnote 1(a), Schedule 3, Part 2, TSUS, as "assemblages of textile fibers or yarns, in approximately cylindrical form and of continuous length, ... , designed and chiefly used as an end product, ... , but the term does not include -- (ii) braids...". Braids are classifiable under Schedule 3, Part 4, Subpart A, TSUS, but only if such braids are "in the piece".

The term "continuous length" has not been the subject of judicial interpretation. The subject products will be imported in minimum lengths of 200 feet. It is our view that this product, imported in lengths of 200 feet or more and without submission of more convincing evidence that it will be used in the imported sizes, is sufficiently without cessation so as to be considered continuous for classification purposes.

The splicing of eyes to the ends of ropes imported in sizeable continuous lengths does not necessarily preclude those ropes from classification under the cordage provisions of the tariff schedules. See ORR Ruling 73-0278. In that ruling, it was held that manila rope hanks, each with a spliced-eye end and cut in 50- and 100-foot lengths, were classifiable as cordage rather than as articles of textile materials, not specially provided for.

The addition of eye splices to long lengths of cordage does not dedicate those lengths to a sole specific use as towing ropes or barge lines. The character of these articles is not fixed with certainty by the mere addition of eye splices. When long lengths of cordage are imported in a condition where dedication to other uses is probable, the addition of the eye splice is a de minimis act which cannot serve to make them articles rather than cordage.

Accordingly, the polypropylene and nylon twisted ropes are classifiable as cordage: of man-made fibers: measuring 3/16 inch or over in diameter, under the provisions of item 316.58, TSUS,

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dutiable at the rate of 12.5¢ per pound plus 15 percent ad valorem. It should be noted that cordage which is the product of Korea and classifiable under this item number is subject to quota restrictions under Category 605.

The commercial designation "in the piece" normally refers to bolts of fabric in material lengths that have not been cut to size for a particular use. See Headquarters Ruling Letter dated April 2, 1979 (060328). The subject braids are imported in minimum lengths of 200 feet. As with cordage, the addition of eye splices does not dedicate those lengths to a specific use as towing ropes. The option to cut for other uses still remains.

Accordingly, the polypropylene and nylon braids, if constructed with a nonelastic core, would be classifiable as braids not suitable to making or ornamenting headwear: tubular braids with a nonelastic core, under item 348.00, TSUS, dutiable at the rate of 8.5 percent ad valorem. If construction with a nonelastic core is not in evidence, the polypropylene and nylon braids would be classifiable as braids not suitable for making or ornamenting headwear: other, under item 348.05, TSUS, dutiable at the rate of 10.5 percent ad valorem. It should be noted that braid which is the product of Korea and classifiable under either of these item numbers is subject to quota restrictions under Category 669.

Sincerely,

John T. Rock

Harvey B. Fox
Director, Classification
and Value Division

071530

AS

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

SEP 27 [illegible]

REFER TO

VES-13-13-[illegible]
[illegible]

Regional Commissioner of Customs
Baltimore, Maryland 21202

Dear Sir:

This is in reply to your memorandum dated February 22, 1978 (VES-13-12-[illegible]) transmitting a request from [redacted], filed under section 4.14(b), Customs Regulations, in connection with foreign repairs to the [redacted] declared under title 19, United States Code, section 1466 on Norfolk entry No. 11[illegible] dated August 24, 1977. Even though the request for relief was not filed within the time limits prescribed by section 4.14 of the Customs Regulations, we have decided to consider the request on the merits of the evidence submitted.

The statement of the master and the vessel's log show that the hull of the [redacted] was damaged by drifting barges during a period of adverse weather conditions on June 27, 1977. Accordingly, duty on the cost of repairs to the hull is remitted because such repairs resulted from a casualty and were necessary to secure the seaworthiness of the vessel to enable her to reach her port of destination.

The record shows that the damage to the crane resulted from negligent use of the crane by a longshoreman on July 13, 1977. While the repairs to the crane appear to have resulted from casualty, such repairs were not necessary to secure the seaworthiness of the vessel to enable her to reach her port of destination. We are aware of the ruling in C.I.L. 400/47 concerning safety and seaworthiness of the vessel. However, the ruling in that case was based on a court case involving seaworthiness of a vessel as related to an injury claim by a seaman. We believe that title 19, United States Code, section 1466(a)(1) is explicit in its language that the repairs must be necessary to enable the vessel to reach her port of destination as well as to secure the seaworthiness of the vessel. Since the repairs to the crane do not meet the above criteria, duty on the cost of repairs to the crane is not remitted.

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REPLY TO COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

We note that the subject entry covers repairs not mentioned in the preceding paragraphs. As agreed to by the petitioner, these repairs are considered dutiable. We agree with your notations on the invoices that certain charges for transportation and living expenses are not dutiable even though the repairs covered by the invoices are dutiable.

Your file is returned herewith.

Sincerely yours,

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

Enclosure

103315

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A1

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 18 1984

FILE: VES-13-18 CO:R:CD:C
106993 JM

TO : District Director of Customs
Norfolk, Virginia

FROM : Chief, Carriers Rulings Branch

SUBJECT: Newport News Vessel Entry 82-201635-3 dated December 28, 1981,

Protest No. 1402-4-000001 received in your office on January 6, 1984, has been considered as a petition for relief from duty under 19 U.S.C. 1466 on the cost of repairs to the bow of the subject vessel. We are attaching a copy of our ruling on this matter.

Please notify the DARC, Financial Management, Southeast Region, to cancel Bill No. 34486995 to in the amount of $33,133.28 and reissue a bill in the amount of $4889.88 to cover duty on all repairs shown on the entry except those to the vessel's bow covered by Invoice No. 10272. The entry was liquidated with duty in the amount of $28,243.38 attributable to repairs covered by Invoice No. 10272. We also have been advised by your office that the Bill should have been issued to rather than

Your file on this matter is returned herewith. We have retained a copy of each document in the file, making copies where required. In the future, one copy of each document in the file should be sent to Headquarters when a ruling is requested. This procedure will prevent the loss of all documents relating to a case if a file is lost or misplaced.

Kathryn C. Peterson

Kathryn C. Peterson

Attachments:

A8

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 18 1984

REFER TO

VES-13-18 CO:R:CD:C
106993 JM

This ruling concerns a petition for relief from the duty incurred under 19 U.S.C. 1466 on the cost of foreign repairs to an American-flag vessel.

ISSUE:

1. Whether a petition for remission of duty on foreign repairs filed pursuant to 19 U.S.C. 1466(d) is subject to the time constraints imposed by 19 U.S.C. 1514, the statute concerning protests.

2. Whether certain repairs to the vessel were necessitated by stress of weather or other casualty while the vessel was in the regular course of her voyage, thus making duty thereon remissible under 19 U.S.C. 1466(d)(1).

FACTS:

The subject vessel arrived in the United States at Newport News, Virginia, on December 27, 1981, from Jeddah, Saudi Arabia. Vessel Repair Entry 82-201635-3 was filed showing that repairs were made to the vessel's hull, radar and other equipment in foreign countries. In a petition dated March 25, 1982, the petition requested relief from duty on temporary repairs to the vessel's hull in Singapore which are covered by [redacted] Invoice No. 10272 in the amount of SD 119,752 which converts to $56,486.27 in United States currency.

On September 30, 1983, the vessel repair entry was liquidated and a bill was issued in the amount of $33,133.28 which covered all repairs to the vessel including those to the vessel's hull. The petitioner filed a protest which was erroneously mailed to the Regional Commissioner of Customs, New York Region. By a form letter dated December 15, 1983, Customs returned the protest to the petitioner with instructions that the protest should be filed at Newport News. The protest, which was mailed to the District Director of Customs at Norfolk and received on January 6, 1984, was denied as untimely filed in that it was received more than 90 days after liquidation of the entry.

A9

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The record shows that while entering the harbor at Keelung, Taiwan, on November 5, 1981, the vessel struck a submerged object causing damage to the vessel's bow and subsequent flooding of the forepeak tank. An American Bureau of Shipping (ABS) surveyor examined the bow damage, allowed the vessel to proceed and recommended the damage be further examined at the next calling port, Kaochsiung, Taiwan. Since repair facilities were unavailable at Kaohsiung, an ABS surveyor examined the vessel and recommended the damage be repaired at the next port of Hong Kong. Because of pressing cargo commitment and unavailability of repair facility, the ABS surveyor at Hong Kong recommended the damage be repaired at Singapore. In support of its claim that the repairs were necessitated by casualty, the petitioner has submitted extracts of the vessel's deck log, statements of the vessel's Master and Chief Officer, photographs, ABS Survey reports and other documents. The petitioner has also submitted documents to show that repairs to the bow in Singapore were of a temporary nature and that additional repairs to the vessel's bow were effected after the vessel's return to the United States.

106993

LAW AND ANALYSIS:

Title 19, United States Code, section 1466, provides in pertinent part for an ad valorem duty of 50 percent of the cost of foreign repairs to a vessel documented under the laws of the United States to engage in the foreign or coastwise trade. Subsection 1466(d)(1) provides that the Secretary of the Treasury is authorized to remit or refund such duties if the owner or master furnishes good and sufficient evidence that the vessel was compelled by stress of weather or other casualty to put into such foreign port to make repairs to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination.

Title 19, United States Code, section 1514, states in pertinent part that decisions concerning "classification and rate and amount of duties chargeable" shall become final and conclusive upon all persons unless a protest is filed within 90 days of the notice of liquidation or reliquidation. Accordingly, the liquidator's decision that the costs of repairs are subject to duty under 19 U.S.C. 1466(a) is final and the entry can not be reliquidated.

A10

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Petitioner's protest, which is being treated as a petition for relief, does not deny that the repairs to the vessel are subject to duty under 19 U.S.C. 1466(a). Petitioner is seeking remission of duty under 19 U.S.C. 1466(d)(1), based on the claim that repairs to the vessel's bow were necessitated by stress of weather or other casualty while the vessel was in the regular course of her voyage.

Prior to the amendment of section 4.14, Customs Regulations, by T.D. 80-237, the last sentence of section 4.14(e) stated, "Inasmuch as an unprotested liquidation insofar as it relates to the classification of items under section 466(a) of the Tariff Act of 1930, as amended, is final at the expiration of 90 days, a subsequent application in regard to such classification cannot be considered in the absence of a timely protest." The clear implication in section 4.14(e) was that an application for remission (as opposed to a classification relief application) is not subject to the time contraints of 19 U.S.C. 1514.

While the last sentence of former section 4.14(e) was omitted from the amendment, its content was incorporated into two new sections (sections 4.14(f) and 4.14(d)(1)(v)). Section 4.14(d)(1)(v), Customs Regulations, provides in part that reliquidation is not required if a decision involves remission of duty as provided by 19 U.S.C. 1466(d)(1) because the repairs were necessitated by stress of weather or other casualty during the regular course of the vessel's voyage. Accordingly, the relief provided by 19 U.S.C. 1466(d)(2) is still available beyond the 90 day period following liquidation. This is in agreement with a decision of the U.S. Court of Customs and Patent Appeals in the case of Farrell Lines, Inc. v. U.S., 657 F. 2d 1214 (1981).

The record before this office shows that the protest was filed and returned to the petitioner by Customs at New York within the 90 day period following liquidation. We believe that the petitioner exercised due care in seeking relief and all information submitted by the petitioner is being considered as a petition for relief.

Documents furnished by the petitioner show that the vessel's bow was damaged by striking a submerged object at Keelung, Taiwan, and that repairs to the vessel's bow at Singapore were necessary to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination in the United States. Accordingly, duty on the cost of repairs to the vessel's bow are subject to remission under the provisions of 19 U.S.C. 1466(d)(1).

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106993

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HOLDINGS:

1. A petition for remission of duty on foreign repairs filed pursuant to 19 U.S.C. 1466(d) is not subject to the time constraints imposed by 19 U.S.C. 1514. Since it appears that the petitioner in the subject case used reasonable care in seeking relief, the petition will be considered despite the fact it was not filed timely at Norfolk or Newport News.

2. The petitioner has submitted good and sufficient evidence that repairs to the vessels's bow were necessitated by stress of weather or other casualty. Accordingly, duty in the amount of $28,243.38 on the cost of repairs covered by Invoice No. 10272 is remitted.

Kathryn C. Peterson

Kathryn C. Peterson

106993

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
U.S. CUSTOMS SERVICE 1301 CONSTITUTION AVENUE, NW. WASHINGTON, D.C. 20229	ACTION: P INFO:	UNCLASSIFIED
ACCOUNTING CLASSIFICATION	DATE PREPARED 3/07/85	FILE VES-3/VES-10-03 CO:R:CD:C 107439 PH
FOR INFORMATION CALL		
NAME PAUL HEGLAND	PHONE NUMBER 566-5706	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

MAR 8 - 1985

107439

TO: MR. JIM MITCHELL
INTERMARE AGENCY SERVICES, INC.
104 CAMPUS DRIVE EAST, SUITE 206
DESTREHAN, LOUISIANA 70047

TELEX NO. 784-145

INFO: RC, SOUTH CENTRAL REGION
DD, NEW ORLEANS

REURTEL FEBRUARY 28, 1985 (OUR REF: VES-3/VES-10-03 CO:R:CD:C 107439 PH), CONCERNING TRANSPORTATION U.S.-FLAG DRILLING RIG PENROD 96 BY BAHAMIAN-FLAG SEMI-SUBMERSIBLE HEAVY-LIFT VESSEL M/V DAN MOVER FROM LONG BEACH, CALIFORNIA, TO OFFSHORE POSITION IN INTERNATIONAL WATERS IN GULF OF MEXICO.

YOU STATE CONTRACT WAS SIGNED, ON BASIS OF CUSTOMS LAWS, REGULATIONS, AND RULINGS AS KNOWN AT TIME, FOR TRANSPORTATION ON JANUARY 8, 1985. RIG WAS TOWED BY U.S.-FLAG TUG TO LONG BEACH AND ON JANUARY 26 WAS LOADED ON MOV DAN MOVER WHICH SAILED ON JANUARY 27. M/V DAN MOVER IS PROCEEDING AROUND CAPE HORN AND WILL BUNKER AT MONTIVIDEO, URUGUAY, BEFORE ARRIVING AT POINT IN INTERNATIONAL WATERS SOUTH OF HOUMA, LOUISIANA, WHERE RIG WILL BE UNLOADED. PRSENTLY, RIG OWNER DOES NOT INTEND TO DRILL OR ENTER U.S. WATERS.

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION

A13

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	FILE
FOR INFORMATION CALL		
NAME	PHONE NUMBER	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

YOU STATE YOU ARE CONCERNED M/V DAN MOVER COULD BE HELD IN VIOLATION OF COASTWISE LAWS IF RIG IS TOWED ONWARD TO ANOTHER COASTWISE POINT FROM POINT SOUTH OF HOUMA, UNDER C.S.D. 85-9. BECAUSE CONTRACT WAS SIGNED AND VESSEL LOADED AND SAILED PRIOR TO PUBLICATION OF C.S.D. 85-9, YOU REQUEST ONE-TIME EXCEPTION TO PROTECT M/V DAN MOVER FROM PENALTIES UNDER 46 U.S.C. 883 IF RIG IS ATTACHED AND DRILLS AT COASTWISE POINT OR ENTERS COASTWISE WATERS AT FUTURE TIME.

C.S.D. 85-9, PUBLISHED IN CUSTOMS BULLETIN, VOLUME 19, NUMBER 5, JANUARY 30, 1985, MODIFIED EARLIER RULINGS "SO THAT THE MOVEMENT OF A VESSEL ON ANOTHER VESSEL FROM A COASTWISE POINT TO A FOREIGN POINT OR A POINT ON THE HIGH SEAS WHERE THE VESSEL IS REMOVED FROM THE CARRYING VESSEL AND THEN TOWED ONWARD TO ANOTHER COASTWISE POINT IS CONSIDERED COASTWISE TRADE; THE CARRYING VESSEL IN THIS KIND OF MOVEMENT MUST BE COASTWISE-QUALIFIED.

UNDER SECTION 177.9(C), CUSTOMS REGULATIONS, NO PERSON OTHER THAN PERSON TO WHOM RULING LETTER IS ADDRESSED SHOULD RELY ON RULING LETTER. UNDER SECTION 177.10(E), CUSTOMS REGULATIONS, EXCEPT AS OTHERWISE PROVIDED IN RULING ITSELF, ALL RULINGS PUBLISHED UNDER PART 177 SHALL BE APPLIED IMMEDIATELY.

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION

214

071439

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	FILE
FOR INFORMATION CALL		
NAME	PHONE NUMBER	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

IN THIS CASE, CONTRACT WAS SIGNED AND VESSEL DEPARTED LONG BEACH BEFORE PUBLICATION OF C.S.D. 85-9 AND, THUS, BEFORE C.S.D. WENT INTO EFFECT. ACCORDINGLY, MOVEMENT OF DRILLING RIG PENROD 96 ONWARD FROM DISCHARGE POINT SOUTH OF HOUMA, LOUISIANA, WILL NOT VIOLATE COASTWISE LAWS BY REASON OF C.S.D. 85-9. OF COURSE, MOVEMENT OF DRILLING RIG WHICH WOULD OTHERWISE VIOLATE COASTWISE LAWS IS NOT EXCUSED.

Edward B. Gable Jr.

EDWARD B. GABLE, JR.
DIRECTOR, CARRIERS, DRAWBACK
AND BONDS DIVISION

107439

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 19 NOV 1985

FILE: VES-5-18-CO:R:CD:C
107842 PH

TO : DARC, Inspection and Control
New Orleans, Louisiana

FROM : Director, Carriers, Drawback and Bonds Division

SUBJECT: Entry and Clearance of Vessels - Treasury Decision 85-91

With your memorandum of August 1, 1985 (VES-5-V:O:IC JHG), you forwarded a memorandum dated July 24, 1985, from the Port Director at Pascagoula, Mississippi, concerning Treasury Decision 85-91. The Port Director states that he is concerned with the possible changes Treasury Decision 85-91 may effect to the Customs treatment of service vessels and helicopters which transport merchandise and passengers to and from very large crude carriers (VLCC's) outside United States territorial waters. He states that he assumes that service craft bringing merchandise from VLCC's which requires Customs entry would be subject to the vessel entrance and clearance requirements by virtue of the amendments to the Customs Regulations effected by the Treasury Decision. He states that this would pose additional burdens on the service vessel operators but would greatly enhance Customs control of transportation of passengers and merchandise to and from VLCC's. On the negative side of the ledger, he states that the changes would increase the volume of documents and time involved in processing these vessels, some of which perform two or more trips per day to and from VLCC's.

The Port Director also asks about the effect of Treasury Decision 85-91 in the context of Customs Service Decision 85-37. This C.S.D. held, pursuant to 19 U.S.C. 1565 and regulations thereunder, that bonded merchandise to be moved from one place within a port to another must be transported by a Customs licensed and bonded cartman or lighterman. The C.S.D. held that launch service operators, if performing these services, must be licensed and bonded as lightermen. Finally, the Port Director asks about the effect of Treasury Decision 85-91 on offshore drilling operations.

Treasury Decision 85-91 amended sections 4.3, 4.9, 4.20, and 4.60, Customs Regulations (19 CFR 4.3, 4.9, 4.20, and 4.60), to require a vessel to obtain clearance if it is bound for another vessel on the high seas to either: (1) transship export merchandise which it has transported from the United States to that vessel; or (2) receive import merchandise from that vessel and

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transport the merchandise to the United States. A vessel is required to make vessel entry if it is returning from another vessel on the high seas after either: (1) transporting export merchandise out of the United States and transshipping the merchandise to that vessel; or (2) transporting import merchandise to the United States after receiving the merchandise from that vessel. Treasury Decision 85-91, as stated therein, was issued to clarify the applicability of the entrance and clearance requirements of the navigation laws to vessels engaged in the lightering of import and export cargo between the United States and vessels located on the high seas.

The Port Director is correct in his assumption that service vessels bringing import merchandise from a vessel on the high seas to a port of the United States would be subject to vessel entrance and clearance requirements. This is also true of service vessels carrying export merchandise from a port of the United States to a vessel on the high seas. Treasury Decision 85-91 does not affect the Customs treatment of helicopters transporting merchandise and/or passengers to and from vessels on the high seas. Customs treatment of helicopters and other aircraft is, of course, governed by Part 6 of the Customs Regulations under which aircraft coming into any area from any place outside the United States (e.g., a vessel on the high seas) shall be entered in such area if landing is made therein and if carrying passengers for hire or commercial cargo (section 6.3, Customs Regulations). Also, the Treasury Decision affects only vessels transporting export or import merchandise or cargo between the United States and a vessel on the high seas, it does not affect such transportation of passengers.

Operators of service vessels which transport merchandise or cargo between the United States and a vessel on the high seas are <u>not</u> required to be licensed and bonded as lightermen. Customs Service Decision 85-37 was only concerned with the movement by service vessels of bonded merchandise between places <u>within</u> a port (see definition of "cartman" and "lighterman" in section 112.1(b) and (f), referred to in the C.S.D.). A vessel on the high seas is, of course, not within a port.

We anticipate that Treasury Decision 85-91 will have little, if any, effect on drilling operations on the United States outer continental shelf (OCS). Drilling vessels or platforms, artificial islands, and other devices or installations which are attached to the seabed of the OCS for the purpose of exploring for, developing, or producing resources therefrom are treated as if they were located within the United States for purposes of United States law (section 4(a)(1), Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a)(1))). Customs and navigation laws, including the coastwise laws, laws on entrance

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and clearance of vessels, and provisions of dutiability of merchandise are applicable to such vessels, islands, and devices or installations (see Treasury Decision 54281, and subsequent rulings on this subject published in the Customs Bulletin as Customs Service Decisions).

Because a drilling vessel, artificial island, or other device or installation attached to the OCS for any of the requisite purposes is treated as if it were a point within the United States, a service vessel carrying merchandise or passengers between the United States mainland and such a vessel, island, or device or installation should be treated as though it is carrying merchandise between points in the United States. Such transportation, or transportation between drilling vessels, artificial islands, or other devices or installations attached to the OCS for any of the requisite purposes, is limited to coastwise-qualified vessels (i.e., United States-built, owned, and properly documented vessels). Imported merchandise transported from a drilling vessel, artificial island, or other device or installation attached to the OCS for any of the requisite purposes to a point in the United States or another such drilling vessel, artificial island, or other device or installation attached to the OCS has already been subject to entry and duty under the Tariff Schedules and is not treated as import cargo. Merchandise sent foreign from a drilling vessel, artificial island, or other device or installation attached to the OCS for any of the requisite purposes is, of course, treated as export cargo.

We appreciate your effort, and that of the Port Director, in considering this matter and in raising these very appropriate questions about it. Enclosed, for your information, are copies of a recent memorandum and letter also considering the effects of Treasury Decision 85-91.

Edward B. Gable

Edward B. Gable, Jr.

Attachments

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84

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

SEP 19 1985

REFER TO
VES-3-03-CO:R:CD:C
107844 DHR

Mr. John E. Bouchard
General Manager
Moller Steamship Company, Inc.
1667 K Street, NW.
Washington, D.C. 20036

Dear Mr. Bouchard:

Reference is made to your letter of August 9, 1985, concerning the applicability of the Sixth Proviso of the Jones Act (46 U.S.C. 883) and section 4.93, Customs Regulations (19 CFR 4.93), to certain merchandise transported between points in the United States.

Under the Sixth Proviso and section 4.93, foreign-flag vessels of certain nations and United States-flag vessels not qualified to engage in the coastwise trade may transport empty cargo vans, empty lift vans, and empty shipping tanks and equipment for use with cargo vans, lift vans, or shipping tanks between points embraced within the coastwise laws of the United States if those articles are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade. In accordance with section 4.93(c), Customs Regulations, the articles must be identified on any Cargo Declaration, Customs Form 1302, required to be filed under part 4 of the Customs Regulations (19 CFR part 4). Section 4.93(c) also requires that such a Cargo Declaration include a statement that the articles are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade.

You ask whether replacement tires and repair parts can be considered "equipment for use with" cargo vans, lift vans, or shipping tanks, as that phrase is used in the Sixth Proviso and section 4.93. You state that because of contrary Customs rulings, you and other vessel operators have been forced to transport your own replacement tires and repair parts for containers between points in the United States by trucks or rail at a significant expense even though your own vessels are moving between those points. The Honorable Mario Biaggi, Chairman, House Subcommittee on Merchant Marine, has also written us concerning this matter.

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After a complete review of this matter, we have concluded that the phrase "equipment for use with" cargo vans, lift vans, or shipping tanks in the Sixth Proviso of the Jones Act and in section 4.93, Customs Regulations, includes replacement tires and parts for cargo vans, lift vans, or shipping tanks, provided that the tires and parts are owned by the owner or operator of the transporting vessel, are intended for cargo vans, lift vans, or shipping tanks owned or leased by the owner or operator of the transporting vessel, and are transported for his use in handling his cargo in foreign trade. The requirements of section 4.93(c), Customs Regulations, regarding any required Cargo Declaration, Customs Form 1302, are applicable to replacement tires and parts for cargo vans, lift vans, or shipping tanks being transported coastwise.

If replacement tires or parts for cargo vans, lift vans, or shipping tanks are transported between coastwise points on foreign-flag vessels of nations not granted reciprocal privileges under the sixth proviso (see list in section 4.93(b)(1), Customs Regulations) or, even if transported by qualifying vessels, are not owned or leased by the owner or operator of the transporting vessel and transported for his use in handling his cargo in foreign trade, severe liabilities will be incurred under 46 U.S.C. 883. If the requirements of section 4.93(c), Customs Regulations (see also section 4.81(e), Customs Regulations), relating to any required Cargo Declaration, Customs Form 1302, are violated, penalties will be assessed under 19 U.S.C. 1584.

Sincerely,

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

22 OCT 1985

REFER TO
VES-3-15/VES-5/VES-13
CO:R:CD:C 107852 PH

John W. McConnell, Jr., Esq.
Haight, Gardner, Poor & Havens
Federal Bar Building
1815 H Street, NW., Suite 501
Washington, D.C. 20006

Dear Mr. McConnell:

In your letter of August 14, 1985, you state that recently a client brought a semi-submersible drilling rig from Alaska by way of Peru to a location in the Gulf of Mexico where it was attached to the seabed of the outer continental shelf (OCS) for the purpose of exploring for resources. The owner of the drilling rig sought to make formal entry with the local Customs office but entry was refused on the basis of Legal Determination 3100-02 and a Notice to Steamship Companies/Brokers and Others Concerned issued by the District Director of Customs in New Orleans on September 20, 1984 (84-140 VES-5-07:V:NO:DD TEH).

On the basis of the 1978 Amendments to the Outer Continental Shelf Lands Act of 1953 (OCSLA), you state that you believe that entry should be made and seek a ruling as to when such entry should be made. You state that you believe that equipment purchased for and repairs made to the vessel outside the United States should be subject to duty.

The 1978 amendments to the OCSLA, among other things, changed section 4(1)(a) of the OCSLA (43 U.S.C. 1333(a)(1)) to provide, in part, that the laws of the United States are extended to " ... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State." Before the 1978 amendments, the corresponding part of section 4(a)(1) provided that the laws of the United States are extended to "... the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State."

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The intent of this change was stated to be "technical and perfecting and ... meant to restate and clarify and not change existing laws." (House Conf. Report No. 95-1474, p. 80 (1978 U.S.C.C.A.N. 1679)). It was also stated in this Report about this change that the conferees were informed--

> that the U.S. Customs Service has interpreted existing section 4(a)(1) to mean that foreign-built production platforms are not subject to import duties when they are brought into OCS waters and attached to the seabed. Specifically, the Customs Service has stated that such platforms are not actually being imported to the United States until they are placed on the shelf and need not pay customs duties. 1 The conferees reject this interpretation and believe it is contrary to the intent of Congress in enacting the 1953 act. Moreover, to make it explicit that this interpretation should not be continued to be given effect, the conferees state that one of the purposes of this change in 4(a)(1) is to make it clear that U.S. customs duties are to apply to a platform, built overseas, and brought into OCS waters for placement so that it can be used to develop and produce OCS minerals.
>
> Under section 4(a)(1) of the conference report, Federal laws and "civil and political jurisdiction of the United States" are applicable to the subsoil and seabed of the OCS, to all artificial islands and "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon" to explore, develop, produce or transport OCS mineral resources. Thus customs laws apply - as within the "political and civil jurisdiction" of the United States - to platforms constructed outside the United States and brought into OCS waters - as being "installations and other devices * * * which may be erected thereon".
>
> 1 The Customs Service indicates that once the platforms are in place, machinery, equipment and other items placed on the structure are subject to duties. Of course, the conferees believe this is, and continues to be, the law. [Supra, pp. 80, 81.]

In response to the foregoing legislative history, the Customs Service issued Customs Service Decision (C.S.D.) 79-1. This decision held that foreign-built drilling and production platforms which are not vessels are dutiable upon their attachment, whether temporary or permanent, to the seabed of the OCS. The C.S.D. emphasized that only drilling platforms which are not vessels are dutiable upon attachment to the OCS. It did not make vessels, whether drilling vessels or otherwise, subject to duty (vessels

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other than yachts and pleasure vessels are not subject to duty under the Tariff Schedules (General Headnote 5(g), Tariff Schedules of the United States)), nor did it make them subject to vessel entrance and clearance requirements upon initial attachment to the OCS at a point at which there is no existing artificial island or installation or other device attached to the seabed for the purpose of exploring for, developing, or producing resources therefrom.

It was the position of the Customs Service before the 1978 Amendments and remains the position of the Customs Service that drilling vessels are not subject to the vessel entrance and clearance requirements at the time they initially "attach" to the OCS, as stated in the note you referred to in the September 20, 1984, Notice from the District Director of Customs in New Orleans. Accordingly, we concur with the decision of Customs in New Orleans in declining to accept formal entry of your client's drilling rig on its initial attachment to the OCS.

Under 19 U.S.C. 1466, equipments purchased in a foreign country for, and repairs made in a foreign country to a vessel documented under the laws of the United States to engage in the foreign or coasting trade or intended to be employed in such trade are dutiable "on the first arrival of such vessel in any port of the United States." In view of the specific language in section 1466 attaching duties on the first arrival in any port of the United States, we conclude that drilling vessels are not subject to vessel repair duties on their initial attachment to the OCS at a point at which there is no existing artificial island or installation or other device attached to the seabed for the purpose of exploring for, developing, or producing resources therefrom.

Sincerely,

Edward B. Gable

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

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NOV 11 1977

DRA-1-R:CD:D S
208296

Regional Commissioner of Customs
New Orleans, LA 70112

Reference: Internal Advice dated October 14, 1977; time limit for filing drawback claims.

Dear Sir:

You asked whether the date of exportation is counted in measuring the time within which a claimant must file for drawback.

A claimant filed a drawback entry under 19 U.S.C. 1313(g) on September 29, 1976, covering the exportation of two drilling rigs on September 29, 1973.

Section 22.13(a) of the Customs Regulations provides in relevant part that "a drawback entry and certificate of manufacture shall be filed within 3 years after the date the articles are exported."

When a time limitation is expressed in terms of a time period after or from a certain date, the initial date itself is not included in the computation. See, e.g. U.S. v. Hurlburt, 11 Ct. of Cust. App. 24., T.D. 38638 (1921); Madden Machine Co. v. U.S., 61 C.C.P.A. 97, 499 F. 2d 1294 (1974).

Accordingly, the drawback entry filed on September 29, 1976, was filed on the last day of the three year filing period. Assuming that all other time limitations have been met, the claim is timely.

Sincerely yours,

George C. Stewart
J.P. Tebeau
Director
Carriers, Drawback and Bonds Division

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FEB 20

DRA-1-RRUCDB SMC
211336

Dear

This is in reference to your letter dated January 15, 1980. You state that in June of 1978, you paid duty ($37.50) through your customs broker, on the shipment of a glass ornament which was found to be damaged when opeded. Consequently, after negotiating with your shipper in Italy, a replacement shipment was sent and entered the United States in September 1979. This shipment was also cleared by and duty ($45.48) was again paid. You now request a refund of the duties paid on the second shipment.

Section 1313(c), title 19, United States Code, provides that merchandise not conforming to sample or specifications may, within 90 days after release from Customs custody be returned to Customs custody and upon exportation duties paid less 1 per centum shall be refunded as drawback.

Sections 22.31-22.35 of the Customs Regulations (copy enclosed) outline the necessary requirements for an importer to follow to obtain a refund of duties paid for rejected merchandise under 19 U.S.C. 1313(c). These requirements include a timely return of the merchandise to Customs custody for examination and exportation. The facts you have presented indicate that these requisites were not met after you received the first shipment. It should also be noted that drawback under section 1313(c) would not be applicable on the replacement shipment because it was not rejected merchandise.

We wish to advise you to contact the district director of Customs of the port where the entries were made, as it is within his authority to authorize drawback under section 1313(c). The address of the District Director in San Francisco is 555 Battery Street, P.O. Box 2450, San Francisco, California, 94126.

Sincerely yours,

S/ Steuart

George C. Steuart
Chief
Drawback and Bonds Branch

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THIS DOCUMENT MAY BE RELEASED TO THE

JAN 31 1983

FOR-1-CO:R:CD:D
214744 L

Dear Sir:

Re: Decision on Application for Further Review of Protest Nos. 4105-2-000001 and 4105-1-000003

The above captioned protests and applications for further review were filed against demands for payment of certain charges for Customs supervision at the Toledo Foreign-Trade Zone, billed on a total of 11 invoices dated from July 21, 1981, through December 22, 1981. Our decision follows:

ISSUE:

The basic issue raised is whether charges for additional Customs services required at a foreign-trade zone (FTZ) are chargeable to the operator of the FTZ when those services are performed outside of the precincts and limits of the FTZ.

FACTS:

The Protestants are the grantee of a FTZ and the former operator of the FTZ. The bills, or more accurately, portions of bills protested, relate to services provided by Customs with respect to a tenant of the FTZ but which were performed subsequent to termination of the tenant's tenancy at the FTZ and apparently subsequent to the time protestant FTZ operator stopped operating the FTZ and was succeeded by another firm as operator.

The sequence of events, as set out by the Protestants, is as follows. For a period of years ending in October 1980, a company was a tenant in a FTZ, and maintained a sizeable inventory of merchandise in the FTZ. The Protestant former operator of the FTZ was the operator of the FTZ during the tenancy of that company.

At some time in or prior to March 1978, it is stated, Customs officers apparently became concerned with the integrity of the inventory of the above company's merchandise at the FTZ and began an investigation, the nature and scope of which is unknown to the Protestants. The method of investigation included comparison of inventory records of the company's mechandise "lots" with subsequent inventories of the same "lots." As a result of the investigation, Customs commenced to issue a series of claims for liquidated damages for duty due on

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merchandise said to have been found missing from each lot. These claims were addressed to Protestant FTZ grantee, and although not so stated, apparently were against the grantee's foreign-trade zone bond.

The FTZ bond is voluntarily tendered and is conditioned upon the removal of FTZ guards for other than the FTZ's normal business hours and guarantees the payment of all duties and taxes on such merchandise as may be removed from the FTZ without a proper Customs permit or otherwise be missing from the FTZ.

The claims were forwarded by the grantee to the operator and by the operator to the tenant company. The tenant company has contested the claims, taking the position that none of its merchandise was in fact missing.

In any event, investigation of the tenant by Customs is said to have resulted in a substantial increase in Customs charges for services at the FTZ, which were periodically billed to the grantee. During the tenure of the tenant at the FTZ, these charges were paid to Customs by the FTZ operator, who was in turn reimbursed by the tenant for that portion of the charges attributable to the tenant. The amount of the charge to the tenant was based upon rate and hour information furnished to the FTZ operator by Customs.

In October of 1980, the tenant discontinued its operation in the FTZ and removed its goods from the FTZ. It appears that prior to its departure from the FTZ, the tenant asked Customs to take all necessary steps to expedite the removal of their inventory from the FTZ. It further appears that in order to expedite the removal of the merchandise from the FTZ, Customs agreed that, when feasible, the paperwork necessary to accomplish the lot reconciliation typically performed at the time of constructive transfer would be performed after the removal of the merchandise, and therefore after departure of the tenant from the FTZ.

It is at this point in the sequence of events that the facts fail us. The Protestants deny ever making any such agreement with Customs and that Customs has been unresponsive to its inquiries concerning with whom Customs did make the agreement. Customs, on the other hand, has acknowledged that there is no record of the agreement but submits that all parties at the time, including the Protestants, were aware that extensive inventory discrepencies existed with the tenant's merchandise.

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Following the tenant's departure and removal of its goods from the FTZ, Customs continued to issue demands for liquidated damages for goods of the former tenant said to be missing from the FTZ and to bill the FTZ operator for zone services which included substantial sums in respect to the former tenant's affairs. These billings are said to commence with an invoice dated May 19, 1981, although the first invoice which is the subject of these protests is dated July 21, 1981.

In the meantime, the Protestant former FTZ operator had terminated its operations at the FTZ and been succeeded by another firm as FTZ operator; it continues, however, to be responsible to the FTZ grantee for Customs charges arising out of the tenant's tenure.

Initially, Protestants attempted to handle the Customs charges for zone services attributed to the tenant by paying Customs and seeking reimbursement from the former tenant. However, the former tenant refused to pay, claiming the charges were not proper.

All charges billed have been paid and Protestants now claim a refund of $15,070.71, said to be that portion of the charges for zone Customs services attributable to the former tenant after that tenant's departure from the FTZ. However, the charges, the subject of the protests, appear to total $12,639.87.

LAW AND ANALYSIS:

In our opinion, the question to be decided is one of fact, not of law. Protestants claim that Customs' concurrence in removal of the tenant's goods was obtained without their knowledge or permission. Section 146.5, Customs Regulations (19 CFR 146.5), requires the written concurrence of the grantee (or its delegate) to remove merchandise from a zone except where there is provision for the making of applications by the grantee itself or where the grantee is permitted to file specific or blanket approvals.

We find no evidence in the file of the written concurrence or blanket approval of the grantee for the removal of the goods from the zone. Neither do we find any evidence in the file that Protestants explicitly or implicity agreed to the cost of Customs zone services performed subsequent to removal of the merchandise and departure of the tenant from the zone, although certainly the Protestant zone operator, at least, knew or should

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have known that the merchandise was being removed from the zone and tacitly concurred in that removal.

Nevertheless, we cannot interpret that tacit approval to constitute an unwritten agreement on the part of the Protestants to be responsible for any prospective charges involving a departed tenant and removed merchandise.

This is not to say, of course, that Protestants could not have agreed to be responsible for such charges, nor that under different circumstances the charges protested would not be proper.

Indeed, although in view of the result we have arrived at we do not believe it necessary to consider Protestant's arguments on the propriety of the charges, we would note that nothing in the statutory provisions on foreign-trade zones limits the scope of the "additional Customs services required" to on-site service. Customs has broad discretion to determine what service is required to carry out its statutory mandate, and is statutorily authorized to be reimbursed for the cost of such service by the grantee of the zone. Thus, if Customs officers are performing functions relating to protection of the revenue or to admission of foreign merchandise into Customs territory or any other function required under the statutory provisions on foreign-trade zones, Customs has authority to assess zone grantees for the cost of those services.

HOLDING:

For the foregoing reasons, you are instructed to allow Protest Nos. 4103-2-000001 and 4103-1-000003 in the amount attributable to charges for Customs services incurred in connection with the departed zone tenant subsequent to its departure from the zone. As it is not necessary to the result, we do not rule on the propriety of the disputed charges.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

Marilyn G. Morrison

Marilyn G. Morrison
Director, Carriers, Drawback
and Bonds Division

Regional Commissioner of Customs
Chicago, Illinois 60603

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CODE AND DATE					
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SURNAME					

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

AUG 2 1983

WAR-1-CO:R:CD:D
216113 L

Chief, General Classification Branch

Chief, Drawback and Bonds Branch

Withdrawals from warehouse and entireties

The following paragraphs may be included in your reply to the May 23, 1983, internal advice request from the District Director, Detroit:

The trucks are placed in a class 4 warehouse, and there is no manipulation. One withdrawal is made of the merchandise on all the trucks, comprising a complete machine. The issue is whether the withdrawal can be considered a single transaction and the machine an entirety.

As a general rule, articles are imported when they arrive within the Customs territory of the United States with intent to unlade. James G. Wiley, a/c Pasadena Firearms Co. v. U.S., C.D. 2645 (1966), and cases cited therein. Wiley holds that importation on separate aircraft arriving on the same day are not subject to the entireties doctrine. United States v. Baldt Anchor, Chain & Forge Division of Boston Metals, C.A.D. 1051 (1972), holds that articles not imported together are precluded from being classified as entireties.

Warehoused goods represent an exception to the general rule. There is a line of cases which hold that goods in bonded warehouses are not to be considered "imported" until a permit of delivery has been issued and they then enter into the commerce of the United States. Stone and Downer Co. v. U.S., T.D. 45388; Casazza & Bro. v. U.S., 125 U.S. 525 (1887); Five Percent Cases, T.D. 35503; Atlas Marine Supply Co. v. U.S., C.D. 597. See also dicta at page 351 of Franklin Industries Inc. v. U.S., 1 CIT 349.

The exception is reinforced by the cases concerning 19 U.S.C. 1562, the manipulation statute. In Marques Del Merito, Inc. v. U.S., C.A.D. 394, the court decided that in 19 U.S.C. 1562 Congress evidenced an intention to make an exception to the rule that "importation" means bringing goods within the jurisdictional limits of the United States with an intention to

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unlade. The court states that goods become subject to duty ("imported") in their condition at the time of withdrawal from warehouse.

The lower court discussed this subject in Marques Del Merito, Inc. v. U.S., C.D. 1080; the court found that section 1562 required reclassification of merchandise if, in fact, the manipulation changed the dutiable character of the merchandise. The court said:

> By the provisions of the Tariff Act of 1930, as amended, Congress intended to change ordinary rules regarding classification of merchandise so as to make the condition upon withdrawal from the warehouse of merchandise manipulated under that section the determinant of its classification.

In Garvey v. U.S., C.D. 1726, the following portion of the Customs Regulations, section 19.11(d), was held to be invalid:

> ... but if the manipulation produces two or more parts of an article constituting an entirety, the parts shall not be classified separately if all the parts constituting the entirety are withdrawn for consumption under a single withdrawal.

The court reasoned that this was an amendment to 19 U.S.C. 1562 not intended by Congress. Customs published T.D. 54067 which deleted that portion of section 19.11(d).

The Customs court was even more explicit in Manca, Inc. v. U.S., Abs. 62666. Merchandise had been entered into a warehouse as completed microscopes; they were manipulated, dismantled and repacked and withdrawn as parts of microscopes (under two different classifications) on one warehouse withdrawal for consumption. In discussing C.D. 1726, the court said that one sentence of section 19.11(d) had been held invalid because "... in seeking to fix a classification as entireties on manipulated merchandise when it is withdrawn for consumption under a single withdrawal the said provision had the effect of imposing a limitation on the statute which was not applied by Congress. Under the stipulated facts the cited decision has equal force and effect in this case."

Both Garvey and Manca were decided prior to the promulgation of General Headnote 10(h), the entireties headnote. While Garvey holds that where manipulation under 19 U.S.C. 1562 produced two separate articles which constitute an

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entirety they are classifiable separately whether or not withdrawn for consumption under a single withdrawal, we believe that General Headnote 10(h) would now require classification as an entirety where such a withdrawal was under a single withdrawal, but separate classification where there were separate withdrawals.

With respect to storage warehouses, 19 U.S.C. 1557 provides in part "... merchandise may be withdrawn ... at the rate of duty imposed by law upon such merchandise at the date of withdrawal." We see no requirement of law or reason to have a rule for storage warehouses that differs from that for manipulation warehouses. To do so would be to encourage importers to perform nominal and needless manipulation to obtain desired classifications.

It is our opinion that merchandise constituting an entirety withdrawn from warehouse on a single withdrawal for consumption is classifiable as an entirety regardless of whether there are one or more warehouse entries covering the articles withdrawn.

George C. Steuart

George C. Steuart

216113

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SURNAME						

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

24 OCT 1985

REFER TO
DRA-1-09-CO:R:CD:D
218032 RB

Issue: Is imported merchandise which is entered for warehouse eligible for drawback under the substitution provision of the same condition drawback law, 19 U.S.C. 1313(j)(3), if it is thereafter withdrawn from warehouse and exported?

Law and analysis: The express provisions relating to drawback under 19 U.S.C. 1313 fundamentally do not apply to imported merchandise until "after its release from the custody of the Government." (19 U.S.C. 1558(a) and (a)(1); 19 CFR 191.132(a); H. Rept. 7, 71st Cong., 161 (1929); S. Rept. 999, 96th Cong., 23 (1980); also see Atlas Fibers Co. v. United States, 30 Cust. Ct. 247, 254-255, C.D. 1528, aff'd 42 C.C.P.A. 65, C.A.D. 572). It is also acknowledged in this regard that same condition drawback, subsection (j), "would apply to (imported) articles entered, or withdrawn from warehouse, for consumption" (S. Rept. 999, supra).

In contrast to section 1313, 19 U.S.C. 1557(a) provides, in a general sense, for drawback, under certain conditions, on imported merchandise which has "remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers."

Imported merchandise entered for warehouse, and in the custody and under the control of Customs, does not, therefore, fall within the scope of section 1313, including, specifically, the provisions for same condition drawback under subsection (j).

Parenthetically, even if same condition drawback were applicable herein, the necessity that the claimant have "possession" of the substituted merchandise under section 1313(j)(3) would not be met while the merchandise remains in the warehouse subject to the control of the Government. In a recent ruling to be published in the Customs Bulletin (file DRA-1-09-CO:R:CD:D 218100, dated August 16, 1985), it is held that possession under section 1313(j)(3) "means complete control over the articles or merchandise on premises or locations where the possessor can put the articles or merchandise to any use chosen" (emphasis added).

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Holding: Imported merchandise entered for warehouse is not eligible for drawback under the substitution provision of the same condition drawback law, 19 U.S.C. 1313(j)(3), if it is thereafter withdrawn from warehouse and exported.

Edward B. Gable, Jr.

Edward B. Gable, Jr.

218032

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DEC 27 1985

REFER TO

DRA-1-09-CO:R:CD:D
218254 JPS

Dear Mr. Battaglioli:

Thank you for your letter of December 5 expressing your reservations about a drawback protest ruling (file 218254) of October 2, 1985, specifically holding number two of that ruling, which holds that for purposes of substitution drawback (19 U.S.C. 1313(b)) a successor is allowed to designate, as the basis for drawback on articles manufactured by it after the date of succession, merchandise used by the predecessor prior to the date of succession.

The facts in that case are that the Firestone Plastics Company, an unincorporated division of Firestone Tire and Rubber Company, was sold to the Occidental Chemical Company and became part of the PVC Resins Division of Occidental. Such rights as Firestone had to claim drawback, by virtue of the manufacturing operations of the Firestone Plastics Company, were transferred to Occidental under the terms of the sales agreement, either paragraph 1.1.4 or 1.1.8.

The issue is whether, with respect to articles manufactured with use of certain merchandise and exported by the PVC Resins Division after its transfer to Occidental, Occidental may designate as the basis for drawback merchandise of the same kind and quality imported and used by the PVC Resins Division prior to its transfer, when it was still the Firestone Plastics Company.

It appears from the file that we have been distracted from resolving this issue by efforts to establish a special concept of "succession" as a requirement for transferring drawback rights from one corporation to another, and to define "succession" as a situation in which the transferor corporation must cease to exist.

There appears to be nothing in the drawback law or regulations to invalidate the transfer of a drawback claim along with the unincorporated manufacturing plant to which it belongs, as was done in this case. This is so whether the claim is a potential claim, depending on conditions not yet satisfied, or a consummated claim. The drawback law may be, and should be, applied so as to permit the transfer of drawback claims which are in various states of maturation.

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2 of 13 pages (218254)

In a transaction such as the one involved here, a drawback claim is like certain other assets a corporation may transfer by sale of its factory. These claims may depend, for their perfection, on some future action by the transferee corporation. For example, as a result of its business activities, a transferor corporation may have at the time of transfer firm purchase orders for goods which have not yet been delivered to customers, accounts receivable from orders which have been satisfied, and cash from accounts receivable which have been paid. These are all assets which may be transferred, even though in the case of the undelivered orders the transferee corporation must complete some undertaking commenced by the transferor corporation in order for the claim to become perfected. Without some contractual provision to the contrary, there is no legal (or rational) barrier to the transfer of an undelivered purchase order, or to allowing the transferee to complete the undertaking commenced by the transferor. To hold otherwise would either destroy an asset (transferor's undelivered orders) or force the transferor to suspend normal business activities to avoid creating an asset which, subsequent to transfer, it could not perfect as a practical matter and which the transferee could not perfect as a legal matter.

Absent a legal bar which does not appear to exist in this case, the same rationale should be applied to drawback transactions. The most important objective of the drawback law is to encourage exportation of articles manufactured in the United States. To cut off arbitrarily Occidental's right to drawback on articles manufactured by the PVC Resins Division simply because Occidental is designating articles imported and used by that same manufacturing division before it was acquired from Firestone causes the destruction of a legitimate claim and interferes with the incentive which the law is intended to create.

Moreover, there is no reason why the transferor should not be able to continue normal business operations right up to the moment of transfer, importing merchandise and using it to manufacture articles on the assumption that it is creating an asset - potential right to drawback - which it may eventually claim itself or which it may transfer, along with other assets of its manufacturing facility, to another corporation.

Enclosed is a Headquarters ruling letter dated January 14, 1957 which appears to me to be right on point and which confirms that the position taken in the October 2, 1985 letter was our policy in 1957.

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As a revenue-raising bureau of the Treasury Department, the Customs Service appropriately takes a strict view of laws which provide for avoidance or refund of taxes. However, where the Congress has provided for such a refund, and where the rationale of the refund law is clear, we must give way and support the spirit of that law rather then seeking sharp distinctions to avoid its effects. From this point of view, I believe that the October 2 ruling was correct and should be applied.

Sincerely,

John P. Simpson
Director, Office of
Regulations and Rulings

Mr. Peter J. Battaglioli
Deputy Assistant Regional Commissioner
(Regulatory Audit)
U.S. Customs Service
100 Summer Street
Boston, Massachusetts 02110

Enclosure

[redacted]

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3 of 13 pages (218254)

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 2 _ 1985

REFER TO

DRA-1-09-CO:R:CD:D
218254 MM/GS

Regional Commissioner of Customs
Chicago, Illinois 60603

Re: Further Review of Protest Number 3901-5000476 (Chicago) - Drawback Successorship - 19 U.S.C. 1313(b) - 19 CFR 191.32(a)(3)

Dear Sir:

This is in reply to the application for further review, filed on April 2, 1985, of a decision by the Regional Liquidation Branch not to allow drawback with respect to entries 84-102057-9, 84-104212-0, 84-104213-3, 84-104214-6, 84-102949-9, 84-106059-7, 84-107411-4, 84-110912-8.

ISSUES:

1. Will a corporation be approved as the successor of a division of another company, assuming all other requirements of successorship are met?

2. For purposes of substitution drawback (19 U.S.C. 1313(b)) may a successor designate as the basis for drawback on articles manufactured by it after the date of succession merchandise used by the predecessor prior to the date of succession?

3. For purposes of substitution drawback may a successor designate as the basis for drawback on articles manufactured by it prior to the date of succession merchandise used by the predecessor prior to the date of succession?

FACTS:

On July 5, 1983, Customs approved a drawback proposal of Occidental Chemical Corporation, PVC Resins Division (abstracted as T.D. 84-2-L) in which proposal Occidental Chemical claimed to be the successor to Firestone Plastics Company, a division of Firestone Tire and Rubber Company, under the latter's contract of September 16, 1980 (abstracted as T.D. 81-91-J).

Based on T.D. 84-2-L, Occidental Chemical, PVC Resins Division, filed the eight drawback entries noted above on which

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4 of 13 pages (BACKGROUND TO 218254)

it received accelerated drawback. However these entries were liquidated "no drawback" and the drawback was repaid by Occidental Petroleum on eight U.S. Customs bills dated March 1, 1985. In addition Occidental protested the liquidation of the eight entries and it is this protest we now consider.

LAW AND ANALYSIS:

Occidental Chemical Corporation, PVC Resins Division, is the drawback successor of Firestone Plastics Company, a division of Firestone Tire and Rubber Company, under T.D. 84-2-L. There was precedent permitting a corporation to be successor to a division of another corporation. See for example T.D. 75-71-R.

The next issue to be considered relates to the rights of a successor under substitution drawback. Successorship as a concept was introduced into drawback at least as early as February 4, 1920. See T.D. 38286-G. When substitution drawback was enacted the concept was extended to it (T.D. 52749-N).

The following excerpts are from a Memorandum of June 14, 1963, concerning Headquarters views (at that time) with regard to the passage of drawback rights under successorship.

> When one corporation succeeds another, for drawback purposes the successor takes over whatever drawback rights were held by the predecessor. In the case of operations under 313(a), the form of the drawback right is clearly defined in that it is either in imported merchandise which on the date of succession has not been used by the predecessor, or it is in an article manufactured by the predecessor with the use of imported merchandise. There is no question that if the successor in either case completes the necessary steps under the drawback procedure, he can recover the duties paid on the imported merchandise. In fact then the drawback right does pass from the predecessor to the successor in 313(a) cases.
>
> In the case of operations under section 313(b), the drawback right is less clearly defined, but it is nonetheless present in imported merchandise. In this regard, the Customs Court in the case of General Motors Corporation v. United States, C.D. 1587, which involved operations under section 313(b), stated at page 97:

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5 of 13 pages (BACKGROUND TO 218254)

> Ordinarily, when merchandise is imported as to which the drawback statute may become applicable, an inchoate right, or a "right accruing," arises, and as the merchandise progresses by way of manufacture or production in the United States, use in certain ways, etc., the inchoate or accruing right ripens, until upon exportation of the merchandise or article in accordance with the statute and regulations pertaining thereto, the inchoate or accruing right becomes an absolute right to receive payment, as drawback, of the amounts specified by the statute.

If the drawback right in imported merchandise passes to a successor corporation in the case of operations under section 313(a), it must also pass to the successor in operations under section 313(b), unless such passage is prohibited by the drawback law or regulations. I can find no such prohibition in either section 313(b) of the Tariff Act of 1930, or Part 22 of the Customs Regulations. Pursuing this one step further, if a manufacturer who operates under section 313(b) receives imported merchandise but, before using such merchandise, is succeeded by another corporation, the successor clearly can use the imported merchandise and subsequently designate it as the basis for drawback. If on the other hand, the predecessor used the imported merchandise before the date of succession, there can be no question that the predecessor had a right to designate such merchandise. This right too must pass to the successor for otherwise it is a fallacy to say that a successor takes over the drawback rights held by the predecessor.

The "right to designate" having passed to the successor, the question then arises as to what exportations the imported merchandise covered by the right may be designated against. The predecessor had the right to designate the merchandise against articles manufactured by it after the date of receipt of the imported merchandise. In effect, the date of receipt of the imported merchandise was the date on which the "right to designate" was created, and the predecessor held such right until the date of succession. When the right is transferred by succession, the successor stands in the place of the initial holder of the right and therefore would be able to designate the merchandise

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6 of 13 pages (BACKGROUND TO 218254)

covered by the right aganist articles manufactured by it (the successor) on and after the date on which the right first inured to the successor that is, the date of succession.

There follows an excerpt from the sample format for a successorship statement which was furnished by Customs for preparation of the successorship statement from as early as 1954 until 1979 when it was eliminated for reasons unrelated to the successorship question.

> On (date), the (Old Corporation), was succeeded by (New Corporation), and on the said date (or on (date)) the said (New Corporation) became entitled to all of the drawback rights accrued and accruing to the (Old Corporation) by virtue of the provisions of T.D. .

This format was furnished until the regulations were amended (T.D.79-65) to eliminate supplemental statements (including successorship) in favor of revised statements to modify existing contracts.

Elimination of the supplemental statement was for administrative purposes only. The intent was to enable Customs to have all information relating to a drawback rate for a product in a single drawback statement under its individual Treasury Decision number rather than a rate holder having different rates for different products under one Treasury Decision amended numerous times. There was no intent to change in anyway the drawback rights to be transferred from a predecessor to a successor.

It is evident therefore that under direct identification drawback the successor obtains the right to identify for drawback any and all merchandise (or articles) its predecessor could identify. Under substitution drawback the successor receives the right to identify and/or designate any merchandise/articles its predecessor could identify and/or designate. Under substitution drawback the successor receives the right to designate merchandise used by the predecessor as the basis for drawback only on articles manufactured by it after the date of succession.

Denial of drawback in the current case however is based on a ruling made in Service Headquarters on May 8, 1974, which was

7 of 13 pages (BACKGROUND TO 218254)

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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highlighted in the drawback seminar held in June 1974 and the notes resulting from that seminar. The following was disclosed upon review of that ruling.

A Delaware corporation, with factories in several states, divided itself into several corporations. The factories became separate corporations. One such factory was located in Texas and became the Texas corporation. Prior to formation of the new company 90,000,000 pounds of merchandise had been received at the Texas factory. The physical inventory at the time of formation of the new company was 20,000,000 pounds.

Headquarters was asked the procedures to follow to transfer the drawback rights to the Texas corporation. The reply of November 2, 1973, stated that the Texas corporation was to be treated as a successor and in that capacity could designate the 20,000,000 pounds on hand in inventory. However, when inquiry was made further as to the 70,000,000 pounds that had been used the reply of May 8, 1974, was that the Texas corporation could not designate this material as it had been used by the Delaware corporation, even though it had been held that the Texas corporation was successor.

The May 8, 1974, ruling was inconsistent with the November 2, 1973, ruling as well as the policy of transferring drawback rights under a successorship at that time. There is nothing in the file to support this inconsistency or a change from that policy. When the Texas corporation succeeded the operations at the Texas factory, all drawback rights accrued or accruing to the predecessor at that factory were transferred to the successor on the date of succession. The May 8, 1974, ruling was incorrect and the traditional perogatives of successorship are reaffirmed.

The substitution drawback law requires that the same legal person use in manufacturing both the designated and substituted merchandise. The current ruling fulfills this requirement, since a successor is considered legally to be a continuation of the predecessor in the domain covered by the successorship.

HOLDING:

1. A corporation will be approved as the successor of a division of another company, assuming all other requirements of successorship are met.

8 of 13 pages (BACKGROUND TO 218254)

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2. For purposes of substitution drawback (19 U.S.C. 1313(b)) a successor is allowed to designate as the basis for drawback on articles manufactured by it after the date of succession merchandise used by the predecessor prior to the date of succession.

3. For purposes of substitution drawback a successor is not allowed to designate as the basis for drawback on articles manufactured by it prior to the date of succession merchandise used by the predecessor prior to the date of succession.

You are directed to allow the protest.

EFFECT ON OTHER RULINGS:

The unpublished ruling of May 8, 1974, and any other rulings inconsistent with the above policy are hereby revoked.

Edward B. Gable, Jr.
Director, Carriers
Drawback and Bonds Division

9 of 13 pages (BACKGROUND TO 218254)

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JAN 14 1957

DB 731.1

Dear Mr. Dill:

The Bureau is in receipt of a letter dated December 10, 1956, from Comstock & Theakston, Inc., Customhouse Brokers, New York, New York, transmitting a letter dated December 3, 1956 from Sharon Steel Corporation, Sharon, Pennsylvania (hereinafter referred to as Sharon Steel), which was approved on the same date by Mallory-Sharon Titanium Corporation, Niles, Ohio (hereinafter referred to as Mallory-Sharon).

The letter of December 3, 1956, is concerned with the allowance of drawback under the provisions of section 313(b), Tariff Act of 1930, on titanium and titanium alloy articles manufactured by Mallory-Sharon at its Niles, Ohio, factory with the use of titanium sponge and titanium and titanium alloy products manufactured from titanium sponge, as authorized in Bureau letter to you dated August 27, 1956, the abstract of which was published as T. D. 54176-F. The said authorization is effective with respect to articles manufactured on and after January 3, 1956, which is the date Mallory-Sharon acquired through purchase from Sharon Steel the land, plant, and equipment of the Niles, Ohio, factory, known as Niles Rolling Mill Division of Sharon Steel Corporation.

It appears that prior to January 3, 1956, a quantity of imported titanium sponge owned by Mallory-Sharon was used in the manufacture of titanium products for the account of the said corporation at the Niles, Ohio, factory, then owned by Sharon Steel. The said processing was covered by T. D. 54121-G. Mallory-Sharon desires to designate the titanium sponge used by Sharon Steel as the basis for the allowance of drawback on articles manufactured by it (Mallory-Sharon) subsequent to January 3, 1956. The question is presented whether the designation of such merchandise is permissible in view of the requirement of section 22.5(a)(2) of the Customs Regulations that the designated merchandise shall be used by the manufacturer or producer of the exported articles within 3 years after the date on which it was received by such manufacturer or producer.

In view of the fact that Mallory-Sharon succeeded to Sharon Steel insofar as operations at the Niles, Ohio, factory are concerned, the Bureau is of the opinion that Mallory-Sharon is entitled to designate titanium sponge which, prior to the date of succession, had been used at the said factory by Sharon Steel in the manufacture of products for the account of Mallory-Sharon. Please be guided accordingly.

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10 of 13 pages (BACKGROUND TO 218254)

Copies of this letter are being forwarded today to Comstock & Thaakston, Inc., Mallory-Sharon Titanium Corporation, and Sharon Steel Corporation.

Very truly yours,

(Signed) W. E. Higman

Chief, Division of
Classification and Drawbacks

Hon. Robert W. Dill
Collector of Customs
New York 4, New York

[redacted]

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[redacted]

11 of 13 pages (BACKGROUND TO 218254)

File

MAR 2 0 1973

R:CD:D
731.1 G
200881

Mr. Paul Lawrence
Regional Commissioner of Customs
Baltimore, Maryland 21202

Dear Mr. Lawrence:

You are hereby authorized to allow drawback on petroleum products manufactured under the provisions of section 1313(b), title 19, United States Code, by Gulf Oil Company of Pennsylvania, Philadelphia, Pennsylvania, at its Philadelphia, Pennsylvania, refinery, with the use of crude petroleum or petroleum derivatives, upon compliance by the manufacturer with the provisions of the rate of drawback set forth in section 22.6(g-1) of the Customs Regulations.

There are enclosed, approved, copies of the manufacturer's drawback statement and supplemental drawback statement subscribed to, respectively, on July 28, 1971, and March 13, 1973, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow, including procedures for preparing drawback claims, and the records it will keep. Such records shall include those prescribed in the above section 22.6(g-1) of the regulations.

It is noted that the opening inventory shown on Exhibit A, as well as the drawback factors relating to completed stocks in inventory, are those of the previous owner of the Philadelphia refinery. In this regard, the Gulf Oil Company of Pennsylvania is considered as standing in the same place as any other successor, and since the prior owner could use these figures, the right to use them accrues to the Gulf Oil Company of Pennsylvania.

This authorization is issued with the understanding that any exhibit relating to the claiming of residual rights will be forwarded to the Bureau of Customs for approval prior to payment of a claim involving such residual rights.

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	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
CODE	[redacted]						
SUR-NAME	[redacted]						
DATE	[redacted]						

DEPARTMENT OF THE TREASURY—BUREAU OF CUSTOMS CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (5-72)

12 of 13 pages (BACKGROUND TO 218254)

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured and exported on and after July 1, 1971. Exportation shall be made within 5 years after importation of the imported merchandise.

There are enclosed an extra copy of the manufacturer's drawback statement, supplemental statement, and of this authorization, which may be furnished with the first drawback claim filed hereunder, to the special agent in charge, pursuant to section 22.4(g) of the Customs Manual.

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. TEBEAU
Director, Carriers,
Drawback and Bonds Division

Enclosure 191608

[redacted]

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13 of 13 pages (BACKGROUND to 218254)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

09 DEC 1985

CON-9-04-CO:R:CD:D
218370 MM/GS

ISSUE:

If fungible merchandise is entered temporarily free of duty under bond (TIB) under item 864.05, Tariff Schedules of the United States, for foreign sales and under consumption entries for domestic sales, and is then commingled, may the TIBs be cancelled on a FIFO basis and the consumption entries identified for domestic withdrawals?

FACTS:

Cut rag tobacco will be blended in Germany and imported for use in manufacturing cigarettes. The tobacco to be used for cigarettes for the domestic market will be entered for consumption with duty being paid thereon. The tobacco to be used for cigarettes for the export market will be entered under item 864.05, TSUS. All the imported tobacco will be fungible (i.e. commercially identical) and will be commingled in storage and manufacture.

LAW AND ANALYSIS:

An importer at the time of importation under item 864.05, TSUS, must have the intent to export the articles produced from the merchandise. If the articles or the merchandise are diverted to the domestic market, the importer is liable under its bond for twice the duties and in addition is subject to a penalty if it is established that the intent to export was not present at the time of exportation. Thus the importer will have to have on hand at all times sufficient merchandise and/or articles to cancel all of the open TIB entries. On the other hand merchandise which is imported under a consumption entry may be exported or used to manufacture articles which are exported.

Commingling of fungible TIB merchandise and other merchandise has previously been approved (C.S.D. 84-12). In the present case the importer proposes to commingle fungible tobacco imported under TIB and consumption entries and to cancel the TIB entries on a FIFO basis. In addition the importer would have on hand at all times sufficient merchandise or articles to cancel all open TIB bonds.

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HOLDING:

Fungible merchandise imported under TIB and under consumption entries may be commingled and the TIBs cancelled on a FIFO basis, provided the importer has on hand at all times in the commingled inventory sufficient merchandise (or articles manufactured therefrom) to cancel all outstanding TIBs.

Edward B. Gable, Jr.
Director, Carriers,
Drawback and Bonds Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

03 DEC 1985

REFER TO
DRA-1-09-CO:R:CD:D
218407 RB

Issues: (1) Is imported merchandise eligible for drawback under the substitution same condition drawback law, 19 U.S.C. 1313(j)(3), when it is initially transported under a special permit for immediate delivery to the importer's premises, and is thereafter entered for transportation and exportation, and exported?

(2) Is perishable merchandise, such as fresh fruits and vegetables, eligible for drawback under the same condition drawback law, 19 U.S.C. 1313(j)(1) or (3)?

Facts: Fresh fruits and vegetables are imported at various times, and initially shipped under a special permit for immediate delivery to the importer's premises for examination and sorting, as authorized under 19 U.S.C. 1448(b) and 19 CFR 142.21(b). As a result, part of each shipment is entered for consumption, duty-paid, and the balance is entered for transportation and exportation, and exported. The exported merchandise is made the subject of claims for drawback under the substitution provision of the same condition drawback law, 19 U.S.C. 1313(j)(3), and other imported merchandise entered for consumption, duty-paid, 2 or 3 days prior to the date of exportation is randomly designated as a basis for drawback.

Law and Analysis: (1) It has been observed that "[t]he express provisions relating to drawback under 19 U.S.C. 1313 fundamentally do not apply to imported merchandise until 'after its release from the custody of the Government.' It is also acknowledged in this regard that same condition drawback, subsection (j), 'would apply to (imported) articles entered, or withdrawn from warehouse, for consumption'" (citations omitted) (Headquarters letter dated October 24, 1985, file DRA-1-09-CO:R:CD:D 218032 [imported merchandise entered for warehouse, and in Customs custody and control, not eligible for substitution same condition drawback if withdrawn and exported]).

In the present case, when transported to the importer's premises under a special permit for immediate delivery, the subject merchandise is considered as remaining in Customs custody (19 CFR 142.22(b); see T.D. 79-221, 44 F.R. 46794, the notice of proposed rulemaking leading thereto, 43 F.R. 55774 (1978), and T.D. 76-220, 41 F.R. 33248).

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When thereafter entered for transportation and exportation, the merchandise continues in Customs custody. See American Shipping Co. v. United States, 65 Treas. Dec. 178, T.D. 46879. In that case, imported tomatoes, entered for transportation and exportation, were diverted for inspection at the request of the shippers, a consumption entry filed, duty-paid, and an unconditional delivery permit issued for the merchandise. The tomatoes, however, were subsequently exported through error. In denying a claim for refund of duty on the ground that no provision of law then existed justifying such action under the circumstances after the merchandise was released from Customs custody, the Customs Court stated in this respect that "[w]hen the consumption entry was made...and the delivery permit issued, possession and control passed from the Government to the importers..." (emphasis added) (supra, at 180) (also see United States v. Maine Central Railway Co., 9 Ct. Cust. Appls., T.D. 38015; and Illinois Central Railroad Co. v. United States, 2 Cust. Ct. 422, C.D. 168).

Furthermore, in the October 24, 1985, ruling, cited above, concerning imported merchandise entered for warehouse, it was implicit that such merchandise, when withdrawn for exportation or for transportation and exportation, would thereby remain continuously in Customs custody until exported (also see T.D. 4843; and see Hudson Shipping Co., Inc. v. United States, 18 Cust. Ct. 17, 21, C.D. 1038).

Imported merchandise, initially transported under a special permit for immediate delivery to the importer's premises and then entered for transportation and exportation, and remaining in Customs custody and control, consequently, does not fall within the scope of section 1313, including, in particular, the provisions for same condition drawback under subsection (j).

Parenthetically, even if same condition drawback were applicable herein, the necessity that the claimant have "possession" of the substituted merchandise as contemplated by section 1313(j)(3) would not be met while the merchandise remains in Customs custody and control (see American Shipping Co., supra). In addition, it is axiomatic that the designated and substituted merchandise herein would not be fungible and in the same condition, if each is sorted respectively from the same import shipment.

(2) The term "merchandise" as used in section 1313, including subsection (j) thereof, means "goods, wares and chattels of every description" (19 U.S.C. 1401(c)). Assuming that there is compliance with the law and relevant regulations, therefore, perishable goods would be eligible for same condition drawback.

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Holdings: (1) Imported merchandise is not eligible for drawback under the substitution same condition drawback law, 19 U.S.C. 1313(j)(3), when it is initially transported under a special permit for immediate delivery to the importer's premises, and is thereafter entered for transportation and exportation, and exported.

(2) Perishable merchandise, such as fresh fruits and vegetables, is eligible for same condition drawback under 19 U.S.C. 1313(j)(1) or (3), assuming that there is compliance with the law and applicable regulations.

Edward B. Gable, Jr.

Edward B. Gable, Jr.

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Gentlemen:

Reference is made to your letter of December 9, 1930, requesting that all drawback rates issued in behalf of your clients operating under the provisions of Section 313 (b), Title III, of the Tariff Act of 1930, when such clients are covered by drawback rates previously promulgated, be made effective as to articles exported on or after June 18, 1930, instead of on or after the date on which the applications were received in the Bureau.

You state that inasmuch as you were not advised that applications to operate under Section 313 (b) would be required, you assumed that such applications were not necessary in the case of firms already covered by drawback rates.

As will be noted by reference to Treasury Decisions 44469-A, B, C, F, and J, drawback rates under Section 313 (b) have been made effective as to articles manufactured on or after June 18, 1930, which are exported on or after the date on which the applications to operate under the said section and paragraph were received in the Bureau, even in instances where the firms at interest were covered by drawback rates previously promulgated. Treasury Decisions 44469-G, H, and O, were made effective as to articles manufactured and exported on or after June 18, 1930, for the reason that the applications in these cases were filed prior to the passage of the Tariff Act of 1930, the firms at interest having taken steps to protect their rights.

In this connection, the following is quoted from a recent decision dealing with the filing of applications by secondary manufacturers operating under Section 313 (b):

> "The Bureau wishes to advise, however, that drawback rates issued in behalf of secondary manufacturers operating under Section 313 (b) have been made effective as to articles manufactured on or after June 18, 1930, which are exported on or after the date the application to manufacture under Section 313 (b) was received in the Bureau, and within the three year time limitation on exportation prescribed by Section 313 (h), of the Tariff Act of 1930."

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No circumstances appear which would justify an exception in favor of your clients. The Bureau is therefore constrained to deny your request.

Respectfully,

(Signed) A. W. Epes

Commissioner of Customs.

(No inclosure).

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SEP 2

The Supervising Customs Agent
201 Varick Street, Room 406
New York 14, New York

Sir:

Reference is made to your letter of May 21, 1953 (1-5052), in reply to Bureau letter of May 13, 1953, further in regard to an application filed on May 3, 1951, by [redacted] for the establishment of a rate of drawback on aluminum alloy stampings or pressings manufactured with the use of aluminum alloy sheets.

The above-mentioned application was returned to you with Bureau letter of May 13, 1953, with the request that you conduct a further investigation, and if warranted, secure from the firm a sworn statement upon which a rate of drawback under the provisions of section 313(b) of the tariff act may be predicated. You note in your letter that the application in question is dated May 1, 1951, and is apparently intended to cover articles manufactured prior to that date and articles which were in the process of manufacture on that date. Since the Bureau's ruling in the case of [redacted] holding iron and steel in various forms to be "metal" was, in view of T. D. 52935, made effective as to manufactures and exportations on and after August 8, 1951, you raised the question whether any proposed rate in favor of [redacted] can be made effective to cover manufactures and exportations on and after a date prior to August 8, 1951.

You also note that evidence obtained during your original investigation in this case showed that part of the involved manufacturing operations were performed by [redacted] Although both that firm and the applicant were advised of the necessity for filing an application for a rate of drawback covering the operations conducted by [redacted] such application has not as yet been received. You therefore ask whether, in view of section 22.3(a) and 22.4(n) of the customs regulations, any drawback rates which might be promulgated in favor of the two corporations would be effective only as to the products which are exported on and after the date on which an application for a rate of drawback is filed by [redacted]

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With regard to your first question, the restriction on the effective dates of manufacture and exportation in T. D. 53253-A, in favor of [redacted], was based on T. D. 52935 which provides that no imported ferrous metal may be legally designated as the basis for the allowance of drawback under section 313(b), Tariff Act of 1930, as amended by Public Law 109, approved August 8, 1951, if such merchandise was entered for consumption, or withdrawn from warehouse for consumption, prior to August 8, 1951 (the date on which Public Law 109 was approved).. Since section 22.5(a)(4) of the regulations requires that articles exported with benefit of drawback be manufactured within 1 year after the date on which the designated merchandise was received by the manufacturer of the exported articles, it is apparent, in view of T. D. 52935, that rates of drawback covering articles manufactured under section 313(b) of the tariff act with the use of ferrous metal cannot be made effective as to articles manufactured and exported prior to August 8, 1951.

Public Law 109 made no change in section 313(b) of the tariff act insofar as nonferrous metal is concerned . Subsequent to the enactment of Public Law 109 the Bureau reconsidered the construction placed by it on the term "metal" as used in section 313(b) of the tariff act and the resultant decision, which is applicable to nonferrous as well as ferrous metal was published as T. D. 53255. The retroactivity of that decision, as it pertains to ferrous metal, is necessarily limited to August 8, 1951, the date of approval of Public Law 109. However, no such limitation exists with regard to nonferrous metals.

The Bureau, therefore, is of the opinion , insofar as your first question is concerned, that providing the drawback law and regulations are complied with, the proposed rate of drawback in favor of [redacted], could be made effective as to articles which are manufactured on or prior to May 3, 1951, and exported on and after that date.

Concerning your second question, in view of section 22.4(n) of the customs regulations, a rate of drawback in favor of [redacted], could not be made effective on articles exported prior to the date of receipt of the firm's application for the establishment of that rate. Inasmuch as the proposed drawback rate in favor of [redacted], would be separate and distinct from that of [redacted] the dates of first manufacture and exportation authorized in a rate in favor of the former firm would not be limited by the facts found to exist in the case of the latter, but rather would be limited in the case of date of exportation to the date of filing of its own application, that is May 3, 1951, and in the case of the date of manufacture to the earliest date on which a lot exported on and after May 3,

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D14

1951, was manufactured by it, provided the records maintained by the firm beginning that date were found to be adequate for drawback purposes and the drawback law and regulations were complied with.

However, even though the proposed rate of drawback in favor of [redacted] might, for example, authorize the allowance of drawback on articles manufactured by that firm on and after May 1, 1951, and exported on and after May 3, 1951, drawback would not be allowed on articles on and after such dates if, subsequent to manufacture by that firm, the articles were subjected to further manufacture by [redacted] and exported prior to the date of exportation authorized in the proposed rate of the latter firm. It is apparent therefore, that if [redacted], has ceased to manufacture for exportation the articles covered by its application, and if all such articles manufactured by it in the past have been subjected to further manufacturing processes by [redacted], prior to exportation, no advantage would be gained by the firm's submission of a drawback statement and the establishment of a rate of drawback in its favor.

The application of [redacted] is returned with the request that you conduct a further investigation of the matter and acquaint the manufacturer with the views of the Bureau expressed herein. Please secure from the manufacturer, as the circumstances warrant, either a drawback statement upon which a rate may be predicated, or a statement setting forth its agreement to the cancellation of the application.

Very truly yours,

(Signed) E. M. Griffin

Chief, Division of
Drawbacks, Penalties, and Quotas

Enclosure No. 96364

In duplicate.

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[redacted]

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MAR 21 1978

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[redacted]

Dear [redacted]

This is in reference to your letter of August 4, 1977, on behalf of your client, [redacted], requesting a valuation ruling declaring the prospective importation described below to result in sales prices which establish export value within the meaning of section 402(b) and 402(b)(1)(B) of the Tariff Act of 1930, as amended (19 U.S.C. 1401(b) and 19 U.S.C. 1401(1)(b). The prospective transaction involves the sale of assembled apparel, not on the Final List, which you indicate would be entitled to the benefits of item 807.00 of the Tariff Schedules of the United States (TSUS), to [redacted] from an unrelated foreign assembler. You outline the circumstances of the prospective transaction as follows:

> [redacted] proposes to manufacture in the United States textile apparel components for assembly off-shore pursuant to item 807.00, TSUS. [redacted] will sell the components to the assembler, and the assembler will then sell the assembled products to [redacted] for resale primarily in the United States of America. Some merchandise will be sold to [redacted] for sale in third country markets. In such sales [redacted] will act as distributor and incur the additional costs related to warehousing, marketing, promotion, returns and allowances, billing and collection, none of which are to be incurred by the assembler in his sales to [redacted] There will be no sales of the textile apparel in the home market, nor will the finished apparel be sold to any other purchaser than [redacted] With respect to the character of the parties, [redacted] and the foreign assembler are not related parties within the meaning of section402(g)(2) of the Tariff Act of 1930, as amended. Each entity has its own Board of Directors, officers, and paid employees. None of the directors and officers of one corporation are directors or officers of the other. There is no common stock ownership or blood relation between the principals of either corporation. [redacted] and the foreign

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assembler independently own their own equipment and land and buildings; each maintains a separate financial system including its own set of books, bank accounts and accounts payable and receivable, and each pays its own bills and appropriate taxes. With respect to the elements of the transaction, each shipment of components and finished apparel will be accompanied by a commercial invoice issued by the appropriate supplier (in the case of apparel, the foreign assembler). Title will pass on the components, CIF foreign port of importation, and on the finished apparel FOB foreign port of exportation. Orders will be placed by letter or telex and payment will be made either in kind and/or in cash. Specifically, [redacted] will pay for assembled articles by its shipment of components plus cash, while the foreign assembler will pay for components by its shipment of assembled articles.

With respect to the determination of the price, the sales price of the completed garment will be set exclusively by the foreign assembler. This price will be calculated on the sum of the cost of materials, the cost of labor, general expenses and profit, plus the cost of export packing. The profit percentage will be determined soley by the foreign assembler. The amount of this percentage will be set up by competitive market forces between the respective purchaser and seller. The cost of material will also include all appropriate costs incidental to shipment of the American components to the assembler's facility in the Carribean.

541581

With respect to the prospective importation, under item 807.00, TSUS outlined above, it is your contention that [redacted] and its assembler are engaged in bona fide sales, and that the sales prices of the assembled articles from the assembler to [redacted] fairly reflect the market value, and, therefore, represent export value under sections 402(b) and 402(f)(1)(B), Tariff Act of 1930, as amended.

The correspondence indicates that [redacted] and the foreign assembler are separate legal entities, that they are governed by different boards of directors and officers, that each maintains its own books and accounts, that title to the American components will pass to the foreign assembler, CIF, foreign port of exportation, and that the sales prices of the assembled articles will be determined by the foreign assembler based on competive market forces between the purchaser and seller. Under the circumstances described, we are of the opinion that the prospective transaction is one where [redacted] will sell its components to the foreign assembler and will purchase back the assembled articles

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from the assembler. From the information furnished it appears that the price to be paid by [redacted] to the foreign assembler will fairly reflect the market value and that price should be taken as export value and used for the appraisement of the merchandise.

We note, however, that this discussion is advisory in nature and that the actual determination as to whether or not the price of the articles to be imported by [redacted] will in fact fairly reflect the market value is an appraisement issue which will be decided by an appraising officer when the merchandise is presented for entry.

Sincerely yours,

Thomas L. Lobel

for Salvatore E. Caramagno
Director
Classification & Value Division

541581

[redacted]

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CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE (INSTRUCTIONS ON REVERSE) Form 100 (11-15-73)

THIS DOCUMENT HAS BEEN RELEASED TO THE PUBLIC

CLA-2 RRUCV
542220 MK
Your file:
DAIMARU/083
TAA# 15

DEC 24 1980

542220

[redacted]

Dear [redacted]

This refers to your letter of September 8, 1980, inquiring about the dutiable status of a prototype under the Trade Agreements Act of 1979 (TAA).

You ask whether, under the statutory definition of the term "assist" a prototype sample developed entirely by the buyer in his research and development department in the United States, and furnished to the foreign manufacturer without cost, would be dutiable under the TAA. You explain that the prototype is simply a pattern or template followed by the manufacturer in producing the finished product.

The term "assist" is defind in 19 U.S.C. 402(h)(1)(A). Subsection (iv) of that provision relates to certain "engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States...."

Engineering and development undertaken in the United States are excluded from the definition of "Assist," and are not dutiable. A prototype developed entirely in the United States, by the United States buyer or his employees, and used as a pattern or template will not be treated as a dutiable assist under the cited statutory definition of the term.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

ES

[redacted]

JUN 22 1981

CLA-2 CO:R:CV:V
542324 DLS
TAA# 33

542324

District Director of Customs
Honolulu, Hawaii 96806

Director, Classification and Value Division

Request for Internal Advice No. 169/80; Dutiable Status of U.S.-Produced Pattern Generator Tapes Under Section 402 of The Tariff Act of 1930, As Amended by the Trade Agreements Act of 1979 (TAA)

This is in reference to your memorandum dated August 29, 1980, requesting our opinion with regard to the above-captioned matter. In addition to this issue, the importer has presented a number of other questions for our consideration which we will address. Since New York has submitted their views in connection with this matter, we will refer to their position before ruling on each issue. Our response in each case assumes the merchandise was exported on or after July 1, 1980.

ISSUE No. 1:

Whether a pattern generator tape produced in the United States and furnished free of charge by the importer to several foreign manufacturers is an assist under the TAA.

FACTS:

The subject item is an ordinary one-half inch magnetic tape that contains instructions meaningful to a pattern generator machine which is used to fabricate a photomask. The photomask manufacturer uses the tape to layout and print the desired circuit pattern onto blank photomasks. A sequence of steps or developmental stages, undertaken in the United States, precedes the generation of the tape. The steps are as follows:

E6

1. Integrated circuit definition
2. Integrated circuit logical design
3. Integrated circuit electrical design
4. Integrated circuit topological layout from electrical schematic
5. Digitizing of integrated circuit topological layout
6. Correction of digitized data
7. Conversion of digitized data to D. W. Mann 3000 pattern generator data
8. Revision of D. W. Mann 3000 pattern generator data to fit vendor's photomask manufacturing process

The importer advises that a visual printout of the information contained on a pattern generator tape would consist of numbers separated by semi-colons and associated with these numbers would be letters such as "X", "Y", "W", "H", and "A". The "X" and "Y" letters represent the X and Y coordinates for the numbers. "W" represents the width of exposure, "H" represents the height of exposure, and "A", when appropriate, specifies the angle of exposure. Width, height, and angle of exposure refers to the control for the slit of a D.W. Mann pattern generator through which light shines to expose a sensitized surface in the process of creating a photomask. These numbers and letters define rectangular areas -- their size and location. That is, they determine the dimensions for the opaque areas to be produced on a glass surface and are detected by the foreign vendor's equipment from the tape and used to control a D. W. Mann pattern generator in the process of producing photomasks. The numbers and letters are the result of digitizing a topological layout which, in turn, is the result of circuit design and schematic drawings.

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The importer regards the tape as equivalent to the dimensional specifications of the drawings for the desired integrated circuit. He argues that the tape does not perform "immediate functions" as would a tool and similar items which are involved in giving shape, form, and physical characteristics to imported merchandise. Rather, the importer contends that a pattern generator tape constitutes a drawing in digital data form in which the data are detected and used with a vendor's "tools" to produce the imported merchandise. Therefore, he is of the opinion that the tape is not an assist under the TAA, since the "drawing" is produced within the United States. See section 402(b)(1)(A)(iv).

On the other hand, our New York office is of the opinion that the tape is a tool as described in section 402(a)(1)(A)(ii), and therefore is dutiable as an assist. Headquarters Ruling Letter 055104, dated October 13, 1978, is cited in support of this position.

LAW AND ANALYSIS:

Section 402(a)(1)(A) provides that the term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

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(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise. (Emphasis added).

In our opinion, neither subparagraph (i) nor subparagraph (iii) is applicable to the subject tape. Nor is subparagraph (iv) applicable, since the item is produced within the United States. Therefore, to be an assist under the TAA, the tape must fall within subparagraph (ii), i.e., "Tools, dies, molds, and similar items used in the production of the imported merchandise."

In Headquarters Ruling Letter 055194, dated October 13, 1978, involving appraisement of certain merchandise under the predecessor statute to the TAA, we held that the same pattern generator tape was an assist. Since the TAA has radically altered the law dealing with assists, that ruling is inapplicable to the instant case. In the course of that opinion, however, we stated that the tapes were "...essential, functional and integral tools necessary to the production of the (imported) photomasks." (Emphasis added). We did not define what the term "tool" represented, nor was it necessary to do so for the purposes of that ruling.

RESPONSE TO THE

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In Headquarters Ruling Letter 065209, dated July 25, 1980, we stated that "The term 'design' is used here in its ordinary meaning as being to conceive and execute shapes, figures, and lines in an arrangement one to the other so as to result in a visual impression readily distinguishable from any other arrangement of shapes, figures, or lines." The Random House Dictionary of the English Language, Unabridged, (Copyright 1973), provides that a tool is "1. An implement, especially one held in the hand, for performing or facilitating mechanical operations, as a hammer, saw, file, etc."

Determination:

After consultation with the Technical Services Division, Headquarters, and after careful consideration, we find the tapes to be in the nature of design work, rather than tooling, primarily because the tape itself is a drawing in digital data which represents specifications which are furnished the manufacturer solely to obtain the desired dimensions of the photomask. In our prior ruling, the reference to "tools" was not used in a literal sense, nor was it intended to construe any statutory term or phrase. Accordingly, we do not find our general description of the tape in that case, decided under the predecessor statute, to be relevant.

Thus, since the work involved is performed within the United States, section 402(h)(i)(A)(iv) is inapplicable; nor do the tapes fall within

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any of the other assist categories. Under the circumstances, we find that the pattern generator tapes are not assists within the meaning of section 402(h)(i)(A), TAA.

ISSUE No. 2

The importer pays $30,000 for various changes to producer A's processes to produce slices with MOS chips. The importer proposes to add the $30,000 to one entry where the slices have been brought into the United States, through the port of Honolulu.

New York

This proposal is acceptable.

LAW AND ANALYSIS:

Section 152.105(e) of the Customs Regulations provides the following:

> The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer. If the entire anticipated production using the assist is for exportation to the United States, the total value may be apportioned over (i) the first shipment, if the importer wishes to pay duty on the entire value at once (ii) the number of units produced up to the time of the first shipment, or (iii) the entire anticipated production. In addition to these three methods, the importer may request some other method of apportionment in accordance

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with generally accepted accounting principles. If the anticipated production is only partially for exportation to the United States, or if the assist is used in several countries, the method of apportionment will depend upon the documentation submitted by the importer.

Determination

The importer may apportion the total value of the assists over the first shipment. (We are assuming for these purposes that the particular items involved, which are not described, and which were acquired with the $30,000 furnished by the importer, are assists under the TAA).

Issue No. 3

This issue, relating to the value of the pattern generator tapes as an assist (Point 2 of New York's memorandum), is relevant only if we treat the tapes accordingly. Since the tapes do not fall within any of the various assist categories (see discussion, above) the issue is moot.

Issue No.4

The importer proposes that photomasks furnished by him be valued as follows: 1) If purchased, the item will be valued at the amount paid to the vendor; 2) If produced by him the photomasks will be valued at the cost of the material, plus labor with an addition for overhead costs (The photomasks are dutiable assists under section 402(h)(1)(A)(i), TAA).

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New York

Agrees with the importer as regards the value if acquired by purchase, however, that office believes the importer should add a profit to the materials, labor and overhead costs where photomasks are produced by him.

LAW AND ANALYSIS:

The Statement of Administrative Action adopted by Congress in connection with the TAA and section 152.103(d)(2), Customs Regulations, provide that if the assist consists of tools, dies, molds, or similar items used in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is its cost of acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. Accordingly, the value of an assist produced by the buyer or a person related to the buyer is limited to the cost of producing that assists. Profit is not a cost and should not be added to the value of the assist.

Determination

An amount for profit should not be added to the value of the assist furnished by the importer.

Issue No. 5

The importer proposes to accumulate the costs of the technical advisors' trips made to the manufacturer including travel and appropriate amounts for salaries of personnel involved. (From the importer's description it does not appear that any of these visits were incidental

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to other engineering, development, artwork, etc., that were undertaken within the United States). These costs will be allocated to the manufacturer based on the time spent in assisting them with the production of the CMOS slices.

New York

Agrees with this proposed treatment.

Determination

These activities are nondutiable because they do not fall within any definition of assist. It is irrelevant whether or not the activity is incidental to other engineering, development, artwork, etc., that was undertaken within the United States (See TAA No. 32, question No. 2, copy attached).

Issue No. 6

The slices produced by one of the foreign manufacturers are brought to the United States, where they are analyzed, problems identified, and solutions determined. This information is then communicated to the manufacturer. In some instances, the slices are scribed and broken into individual chips, assembled into completed devices and then analyzed.

The importer proposes to determine the costs of the technical analysis of the slices in the United States by using a standard rate and applying that rate to an estimate of the time spent in analyzing slices from the manufacturer. The rate used would include labor, material and overhead.

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New York

That office is of the opinion that this technical analysis would not be considered an assist if performed by an individual who is domiciled in the United States while he is acting as an employee or agent of the buyer of the imported merchandise. If this analysis is not performed by an employee or agent of the manufacturer while domiciled in the United States, New York believes that the importer's proposed valuation is acceptable.

Determination

We are in agreement with New York's analysis as well as the importer's method of costing the assist, if an assist is in fact involved.

Issue No. 7

The importer would identify the test equipment and parts supplied to one of the foreign manufacturers at less than full cost or at no charge. He proposes to determine the cost of these articles in the following manner: If produced by the importer, these articles would be valued at the sum of the materials, labor and overhead required to produce the articles; if purchased, the articles would be valued at the amount paid to the vendor plus purchasing, hauling, storage and inspection type expenses and freight costs for transporting the test equipment to the manufacturer. The importer believes that development costs for the test equipment should be treated in accordance with the principle stated

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in United States v. Border Brokerage Company, Inc., A.R.D. 288 (1971). Under this principle, the cost of development is to be allocated among the number of units definitely produced. Thus, the importer proposes that the development costs be allocated among the number of testers to be produced and a proportional amount be allocated to the test equipment supplied to the manufacturer.

New York

This proposal is acceptable except that -

1) The importer may allocate these costs over the number of pieces expected to be produced as outlined in Oxford University Press v. United States, 36 CCPA 102, C.A.D. 405 (1949); 2) a profit should be added to the value of these articles produced by the importer.

Determination

Section 152.102(e), TAA, provides for the apportionment of the value of assists. If apportioned in a reasonable manner and in accordance with generally accepted accounting principles, the importer's method of allocating the value of the assist will be acceptable. In accordance with our holding, above, profit is not to be added to the value of the assist produced by the importer.

Issue No. 8

The importer proposes to add a factor of 1.37 percent to the value of the merchandise produced by one of the manufacturers, representing the cost of engineering and development. This percentage is an estimate based on applying to the value of the net sales

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billed the average royalty rate experienced by the importer in license agreements granted and entered into with respect to technology applicable to the class or kind of merchandise involved.

New York

The amount for engineering and development would not be an assist if performed by an individual who is domiciled in the United States while he is acting as an employee or agent of the buyer of the imported merchandise. (See section 402(h)(1)(B)).

Determination

If the engineering, development, etc., is performed within the United States, that activity would not be an assist, since only work of that nature performed outside of the United States is considered to be an assist. Section 402(h)(1)(A)(iv). Otherwise, we agree that the method as proposed is acceptable.

Issue No. 9

The importer reimburses one of the manufacturers for the cost of its engineers, transportation, etc., to come to the United States and learn the operation of the test equipment. He proposes that the value of such assists be the amount of such reimbursement.

New York

That office is in agreement with this proposed treatment.

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Determination

Under section 402(h)(1)(A)(iv), TAA, "Engineering, development, artwork, etc...." undertaken elsewhere than in the United States is a dutiable assist. We agree with New York that such training and transportation is part of the value of this assist. The amount paid by the importer reimbursing the manufacturer for such cost represents the value of the assist.

Issue No. 10

In the case of the second manufacturer involved, the importer contends that there should not be added any amount for R&D because this producer possessed the ability to produce the CMOS chips without any help from the importer.

New York

The importer has advised by teletype that the R&D referred to is very basic R&D that he cannot allocate to any merchandise. R&D concerned with design of chips for specific articles such as computers, calculators, television apparatus and other such items are allocated to those articles. Likewise, R&D performed to improve technology is also allocated to specific merchandise.

Determination

Under the TAA, such R&D would not be an assist if undertaken within the United States. (Section 402(h)(1)(A)(iv)). Further, R&D undertaken elsewhere than in the United States would be an assist only if necessary for the production of the imported merchandise. (Section 402(b)(1)(A)(iv)).

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Prior Law

For merchandise exported before July 1, 1980, R&D performed by the importer within the United States, if necessary for the production of the imported merchandise, is dutiable as an assist. (See, for example, Ford Motor Company v. United States, 29 Cust. Ct. 553, A.R.D. 9 (1952), and Headquarters Letter Rulings 400255 and 541511, dated January 18 and December 8, 1977, respectively.)

(Signed) Harvey B. Fox

Harvey Fox

Attachment

[redacted]

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

APR 03 1981

CLA-2:CO:R:CV:V
542325 TEL
TAA 123

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[redacted]

Dear [redacted]

This is in reply to your letter dated December 3, 1980, requesting a ruling that certain design costs are not "assists" for purposes of either "transaction value" or "computed value" under section 402(h)(1)(A) of the Tariff Act of 1930, amended by the Trade Agreements Act of 1979 (TAA). The specific design costs which you are concerned about occur in the United States and are the following:

DESIGN DEPARTMENT EXPENSES

Designer's Salaries
Sample Hand Salaries
Rent and Depreciation Charges
Design Coordinator's Salaries
Pattern Maker's Salaries
Design Pension
Design Director's Salary
Model Fees
Telephone Charges
Travel Expenses
Office Supply Expenses
Equipment Repair
Rent on Equipment
Finish Samples

As you know, section 402(h)(1)(A) of the TAA provides:

(1)(A) The term 'assist' means any of the following if supplied directly or indirectly, and free of charge or at a reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

"(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

"(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

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"(iii) Merchandise consumed in the production of the imported merchandise.

"(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

Since we have assumed for purposes of this response that the design expenses are undertaken within the United States, it can be said that the design expenses would not be considered "assists" for purposes of section 402(n)(1)(A), in considering both transaction value and computed value.

In so stating, however, your attention is directed to section 402(g)(3) of TAA which provides:

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term 'generally accepted accounting principles' refers to any generally recognized consensus or substantial authoritative support regarding--

"(A) which economic resources and obligations should be recorded as assests and liabilities;

"(B) which changes in assests and liabilities should be recorded;

"(C) how the assests and liabilities and changes in them should be measured;

"(D) what information should be disclosed and how it should be disclosed; and

"(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

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U.S. Customs Service interprets the first sentence of this provision as being a bar on Customs telling an importer, buyer, or producer how to keep its books. This is, in our opinion, in accordance with the legislative history. See for example, page 56 of the House of Representatives Report of the Committee on Ways and Means to Accompany H.R. 4537, wherein it is stated;...

> the intent is to allow the importer, buyer, or producer to prepare his figures in any one of a variety of acceptable methods, and Customs will not reject the manner in which such information is organized, so long as the preparation and methods are in accordance with generally accepted accounting principles.

Accordingly, we cannot categorically state that design expenses are not dutiable for purposes of computed value. What we can state, however, is that in those cases where such design costs are not carried on the producer's books as either a cost or value of materials and or fabrication or as a general expense and such treatment is in accordance with generally accepted accounting principles, then such costs would not be part of computed value.

With regard to your comments concerning the furnishing of non-dutiable cost information to Customs, we would address your attention to the last paragraph on page 3 of TAA #4, in which it is stated:

> Insofar as the continued reporting of these costs to Customs is concerned, Customs does not intend to burden importers with the requirement of submitting unnecessary cost information, so that it is not our present intention to require cost information relating to those items listed in paragraph number 1 of your letter. This of course is to be distinguished from those situations in which Customs has a legitimate interest in learning the duty consequences of the particular transaction under scrutiny. For instance, when the question of 402(n)(1)(4)(iv) arises, Customs should be advised that certain "engineering," development," "artwork,", etc., was undertaken within the United States and is

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therefore, not to be added to the price actually paid or payable.

Sincerely,

(Signed) Irving W. Smith, Jr.

Harvey B. Fox
Director
Classification and Value Division

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

APR 03 1981

542355 BLS
RA #21

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District Director
Seattle, Washington

Director, Classification and Value Division
Office of Regulations & Rulings

Request for Internal Advice No. 214/80;
Value of Metal Stamper

The issue in the case is whether a metal "stamper" used to press a record is a tool, die, mold or similar item under The Trade Agreements Act of 1979 (TAA); and if so, what are the elements of cost which comprise the value of the assist?

The importer is involved in the production of 33 1/3 r.p.m stereo records. It contracts with recording artists, hires musicians, the recording studio and the various technicians necessary to produce a digital recording (tape) of the sessions. From the tape is produced a master lacquer which is then plated to make the metal master from which is made the mother and from which is made the stamper. The stamper is then used, one for each side of the record, to stamp out the vinyl records which are the product which is imported and sold at the retail level.

The whole process described above is, in this case, done in the United States up to and including the production of the stampers. The stampers are exported to the manufacturer in Japan to be sent to the importer in dust covers but without record jackets. The invoiced price of the records represents only the charge for the materials, labor, and profit of the manufacturer.

Under section 402(h)(1)(A), TAA, the term "assist" means certain enumerated items if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise. Included among the listed items are "tools, dies, molds, and similar items used in the production of the imported merchandise."

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It is clear from the description and function of the metal stamper that its use is analagous to that of a mold and that without it the records as imported could not be produced. Accordingly, we find that the metal stamper is in the nature of a mold or similar item used in the production of the imported merchandise, and therefore is a dutiable assist.

The second issue is the value of the assist. The importer has advised that the following costs were incurred to produce the metal stamper: 1) Musicians and Arrangements - $6,100; 2) Rehearsal Pay - $ 1,000; 3) Rehearsal Hall Rent - $450; 4) Agency Fee - $350; 5) Studio Cost - $3,500; 6) Digital Recorder - $4,000; 7) Engineer - $1,000; 8) Cartage - $100; 9) Mastering - $800; 10) Plating - $1,500; and 11) Producer - $8,000. The total cost is $28,800.

Section 152.103(d)(2) of the Customs Regulations provides that the value of an assist in the nature of a tool, die, mold, or similar item, is its cost of production if produced by the buyer (or the merchandise) or a person related to the buyer. Accordingly, the value of an assist in this situation will be the cost of producing the assist as reflected on the books of the producer of the assist, so long as the records have been maintained in accordance with generally accepted accounting principles (GAAP).

In this case, the stamper could not have been brought to its completed condition without the particular music contained thereon. Without the music, the metal stamper would have been a plain stamper which could not be used in that condition in the manufacture of the imported phonograph records. Therefore, as these costs appear to be directly related to the production of the assist, in the absence of a showing to the contrary, we believe that the application of GAAP requires them to be included in the cost of producing the assist.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY

542355.

JUL 21 1981

CLA-2:RR:CV
542519 TLL

TAA# 35

District Director of Customs
Detroit, Michigan 48226

Dear Sir:

This is in reply to a memorandum from your Director of Classification and Value Division dated June 17, 1981, concerning the amortization of assists.

Specifically, your office is concerned about the possibility of an importer amortizing the value of an assist for a given automotive part on a duty free entry. This question arises because vast numbers of vehicle parts are entered at Detroit under the Automotive Products Trade Act of 1965 (APTA) duty free. Parts may be entered free of duty under the APTA if, among other requirements, they are intended for use in the U.S. in the manufacture of motor-vehicles as defined in the Act. Parts not so intended, are dutiable. Therefore, it is a very common occurrence for a particular vehicle part to be entered duty free on one entry, and dutiable on the next. Further, parts entered duty free under the APTA, but diverted to use other than in the manufacture of motor-vehicles subsequent to importation, are to be reported to Customs and duty paid at the time of diversion.

You are concerned because of the possibility that based on previous rulings the importer could amortize all assists for a given part on a duty free entry. Then on subsequent dutiable entries no duties on the assists would be collected. Your office feels this is contrary to the legislative intent of both the Tariff Act of 1930 and the Trade Agreements Act of 1979, since the primary reason for a legal appraisement is so that merchandise subject to an ad valorem rate of duty would have the proper duties levied thereon. To collect duties on assists on some merchandise but not on other merchandise presents an anomaly in the law which the court in C.A.D. 109 did not contemplate.

Your present method requires that each importer, when he submits his assist data for a part, also submits an index volume for the part. This is the estimated service usage, and the estimated production usage (usage in the manufacture in the U.S. auto vehicles). This index volume is based on historic usage of similar parts and statistical models. Your office makes the projected service volume as a percentage of the total anticipated volume (usually 1% to 5%), applies it to the value of the assist, and amortizes this portion on one dutiable entry. This method of amortization, although correct,

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appears to reasonably protect the revenue and at the same time fulfill the intent of the law. You feel this method should be continued.

In response to your inquiry, we agree with your conclusion that section 402, as amended by the Trade Agreements Act of 1979 (19U), does not contemplate apportioning the value of assist on a duty free importation. In this connection, the particular portion of the Statement of Administrative Action concerning the apportioning of assists, specifically approved by Congress, is quite relevant. Therein, it stated (See page 54 of the U.S. Customs Service Blue Book entitled Customs Valuation).

> Once a value has been determined for the assists described above, it is necessary to apportion that value to the imported merchandise. The apportionment of these elements will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment used will depend on the detail in the documentation provided by the importer to substantiate his requested method. For example, if the entire anticipated production using the assist is destined for exportation to the United States, the value might be apportioned over the first shipment if the importer wished to pay duty on the entire value at one time, over the number of units produced up to the time of the first shipment, or over the entire anticipated production. If the anticipated production using the assist is only partially destined for the United States, or if the assist is used in several countries, the method of apportionment to be used will depend upon the documentation provided by the importer to substantiate the requested method. Various possibilities for apportionment that are in accordance with generally accepted accounting principles exist. (emphasis added)

In our view the underlined clearly indicates, as we do rule, that there is no authority under the law to apportion the value of an assist on the first duty free entry. Of course, authority exists under the law to apportion the value of the assist on the first dutiable entry or any other method in accordance with generally accepted accounting principles.

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In this regard, there is no authority under the TAA to require the importer, although he may so elect, to use the so-called "index volume" previously mentioned.

Sincerely,

(Signed) **Harvey B. Fox**

[redacted]

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEC 8 1981

CLA-2 CO:R:CV:G:V
542595 BLS

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Director, Classification and Value Division
Miami, Florida 33131

Re: Application for Further Review of Jacksonville Protest No. 1803-1-000011, [redacted]

Dear Sir:

This is in reference to the above-captioned matter, involving the importation of 30,000 electronic hand-held football games. The issues are as follows: (1) Whether the internal sale between the Hong Kong manufacturers and [redacted] is the sale for exportation to the United States for purposes of determining statutory export value; (2) Whether export value may be established by a lower wholesale quantity price of such or similar merchandise reflected by the manufacturer's sales to others for exportation to the United States during the period in question.

With regard to the first issue, the protestant points out the following: (1) The marks and numbers reflected on the invoices executed between [redacted] and the Hong Kong manufacturers were the same marks and numbers that were on cases of merchandise imported by [redacted], the importer [redacted] (2) The goods manufactured for [redacted] were packed in boxes marked with the model number plus [redacted]" and the Tampa address; (3) The payment terms of the transferable letter of credit transferred to the Hong Kong manufacturer indicated that payment was to be made at sight after the presentation of certain documents, among which were a Special Customs Invoice, and an on board bill of lading or airway bill showing consignment to [redacted] in Tampa; (4) [redacted] does not manufacture merchandise itself nor does it maintai ny inventory for sale; (5) The items were all marked by the manufacturer in English with the words "Made in Hong Kong" to comply with U.S. Customs marking requirements.

It is settled law that for statutory export value purposes a sale for exportation to the United States may be between a buyer and a seller within a foreign country. See R. J. Saunders & Co., Inc. v. United States, 42 CCPA 55, C.A.D. 570 (1954), and United States v. Getz Bros. & Co., 55 CCPA 11, C.A.D. 927 (1967). However, for an internal transaction to be considered a sale for exportation within the meaning of the statute, there must be an "effective control" ensuring that the merchandise will be exported to the United States. See Getz, supra.

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In Saunders, (decided under the old law) the Canadian manufacturer sold canned meat paste to its Canadian subsidiary who in turn sold the merchandise to the American importer. The manufacturer also sold the identical product to two Canadian firms, under the condition that these companies could not sell it for export. The merchandise was shipped direct from the manufacturer to the ultimate U.S. consignees. While the court found that the value of the merchandise reflected a proper export value, foreign value was used as the basis of appraisement since it was the higher price.

In Getz, the court found that the sale for exportation to the United States (under export value) was the internal sale between the plywood manufacturer and the Japanese trading house. There were a number of factors present in that case which convinced the court that the plywood was irrevocably destined for exportation to the United States. Among these factors were the following: (1) Most if not all of the plywood was sold to an American importer before it was manufactured; (2) The trading houses never placed orders with the mills until they received purchase orders from the U.S. importers; (3) The crates and panels were marked at mills with the U.S. importer's brand; (4) All of the mills sold the plywood f.o.b. Japanese port price; (5) There was a lack of domestic demand (in Japan) for the type of merchandise involved; (6) The mills making plywood for exportation had a production quota, while mills making plywood for domestic consumption had no such quota; (7) The mills were required to know a particular order was for exportation since they had to obtain a clearance from the Japanese Government involving shipments for exportation.

It is our view that the facts in the instant case parallel in relevant respects the situations in Getz and Saunders. Therefore, and in accord with the recommendation of our Miami and New York offices, we believe that the "sale for exportation to the United States" is the internal sale between the Hong Kong manufacturer and [redacted] since the evidence establishes that at that time the merchandise was "irrevocably destined" for exportation to the United States. As a result, the sale price between the Hong Kong manufacturer and [redacted] should be used for purposes of determining statutory export value.

Protestant alleges that identical or similar merchandise produced by the same manufacturers has been shipped to other U.S. importers in substantial quantities at lower prices than those sold to [redacted] prior to or on the date of export of the instant shipments. Protestant believes that these sales may be in wholesale quantities and thus represent statutory export value. Several manufacturers and importers are named, and protestant requests that Customs verify this information.

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Our Miami office points out that the protestant did not submit any price or sales information to enable consideration of usual wholesale quantities. Therefore, they recommend denial of this claim. We agree with this suggested action.

Under the circumstances, you are directed to dispose of the protest consistent with the foregoing.

Sincerely,

(Signed) Irving W. Smith, Jr.

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

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MAR 0 5 1982

CLA-2 CO:R:CV:C
[illegible]

District Director of Customs
Los Angeles, California 90731

Director, Classification and Value Division

Request for Ruling by [redacted] Valuation of Assist

L99645

This is in reference to your memorandum dated October 29, 1981, regarding the above-captioned matter.

ISSUE:

Whether the value of an assist produced by the ultimate purchaser of imported merchandise and furnished to the foreign assembler through the importer shall include an element for profit.

FACTS:

A, the inquirer, has entered into a contract with B, the importer of record, for the assembly and testing of certain core memory panes. The actual assembly and test operations are performed by C, B's wholly owned subsidiary in Hong Kong.

In performing these tests and assembly operations, C uses components, materials and equipment furnished free of charge by A through B. A does not contest that these furnished items are assists within the meaning of Section 402(b)(1)(A), Trade Agreements Act of 1979 (TAA), and dutiable under the computed value basis of appraisement. Shipments from C to B are ordinarily appraised under computed value.

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While most of the assists are purchased by A from unrelated third parties, some of the furnished components and materials are manufactured in-house in A's facilities in the United States.

PROBLEM:

While there is no disagreement as to the value of the purchased assists, i.e., A's cost of acquisition, it is your opinion that the value of the assists produced by A is A's cost of production plus a normal profit. On the other hand, A believes that the value of the assists manufactured in-house should be limited to their cost of production, and should not include an additional element for profit.

LAW AND ANALYSIS:

The Statement of Administrative Action, 1979, provides that in determining the value of assists, such as materials, components, etc., the following is applicable: If the assist was acquired by the importer from an unrelated seller, the value of the assist is the cost of acquiring it. If the assist was produced by the importer or person related to him, its value would be the cost of producing it. The value of the assist would include transportation costs to the place of production. (Emphasis added.) See also Section 152.103(d)(1), Customs Regulations.

In either case, the value of the assist is limited to its cost. While the unrelated seller in the above situation presumably makes a profit on the sale of the assist to the importer, the total price paid, which includes the seller's profit, is the importer's cost. We see no difference, for purposes of satisfying the intent of the statute, whether

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it is a party other than the importer who produces and furnishes the assist. While in this instance the component is not produced by a "person related" to the importer, nor is there a cost of acquisition, statutory intent is nevertheless served by limiting the value of the assist to its cost of production. As we stated in TAA No. 33, dated June 22, 1981 (542324 DLS), "Profit is not a cost and it should not be added to the value of an assist."

512667

HOLDING:

The value of an assist produced by an unrelated ultimate purchaser of imported merchandise is limited to the purchaser's cost of production, in accordance with generally accepted accounting principles, where either the assist is furnished without cost through the importer to the foreign assembler, or is furnished directly to the assembler.

Furthermore, computed value cannot be disregarded as the proper basis of appraisement where sufficient information is available to establish the ultimate purchaser's cost of production for the subject assist.

(Signed) Irving W. Smith, Jr.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUL 20 1982

CLA-2-CO:R:CV:V
542873 IWS
TAA #44, Supplement #1

District Director of Customs
El Paso, Texas 79985

Director Classification & Value Division

TAA #44, Dutiability of Certain General Expenses
(IA 169/81, Control number 542658, LD82-0039)

542873

In reviewing TAA #44, it has come to our attention that there may be some confusion over the last paragraph of the ruling regarding the requirements of Section 402(e)(2)(B), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. Accordingly, please substitute the following paragraphs for the last paragraph of the ruling.

The question of whether the producer's profit and general expenses are consistent with the profit and general expenses usually reflected by producers in the country of exportation in sales of merchandise of the same class or kind is, of course, a question of fact which will vary depending on the particular point in issue. Our authority for rejecting figures relating to the producer's general expenses is clearly limited under section 402(e)(2)(B) of the TAA to those situations where such figures "are inconsistent with those usually reflected in sales of merchandise of the same class or kind (emphasis added)..." However, it may be entirely possible that certain expenses that heretofore may have been considered general expenses under previous law would continue to be treated as being dutiable under 402(e)(1)(B) if "usually reflected, ..." etc. For example, that portion of plant rental relating to the selling of merchandise of the same class or kind for exportation to the United States may properly be treated as being dutiable as "an amount" for profit and general expense if included in the producer's profit and general expenses.

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However, if the absence of such expense from the producer's general expenses results in that producer's profit and general expenses being "inconsistent with those usually reflected in sales of merchandise of the same general class or kind", the actual profit and general expenses of that producer should be rejected and the usual profit and general expenses substituted therefor. There is no authority under the law to adjust the producer's actual general expenses.

Harvey B. Fox

[redacted]

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	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
CODE AND DATE	[redacted]						
SURNAME							
	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
CODE AND DATE							
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DEPARTMENT OF THE TREASURY - U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

MAR 22 1983

CLA-2 CO:R:CV:V
542977 CW

Dear Sir:

Re: Application for Further Review of Protest No. 1001-1-007863

The above-referenced protest concerns the dutiability of a 5 percent "commission" and a 10 percent "handling charge" paid by the protestant (importer), Rosenthal-Netter, Inc., to Hongson Arts Company of Hong Kong in connection with the importation in 1979 of baskets and rattanware produced in the Peoples' Republic of China (hereinafter referred to as China). There is no dispute that the proper basis of appraisement is export value under section 402(b) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956.

The protestant maintains that the 5 percent commission is not dutiable as it represents a bona fide buying commission. In support of its contention, protestant has submitted a copy of a buying agency agreement which it entered into in 1976 with the Hong Kong company and which is alleged to be in effect today. The protestant states that its transactions with the purported buying agent normally involve visits by a representative of the importer to various factories in China, accompanied by a representative of the Hong Kong company. When the importer's representative finds an item to his liking, he and the Hong Kong representative enter into negotiations with the seller "until terms are agreed upon by the parties." At that time, the Hong Kong representative places an order in his name with the Chinese producer. Upon their return to Hong Kong, the representative of the alleged buying agent assists the importer's representative in making out a purchase order to the Hong Kong company for the same merchandise which was previously ordered from the manufacturer.

In regard to the handling charges, protestant advises that all articles purchased from various producers in China are forwarded to the Hong Kong company where the packages are opened and the contents are inspected to determine if they are in conformance with specifications. Broken and non-conforming articles are discarded and all articles which are to be forwarded to the United States are labeled with the proper country of origin, fumigated, consolidated and containerized. For these services, the importer and Hong Kong company have orally agreed that the latter should be paid a 10 percent handling charge. Protestant contends that these charges are not dutiable "under any theory of Customs law" since they are incurred after the goods leave the producers' premises and at the behest and for the account of the United States importer, not the seller. Protestant claims that the holdings in C.S.D. 82-53, dated October 7, 1981 (control No. 542516) and C.S.D. 82-157, dated August 6, 1982 (control No. 542875) are in support of its contention that the handling charges are not part of dutiable value.

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We note that between September of 1978 and May of 1981 the Customs Service conducted an investigation of the business relationship between the United States importer and the Hong Kong firm which resulted in the discovery that the former apparently had failed to declare the commissions and handling charges paid to the latter in connection with merchandise imported between 1976 and 1978. The completed Report of Investigation, dated May 6, 1981, indicates that the Hong Kong company in question was the seller of the imported merchandise and that, in fact, until June of 1978, United States companies could not purchase directly from China.

In the opinion of your office, the evidence establishes that the relationship between the United States importer and the Hong Kong company is that of buyer and seller rather than principal and agent and, as a result, the fees paid to the purported agent are dutiable as part of the total price paid for the merchandise.

Concerning C.S.D. 82-53 and 82-157, we believe that neither decision is applicable to the case under consideration here. First, these decisions involved a construction of the new valuation statute established by the Trade Agreements of 1979, while the prior valuation statute is controlling with respect to the instant case. Secondly, the above-cited decisions generally relate to a situation in which merchandise, purchased by a United States importer directly from a foreign manufacturer, is transshiped through a third country, although the country of manufacture is deemed to be the country of exportation. In contrast to that situation, the merchandise in the case before us is not purchased directly by the United States importer from the foreign producer and the intermediate country, not the country of origin, clearly is the country of exportation.

It is well established in Customs jurisprudence that no single factor is determinative in establishing the existence of bona fide buying agency relationship. The existence of such a relationship must be ascertained by examining all relevant factors and each case is governed by its own particular facts. The commissionaire performs the duties of an agent acting on behalf of its principal, the buyer: it may not act as an independent seller, nor as a representative of the manufacturer. United States v. Manhantan Novelty Corporation, 63 Cust. Ct. 699, A.R.D. 263 (1969). Where the relationship between the parties is that of buyer and seller rather than principal and agent, an item claimed to be a "buying commission" is not deductible from export value. B & W Wholesale Co., Inc. v. United States, 58 CCPA 92, C.A.D. 1010 (1971).

Although the evidence of record is conflicting as to the precise relationship between the importer and the Hong Kong company, we believe that, on balance, the evidence support a finding that the Hong Kong company was an independent seller of the subject merchandise. On the one hand, while the Court of International Trade has viewed a written buying agency agreement as tending to support the existence of a buying agency relationship (see

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Dorco Imports v. United States, 67 Cust. Ct. 503, R.D. 11753 (1971)), such an agreement clearly is not sufficient, by itself, to prove that a commission paid by an importer constitutes a bona fide buying commission. In our view, the written agreement in question should not be accorded substantial evidentiary weight since at the time the agreement was entered into in 1976 United States companies were not permitted to purchased directly from companies in China. Thus, during that period, in order to acquire rattanware from Chinese producers, the importer had no alternative but to purchase from or through a third party. In this regard, it has been held that a buying agency relationship is indicated where a buyer could have dealt directly with the manufacturer but chose to seek the assistance of an intervening party. United States v. Alfred Kohlberg, Inc., 27 CCPA 223, C.A.D 88 (1940). Although at the time the merchandise subject to this protest was exported to the United States (1979), United States companies apparently could purchase directly from China, protestant has furnished no evidence nor made any claim that it, in fact, could have purchased directly from the Chinese manufacturers of this merchandise.

A consideration in support of the protest is protestant's contention, corroborated by the Report of Investigation, that a representative of the United States importer frequently accompanied a representative of the Hong Kong company to various factories in China and entered into negotiations with the manufacturers. The fact that an importer actually visited factories and participated in negotiations with the factory has been cited by the Court of International Trade as evidence of a buying agency relationship. United States v. Gitken Co., 46 Cust. Ct. 788, A.R.D. 132 (1961).

On the other hand, there is evidence that the Hong Kong firm received discounts from the Chinese suppliers which were not passed on to the United States importer. The fact that articles were sold to the Hong Kong company at lower unit prices than the unit prices which were charged by that firm to the United States importer for the same merchandise is a strong indication that the Hong Kong firm bought and sold for its own account. Additional evidence of this is found in the Report of Investigation which states that, on occasion, the United States importer has cancelled orders with the Hong Kong company after the latter firm has placed orders with Chinese producers, thereby leaving the Hong Kong company "with large inventories of merchandise." In our view, these actions are more indicative of a relationship between a buyer and seller than between a buyer and its buying agent.

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In view of the foregoing, we find that the protestant has failed to establish by satisfactory competent proof that the amounts which it paid to the Hong Kong company represented fees paid to a bona fide buying agent, and that, therefore, both the "commission" and the "handling charge" were properly included in export value.

You are directed to deny the protest in full. Your file is returned.

Sincerely,

(Signed) Irving H. Smith, Jr.

Harvey B. Fox
Director, Classification
and Value Division

Area Director of Customs
New York, New York 10048

Enclosure

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MAR 20 1985

CLA-2 CO:R:CV:V
543463 MK

District Director of Customs
Miami, Florida 33131

Dear Sir:

Re: Application for Further Review of Protest No. 5201-4-000255, dated May 8, 1984

This protest was filed against your appraisement of several shipments of "grey" or "parallel" market Rolex watches. Transaction value is the agreed-upon basis of appraisement, at the price actually paid. However, the importer (Big Ben Corporation, Miami) contends that the duty computation should be based on the transaction value given for the separate parts of the watches as presented in the commercial or pro forma invoices, whereas you based your appraisement on the values contained in the Rolex, Switzerland, export price list.

The National Import Specialist advises that watches are dutiable under item 715.05, TSUS, at the rates applicable to the watch case, plus the rates applicable to the watch movements, as if such cases and movements had been imported separately. Additionally, the 18-K gold watch bracelets are separately dutiable under item 740.14, TSUS.

According to the National Import Specialist, the importer has provided value breakdowns that are erroneous in that they greatly exaggerate the value of the watch movements that are dutiable at a specific rate, which rate is independent of value. At the same time, the importer's breakdown minimizes the values on the watch cases and watch bracelets, which are dutiable at a compound rate (720.20), and an ad valorem rate (740.14), respectively. In doing so, the importer has minimized the duties.

The National Import Specialist also notes that classification is not at issue. The importer is objecting to the value breakdowns you used. He stresses that there is no change in the transaction value for the numerous Rolex watches entered by this and other importers over many entries.

He states that the appraisements are based on sufficient information - the value breakdowns provided in the Rolex, Switzerland, export price list, from which can be established the percentage of the total value for any given Rolex watch that is borne by the watch movement, case, and bracelet.

For example, for the Rolex 1803.8/8385.8 watch reported by your office on your CF 6431 of March 25, 1983, the importer provided a value breakdown which is 40 percent ($1,280) for the watch movements, 30 percent

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($960) for the watch cases, and 30 percent ($960) for the watch bracelet. Based on the information available in the Rolex price list, the watch movement was appraised at $288 (9 percent), the watch case at $960 (30 percent, and the watch bracelet at $1952 (61 percent). The transaction value ($3200) for this watch was unchanged.

The National Import Specialist agrees with the breakdowns you used. We too agree that the Rolex export price list is the best source for determining the costs of the movement, case, and bracelet relative to each other, for any given model number.

Under the circumstances, you are directed to deny the protest in full. Please send the importer a copy of this decision with your notice of action on the protest. Your file is returned herewith.

Sincerely,

(Signed) Harvey B. Fox
Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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PUBLIC _____

543463

DATE: AUG 5 1985

FILE: CLA-2 CO:R:CV:V
543464 CW

TO : Chief, Entry, Licensing and Restricted Merchandise Branch

FROM : Director, Classification and Value Division

SUBJECT: Application for Further Review of Protest No. 1502-3-000001

The above-referenced protest, filed by the Washington International Insurance Company, a surety company, concerns the issuance of a formal demand on surety for payment of additional duties relating to certain jewelry imported from Italy by Mr. Nathan Shaffir, President of Acronite Corporation. Mr. Shaffir has been indicted in connection with the alleged undervaluation of the subject jewelry.

The protestant raises a number of issues, most of which appear to be the responsiblity of your office. Please include the following language concerning the valuation issue in your direct response to the District Director of Customs, Wilmington, North Carolina:

> The subject merchandise was appraised by the import specialist at the port of entry, Winston Salem, North Carolina, based on the closing price of gold on the London Gold Market on the date of purchase of the imported merchandise. The protestant contends that the "merchandise should have been appraised at the invoiced unit values or at values less than the liquidated values in accordance with the appropriate appraisement statutes and regulations."
>
> In our opinion, the method used by the import specialist in appraising the subject jewelry is appropriate and in accordance with section 402(f) of of the TAA. Section 402(f) provides that if the value of imported merchandise cannot be determined under the bases of appraisement provided for in subsections 402(b) through (e) of the TAA, the merchandise shall be

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appraised on the basis of a value that is derived from the methods set forth in such subsection, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

The protest file is attached.

(Signed) Harvey B. Fox

Harvey B. Fox

Attachments

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DATE: 02 MAY 1985

FILE: CLA-2 CO:R:CV:V
543501 MK

TO : Area Director of Customs
J.F.K. Airport
Jamaica, New York 11430

FROM : Director, Classification and Value Division

SUBJECT: Dutiability of Warehousing and Insurance Charges; I.A. 6/85

This refers to your memorandum of December 14, 1984, with attachments, including a request for Internal Advice from counsel for Royal Zenith Corporation (the importer), concerning the dutiable status of warehousing and insurance charges accruing on certain printing presses manufactured in East Germany and sold to the importer by Polygraph-Export-Import (the seller), an East German company. The parties are not related.

Under the contract between the parties, the importer is required to buy a certain number of machines each year, which it does on a C.I.F. basis. If it does not have a customer for a particular machine by the time it is completed, the seller arranges for warehousing at its warehouse or at a third party warehouse.

The importer assumes all risks and ownership of the presses when they are warehoused, packed ready for export.

You advise that a recently completed audit disclosed that since 1976 transactions between the seller and the importer have involved separate payments, not disclosed to Customs, for storage and insurance. Prior to 1980 such payments would not have been considered dutiable since the presses were freely offered for sale or sold without those payments. However under transaction value (the agreed-upon basis of appraisement), the concerned Customs officers, as well as counsel, hold differing opinions as to the dutiable status of these charges.

You describe the payment procedure as follows:

> Payments for the merchandise - must be completed by 1 year from shipment or warehousing. In the case of stored machines, payments need not begin until they are shipped. Thereafter, payments are due in equal monthly installments, the full price to be paid by the end of the 1-year period.

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Payments for storage - are due 30 days after invoicing. Charge are not billed until a press is released for shipment or after storage for 6 months.

Payment for insurance - billed as soon as machines are placed in storage and payable in 30 days. When storage is to be at a third-party warehouse, insurance payments are made to the seller.

You also advise that line items in the invoices for storage and insurance specifically identify each machine by type and order number, and demonstrate that both charges the importer pays are, in part, based upon the cost of the particular machine being stored.

Arguments for non-dutiability, advanced by some Customs officers and by counsel, note that the separate storage agreement has been the usual method of doing business since 1976. The importer assumes all risks and ownership of the presses when they are warehoused, packed ready for export. If a third party warehouse is used, or if the presses are stored by the seller, there are separate bills for storage and insurance; in neither case should they be part of transaction value, just as they are not part of value for the presses shipped immediately.

Counsel, noting that transaction value is the price paid or payable for merchandise when sold for export to the United States, contends the payments in question are not for machinery, but for an entirely different item, a service unrelated to the purchase of the goods for export.

He cites several rulings in support of this position:

1. TAA 143, which was concerned with the dutiability of interest charges, where we stated that a type of financing arrangement, fully documented as being separate from the import transaction, was not part the price actually paid or payable.

2. C.S.D. 82-167, in which certain costs of unloading, storage, and re-exporting transshipped goods were ruled non-dutiable.

3. TAA 149, where when goods were seaworthy packed, subsequent handling costs were not dutiable.

4. Headquarters rulings 542957 and 542026, where vacuum packing arranged for by the importer at his option, and occurring after the prior packing met standards for international shipment, were ruled to be non-dutiable.

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Counsel believes these rulings show a "general sense" that costs for services rendered after goods are placed in condition for export should not be dutiable.

The National Import Specialist believes that the warehouse and storage charges the buyer pays separately to the seller form part of transaction value. The fact that identical presses shipped immediately would be appraised at a lower price is irrelevant under the transaction value definition, which looks to the price paid or payable not, as under prior law, to the price at which goods are sold or offered for sale.

He also distinguishes the cases counsel cited from the facts in this case. TAA #43 dealt with a transaction documented as being separate from the import transaction, whereas here the charges, being directly related to individual machines, are not separate from the import transaction. C.S.D. 82-157 concerned charges incurred subsequent to exportation, and were not paid to the seller. The rulings on vacuum packing concerned certain packing charges, whereas the charges in issue here are not packing charges.

In our opinion, the answer to the issue presented is found in section 402(b)(4)(A), which defines the term "price paid or payable" as:

> ...the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller. (Emphasis added)

The charges in issue here are not "incidental to the international shipment of the merchandise." Both charges are incurred before the international shipment commences, and one charge, for insurance, is (at least in most cases) paid before exportation. Also, the importer purchases C.I.F., which basis would seem to encompass the charges in issue.

Accordingly, we conclude that the charges for storage and insurance paid to the seller are part of the price actually paid or payable, and dutiable under transaction value. Please send counsel a copy of this decision.

(Signed) J. T. Roth

for Harvey E. Fox

[redacted]

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CODE AND DATE	[redacted]	[redacted]	[redacted]			
SURNAME						
CODE AND DATE	[redacted]	[redacted]	[redacted]			
SURNAME						

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-79)

543501

JAN 17 1986

CLA-2 CO:R:CV:V
543567 FG

District Director of Customs
Buffalo, New York 14202

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0901-4-00513

This protest was filed against your decision in the liquidation of various shipments of precast concrete panels manufactured in Canada.

The protesting party is Beer Precast Concrete Ltd., the manufacturer and importer of the concrete panels. The protestant disputes Customs' decision to include certain repair costs and performance bond insurance premiums in the appraisement of merchandise under transaction value, pursuant to section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

In this case, the precast company involved made competitive bids for the right to manufacture and erect the precast concrete panels in question. A contract was subsequently entered into between the precast company and the United States buyer. Subcontractors were then hired by the precast company to install the panels. In the contract between the precast company and the buyer, a warranty provision which guarantees the material and workmanship was agreed to by the parties. As a condition of the bid acceptance, the buyer demanded the posting of a performance bond to insure the liability of the precast manufacturer.

We understand that it is not unusual for imported precast panels to be damaged during transportation, handling, storing or installation. Due to construction delays, it is common to store the panels at the construction site where the panels may be exposed to damage. Whenever possible, the damaged panels are repaired at the construction site. In connection with the shipments subject to this protest your office advises that repair cost invoices have been submitted which list the repairs performed as including panel refacing and washing and removal of paint, coffee, and pipe dope stains.

There is no dispute that the proper method of appraisement is transaction value pursuant to section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). However, the protesting party states that the performance bond insurance premiums and the cost of the repairs to the panels in the United States should not be

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included in the price actually paid or payable for the imported merchandise. The following provision of 402(b) is cited in support of this contention: [402(b)(3)(A)(i)]

> The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable...:
>
> (A) Any reasonable cost that is incurred for —
> "(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to the merchandise after its importation into the United States;...

With respect to the performance bond insurance premiums, the circumstances are such that it appears as if the premiums cover the entire precast contract. The performance bond insures the material and workmanship of the precast company, as well as the quality, condition and installation of the actual precast panels. The premiums cannot be apportioned to only a part of the contract, i.e., that which is covered by section 402(b)(3)(A)(i) of the TAA regarding the erection and assembly of the precast panel after importation into the United States. That provision of 402(b) requires the cost incurred to be identified separately from the price actually paid or payable.

The performance bond is required as a condition to the acceptance of the bid. The performance bond is analogous to a warranty provision, which Headquarters has in fact ruled is an integral part of the imported merchandise, and therefore, included in the price actually paid or payable. Customs has rejected the argument that a warranty is a charge for services performed subsequent to importation. See Headquarters Ruling No. 542699 BS, dated March 10, 1982, citing CRR Ruling 76-0072 (File 72-024488), dated July 15, 1976.

Therefore, it is our conclusion that the premiums for the performance bond are in fact dutiable. Although a portion of the premiums may relate to a reasonable cost incurred for the construction, erection or assembly of the merchandise after its importation, it is not identified separately which is required by section 402(b)(3).

The protesting party further claims that section 402(b)(3)(A)(i) provides for the deduction from the price actually paid or payable of the repair costs incurred for the merchandise after its importation into the United States. However, we note that the contract between the precast company and the United States buyer provides that the former "shall, without charge, replace any material and correct any workmanship found by the (buyer) not to conform to contract requirements..." (Emphasis added).

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Therefore, since it appears that the repair costs incurred by the precast company are not included in the contract price, those costs may not be deducted from that price.

Accordingly, you are directed to deny the protest in full.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

543567

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A10

26 AUG 1985

CLA-2 CO:R:CV:V
543577 MK

Robert L. Eisen, Esq.
Coudert Brothers
200 Park Avenue
New York, New York 10166

Dear Mr. Eisen:

This refers to your letter of July 1, 1985, requesting a ruling on behalf of De Dietrich (USA) (hereinafter, the licensee), that certain royalty payments it makes to its parent company, De Dietrich et Cie. (hereinafter, the licensor), are nonutiable.

You advise that the licensee has entered into a trademark license agreement with the licensor, a manufacturer of filters, dryers, tanks, and vessels for the chemical industry. The agreement designates the licensee as the exclusive North American importer and distributor of these products and authorizes the licensee to utilize the licensor's trademarks in connection with the domestic manufacture, sale, and distribution of the products. Under paragraph 3.1 of the agreement:

> Licensee shall pay to Licensor (as a condition of the use of the Trademarks and not as a condition of the sale of the Products for export to the United States) a percentage royalty (the "Royalty") equal to three percent (3 %) of the Net Sales Price of all Products sold by Licensee using any of the Trademarks during the term of this Agreement.

As you point out, the royalty payments are to be paid for the exclusive right to use licensor's trademarks in connection with the licensee's United States manufacture, sale, and distribution of the products in North America.

You cite several rulings (C.S.D. 83-99, C.S.D. 82-142, and others) in which, under virtually identical or similar circumstances we ruled that royalty and trademark payments made by a United States importer to its foreign parent/seller were nonutiable.

Transaction value, the probable basis of appraisement, provides for certain additions to the price actually paid or payable, including:

> Any royalty or license fee that the buyer is required to pay as a condition of the sale

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Since the agreement specifically states that the royalty payments are not a condition of the sale of products to the licensee-importer, but are instead based upon subsequent sales in the United States of products bearing the licensor's trademark, we agree that they will be nondutiable under transaction value.

Sincerely,

(Signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

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CLA-2 CO:R:CV:V
543585 ENS

Mr. Thomas C. Case
President
The Camelot Company
9865 West Leland Avenue
Schiller Park, Illinois 60176

26 AUG 1985

Dear Mr. Case:

Thank you for your correspondence dated July 16, 1985, concerning the dutiability of foreign inland freight. Specifically, you indicate that one of your clients enters into a transaction for the sale of merchandise from its Korean supplier (S), who loads a container at its inland facility and tenders it to the steamship company in Busan via its freight forwarder. The steamship company then transports the merchandise to the United States. The terms of sale to your client appear to be F.O.B. Busan.

Enclosed with your letter are an ocean bill of lading issued by the steamship company and a commercial invoice issued by S which itemizes the F.O.B. price into an ex factory price, inland freight and broker loading and other charges. Although not included with your correspondence, there is also a cartage ticket issued by the freight forwarder for transportation of the goods from the manufacturing facility to the dock. You ask whether presentation of the above documents is sufficient to permit nondutiable treatment for the foreign inland freight and other itemized charges.

One of the requirements in our amended regulation (19 CFR 152.103(a)(5)(iii)) for obtaining nondutiable treatment for foreign inland freight charges is the presentation to Customs of a through bill of lading. Because this term was not defined in the original regulation, and it was later determined that it was not being uniformly interpreted in many sectors of the importing community, on February 4, 1985, we issued instructions to our field personnel, a copy of which is enclosed, which, inter alia, defined the term as follows:

> A "through bill of lading" for these purposes is a contract, waybill, invoice, issued by one carrier or forwarder which controls the manner of shipment from the point or place of manufacture or origin to the U.S. port of importation or beyond (although the shipment may extend over two or more lines of connecting carriers), shows the origin and destination of the shipment, consignor and consignee, route of movement and applicable rate or rates.

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In the case of your client's transactions, it appears that a through bill of lading has not been made available, since two parties who issue two separate documents are responsible for portions of the shipment of the goods from the point or place of manufacture to the port of importation in the United States. Accordingly, under the facts presented the foreign inland freight and related charges would not be deductible from the price actually paid or payable for the goods. The same reasoning would apply to other forms of transportation, such as aircraft, about which you inquire.

The type of shipping document which will permit your client to take advantage of the new regulation is one which indicates that one shipper, carrier or freight forwarder is responsible for the entire shipment of the merchandise from the point of origin or manufacture to the port of importation in the United States. In this regard, you may wish to refer to the enclosed copy of additional instructions issued to our field personnel on July 16, which contain practical examples of situations where foreign inland freight will be dutiable and nondutiable.

Sincerely,

(Signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

Enclosures

543585

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A14

NOV 04 1985

DATE: NOV 04 1985

FILE: CLA-2 CO:R:CV:V
543620 BS

TO : Director, Entry Procedures and Penalties Division

FROM : Director, Classification & Value Division

SUBJECT: Domestic Value of Merchandise Seized from Emil Hatami d/b/a E&W Industries in El Paso District Case No. 84-2404-00810

The file in the above case was recently forwarded to us for our opinion concerning the domestic value of the merchandise involved. The relevant facts in the file indicate that the merchandise was originally sold from Richloom Fabrics to Great Neck Games at $31,143.65, and consigned to E&W Industries. Based on this transaction the petitioner claims that the domestic value of the goods does not exceed $31,143.65.

The El Paso District assigned a domestic value of $44,450 to the goods, calculated as follows:

$31,143.65	original sale price from Richloom to Great Neck
1,119.00	freight and storage from New York to El Paso
7,511.00	duty assessed on goods in El Paso when entered from Mexico
4,678.00	11.76% markup
$44,451.65	Total.

Title 19, United States Code, section 1606, requires that Customs determine the "domestic value" of seized merchandise, "at the time and place of appraisement." The relevant Customs regulation (19 CFR 162.43) defines "domestic value" as follows:

> The term "domestic value" as used therein [19 U.S.C. 1606] shall mean the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade....

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Under the above regulation, if sales or offers for sale of such or similar merchandise exist in the domestic market, then these sales must be used for appraisement purposes, and resort may not be made under these circumstances to some alternative method of valuation, such as an estimate based on an assumed profit margin.

In the instant situation, subsequent to Headquarters receipt of the case and El Paso's initial domestic value appraisement for the merchandise, a member of my staff orally requested the import specialist concerned (Mr. Peter Rayon) to ascertain whether there was a wholesale market in El Paso for merchandise such or similar to that which was seized. Mr. Rayon agreed that is such a market existed, it would preclude the use of El Paso's original method of ascertaining the domestic value for the merchandise in issue. As the result of our request Mr. Rayon initiated several inquiries, which are detailed in Report of Investigation EP08CM467508 dated October 1, 1985 (copy attached), and which clearly support the conclusion that a wholesale market for merchandise similar to that which is under seizure currently exists in El Paso. More specifically, the El Paso District made three inquiries, two of which revealed that merchandise similar to that in question is freely offered for sale in El Paso at $4.00 per yard, and one of which revealed that similar merchandise is freely offered at $3.79 per yard. Utilizing the $3.79 price, at which it is assumed that a prudent buyer would purchase the goods, the correct domestic value for the merchandise is $48,301 (12,744.25 yards x $3.79).

(Signed) Harvey B. Fox

(Signed) Harvey B. Fox
Harvey B. Fox

Attachment

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NOV 04 1985

CLA-2 CO:R:CV:V
543623 CW

Mr. Arthur L. Litman
President
Castelazo & Associates
5420 West 104th Street
Los Angeles, California 90045

Dear Mr. Litman:

This is in response to your letter of August 28, 1985, in which you inquire as to the applicability of a ruling dated April 30, 1984 (543093), to a prospective transaction involving one of your clients. The referenced ruling involved an importer who furnished integrated circuits and similar components free of charge to Far East assemblers of video computer systems and related articles. The issue in that ruling was whether components which were rejected, scrapped or lost during the assembly process were assists under the definition of that term in section 402(h)(1)(A) of the Trade Agreements Act of 1979 (TAA). We concluded that components which are destroyed, scrapped or lost and which are not physically incorporated into the imported articles are not assists under the TAA.

You state that your client will be furnishing plastic in resin form to a foreign manufacturer free of charge. The resin will be used in a plastic injection molding machine to produce plastic products which will be imported into the United States. You ask whether the "value of the assist is based upon the actual amount of plastic resin used in the finished products or must reflect the yielded value including pro-rated waste, scrap, shrinkage and rejected items."

Section 402(h)(1)(A) defines assists as:

> ... any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise.
>
> (i) Materials, components, parts, and similar items incorporated in the imported merchandise.

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(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

The components described in our April 30, 1984, ruling are included in the first category described above (subparagraph (A)(i)). In our opinion, plastic resin furnished free of charge to a foreign manufacturer by the importer of plastic products made from that resin also would be included in the first category to the extent that the resin is not consumed in the production of the finished products. Resin which is consumed during the production process would be included in the third category described above (subparagraph (A)(iii)).

Consequently, in conformance with the holding in our April 30, 1984, ruling, we conclude that plastic resin which is rejected, scrapped or lost during the production process, and which is not physically incorporated into the imported articles, would not constitute an assist under the TAA. However, resin which is consumed during the production of the plastic products would constitute an assist under section 402(h)(1)(A)(iii) of the TAA.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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543623

CLA-2 CO:R:CV:V
543625 EG

Area Director of Customs
New York Seaport
New York, New York 10048

FEB 4 1986

Dear Sir:

Re: Decision on Application for Further Review of Protest
No. 1001-3-000309

This protest was filed against your decision in the liquidation of various entries covering shipments of wooden jewelry boxes imported by London Leather Novelties, Inc., (hereinafter importer).

The importer is protesting Customs' decision to assess duty on alleged buying commissions paid to Alps International Corp. and Victradco Limited, both alleged buying agents of the importer. There is no dispute that the proper basis of appraisement is transaction value under section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

Transaction value is defined in section 402(b) as "the price actually paid or payable for the merchandise when sold for exportation to the United States," plus amounts for the items enumerated in section 402(b)(1). Buying commissions are not specifically included as one of the additions to the price paid or payable. The price paid or payable is more specifically defined in section 402(b)(4)(A) as:

> The total payment (whether direct or indirect...) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

In order to establish transaction value, it is essential that the identity of the seller as well as the amount paid or payable to him is established. As stated in Headquarters ruling 542141 EG (TAA #7), dated September 29, 1980, "...an invoice or other documentation from the actual foreign seller to the agent would be required to establish that the agent is not a seller and to determine the price actually paid or payable to the seller. Furthermore, the totality of the evidence must demonstrate that the purported agent is in fact a bona fide buying agent and not a selling agent or an independent seller."

Various invoices which are alleged to have been received directly from the manufacturer have been submitted by the importer. The importer deems these invoices to be determinative in demonstrating the relationship of the

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parties, i.e., the agent receiving a fixed commission from the importer for its activities and the manufacturers being the actual sellers of the imported merchandise. It is our conclusion from the circumstances and a review of the extensive interviews conducted by the Import Specialist that these invoices were not prepared by the manufacturers of the merchandise, but rather, were prepared by the alleged buying agents of the importer in order to meet Customs' criteria for a bona fide buying agent. Therefore, we believe that these invoices were not received by the importer directly from the manufacturers as alleged by the importer.

In addition, in determining whether a bona fide buying agency relationship exists between an importer and an alleged buying agent, the primary consideration is the right of the principal to control the agent's conduct with respect to the matters entrusted to the agent. B & W Wholesale Co., Inc. v. United States, 58 CCPA 92, C.A.D. 1010 (1971), Dorf International, Inc. et al. v. United States, 61 Cust. Ct. 604, A.R.D. 245 (1968). The alleged buying agent may not act as an independent seller, nor as a representative of the manufacturer or seller. In the instant case, we are not satisfied from the evidence presented that the importer exercises the requisite degree of control over the alleged buying agents so as to establish a bona fide buying agency relationship.

We conclude that the alleged buying commissions are part of "the price actually paid or payable for the merchandise when sold for exportation to the United States", and are, therefore, dutiable. You are directed to deny the protest in full.

A copy of this decision should be attached to the Form 19, Notice of Action, to be sent to the protestant.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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CLA-2 CO:R:CV:V
13 DEC 1985 543639 CW

Mr. Jacq Van Der Heyden
Deanna Marie
Ford End, Cheapside Lane
Denham, Bucks, UB9 5AB
United Kingdom

Dear Mr. Van Der Heyden:

This is in reference to your letter of October 11, 1985, in which you request advice concerning the classification and valuation of certain items which your company may import into the United States from various countries. You state that your company is presently engaged in England in manufacturing ladies garments which are sold directly to customers in that country. The garments are made of high quality fibers, such as wool, linen and silks, which are obtained from various countries including England, Germany, Italy, Austria, China and India.

You advise that your company is planning to expand its business to United States markets and, to that end, is considering the following three options:

1. A manufacturing company similar to the one operating in England would be established in the United States. Fabric (wool linen and silks) would be imported from one or more of the countries listed above.

2. Finished garments produced by your company in England would be sold to an unrelated company in the United States which would arrange for the marketing of the garments in the United States. The only remuneration your company would receive would be the sales price of the finished garments from the unrelated United States importer.

3. Finished garments produced by your company in England would be sold to a wholly-owned subsidiary in the United States, or some other related company, which would market the garments in the United States. You indicate that certain design costs in regard to the finished garments would be incurred by the related United States company.

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You ask for the rates of duty applicable to wool, linen and silks imported from the countries listed above, and inquire as to whether there are any special duties or restrictions on the importation of these fabrics from the listed countries. You also ask for the duty rates applicable to finished garments imported from the United Kingdom and made of wool, linen and silk. Finally, you ask how the dutiable value of these items would be determined under each of the three options.

We regret that there is insufficient information in your letter concerning the articles to be imported for us to determine the classification and rates of duty applicable to these articles. This type of information may be obtained by following the instructions in the enclosed leaflet. Moreover, we are unable to provide you with information concerning the applicability of any restrictions to these items until a classification determination is made.

In regard to the valuation of the items to be imported, we wish to point out that the primary basis of appraisement under the valuation statute, section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), is transaction value, which generally is defined as the price actually paid or payable for the imported merchandise when sold for exportation to the United States, plus amounts for five specified items to the extent that they are not already included in that price. Thus, under option #1, the transaction value of the imported wool, linen and silks would be derived from the price that is actually paid by the importer of these fabrics. Similarly, under option #2, the transaction value of the imported finished garments would be derived from the price that is actually paid by the unrelated importer for the garments.

In regard to option #3, the fact that the importer and seller would be related is not in itself grounds for determining that the price actually paid does not represent an acceptable transaction value. Section 402(b)(2)(B) of the TAA sets forth two alternative methods of determining whether the transaction value in a related party transaction is acceptable. The first method involves an examination of the circumstances surrounding the sale to determine if the relationship influenced the price. If the relationship did not influence the price, the transaction value, if otherwise acceptable under the law, would be accepted. The second method involves a comparison of the transaction value with a series of test values. If the transaction value closely

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approximates any one of these test values, it will be accepted, assuming that it is otherwise acceptable under the law.

If it is determined in regard to option #3 that the transaction value between your company in England and the related company in the United States is acceptable, then that value would constitute the final dutiable value of the imported merchandise. Design costs incurred by the related importer in the United States would not be included in dutiable value, nor would any costs incurred by the importer in connection with the resale of the merchandise in the United States.

If the garments are not to be sold to the related United States importer but are to be consigned, for example, to the importer, then there would be no "price actually paid or payable for the merchandise when sold for exportation to the United States" (emphasis added) and, therefore, transaction value would be eliminated as the basis of appraisement. The next in order of precedence of the alternative bases of appraisement under the valuation statute is transaction value of identical or similar merchandise from the same country, section 402(c) of the TAA. If this basis of appraisement also cannot be determined, the merchandise would be appraised on the basis of deductive value, section 402(d) of the TAA, which essentially is the resale price of the merchandise in the United States with deductions for certain items. Those items include the usual general expenses and profit realized in connection with the resale of the merchandise in the United States, international and United States transportation costs, and the Customs duties payable on the merchandise.

If deductive value cannot be determined, the merchandise would be appraised on the basis of computed value, section 402(e) of the TAA, which consists of the sum of: (a) the cost or value of the materials, fabrication and other processing used in producing the merchandise; (b) the profit and general expenses realized by the producer; (c) the value of any assist; and (d) packing costs. We should note that the importer may elect at the time of entry to reverse the order of application of deductive value and computed value.

Generally speaking, regardless of the basis of appraisement which is used, design costs incurred by the United States importer in the United States, costs incurred by the

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importer in connection with the sale of the merchandise in the United States, and the importer's profit on the sale of the merchandise in the United States would not be included in dutiable value.

For your information, we have enclosed a copy of a publication entitled "Customs Valuation under the Trade Agreements Act of 1979."

Sincerely,

(signed) J. T. Rom

For Harvey B. Fox
Director, Classificaton
and Value Division

Enclosure

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DEC 26 1985

CLA-2 CO:R:CV:V
543646 CW

District Director of Customs
Great Falls, Montana 59401

Re. Application for Further Review of Protest Nos.
3307-5-000003 and 3307-5-000005

Dear Sir:

The above-referenced protests concern the proper tariff classification of computer software imported together with IDA-XP protocol analyzers from Canada. Protest No. 3307-5-000005 also raises the issue of the proper appraised value of the subject merchandise.

As you know, the issues and merchandise involved in the above two protests are identical to those involved in Protest No. 3307-5-000004, which was the subject of Headquarters decision dated December 4, 1985 (543615), copy enclosed. Consequently, please dispose of the above-referenced two protests in accordance with our December 4, 1985, protest decision.

In regard to the appraisement issue, we stated in our December 4, 1985, decision letter that transaction value for the imported merchandise cannot be determined since, in our opinion, the related party price is not acceptable within the meaning of section 402(b)(2)(B) of the TAA. Therefore, we concluded that the merchandise should be appraised on the basis of the first of the alternative values that can be satisfactorily determined under section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). We wish to point out that there was insufficient information in the protest file for us to make a definitive determination regarding the proper basis of appraisement to be applied. However, based on the limited information available to us, it appears that the merchandise should properly be appraised on the basis of deductive value, section 402(d) of the TAA. If this is the case, we believe that the starting point in determining deductive value in this case would be the price paid by the ultimate purchasers in the United States to the United States subsidiary.

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From this price should be deducted the amounts described in section 402(d)(3)(A) of the TAA.

A copy of this letter and our decision letter of December 4, 1985, should be attached to the Form 19, Notice of Action, to be sent to the protestant. We are returning the original and one carbon copy of the Form 19 filed by the protestant in connection with each protest.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

Enclosures

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DEC 10 1985

CLA-2 CO:R:CV:V
543655 BG

Mr. Patrick D. Gill, Esq.
Rode & Qualey
295 Madison Avenue
New York, New York 10017

Dear Mr. Gill:

This is in response to your letter of November 22, 1985, in which you request a binding ruling that certain quota charges will not be included in the transaction value of imported merchandise under section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

You state that your client (importer) requests its related buying agent in Hong Kong to purchase quota from unrelated third parties. The importer is invoiced for the quota charge which is incurred by the buying agent. You further indicate that in some cases, the related buying agent acquires permanent quota which is subsequently used to ship merchandise to the importer. The buying agent charges the importer for the quota at the prevailing market rate in Hong Kong. You state that in neither case is any part of the quota charge paid to the sellers of the merchandise who are unrelated to both the buying agent and the importer. It is your contention that none of these quota payments made by the importer constitute part of the dutiable value of the imported merchandise.

The relevant portion of section 402 provides for the following:

> (A) The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for the imported merchandise by the buyer to, or for the benefit of, the seller. Section 402(b)(4)(A).

In TAA No. 30 dated June 11, 1981, we ruled that where the buyer pays quota charges to an exporter who is unrelated to the foreign seller, and where such payments are not remitted in any way by the exporter to the seller, such charges are non-dutiable.

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We agree with your conclusion that in the circumstances as you have described them, the quota charges paid by the importer to the buying agent are non-dutiable. This holding applies as long as these payments are not remitted in any way, directly or indirectly, by the buying agent to the seller of the goods. This ruling is based upon the facts as you have outlined them in your letter of November 22, 1985.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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JAN 2 1986

CLA-2 CO:F:CV:V
543656 EG

District Director of Customs
Seattle, Washington 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3001-3-000287

This protest was filed against your decision on the liquidation of refrigerated reefer containers imported by Sea-land Corporation.

The protested merchandise is described as a KAT 6 series refrigerated container from Japan measuring 8 ft. x 8 ft. x 35 ft. A 2 or 3 ft. sq. hole is cut in one end of the container to accomodate a Thermo King (TK) refrigeration unit of U.S. origin. The file reflects that this unit is diesel or electric powered and has a combination motor/compressor, an evaporator, condenser, and fan. Each TK unit has both a heating and cooling coil, although the former is used only when the cooling coil ices over. The TK unit is used to blow air, ranging from - 20 degrees to +80 degrees F into the container box. The container has heavier insulation in its walls, roof, and floor than those designed for non-refrigerated service, and is not designed to allow heating or cooling liquids to circulate in its walls.

The subject container, with its TK unit, operated in international freight service from February 1979 until October 1982 when it was diverted to domestic service. It is at this point that the tariff classification of this unit must be established. The file indicates the subject container and TK unit were purchased together and were entered for consumption as a complete unit. It is our opinion that this combination is to be regarded for tariff purposes as an entirety and must be so classified. Note Lafayette Radio Electronics Corp. v. United States, 57 CCPA 62, 421 F.2d 751, C.A.D. 977 (1970), Chadwick-Miller Importers, Inc., et al. v. United States, 59 Cust. Ct. 529, C.D. 3221 (1967), and related cases.

The competing provisions at issue are item 640.30, TSUS, covering other containers of base metal chiefly used in the packing, transporting, or marketing of goods (temporarily free of duty under item 911.80), as urged by protestant, versus item 661.35, TSUS, covering refrigerators and refrigerating equipment, whether or not electric, and parts thereof, as liquidated. It is our opinion that item 640.30, TSUS, is precluded from consideration by virtue of Schedule 6, Part 3, Subpart A, Headnote 1(i), TSUS, which precludes from coverage within that item number containers with mechanical or thermal equipment such as agitators, heating or cooling coils, or electrical elements (provided for in parts 4 and 5 of Schedule 6). It is noted that certain hydraulic containers (those having coils in

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the walls) were similarly precluded from item 640.30, TSUS, coverage by the same headnote, and placed in item 661.35, TSUS. See our letter of September 17, 1979 (057183), cited in the protest file.

As to the applicability of item 661.35, TSUS, which is a chief use provision, our decision of July 23, 1974 (033718), published as ORR Ruling 74-0239, correctly noted the common meaning of the term "refrigeration" as "the process of producing low temperatures usually throughout an appreciable volume." Moreover, the 1969 Summaries of Trade and Tariff Information, while not indicative of the legislative intent in enacting item 661.35, TSUS, reflect Customs handling of entries accepted under that item. Volume 8, Schedule 6 thereof, at p. 90, in discussing refrigerators and refrigerating equipment, whether or not electric, describes machines or assemblies of apparatus, which function in a continuous cycle of operations to produce and maintain temperatures ordinarily near or below freezing. These units normally comprise, among other things, a compressor (with or without motor) and condenser mounted on a common base, whether or not complete with evaporator, or self-contained absorption units.

The subject refrigerated container with TK refrigeration unit, in our opinion, is specifically provided for in item 661.35, TSUS. The protest should be denied as to classification.

The protestant is further disputing Customs' decision to appraise the subject merchandise on the basis of a 10-year depreciation schedule. It is argued that the merchandise should be depreciated over a 7-year period.

Headquarters has previously ruled on the protesting party's position in Ruling No. 542999 TLL, dated May 6, 1983. In that decision, Headquarters denied the protest and concluded that the merchandise was to be appraised over a 10-year period. It is from this decision that the protesting party is requesting reconsideration.

As addressed in our May 6, 1983, decision letter, protestant's argument regarding our 1978 settlement agreement which directed the use of a 7-year depreciation schedule is irrelevant for the matter under consideration. That decision was in regard to the settlement of a penalty claim, and has no binding effect on the appraisement of the imported merchandise.

The protesting party has not submitted any evidence which indicates that Customs' decision to depreciate the merchandise over a 10-year period is unreasonable. The 10-year period is reasonable and it accurately reflects an appraisement which approximates that of section 402(b), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. Your office has determined that the subject merchandise has a useful life of 10

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543656

years, and you have appraised the merchandise based upon this determination. In our view, the 10-year depreciation schedule for this merchandise is in accordance with generally accepted accounting principles. It is our conclusion that the 10-year depreciation schedule determined by your office is correct. Therefore, you should deny the protest with respect to the value issue as well.

A copy of this decision should be attached to the Form 19, Notice of Action, to be sent to the protestant.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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CIA-2 CO:R:CV:V
543662 BG

Mr. C. K. Murphy
Manager, Export and
Import Services
Union Carbide Corporation
2900 Westchester Avenue
Purchase, New York 10577

Dear Mr. Murphy:

This is in response to your letter of December 23, 1985, requesting advice on the valuation of Electrolytic Manganese Dioxide (EMD) imported by your company from Japan. You indicate that your agreement with the supplier stipulates that a certain quantity of the EMD will be purchased in a given year. If the actual purchases exceed the quantity stipulated in the agreement, then your company is entitled to a retroactive volume discount on the EMD purchased. This discount is calculated on a semi-annual basis.

You further indicate that when the EMD is imported, duty is paid on the full purchase price. The retroactive volume discount you refer to is not received until after the importation of the EMD. You are inquiring as to the feasibility of receiving a refund from Customs on the difference between the duty paid based upon the original purchase price at the time of importation and the adjusted purchase price after the volume discount is given subsequent to importation.

As you may know, the primary basis of appraisement pursuant to the Trade Agreements Act of 1979 (TAA), is transaction value. This is defined in section 402(b) of the Tariff Act of 1930, as amended by the TAA as "the price actually paid or payable for the merchandise when sold for exportation to the United States...".

The relevant portion of the TAA states the following:

> Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of importation of the merchandise into the United States shall be disregarded in determining the transaction value... section 402(b)(4)(B); (emphasis added)

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Therefore, the rebate, or deferred quantity discount, given by the foreign seller to your company cannot be considered in determining transaction value under section 402(b). The transaction value of the imported merchandise in this case is determined at the time of the importation.

Sincerely,

(Signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

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JAN 9 1986

CLA-2 CO:R:CV:V
543665 CW

Mr. Phillip A. Aronoff
International Steel Corporation
P.O. Box 24534
Houston, Texas 77029

Dear Mr. Aronoff.

This is in response to your letter of December 30, 1985, in which you inquire concerning the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to small diameter steel reinforcing bars produced in Mexico from used railroad track.

You advise that your company exports used railroad track to steel mills in Mexico where the material is rerolled into small diameter reinforcing bars which are imported into the United States for further processing. You indicated by telephone that the further processing performed by your company in the United States consists of cutting the bars to length, bending and shaping the bars, and, in some cases, welding the bars together. As the bars will be imported in 40-foot lengths, cutting to length before use is required in most cases and bending is also often done before resale.

Item 806.30, TSUS, is applicable only to articles of metal (except precious metal) which are (1) manufactured in the United States or subjected to a process of manufacture in the United States, (2) exported for further processing, and (3) returned after such processing for further processing in the United States. Articles which satisfy these requirements are dutiable only upon the value of the processing outside the United States, assuming compliance with the applicable Customs Regulations. For purposes of this tariff provision, the term "further processing" has reference to processing that changes the shape of the metal or imparts new and different characteristics which become an integral part of the metal itself and which did not exist in the metal before processing.

Under the circumstances of this case, it is our opinion that the rerolling of the railroad tracks in Mexico satisfies the foreign processing portion of the statutory requirements. Moreover, we believe that the cutting of the reinforcing bars to length and the bending of the bars in the United States is sufficient to satisfy the domestic "further processing"

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requirement. Therefore, we conclude that the imported bars are entitled to tariff treatment under item 806.30, TSUS, provided all requirements under section 10.9, Customs Regulations (copy enclosed), are met.

We suggest that you discuss the entire transaction with Customs personnel at the applicable port of entry to ensure that all requirements for item 806.30 treatment are satisfied.

Sincerely,

(Signed) RUSSELL X. ARNOLD

Russell Arnold
Chief, Value and Special
Classificaton Branch

Enclosure

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27 JAN 1986

CLA-2 CO:R:CV:V
543668 CW

Mr. Chuck Ulrich
Gourmet Industries Inc.
Route 1, P.O. Box 43
Monon, Indiana 47959

Dear Mr. Ulrich:

This is in response to your letter of October 21, 1985, in which you request advice concerning the dutiable value and the rate of duty to be applied with respect to unpopped corn which your company imports from Canada.

You state that your company ships unpopped corn in bulk to a Canadian firm which packages the product in microwave bags and adds salt and oil. No specific information concerning the amount of salt and oil added to each bag has been provided. In regard to the value of the product, you state, as an example, that the Canadian firm pays $.20 per unit for the unpopped corn in bulk and sells the packaged product to your company for $.24 per unit.

The unpopped corn will probably be classified under the provision for edible preparations in item 183.05, Tariff Schedules of the United States, with duty at the rate of 10 percent ad valorem. For more definitive advice concerning the correct classification of the merchandise, please follow the instructions in the enclosed leaflet.

The imported bags of unpopped corn will most probably be valued on the basis of transaction value, section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(b)), which is generally defined as the price actually paid or payable for the imported merchandise when sold for exportation to the United States. Certain additions will be made to this price for items, such as packing costs, if these items are not already included in the price paid. In the example you provided, $.24 per unit would represent the price actually paid or payable for the imported packaged product.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

FEB 4 1986

CLA-2 CO:R:CV:V
543672 CW

District Director of Customs
Baltimore, Maryland 21202

Re: Protest Nos. 1303-3-000097 and 1303-3-000098 Filed by Rukert Marine Corporation

Dear Sir:

This is in reference to your memorandum of May 4, 1983, which forwarded the above-referenced protests to Headquarters in accordance with instructions contained in Headquarters telex 02212 dated March 20, 1982. The protests, filed by Rukert Marine Corporation, contest the assessment of dumping duties on shipments of synthetic methionine from Japan.

As you know, the protestant requested that no action be taken in regard to the protests until Headquarters had considered protestant's offer in compromise with respect to the additional duties owed. By letter of November 6, 1985, the Acting Chief Counsel advised counsel for the protestant that the Department of the Treasury had decided to reject the offer in compromise.

We note that the protestant has not applied for further review of the protests. Therefore, as the issue raised in the protests does not require a determination by the Office of Compliance, Department of Commerce, a decision with respect to the protests should be made by your office.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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15 NOV 1984

CLA-2 CO:R:CV:V
553020 BNS

Paul D. Cullen, Esq.
Collier, Shannon, Rill & Scott
1055 Thomas Jefferson Street, NW.
Washington, D.C. 20007

Dear Mr. Cullen:

On September 19, 1983, you filed a petition with the Customs Service pursuant to section 516(a), Tariff Act of 1930, as amended (19 U.S.C. 1516(a)), on behalf of several domestic interested parties. The petition disputes Customs current classification of certain television apparatus imported from Mexico, under item 685.14, Tariff Schedules of the United States [TSUS].

This response, written pursuant to 19 U.S.C. 1516(c) and 19 CFR 175.22(b), is to notify you that we have reviewed your petition, additional comments of May 9, 1984, and all other submissions received as the result of our notice published in the Federal Register on January 26, 1984 (49 FR 3201) and have determined that the current tariff classification for the merchandise in question is correct. Our reasons for this determination appear below.

FACTS

Your petition indicates that since May of 1982, Matsushita Industrial Company [MIC] of Franklin Park, Illinois, has been importing color television picture tubes manufactured in Japan and initially shipped to its assembly facility in Mexico, Matsusnita Industrial de Baja California [MIBA]. Each picture tube is subsequently shipped to the United States together with a chassis and control panel which were assembled at the MIBA plant in Mexico. Following their arrival at MIC's plant in the U.S., the picture tube, and chassis and control panel assembled in Mexico are incorporated into completed television receiver sets produced in the U.S. The production of completed receiver sets requires the addition of a cabinet, a deflection yoke, speakers, in some instances a degaussing coil, and perhaps other miscellaneous parts. Additionally, you indicate that once assembled, the completed television receiver sets require extensive testing and adjustment prior to being sold for public consumption.

After the picture tubes leave Japan no manufacturing operations are performed on them until they reach the U.S. Rather, in Mexico the tubes, packed in their original Japanese shipping cartons, are loaded on trucks with equal numbers of completed chassis and control panels, and shipped to the U.S.

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DISCUSSION OF ARGUMENTS

A. PRESIDENTIAL PROCLAMATIONS

The initial section of your petition contains a comprehensive history of items 685.11 - 685.14, TSUS. You conclude from this history that the President had no authority to amend the TSUS in 1979 to divide then item 685.20, TSUS, into items 685.11 - 685.14, TSUS. You indicate that since the President was without authority to change the TSUS, and there is no legal basis for the existing tariff classification of items 685.11 - 685.14, TSUS, "Customs must classify the imported articles described in this petition under their eo nomine designation, 'television apparatus, and parts thereof,' unless there exists a specific provision for a particular part, in which case General Headnote 10(ij), TSUS, should govern." Finally, you conclude that since a specific provision for picture tubes does exist (item 687.35, TSUS), the application of General Headnote 10(ij), TSUS, mandates the classification of the tubes in question thereunder.

Any agreement by us with the above argument would necessarily require a finding that the President was without authority to amend the TSUS. However, we are of the opinion that this office has no jurisdiction to make such a finding; therefore, we make no conclusions with respect to your initial argument. Our lack of jurisdiction in this area is supported by the absence of both specific and implied statutory authority confirming such jurisdiction, as well as by language contained in judicial decisions.[1] Likewise, your petition contains no citation supporting an opposite conclusion.

Additionally, under 19 U.S.C. 1516, a domestic interested party is permitted to contest only the appraised value, classification, and rate of duty of specific importations, and not the validity of a series of tariff provisions having no relevance to the classification of the merchandise in question. Therefore, even if we had authority to rule on the validity of the presidential proclamations in issue, our ruling under section 1516 would be limited to the applicability of that item under which the merchandise in question is currently being classified (item 685.14, TSUS), and would not specifically extend to the validity of the other tariff provisions contested in your petition (items 685.10, 685.11, and 685.13, TSUS).

B. CLASSIFICATION AS AN ASSEMBLY

The second portion of your petition argues in the alternative that notwithstanding the invalidity of the TSUS item numbers in question, Customs classification of the imported merchandise under item 685.14, TSUS, is incorrect. In this regard, in your additional remarks of May 9, 1984, you note that in our rulings on the subject merchandise and in the comments submitted as the result of our Federal Register notice, the subject merchandise has been variously described as a kit, an entirety, and an assembly. Additionally, you note that we have previously cited General Headnote 10(h), TSUS, as support for our classification under item 685.14, TSUS. In your opinion, the diversity of descriptions and rationales in support of classification under item 685.14, TSUS, reflects, "the confusion in current Customs practice and

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1. Cf. United States Cane Sugar Refiners' Ass'n v. Block, 3 CIT 196, 201, 544 F. Supp. 883, 887 (1982), aff'd 69 CCPA 172, 683 F.2d 399 (1982), in which the court indicated that Customs "obviously" has no authority to override a presidential proclamation.

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compels the need for reassessment of that practice." Accordingly, we will briefly explain our classification.

Initially, we note that considerable discussion has been devoted to defining the items contained in the inferior heading which appears in the TSUS just prior to items 685.13 and 685.14. That heading reads:

> Assemblies (including kits containing all parts necessary for assembly into complete receivers)

Although we do not here decide whether the merchandise in question is a type of kit, clearly it is not a kit containing all parts necessary for assembly into complete receivers.[2] Additionally, it appears that the purpose of the kits provision in item 685.14, TSUS, is to make it clear that such kits were specifically intended to fall within that classification.[3] Finally, the presence of the kits provision in item 685.14, TSUS, supports the conclusion that at least some of the merchandise classifiable therein need not be physically fastened together, an allegation discussed in more detail later in this letter.

Having determined that the merchandise in question is not a kit of the type described in item 685.14, TSUS, we turn to the evidence and arguments which specifically support its classification therein as an assembly. Initially, when one analyzes the structure of items 685.11 through 685.18, TSUS, it is immediately apparent that the superior heading for television receivers and parts thereof contains two major subdivisions; items 685.11 - 685.14, TSUS, for television receivers and parts having a picture tube; and items 685.15 - 685.18, TSUS, for television receivers and parts not having a picture tube.

It is equally obvious to us that assuming the merchandise in question was imported without a picture tube, it would be classifiable under one of the inferior headings for television receivers and parts not having a picture tube, in items 685.15 - 685.18, TSUS. It is therefore illogical and inconsistent with the structure of the tariff schedule in question not to classify such merchandise with a picture tube under the provision for television receivers and parts having a picture tube, assemblies, in item 685.14, TSUS.

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2. The term "complete," as it applies to items 685.11 through 685.19, TSUS, is defined in headnote 3(a), Part 5, Schedule 6, TSUS, as a receiver fully assembled, whether or not packaged or tested for distribution to the ultimate purchaser. Since the merchandise in question is not capable of being fully assembled into a television receiver, it does not fall within the specific provision for kits in item 685.14, TSUS. Additionally, we recognize that in our letter reconsidering Headquarters Ruling 067477 SC of September 24, 1981 (Headquarters Ruling 067670 SC, dated April 16, 1982), the merchandise was referred to and classified as a "kit" for a color television receiver. In this regard, the April 1982 ruling, which cited General Headnote 10(h), TSUS, as its basis, would have been more consistent with the language of the TSUS had it referred to the merchandise as an "assembly". This inadvertance was in all probability caused by the incoming memorandum from the San Diego District, which specifically used the word "kit" rather than "assembly".

3. In the absence of the specific kit provision in item 685.14, TSUS, such kits would be classifiable as complete receivers in item 685.11, TSUS, pursuant to General Headnote 10(h), TSUS.

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In support of your proposed classification you have cited the definition for "assembly" which applies to items 720.70 - 720.86, TSUS. That definition, "two or more parts or pieces fastened together," is claimed as proof that the assemblies referred to in item 685.14, TSUS, must be physically fastened together. In this regard, we note that the definition for assemblies in schedule 7 of the TSUS contains specific language mandating that the assemblies contained therein be fastened together, while no such language appears in the assemblies provision contained in schedule 6, a fact supporting the conclusion that the assemblies in item 685.14, TSUS, are not limited to parts which are physically fastened together.

Additional evidence that item 685.14, TSUS, includes merchandise not physically fastened together is found in dictionary definitions for the word "assembly." Those definitions indicate that an assembly may be either a collection or assemblage of parts which are unassembled, or an article formed from the assembly of a collection or assemblage of unassembled parts.[4] Likewise, as previously stated, the inclusion of the specific kits provision in item 685.14, TSUS, also indicates that some merchandise classifiable therein need not be physically fastened together. Finally, information in our possession indicates that given current design standards, it would be virtually impossible to transport television assemblies composed of picture tubes, chassis and other parts physically fastened together, without an unacceptably large percentage of them being damaged. It also appears that since at least 1977 (when a statistical annotation for color television receivers having a picture tube, assemblies, first appeared in the TSUS), there have been no such assemblies designed which were capable of being shipped physically fastened together. Under the above circumstances, agreement with your conclusion that merchandise classifiable in item 685.14, TSUS (other than kits containing all parts necessary for assembly into complete receivers) must be physically fastened together would create an orphan tariff provision. Obviously, such a result was not intended by the provision's drafters. In conclusion, it is our opinion that item 685.14, TSUS, is an eo nomine provision which specifically applies to color television picture tubes imported together with other components and under which the merchandise in question is classifiable.

C. CLASSIFICATION AS AN UNFINISHED ARTICLE

Notwithstanding the above conclusion, you argue that the applicability of General Headnote 10(ij), TSUS, and the inapplicability of General Headnote 10(h), TSUS, and the doctrine of entireties mandate the separate classification of the picture tube, and the chassis and control panel in the merchandise in question. Initially, we emphasize our conclusion, previously discussed, that a discussion of the General Headnotes and the doctrine of entireties is unnecessary since the tariff provision in question (item 685.14, TSUS) clearly

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4. The Random House Dictionary of the English Language, 89 (1973); Webster's New Collegiate Dictionary, 67 (1977); Webster's New World Dictionary, 83 (2nd College Ed. 1974); The American College Dictionary, 75 (1970).

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provides for assemblies imported with a color television picture tube. However, we are also of the opinion that even in the absence of the specific language in item 685.14, TSUS, the merchandise in question would still be classifiable as an unfinished article under the eo nomine provision for television reception apparatus, and parts thereof which currently appears as part of the superior heading to item 685.14, TSUS. Therefore, an analysis of your argument appears below.

The two general headnotes which you cite provide as follows:

10. (h) unless the context requires otherwise, a tariff description for an article covers such article whether assembled or not assembled, and whether finished or not finished;

(ij) a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

Likewise, the doctrine of entireties and General Headnote 10(h), TSUS, have been described and discussed as follows:

> It often happens that merchandise consists of two or more components which are shipped together and are intended to be used together. They may or may not be physically joined together. The question arises as to whether the components are dutiable separately or whether they are to be considered an entirety for tariff purposes, dutiable as one complete article.
>
> In general, it may be said that an article will be regarded as an entirety when the components, upon being joined, form a new article which has a character or use different from that of any of the parts.... Conversely, where . . . the components retain their individual identities and are not subordinated to the identity of the combination, duty will be imposed on the individual entities of the combination as though they had been imported separately.[5]

Additionally:

> To a large extent, General Headnote 10(h) embodies the time-honored doctrine of "entireties." Under the doctrine of entireties unassembled parts or components are treated for tariff purposes as though they were assembled or combined at the time of importation, if the following conditions are present:
>
> (1) The parts or components must be designed or intended to be assembled or combined after importation into the article in question.

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5. R. Sturm, A Manual of Customs Law 288-89 (1st ed. 1974).

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(2) The parts or components must be packed separately (not commingled) in the same shipment for the same importer.

(3) The article, "constructively" assembled or combined into an entirety, must itself fall within the product description under consideration. That is, the "constructive" assembly or combining of the imported parts or components alone must produce an article to which the product description applies.

The leading case on the subject is Daisy - Heddon, Div. Victor Comptometer Corp. v. United States, 66 CCPA 97, C.A.D. 1228 (1979). * * * * Affirming the lower court, the Court of Customs and Patent Appeals held [in Daisy Heddon] that the imported articles were properly classified as fishing reels * * * * because the articles would have been substantially complete reels if imported in an assembled condition.

* * * *

The Daisy - Heddon decision listed the following factors that could appropriately be considered in determining whether an imported article was substantially complete:

(1) Comparison of the number of omitted parts with the number of included parts;

(2) Comparison of the time and effort required to complete the article with the time and effort required to place it in its imported condition;

(3) Comparison of the cost of the included parts with that of the omitted parts;

(4) The significance of the omitted parts to the overall functioning of the completed article; and

(5) Trade customs, i.e., whether the trade recognizes the importation as an unfinished article or merely as a part of that article.[6]

Initially, we conclude that the doctrine of entireties is not relevant to our determination in this case since it appears that the joining of the imported components does not form a new article having a character or use different from that of any of its parts. Rather, that which is important is the possibility that under General Headnote 10(h), TSUS, the imported components form an

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6. P. Feller, U.S. Customs and International Trade Guide 56.05[2] (1984).

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unfinished article. Therefore, applying the above headnotes and principles to the present situation the question essentially is whether, when constructively assembled, the merchandise in question is a type of television reception apparatus which is substantially complete.[7] For purposes of our analysis, we initially note that headnote 3(a), Part 5, Schedule 6, TSUS, provides as follows:

> 3. The provisions of this headnote apply to "television apparatus and parts thereof" provided for in items 685.11 through 685.19, inclusive, of this part.
> (a) The term "complete", as used to describe television receivers, means a television receiver, fully assembled, whether or not packaged or tested for distribution to the ultimate purchaser.

In our opinion the above headnote specifically proscribes the consideration of costs related to adjustment, testing and cabinetry in determining whether the merchandise in question is substantially complete. However, because the above headnote was inserted into the TSUS pursuant to Presidential Proclamation 4707, the validity of which you dispute, we will analyze the issues involved as if the headnote did not exist.

First, available evidence, including statements in a submission from counsel representing MIC, indicates that the articles in question, "are fully compatible with each other, and are used together in the same model color television receiver, which is completed by MIC in its Franklin Park, Illinois, facility."[8] Discussions with our field personnel confirm that the picture tubes, chassis, and control panels are capable of being used together. We assume in the absence of any allegation to the contrary in your submission that the above statements and findings are factually correct.

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7. In footnote 7 on page 17 of your addendum to the original petition, you indicate that the application of the Daisy - Heddon criteria in this case is inappropriate because the imported merchandise is in need of further processing. Initially, we note that in Daisy - Heddon the court distinguished the situation there present from one where, "an article is incomplete because the material which comprises the article is in need of further processing" (emphasis added). In this regard, there has been no allegation in your petition that any of the materials comprising either the imported merchandise or a completed television receiver set needs further processing. Rather, the "processing" which you allege is necessary consists of adjustment and testing of a completed television receiver set. As discussed later in this letter, we have determined that such testing and adjustment costs are not intrinsically bound up with the manufacture of a completed article. Accordingly, because no constituent materials are in need of further processing and the costs referred to do not relate per se to the manufacture of the completed article, we are of the opinion that a Daisy - Heddon analysis is entirely appropriate for purposes of the instant discussion.

8. Submission on behalf of Matsushita Industrial Company at 8-9 (March 26, 1984).

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Additionally, available evidence, including statements from MIC's counsel[9] and information received from our field personnel, indicates that the chassis, control panels, and picture tubes are always packed separately, and imported and entered together, on the same vehicle, in equal numbers and for the same importer. It therefore appears that the second previously stated condition has been met in this case.

Turning to the constructive assembly test and the Daisy - Heddon criteria in particular, business confidential information submitted by MIC's counsel indicates that the number of parts needed to prepare the imported merchandise for sale to the ultimate consumer is small in comparison to the number of parts included in the imported merchandise. We note that your petition does not dispute the above conclusion.

Likewise, statistics supplied by MIC's counsel, and estimated figures in your petition, indicate that the cost of those components added in the United States is more than a de minimis portion of the total cost of all parts contained in a completed television receiver set. Nevertheless, the data also reveals that the major cost associated with those components which are added in the United States relates to the cabinet, which, in our opinion, is relatively insignificant to the overall functioning of the final product.[10] Accordingly, the cost of the components not included in the imported merchandise, and which are necessary for the completion of a finished television receiver set, is relatively small when compared to the cost of the components in the imported assemblies.

A comparison of the time and effort needed to place the entered merchandise in its imported condition to the time and effort necessary for the completion of a finished television receiver set in the United States initially requires us to ascertain those elements and processes which are necessary to convert the imported merchandise into a finished television receiver set. In this regard, you have included in your comparison amounts for adjustment and testing costs, but without breaking these costs out separately from amounts estimated for labor and factory overhead. In any event, you estimate that beteen 25 and 39 percent

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9. Id. at 10.

10. In Yamaha International Corp. v. United States, Slip Op. 84-20 (March 9, 1984), the United States Court of International Trade indicated that an organ cabinet was not essential to the classification of certain imported components as an unfinished "electronic musical instrument" because Congress had specifically provided that that term encompassed all musical instruments in which the sound is generated electronically -- which can be satisfied without a cabinet. Similarly, in the instant case, Congress specifically provided for television "reception" apparatus in the superior heading to item 685.14, TSUS. Accordingly, although we acknowledge that a cabinet is necessary for a completed television receiver set to be marketed to the public, there has been no allegation, and we are aware of no evidence indicating, that a cabinet is related to the reception function provided for in the tariff schedules.

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of the total value of a completed television receiver set is added in the United States, while making no estimate comparing the time necessary for the manufacture of the imported merchandise to the time necessary for completion of a television receiver set in the United States. You indicate that your inclusion of adjustment and testing costs in your estimate is justified because the record is unclear as to when and where the adjustments are conducted.

Although you claim it is unclear as to where and when the adjustments are made, MIC's counsel indicates that testing and adjustment is performed after the television receiver has been completed.[11] In the absence of contrary evidence, we are of the opinion that the above statement must be assumed correct. It therefore appears that such costs are not intrinsically bound up with the actual manufacture of a television receiver set, even though they may be necessary before a finished product can be marketed to the ultimate consumer. Accordingly, we are of the opinion that testing and adjustment costs are not properly part of the time and effort comparison set forth in Daisy - Heddon. Rather (when adjustment and testing costs are not included), the data in our possession indicates that the time and effort required to produce the imported merchandise substantially exceeds that necessary to convert the imported merchandise into a completed television receiver set.

Finally, neither your petition, nor any of the comments received as the result of our Federal Register notice, provides evidence concerning whether the industry in question recognizes the importation as an unfinished article or merely as a part of that article. However, there is evidence regarding the significance of the omitted parts to the overall functioning of the completed article. In this regard, we are of the opinion for the reasons stated below that the parts omitted from the imported merchandise are relatively insignificant to the overall function of a television receiver set.

Initially, we note that we have not located any judicial decisions defining the term "television receiver" or "television reception apparatus," or directly indicating that which is necessary for an imported article to be considered as an unfinished television receiver or television reception apparatus rather than as a part of a television receiver or television reception apparatus. In this regard, even the technical publications which we consulted[12] failed to define or discuss the term "television receiver" in a section or category related exclusively to that term. Rather, all of these technical sources mention or discuss television receivers in sections related to either radios or radio receivers,[13] and agree that all radio receivers perform three basic

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11. Submission on behalf of Matsushita Industrial Company at 52-53, n. 31 (March 26, 1984).

12. Encyclopedia of Electronics and Computers, 690 (McGraw-Hill, 1984); 15 The New Encyclopaedia Britannica, 423 (1975); 23 The Encyclopedia Americana, 147 (International ed. 1980); Van Nostrand's Scientific Encyclopedia, 1477 (4th ed., 1968).

13. For example, the first two sentences of the Encyclopaedia Britannica article cited above, read as follows:

> The term radio covers the radiation and detection of signals propagated through space as electromagnetic waves to convey information. One of the chief branches of telecommunication, radio embraces wireless telegraphy, telephony, and television.

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functions: selectivity, amplification, and detection. More particularly, one article[14] compares the differences between a radio receiver and a television receiver as follows:

> The development of television has led to extensions of the b.f. [beat frequency] principles involved in the usual radio receiver but has not required any radically different ones. The main difference between the sound receiver and the picture receiver is in the width of the bands which must be handled, television requiring a band several megacycles wide while sound requires only a few kilocycles. This means that the radio frequency channels must be capable of selecting between stations yet also pass very wide sidebands. In addition the amplification circuits after the detector (corresponding to the audio amplifiers of the sound set) must satisfactorily amplify over a range of a few million cycles.

Although, as previously mentioned, we are not aware of any judicial decisions defining "television receiver" or "television reception apparatus" for Customs purposes, or differentiating unfinished television receivers or television reception apparatus from parts of television receivers or television reception apparatus, there have been several decisions relating to unfinished radio receivers. In the most notable of the above cases, General Electric Co. v. United States, 2 CIT 84 (1981), aff'd 69 CCPA 166 (1982), at issue was the classification of certain radio chassis which, in their condition as imported, were not capable of use by the ultimate consumer, and which were to be combined with other components to produce various stereo components systems. Specifically, certain of the imported chassis were to be completed by the addition of a power transformer, a "jack pack," a power cord, certain internal wiring, a cabinet, knobs, a calibration scale, an 8-track tape player, a record changer, and speakers.

In ruling that the imported chassis were encompassed within the common meaning of the term "radio receiver," the court cited various definitions for the terms "radio" and "radio receiver" and articles discussing radio receivers,[15] and noted, in agreement with our findings, that none of the definitions or articles mentioned transformers, power cords, speakers, and cabinets as basic components of radio receivers. Specifically, the court noted that power transformers and power cords do not relate to radio reception per se: while with regard to the exclusion of speakers from the common meaning of "radio receiver," the court cited Symphonic Electronics Corp. v. United States, 77 Cust. Ct. 147, C.R.D. 76-5 (1976). In conclusion, the court found that the imported merchandise performed the basic functions of a radio receiver (selectivity, amplification, and detection), and that it was classifiable as an unfinished radio receiver pursuant to General Headnote 10(h), TSUS. In making

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14. Van Nostrand's Scientific Encyclopedia, 1477 (4th ed. 1968).

15. Cooke & Markus, Electronics & Nucleonics Dictionary, 380, 387 (McGraw-Hill, 1960); McGraw-Hill Encyclopedia of Science and Technology, 256 (Rev. 1966 ed.); 11 Encyclopaedia Britannica, 485-486 (1970 ed.); 19 Collier's Encyclopedia, 610-611 (1978); 23 Encyclopedia Americana, 121gg - 121hh (1973).

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the above determination, the court specifically cited Daisy-Heddon as authority for the proposition that classification of merchandise as an unfinished article pursuant to General Headnote 10(h) does not depend merely on the presence or absence of an essential part such as a power transformer and power cord.

We conclude from the technical authorities previously cited, and the General Electric decision and cases cited therein, that for customs purposes the basic function of a "television receiver" or "television reception apparatus" is to select, amplify, and detect particular radio waves. From information provided by Matsushita's counsel, and which is not contested in your petition, it appears that the imported merchandise is capable of performing the above reception function, as well as converting a demodulated television signal into light.[16]

Notwithstanding the ability of the imported merchandise to perform the basic reception functions of any television reception apparatus, you argue that the omission of certain parts (yoke, speakers, and degaussing coil) from the imported merchandise should preclude its classification as an unfinished article. While we recognize that these components are essential to the successful marketing of completed television receiver sets to the public, thus far the courts have not relied on or adopted an argument in similar cases making the classification of an article dependent on its ability to be marketable.[17]

We conclude from the above discussion that the imported merchandise performs the basic functions of a television receiver or television reception apparatus. Likewise, after taking into account all of the Daisy-Heddon criteria we conclude that the imported merchandise is an unfinished television receiver or television reception apparatus pursuant to General Headnote 10(h), TSUS.

D. SUBSTANTIAL TRANSFORMATION, CONTINGENCY OF DIVERSION, AND DUMPING

In addition to all of the arguments made in your petition and previously discussed, you indicate that the imported merchandise should not be classified as a single entity under item 685.14, TSUS, because it undergoes a substantial transformation in the United States to become finished color television receiver sets. Additionally, you indicate that the television picture tubes in question, which are originally produced in Japan, must be entered separately as articles produced in Japan through the application of the principle of contingency of

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16. Submission on behalf of Matsushita Industrial Company at 10 (March 26, 1984).

17. While the Daisy - Heddon court stated that factors other than those specifically listed in its decision may be necessary to the resolution of a particular case, it noted in General Electric, for example, that the merchandise therein was not ready or capable of use by the ultimate consumer without further fabrication (2 CIT at 85) and refrained from relying on that fact in its decision.

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diversion.[18] Finally, you indicate that since the imported merchandise lacks a yoke, affirmation of our current classification would be inconsistent with certain antidumping findings listing those components necessarily contained in a television receiver.

Initially, we know of no doctrine which specifically precludes merchandise from being classified under either an eo nomine provision, such as item 685.14, TSUS, or as an unfinished article pursuant to General Headnote 10(h), TSUS, because it may be substantially transformed after importation into the United States. We do recognize that some principles involved in making a substantial transformation determination may be similar to criteria mentioned in the Daisy - Heddon case. However, Daisy - Heddon does not specifically mention substantial transformation and we do not here assume that the court in that case wished it as such to be a consideration. Accordingly, having already decided that the merchandise in question is properly classifiable under item 685.14, TSUS, either as an eo nomine article or as an unfinished article, the doctrine of substantial transformation is irrelevant to our determination.[19]

With regard to your contingency of diversion argument, it should be noted that 19 U.S.C. 1516 allows interested parties to contest only the "appraised value, classification, or rate of duty." In the instant case, our prior discussion of the issues involved led us to conclude that the imported merchandise was properly classifiable under item 685.14, TSUS, dutiable at 5 percent ad valorem. That determination was neither dependent on, nor affected by, either the country of origin or exportation of the merchandise involved. Likewise, even had we ruled that the chassis and control panels were classifiable separately from the picture tubes (which would then have been dutiable at 15 percent ad valorem), such determination would neither have depended on, nor been affected by, either the country of origin or exportation of the merchandise. Accordingly, to the extent that your petition addresses the country of origin of any of the merchandise involved in the present case, it is outside the areas specified by section 1516 (classification, value, rate of duty) as proper for a ruling.

Additionally, to the extent that your contingency of diversion argument was meant to support the notion that the merchandise in issue is not classifiable as an entity under either the eo nomine provision for assemblies in item 685.14, TSUS, or as an unfinished article pursuant to General Headnote

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18. In the past, the doctrine of contingency of diversion has been used to ascertain the country of exportation for merchandise for appraisement purposes. Under the doctrine, "merchandise imported from one country, being the growth, production, or manufacture of another country, must be appraised at its value in the principal markets of the country from which immediately imported, unless it is shown that it was destined for the United States at the time of original shipment without any contingency of diversion." United States v. G. W. Sheldon & Co. (Damon Raike & Co.), 53 Treas. Dec. 34, 36, T.D. 42541 (1928).

19. In this regard, because we find the doctrine of substantial transformation irrelevant to our classification determination, there is no need to rule on whether such a transformation occurs in the United States, and we therefore refrain from so ruling.

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10(h), TSUS, we have previously discussed all of the relevant classification issues involved. Indeed, we have been unable to find any citation indicating that contingency of diversion may affect the classification of merchandise.[20]

Finally, regarding the alleged inconsistency between our current classification and prior government determinations under the antidumping laws, our previous discussion should make it clear that under Daisy - Heddon the omission of an essential part (such as a yoke) does not preclude the application of General Headnote 10(h), TSUS. More importantly, Footnote 1 in your Exhibit 6, a memorandum authored by the Chief Counsel, U.S. Customs Service, specifically indicates:

> We note at this point that determinations of the "class or kind" of merchandise subject to a dumping finding under the Antidumping Act do not turn on the same issues as those presented when classifying merchandise under the Tariff Act of 1930.

The above conclusion is fully consistent with our ruling MFG 431.51 WR, 018022, dated June 15, 1972, a copy of which is enclosed, in which we indicated that television tubes and chassis imported in the same shipment were classifiable pursuant to General Headnote 10(h), TSUS, as television apparatus in item 685.20, TSUS. In the same letter, however, we specifically stated that: "The tariff classification of an article is not considered as determinative of the scope of an antidumping investigation." Accordingly, we reaffirm our previous decision that the principles involved in tariff classification under the Tariff Act of 1930 differ from those considerations involved in decisions under the antidumping laws; and that there is little if any relationship between the two.

HISTORY OF RULINGS

In addition to the foregoing, we would like to bring to your attention that Customs has a long and consistent history of ruling that merchandise similar to that here in question is classifiable either under item 685.14, TSUS, or its predecessor provision, item 685.20, TSUS; and that this history predates the rulings cited in your petition. We are therefore enclosing copies of the following decisions:

1. MFG 431.51 MA, 009050, dated February 3, 1971
2. MFG 431.51 WR, 018022, dated June 15, 1972

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20. As noted on page 46 of your petition, contingency of diversion is used to determine the country of exportation for purposes of ascertaining export value when appraising merchandise. Likewise, under General Headnotes 3(a), 3(c) and 3(d), TSUS, we are required to ascertain whether merchandise was imported directly or indirectly from certain countries or insular possessions for purposes of ascertaining its dutiable status; however, such a determination is not involved in the instant case. Finally, because it is irrelevant to the classification of the merchandise in this case, we refrain from making any determination concerning a possible contingency of diversion for the picture tubes in question.

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3. CLA-2:R:CV:S L, 431.51, 029088, dated July 30, 1973
4. CLA-2:R:CV:MSP, 053119 SC, dated September 7, 1973
5. CLA-2 R:CV:MSP, 051204 SC, dated August 1, 1977.

Although your petition indicates that our most recent rulings may be somewhat confusing in their use of the words "kit," "entirety," and "assembly," all of the enclosed decisions clearly evidence a conclusion by Customs that the merchandise was an unfinished article classifiable as such pursuant to General Headnote 10(h), TSUS.

CONCLUSION

In summary, we conclude:

1. The U.S. Customs Service has no authority to rule on the legality of a presidential proclamation changing the wording of the tariff schedules. Rather, in performing our administrative ruling function, we must rely on whatever language is currently contained in the TSUS.

2. The merchandise here in issue is properly classifiable under the eo nomine provision for television receivers and parts thereof, having a picture tube, assemblies, color, in item 685.14, TSUS.

3. The merchandise here in issue is an unfinished article classifiable under the superior heading to item 685.14, TSUS, pursuant to General Headnote 10(h), TSUS.

4. The above ruling is consistent with and reaffirms a line of Customs rulings issued under item 685.20, TSUS, the predecessor provision to current item 685.14, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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MAY 17 1985

CLA-2 CO:R:CV:V
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District Director of Customs
U.S. Customs Service
55 Erieview Plaza
Cleveland, Ohio 44114

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 4110-3-000003, Dated May 6, 1983

The above-referenced protest was filed against the decisions in the liquidation of over 400 entries entered between 1978 and 1983. Said entries were liquidated on January 28, February 4, February 11, and February 18, 1983. Although the protest is dated according to the date it was received at the port of entry, a stamp on the face of the protest shows that it was first filed with your office, as the office whose decision was under protest, on April 27, 1983. Accordingly, the protest is considered timely filed within the time limits set forth in section 514 of the Tariff Act with respect to all entries covered by the protest.

ISSUES:

(1) Whether certain printed circuit board assemblies identified as part Nos. 16005256 and 16005285 are properly classifiable under the provision for solid-state (tubeless) radio receivers, designed for motor-vehicle installation, in item 685.21, TSUS (1983), or under the provision for radiobroadcasting reception apparatus, and parts thereof, other, other, other, in item 685.29, TSUS (1983).

(2) Whether certain printed circuit board assemblies identified as part Nos. 16000757, 16001249, 16001299, 16002962, 16008959, 16008964, 16011777, 16011778, 16016404, and 16020333 are properly classifiable under the provision for audio-frequency electric amplifiers in item 684.70, TSUS

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(1983), or under the provision for machines not specially provided for, and parts thereof, in item 678.50, TSUS (1983), for part Nos. 16000757, 16001249, 16001299, 16011777, 16011778, and 16016404, and the provision for radiobroadcasting reception apparatus, and parts thereof, other, other, other, in item 685.29, TSUS (1983), for part Nos. 16002962, 16008959, 16008964, and 16020333.

FACTS:

The articles in question are printed circuit boards with various electronic components assembled onto them. These boards are used by the importer in the manufacture of radios and radio-tape players designed for installation into motor vehicles.

Two of the several types of boards (part Nos. 16005256 and 16005285), which are used to produce radios, contain all the circuitry and other apparatus needed to perform the amplification and detection functions for the radios into which they will be built. Additionally, those boards also contain some, but not all, of the circuitry and apparatus required by their respective radios to perform a selectivity function. In the final products, the remainder of the circuitry for performing the selectivity function is contained in an apparatus identified as a tuner assembly. The importer demonstrated that by soldering one of the imported boards to its corresponding tuner assembly, making a few relatively minor modifications, and connecting an antenna, a power supply, and a speaker thereto, AM and FM radio signals could be reproduced. However, the importer pointed out that in the actual production process, the tuner assembly is not soldered to the imported circuit board until that board has been assembled with many other pieces of the final product.

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Some of the remaining circuit boards (part Nos. 16002962, 16008959, 16008964, and 16020333) are incorporated into radios, while others (part Nos. 16000757, 16001249, 16001299, 16011777, 1601 78, and 16016404) are used in making radio-tape players. Each of these boards contains the circuitry and other apparatus for amplifying audio-frequency signals (audio amplifier), shaping the tone of the sound reproduced by the final article by attenuating the audio-frequency signals (tone control), adjusting the volume (volume control), apportioning the sound between the front and rear speakers (fader control), turning the radio or radio-tape player on and off (on/off switch), and connecting the completed unit to the vehicle's speakers, electrical system, and, on vehicles equipped with power antennas, the electric motor which raises and lowers the antenna mast (power harness). In addition, part No. 16002962 is equipped with a light bulb socket for a radio dial lamp, and part No. 16000757 is equipped with a pushbutton device located in its on/off switch for changing the tracks on the tapes used by an eight-track tape player.

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LAW AND ANALYSIS:

The importer maintains that the circuit boards identified as part Nos. 16005256 and 16005285 are parts of radiobroadcasting reception apparatus, and therefore are properly classifiable in item 685.29, TSUS (1983). However, TSUS General Headnote 10(h) provides that "unless the context requires otherwise, a tariff description for an article covers such article, ... whether finished or not finished." On that basis, Customs officers classified circuit boards 16005256 and 16005285 as unfinished solid-state (tubeless) radio receivers, designed for motor-vehicle installation, in item 685.21, TSUS (1983).

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Parts of an article may be classified as the unfinished article itself only when the imported pieces constitute a substantially complete article. Authentic Furniture Products, Inc. v. United States, 61 CCPA 5, 6, C.A.D. 1109, 486 F.2d 1062, 1063 (1973). In Daisy-Heddon, Div. Victor Comptometer Corp. v. United States, 66 CCPA 97, C.A.D. 1228, 600 F.2d 799 (1979), the court listed five factors that can be relevant in making a determination whether an article is substantially complete in a case such as this, where the article is incomplete due to the omission of one or more parts. Those factors are: (1) comparison of the number of omitted parts with the number of included parts; (2) comparison of the time and effort required to complete the article with the time and effort required to place it in its imported condition; (3) comparison of the cost of the included parts with that of the omitted parts; (4) the significance of the omitted parts to the overall functioning of the completed article; and (5) trade customs, i.e., whether the trade recognizes the importation as an unfinished article or merely as a part of the article. The court hastened to add that "[t]his list of factors is not exhaustive; it must be recognized that fewer than all of the above factors, or additional factors, may come into play depending on the particular importation. The outcome of each case will always depend on the particular merchandise involved." 66 CCPA at 102, 600 F.2d at 803.

Prior to examining the Daisy-Heddon factors in relation to the two imported circuit boards in question, an analysis of the tariff item covering the articles of which the boards are claimed to be unfinished versions is in order. Item 685.21, TSUS (1983), provides for solid-state (tubeless) radio receivers, designed for motor-vehicle installation. In

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the context of former item 685.24, TSUS, a radio receiver has been lexicographically and judicially defined as capable of performing three basic functions: selectivity, amplification, and detection. B & E Sales Co., Inc. v. United States, 9 CIT ____, Slip Op. 85-22 (Feb. 28, 1985); also see NEC America, Inc. v. United States, 8 CIT ____, Slip Op. 84-106 (Sept. 25, 1984), appeal docketed, No. 85-708 (Fed. Cir. Oct. 31, 1984); General Electric Co. v. United States, 2 CIT 84, 525 F. Supp. 1244 (1981), aff'd, 69 CCPA 166, 681 F.2d 785 (1982). Inasmuch as item 685.21, TSUS (1983), covers certain radio receivers by virtue of the same superior heading by which former item 685.24, TSUS, covered other radio receivers, the above definition of a radio receiver must apply equally to item 685.21, TSUS (1983), subject, of course, to the limitations imposed by the remainder of the language in that provision. With that in mind, we now examine the Daisy-Heddon criteria.

For purposes of making our examination, the importer submitted a chart comparing the imported circuit boards to the radio receivers into which they will be incorporated in terms of the first three Daisy-Heddon factors. That chart shows:

(1) It takes 0.39 hours to manufacture circuit board 16005285, which consists of 146 components costing a total of $12.54;

(2) It takes 0.84 hours and 300 additional components costing a total of $5.82 to produce radio receiver 16001700 from circuit board 16005285;

(3) It takes 0.40 hours to manufacture circuit board 16005256, which consists of 148 components costing a total of $12.61; and

(4) It takes 0.85 hours and 302 additional components costing a total of $6.95 to produce radio receiver 16001650 from circuit board 16005256.

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According to this information, two of the first three criteria listed in Daisy-Heddon indicate that the imported circuit boards should not be regarded as substantially complete radio receivers, for it takes roughly twice the number of parts and twice the time to complete the radio receivers as it does to produce the imported circuit boards. However, the parts figures include an unspecified number of components such as washers, studs, or screws whose purpose is merely to fasten other components together. Furthermore, although they number only about half of the remainder of the radio receiver parts, the circuit board parts cost approximately twice as much as the remaining parts needed to produce the radio receivers. Thus, the three statistical Daisy-Heddon criteria are in conflict on the substantial completeness issue in this case.

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The fourth Daisy-Heddon factor looks to the significance of the omitted parts to the overall functioning of the completed article. The imported boards perform two of the three functions by which a radio receiver is defined. Only about a third of the omitted parts participate in the selectivity of radio frequencies, according to information furnished by the importer. The rest of the omitted parts make the finished articles commercially practical for use as radio receivers in automobiles, but do not affect the way in which the finished articles function as radio receivers per se. In our estimation, then, the imported circuit boards would be considered substantially complete radio receivers judging by this criterion.

The last of the Daisy-Heddon factors concerns trade customs. In this regard, the importer submitted an affidavit from a Mr. Gerald M. LeRow, an electrical engineer with over 20 years' experience in the consumer and

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professional electronics industries. Mr. LeBow states in his affidavit that he does not believe that either of the circuit boards in question represents a substantially complete radio receiver. Noting that the circuit boards do not contain components to perform a selectivity function, Mr. LeBow concludes that:

> These missing essential circuit elements and the mechanical linkages for their operation are contained on a different circuit board not part of the 5256 or 5285 board in question. Which [sic] must be assembled to the 5256 or 5285 board in question in order to provide a substantially complete radio receiver.

Letter from Importer dated December 20, 1984, Exhibit D at 2. Thus, Mr. LeBow is basing his opinion on a criterion which has been described as the "essentiality" test, whereby the absence of a substantial or essential part precludes classification as the unfinished article itself. See Authentic Furniture, 61 CCPA at 7, 486 F.2d at 1064. However, Daisy-Heddon expressly rejected the use of that test to determine whether imported merchandise is classifiable as an unfinished article. 66 CCPA at 102, 600 F.2d at 802. Therefore, we cannot accord much weight to Mr. LeBow's opinion as reflected in his affidavit, which was the only documentary evidence submitted by the importer pertaining to the trade customs factor.

In General Electric, a case which is quite analogous to the situation at hand, the imported merchandise included three types of chassis which were capable of performing the basic functions of a radio receiver (i.e., selection, amplification, and detection of radio frequency) and were dedicated for use as the radio receiver portion of combination stereo systems. The plaintiff maintained that the chassis were not unfinished radio receivers because, inter alia, they were missing significant and substantial parts -- namely, a power transformer, a power cord, and

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loudspeakers -- without which the imports were inoperable as radio receivers. However, in its opinion, which was adopted on appeal by the Court of Customs and Patent Appeals as its own, the trial court, after reviewing various definitions of "radio receiver" as well as prior court cases, concluded:

> The several definitions of "radio receiver" cited by defendant disclose that the basic functions of a radio receiver are selectivity, amplification and detection, all of which are performed by the chassis in their condition as imported. The power transformers and power cords have no direct relationship to those basic functions and therefore no relationship to radio reception per se. Thus, it is obvious that the chassis are substantially complete radio receivers.

2 CIT at 90, 525 F. Supp. at 1246 (footnote omitted). Almost as an afterthought, the court added that an examination of the record in the case in terms of the Daisy-Heddon guidelines supported classification of the chassis as unfinished radio receivers.

It stands to reason that if a radio chassis which performs all three basic functions of a radio receiver is "obviously" a substantially complete radio receiver, then there can be an article which does not perform all three functions of a radio receiver but is nonetheless a substantially complete radio receiver, though not quite as clearly as if it performed all three radio receiver functions. We believe that circuit boards 16005256 and 16005285 are such articles. As noted earlier, those boards contain all the circuitry and other apparatus needed to perform two of the three basic functions of a radio receiver, and they also contain some of the circuitry and other apparatus required to perform the third radio receiver function. According to information furnished by the importer,

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84 percent of the component costs, 59 percent of the number of components, and 54 percent of the manufacturing time dedicated to producing the circuitry and other apparatus needed to perform the three basic radio receiver functions in the finished products are attributable to the imported circuit boards. Roughly two-thirds of the parts added after importation, like the power transformers and power cords in General Electric, have no direct relationship to the basic radio receiver functions and, therefore, no relationship to radio reception per se. Two of the four Daisy-Heddon factors for which persuasive evidence was submitted indicate that the circuit boards are substantially complete radio receivers, and one of those factors (i.e., significance of the omitted parts) is the major criterion that was used in General Electric. Based on all this, we conclude that circuit boards 16005256 and 16005285 are substantially complete radio receivers and, consequently, are classifiable as unfinished solid-state (tubeless) radio receivers, designed for motor-vehicle installation, in item 685.21, TSUS (1983).

As for the remaining circuit boards, the importer contends that the classification as audio-frequency electric amplifiers is incorrect because the articles in question are more than amplifiers by virtue of the several functions they perform in addition to amplifying audio-frequency signals.

Where an article is in character or function something other than as described by a specific statutory provision — either more limited or more diversified — and the difference is significant, it cannot find classification within such provision. It is said to be more than the article described in the statute. Dan-Dee Imports, Inc. v. United States, 7 CIT ____, Slip Op. 84-49 (Apr. 30, 1984); Robert Bosch Corp. v. United States,

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63 Cust. Ct. 96, 103, C.D. 3881 (1969). However, where the difference is in the nature of improvement or amplification and the essential character of the article is preserved or only incidentally altered, the applicable rule is than an unlimited eo nomine statutory designation includes all forms of the article in the absence of a contrary legislative intent or commercial designation. Dan-Dee Imports, supra; Robert Bosch, 63 Cust. Ct. at 104.

In order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the merchandise in issue. E. Green & Son (New York), Inc. v. United States, 59 CCPA 31, 34, C.A.D. 1032, 450 F.2d 1396, 1398 (1971). In Customs Ruling CLA-2 CO:R:CV:S 061757 SC (Jan. 27, 1981), we noted that generally speaking, an audio-frequency amplifier is an electronic device used in an audio system to increase the strength of the signal output of other audio components such as tuners, microphones, phonographs, and tape players to the level desired or needed for operating that system. Audio-frequency amplifiers may consist of simple circuits, such as those inserted in portable phonographs, or they may be sophisticated systems that combine, control, and greatly amplify audio signals.

One of the general guidelines that have been used to determine whether audio amplifying equipment having functions in addition to amplification is classifiable under item 684.70, TSUS, as an audio-frequency electric amplifier is whether such or similar articles are bought, sold, and known in the trade as audio-frequency amplifiers. After all, as we observed in Customs Ruling 061757, if the term "audio-frequency electric amplifier" only encompassed articles that did nothing but increase the

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amplitude of an audio signal, few, if any, of the articles commercially known as amplifiers would be classifiable under item 684.70, TSUS. Here, the nonamplifying features incorporated into each of the circuit board assemblies in question are tone control, volume control, fader control, an on/off switch, and a power harness. These features are also contained in many products which are bought, sold, and known in the trade as audio-frequency electric amplifiers. Consequently, the inclusion of these features in the imported circuit board assemblies does not make those assemblies more than audio-frequency electric amplifiers.

The addition of the light bulb socket for a radio dial lamp on part No. 16002962 and the incorporation of a pushbutton device to change tracks on eight-track tapes on part No. 16000757 do not make those articles more than audio-frequency amplifiers, either. Such additions are relatively insignificant and, at most, only incidentally alter the essential character of the imported merchandise. Thus, all of the remaining printed circuit board assemblies in question (i.e., those not classifiable as unfinished radio receivers) are classifiable under item 684.70, TSUS, as audio-frequency electric amplifiers.

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HOLDINGS:

(1) The printed circuit board assemblies identified as part Nos. 16005256 and 16005285 are classifiable under the provision for solid-state (tubeless) radio receivers, designed for motor-vehicle installation, in item 685.21, TSUS (1983).

(2) The printed circuit board assemblies identified as part Nos. 16000757, 16001249, 16001299, 16002962, 16008959, 16008964, 16011777, 16011778, 16016404, and 16020333 are classifiable under the provision for audio-frequency electric amplifiers in item 684.70, TSUS (1983).

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The protest should be denied in full. A copy of this decision should be attached to your Form 19, Notice of Action, to be sent to the protestant.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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JAN 0 2 1985

CLA-2 CO:R:CV:V
553146 EM

[redacted]

Dear [redacted]

In your letter of June 13, 1984, on behalf of [redacted] you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to a semi-circular plastic patch of self-adhesive plastic applied to the interior toe area of footwear uppers as reinforcement. This was the subject of a previous letter dated November 2, 1981, 067459.

A sample upper with the plastic patch attached was submitted. It was previously determined that no allowances could be made under item 807.00, TSUS, for the vamp components of the footwear uppers for the reason that molten thermoplastic material was deposited on the interior toe area of the vamp in a coated form rather than a solid patch component.

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In describing the specially designed feed mechanism of the process, melted plastic flows from the belt body into the applier body and deposits a layer of plastic of uniform thickness in a half-circle configuration on the box toe area of the workpiece. Different thicknesses may be obtained by making adjustments to the applier body and roll function of the process. The melted material is replaced in the applier at the same rate as it is dispensed.

In describing a transfer molding process as an assembly in Sigma Instruments, Inc. v. United States, Slip Op. 83-16, decided March 18, 1983, the plastic was in a transitory molten state, performed in a controlled operation that anticipated the rapid hardening of the plastic component before completion of the permanent joinder process. The molding compound had substantially assumed a definite solidification as to size and shape, and permanently fixed the subject terminals into their designed configuration and spacing so that the resulting headers could perform their intended function in an electrical relay system. The headers are different articles from the exported terminals alone, and result solely from the assembly of the terminals and plastic compound. The transfer molding process was determined to be an assembly of solids, comprised of the terminals and plastic base to form headers.

The plastic compound formed a substantial separate component that changed both terminals and plastic into a new and different article of commerce, described as headers, an assembly of different components.

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Similarly, in C. J. Tower & Sons of Buffalo, Inc. v. United States, C.D. 3840 (1969), imported film was composed of two plastic sheets, one of United States manufacture and the other of Canadian manufacture, with a bond in between to form a lamination. In both situations, the headers in one case and film in the other, different articles resulted from the assembly of respective components.

In the case at hand, however, as seen from the sample submitted, the layer of plastic is defined as little more than a transcribed coating process, as to shape and thickness, which merely changes the quality of the textile vamp, to give it the added characteristic of a reinforced box toe. The vamp remains the same except for the added reinforcement. Merely changing the exported component with the addition of a new property by a foreign process is not analogous to producing a new and different article by a foreign assembly of components.

In these circumstances, since the foreign process amounts to little more than a coating of plastic in a defined area, we remain of the opinion that the coating process performed on the exported vamp would preclude the vamp components from item 807.00 tariff treatment.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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[redacted]

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CODE AND DATE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME							
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

* U.S. GPO: 1981 417-788

DEC 11 1985

CLA-2 CO:R:CV:V
553657 EM

District Director of Customs
U.S. Customs Service
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2528

Dear Sir:

This ruling is in response to the Application for Further Review of Protest No. 3801-3-001960 dated September 15, 1983. The protest was filed against the decision in the liquidation of Entry Nos. 83-642081, et al., of October 19, 1982, et seq. All entries were liquidated on August 26 and August 19, 1983.

ISSUE:

The question raised concerns the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to certain resistance welding electrode caps that were exported to Canada as parts of electric welding machines and coated with aluminum oxide.

FACTS:

Domestic-made welding tips, also referred to as resistance welding electrodes and copper forgings, were aluminum coated in Canada. The importer/protestant claims that the coated welding tips qualify as an alteration under item 806.20, TSUS, since the coating does not create a new and different article of commerce. The district director denies the applicability of item 806.20, TSUS, for the reason that the coating is a finishing step in the total manufacture leading to finished products.

LAW AND ANALYSIS:

Under item 806.20, TSUS, articles exported for repairs or alterations may be returned to the United States with duty assessed on the value of the repairs or alterations made abroad. However, this tariff provision

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cannot be applied to a foreign process that goes beyond the contemplation of a repair or alteration performed on exported articles, as when a different product is returned from that which was exported, or when an unfinished manufactured product was exported for finishing.

In the circumstances described, if the welding tips had been used and were in need of an aluminum oxide coating, the recoated tips may be returned under item 806.20, TSUS. However, if the welding tips are newly manufactured products and the new tips are exported for coating as the last or finishing step in the manufacture of the welding tips, this goes beyond an alteration of an already finished product and the application of item 806.20, TSUS, would be precluded, especially in view of an importer's silence in the matter, or failure to produce contravening evidence. The tariff provision contemplates a repair or alteration of an already finished product and does not contemplate manufacturing or finishing operations performed abroad in order to obtain finished products ready for sale and their intended use upon return.

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CONCLUSION:

On the basis of the foregoing, you should deny the protest for item 806.20 tariff relief on the ground that the tariff provision cannot be used in the production of manufactured goods. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
[redacted]ief, Value and Special
Classification Branch

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CORRESPONDENCE APPROVAL AND CLEARANCE

DEC 16 1985

CLA-2 CO:R:CV:V
553742 EM

District Director of Customs
U.S. Customs Service
600 Central Avenue
Great Falls, Montana 59401

Dear Sir:

This ruling is in response to the Application for Further Review of Protest No. 3304-3-000012 dated February 16, 1983. The protest was filed against the decision in the liquidation of Entry No. 82-313142, et al., of October 5, 1981, entered at the Port of Pembina, North Dakota. All four entries were liquidated on February 18, 1983.

ISSUE:

The question raised concerns the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to an imported Canadian truck on which domestic components were assembled while it was in the United States, before exportation to Canada for further assembly, and final return.

FACTS:

A Canadian-made Fracmaster (frac) Kenworth Pumper truck chassis used in oil-well drilling to determine the presence of certain gases, was imported into the United States and valued about $97,900 Canadian currency. Further equipment was assembled to the truck totaling $201,636 in the United States, including labor and a Cumins diesel engine and other parts made in England, valued at $95,900. The remaining parts installed included a transmission, radiator, support drive lines, an oil cooler, and hydraulic hoses.

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Before exportation to Canada, it is claimed that the vehicle comprised about 7[illegible] percent of a finished passenger unit, a special purpose vehicle. It was finished in Canada by installing an G.M.I. part and some additional items. G.M.I. parts are made in Canada with components of United States origin. The value of the part was about $[illegible],7[illegible]4 and contained about $[illegible],[illegible]7 worth of United States parts. Additional domestic components were added to the vehicle in Canada, which amounted to $[illegible],5[illegible], for a total of $[illegible],[illegible]2 United States parts contained in the vehicle in Canada. The vehicle was then returned to the United States in a knocked down condition as item 807.[illegible] treatment was claimed for the value of the domestic components.

The customs/treasury ruling [illegible] 807.[illegible] tariff treatment for all component parts of United States origin, including the imported Canadian [illegible] in a finished condition, on the basis of a resultant substantial transformation, it was determined, that the operation of final assembly into a special purpose vehicle. The district director ruled that 807.[illegible] duties are chargeable for the operation notwithstanding the fact that the final assembly of parts in the United States failed to change the identity of the special purpose vehicle upon exportation to Canada for completion.

[illegible]:

In order for an imported article to be considered a component of United States origin under item 807.[illegible], it must have been substantially transformed while in the United States by means of a manufacturing operation into a new and different article of commerce with a name, character, or use different from that previously possessed by the criminally imported article. In this case, the [illegible] in the United

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States on the imported pumper truck is not such a turnabout that results in a new and different article of commerce. Or, stated differently, was the work done in the United States (the intermediate country) sufficient to transform the truck after it left the country of origin and before it was imported into Canada? The Canadian-made truck comprised the essence of the article that was exported to Canada. The work done in the United States amounted to little more than adding finishing parts and equipment to the imported truck, to prepare and adapt it for final installation of the O.P.I. pumps.

Although the English diesel engines installed were claimed to be part of the pumping unit, the trucks were then exported to Canada where the final O.P.I. pumper parts were added and the trucks painted. The installation of the engines certainly did not change the identity since the intended use of the truck for a special purpose was already established and dedicated when the trucks were imported from Canada. The final conversion to a particular kind of special purpose vehicle was completed by installing the O.P.I. pumper as special equipment, which then marked each truck as a functioning special purpose vehicle.

Further, since an imported article is classifiable in that provision of the tariff schedules which most specifically describes it, whether assembled or not assembled, and whether finished or unfinished, the trucks were properly classifiable on importation into the United States under the appropriate tariff provisions therefor. See Headnote 1, Part 1 of Schedule 8, TSUS.

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In this view, the interim pass-through finishing preparations done in the United States are not considered sufficient to have transformed the Canadian truck into a domestic product, within the contemplation of item 807.00, TSUS.

CONCLUSION:

Accordingly, since the exported truck fails to meet the condition precedent of an American product for application of item 807.00, TSUS, you should deny the protest in full on the basis of the foregoing. A copy of this decision should be attached to your Form 19 Notice of Action, to be sent to the protestant.

Sincerely,

(Signed) RUSSELL J. ARNOLD

(Signed) Harvey B. Post
Russell Arnold
Chief, Value and Special
Classification Branch

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JAN 14 1986

CLA-2 CO:R:CV:V
553794 IM

District Director of Customs
U.S. Customs Service
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Dear Sir:

This ruling is in response to the Application for Further Review of Protest No. 3004-5-000044 dated February 15, 1985. The protest was filed against the decision in the liquidation of Entry No. 708152 of November 14, 1984, filed at Blaine, Washington. The date of liquidation was December 28, 1984.

ISSUE:

The question raised concerns the applicability of item 860.30, Tariff Schedules of the United States (TSUS), to imported floor covering samples.

FACTS:

Sets of carpet samples, with holes punched in the fabric and destined for Anchorage, Alaska, were imported for use as sample fabric to assist customers in choosing merchandise from stock already available in this country. For this reason, the district director's position is that the samples are not eligible for free entry as samples under item 860.30, TSUS.

It is stated that in order to qualify for free entry under item 860.30, TSUS, the samples must be used to assist customers to choose merchandise of foreign origin. In effect, the question of the situs of the merchandise, either foreign or domestic, amounts to a critical element in the applicability of the tariff provision.

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LAW AND ANALYSIS:

With respect to samples used in the United States for soliciting orders for foreign merchandise, item 860.30, TSUS, provides for the free entry of any sample valued not over $1 each, or marked, torn, perforated, or otherwise treated so that it is unsuitable for sale or for use otherwise than as a sample, to be used in the United States only for soliciting orders for products of foreign countries.

In United States v. London Records, Inc. (1968) C.A.D. 945, the court stated that the controlling factor is whether the importer uses the samples "only for soliciting orders" of foreign merchandise. The court found in this case that the sole motivating purpose behind the importation and distribution of the samples was the creation of a demand for future orders and the stimulation of sales of the foreign product. This was sufficient to warrant free entry. The controlling factor is whether the importer uses the samples for soliciting purchase orders for foreign merchandise. The purpose of the samples is the creation of demand for future orders and the stimulation of sales through exposure for public consumption.

With respect to stock merchandise imported and held at a convenient disposable level of distribution awaiting sale, so long as the sample floor coverings are used for the solicitation of orders to be supplied by foreign floor covering manufacturers, this conforms to the intent of the statute. The samples must be used for soliciting orders for foreign-made carpet, must represent the carpet to be ordered, and the carpet must have been produced in a foreign country.

Delivery of merchandise sold is predicated on a running inventory of readily available merchandise in keeping with common business practices. So long as the samples are used to create a demand for future orders of

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carpets from abroad, this should qualify the samples for free entry even though delivery is made from carpets already available in this country.

CONCLUSION:

Accordingly, if the sample floor coverings result in the solicitation of orders for carpet to be supplied by foreign carpet manufacturers by creating a demand for the carpets, and the samples represent the goods to be ordered, then the carpet samples should be regarded as samples used to solicit orders of foreign merchandise and entitled to free entry under item 860.30, TSUS. In the described circumstances, you should grant the protest for the relief requested under item 860.30, TSUS. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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AUG 26 1985

CLA-2 CO:R:CV:V
553797 EM

Mr. Daniel M. Hazel
Materials Director
True Temper Sports, Inc.
871 Ridgeway Loop Road, Suite 201
Memphis, Tennessee 38119

Dear Mr. Hazel:

In your letter of August 12, 1985, you asked for information about the tariff status of golf shafts that have been exported to foreign customers and are now being returned to the United States as rejected merchandise.

You explained that the golf shafts have been made in the United States with imported steel and exported for sale in a series of numerous small shipments to foreign customers during a limited period of time. Rejected merchandise is then accumulated abroad over a longer period of time before being returned to the United States. The golf shafts are returned in the same condition as when they were exported and all are marked showing the United States as the country of origin.

Although no claims for drawback have been made on past exportations of the merchandise, you now propose to claim drawback refunds on future exportations of golf shafts.

Generally, American goods are returned free of duty under item 800.00, Tariff Schedules of the United States (TSUS), provided they were not advanced in value or improved in condition while abroad. However, articles that were exported with benefit of drawback are excluded from these free provisions for the reason that they were exported under claims of drawback. Under the drawback law (19 U.S.C. 1313(a)) the full amount of duties paid upon imported merchandise is refunded, less 1 percentum of such duties, upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise.

However, since there is a general limitation expressed in the governing headnotes precluding free entry of articles under item 800.00, TSUS, that were exported with benefit of drawback, such articles may nevertheless be entered under item 804.20, TSUS, the stated exception to the exclusionary headnotes, upon repayment of the drawback of duties that were previously allowed under the drawback statute, and upon maintaining adequate records showing the amount of drawback allowed on specific shipments. Item 804.20, TSUS, is the express exception to the exclusionary drawback headnotes.

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So long as the identity of the golf shafts can be proven as American goods being returned, even though they were exported under the drawback statute, item 804.20, TSUS, need not be denied. While we would not approve any accounting system established as the sole basis for tracking the exported merchandise, we have no objection to any accurate method or other controls which ensure to the district director's satisfaction the return of the same articles that were previously exported with repayment of any drawback.

In the final analysis, and in accordance with the regulations, the question of whether any claim for 804.20 tariff relief is justified by the facts rests in the discretion of the area or district director of Customs.

Accordingly, dependent upon satisfactory proof showing that golf shafts were exported under drawback conditions, we are of the opinion that the rejected golf shafts may be returned to the United States under the provisions of item 804.20, TSUS, upon repayment of any drawback allowed.

Sincerely,

(Signed) RUSSELL X. ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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CIA-2 CC:5:CV:V
553818 EM

District Director of Customs
U.S. Customs Service
Post Office Building
Pembina, North Dakota 58271

JAN 14 1986

Dear Sir:

This ruling is in response to the Application for Further Review of Protest No. 3304-3-000027 dated May 16, 1983. The protest was filed against the decision in the liquidation of Entry No. 79-101729 of November 8, 1978, entered at Sweetgrass, Montana. The entry was liquidated on April 1, 1983.

ISSUE:

The question raised concerns the tariff status of an International Harvester Company model 4070 truck upon which was mounted a mobile nitrogen converter, which was exported to Canada.

FACTS:

An IHC truck vehicle worth about $32,500, upon which was mounted a mobile nitrogen converter with a volume of 140,000 standard cubic feet and worth about $131,000, was exported to Canada in January 1979, for oilfield service. The vehicle was made in the United States in 1974 and was exported as a complete working unit.

Further work was carried out in Canada, consisting of a list of some 27 described further operations performed on the unit at the same time, pursuant to conditions for safety and convenience, as well as claimed running repairs. The vehicle was returned on November 8, 1979, and free entry was claimed under item 800.00, Tariff Schedules of the United States (TSUS). A shipper's Statement in lieu of a Certificate of Inspection on a CF 3311 was filed. Since there had been frequent importations of

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mobile nitrogen converters by the same importer (Dresser Industries), further evidence of United States origin was requested on a CF 28. It was later explained through the Customs broker (Norman G. Jensen) that the vehicle did not qualify as American goods returned as its assembly operations had been completed in Canada.

LAW AND ANALYSIS:

Item 800.00, TSUS, provides for the free entry of American goods that have not been advanced in value or improved in condition while abroad.

Since the further work carried out in Canada was performed at the same time, such extensive work can hardly be referred to as running repairs. For this reason, the vehicle is considered to have been advanced in value and condition while abroad, beyond the contemplation of item 800.00, TSUS.

It was further claimed that the assembly operations carried out in Canada should qualify the returning vehicle under item 807.00, TSUS. However, the exported vehicle was an already assembled article when it was exported. As stated in Southern Air Transport, Inc. v. United States, C.D. 4836, the vehicle itself was never assembled abroad from fabricated components of United States origin, since it was an already assembled article when exported. Further, an already-assembled article such as the described vehicle cannot be considered a fabricated component under the tariff provision.

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CONCLUSION:

Accordingly, neither item 800.00 nor 807.00, TSUS, is applicable to the imported vehicle unit. You should deny the protest. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,
(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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DEC 17 1985

CLA-2 CO:R:CV:V
553829 EM

David O. Elliott, Esq.
Barnes, Richardson & Colburn
Attorneys & Counsellors at Law
475 Park Avenue South
New York, New York 10016

Dear Mr. Elliott:

In your letter of June 10, 1985, on behalf of the Norton Company, you asked about the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to certain abrasive grinding wheels that will be exported to Mexico for the purpose of "coring out" smaller size abrasive wheels which will be returned to the United States.

Smaller size abrasive wheels will be "cored out" in Mexico from larger exported abrasive wheels. It is proposed to export wheel blanks measuring up to 20 5/8 in. in diameter. The foreign operation will consist, as described, of "coring out" smaller size wheels ranging from 1 to 5 in. in diameter, using a diamond core drill that is similar to a hole saw. Center holes will be reamed out in the center of the resulting smaller wheels, using a drill press. The smaller abrasive wheels will be inspected and appropriately marked with wheel specifications, safety warnings, country of origin, etc., and packed for return to the United States.

Item 806.20, TSUS, provides for a duty upon the value of the repairs or alterations made on articles sent abroad for that purpose. The application of this tariff provision is precluded in circumstances where the operations performed abroad would result in new or commercially different articles, different in name, characteristics or use from that which was exported, or where the manufacturing process is continued on in the foreign operations.

Although it is stated that a series of smaller wheels are reamed out of larger exported wheels and abrasive wheels are both exported and returned, but in different sizes and adaptable for different uses, we believe that the foreign operation is a process that leads to the manufacture of smaller wheels, contrary to the requirements of the tariff provision. The cutting out of usable sizes of abrasive wheels from larger wheels together with reaming center holes constitutes a fabricating step in the manufacture of the imported smaller abrasive wheels. The foreign process of converting large wheels to finished usable smaller sizes is a fabrication that goes beyond the meaning of the term "alterations" under item 806.20, TSUS. What went out as a semi-finished product was returned as a completely finished component ready for use. Cutting little ones out of big ones creates new articles of commerce that had no prior existence.

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Accordingly, the imported small abrasive wheels would be precluded from classification under item 806.20.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEC 23 1985

DEC 23 1985

CLA-2 CO:R:CV:V
553832 EM

Luis Chavez, Esq.
Kemp, Smith, Duncan & Hammond, P.C.
Attorney at Law
Post Office Drawer 2800
El Paso, Texas 79999

Dear Mr. Chavez:

In your letter of August 19, 1985, on behalf of C-E Tyler, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to a certain article referred to as a Rotap testing sieve shaker, which is proposed for assembly in Mexico from component parts of United States origin.

An assembly description and accompanying photographs were submitted. The Rotap device produces a circular and tapping motion for use in testing laboratories or wherever analysis by sieve separation of materials is required. The list of components include, among others, rotap bases, pedestals, blocks, several kinds of metal plate, couplings, grommets, bearings, bushings, and electric motor and sprockets, timing belt, and several kinds of lock nuts and screws.

The assembly process is described in terms of a series of some ten operations, ranging through the assembly of the rotap bases, pedestals and blocks, painting the metal for protection, installing the main shaft and bearings, the guide blocks and carrying plates, installing the timer with knob and dial, and mounting the motor and sprockets to the rotap base and electrical wiring. The final operations consists of assembling the cam gear and bushing and placing a rubber channel around the base of the device in preparation for lubrication, testing, and final sealing of the unit within a shipping carton for return to the United States.

With respect to foreign assembly operations, item 807.00, TSUS, applies only to fabricated United States components that are designed to be fitted together in an assembly process, with no operations performed thereon except the attachment of the components to form the imported articles and operations incidental thereto.

On the basis of the described operations and photographs, allowances may be made under item 807.00, TSUS, for all components parts making up the device, that are of United States origin.

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With respect to marking, in the case where the components assembled are of United States origin the imported assembly may be marked "Assembled with U.S. Components in Mexico" and in case the assembly consists of Mexican components, it should be marked "Made in Mexico."

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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OCT 17 1985

CLA-2 CO:R:CV:V
553833 EM

S. Richard Shostak
Stein Shostak Shostak & O'Hara, P.C.
3580 Wilshire Boulevard
Los Angeles, California 90010-2597

Dear Mr. Shostak:

In your letter of September 20, 1985, on behalf of Brown Jordan Company, you asked for a review of the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to certain outdoor casual furniture made in Mexico from domestic aluminum tubing exported in 20-30 ft. lengths for that purpose. This was the subject of a previous letter dated May 24, 1985, under file No. 553630.

Because the exported tubing would be cut, formed, drilled, welded, and ground for assembly into the described furniture, it was determined in the previous letter that this processing satisfied only the foreign segment of item 806.30, TSUS. Upon return to the United States, the furniture would be sanded before applying a chromate conversion coating, dried, electrostatically painted with powdered paint, and again baked in order to fuse the powder to the metal. On the basis that sanding, coating, and painting, were not considered sufficient to satisfy the domestic segment of the processing cycle, it was determined that item 806.30, TSUS, was inapplicable.

It is stated in the present letter that, upon return of the furniture to the United States, it is sanded, processed in a chromate conversion washer, oven dried, painted with a powder coating, baked in an oven, and then finished by assembly with cushions, pads, or textile or plastic support material. Sample lengths of tubing were submitted to show the condition of the metal tubing as imported, its condition both after sanding and after the chromate conversion and before powder coating.

Despite slight differences in the appearances of the samples, it is stated in the accompanying literature submitted that chemical conversion coatings are intended to provide corrosion prevention when metal is left unpainted as well as to improve adhesion of finish paint applied to aluminum and its alloys. It is also stated that unpainted chromate conversion coatings will commence losing corrosion resistance properties and are readily removed if exposed to high temperatures, drying, or severe wear or erosion.

In order to meet the requirements of "further processing," some operation must be applied to the metal that will change its shape or form or impart new and different characteristics, which become an integral part

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of the metal itself. The term also refers to a manufacturing process that looks toward the completion of the imported metal by operations other than those incidental to using it for the purpose intended.

However, it appears that some further act of processing the metal furniture other than sanding and applying chemical coatings which provide corrosion protection, must be undertaken in order to comply with the domestic processing requirement. Cleaning and coating or painting with corrosion preventatives do not constitute an acceptable processing of the metal under the statute.

Accordingly, since both processing segments must be met for compliance with the statute, we remain of the opinion that the requirement of further processing upon return to the United States is not considered to have been complied with and the imported metal furniture would not be entitled to item 806.30 tariff treatment.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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OCT 23 1985

CLA-2 CO:R:CV:V
553861 EM

Mr. L. J. Morpurgo
Hoechst-Roussel Pharmaceuticals Inc.
Route 202-206 North
Somerville, New Jersey 08876

Dear Mr. Morpurgo:

Thank you for your letter of October 8, 1985, regarding the tariff treatment of a drug for veterinary use prepared and packaged in Canada from domestic components.

You state that furosemide will be exported in bulk along with certain inert ingredients, glass vials, stoppers, aluminum seals, and packaging materials. In Canada, labor and distilled water would be supplied. The foreign processing would consist of mixing the various ingredients into an aqueous solution, filtering and filling the solution into vials (washed and sterilized abroad), sealing the vials with rubber stoppers and aluminum seals, and finally labeling and cartoning along with a package insert.

Your specific question is whether the packaged drug would be entitled to tariff treatment under either item 800.00, 806.20, or 807.00, Tariff Schedules of the United States (TSUS). Item 800.00, TSUS, would not apply because this provision is limited to returned American products which have not been advanced in value or improved in condition while abroad. Item 807.00, TSUS, is not applicable to chemicals as they are not the required solid components necessary for a qualified assembly. The mixing of the various ingredients into an aqueous solution to make the finished medical preparation exceeds an alteration so the provisions of item 806.20, TSUS, cannot apply.

Accordingly, none of the tariff provisions mentioned could be used to secure a lower duty on the imported furosemide preparation. However, the American usual containers, including the vial, stopper, and seal, and the packaging materials such as the label, carton, and insert may be imported free of duty under General Headnote 6(b)(i), TSUS, upon compliance with the regulations.

Sincerely,

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(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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CORRESPONDENCE APPROVAL AND CLEARANCE

OCT 22 1985

CLA-2 CO:R.CV:V
553663 EM

Mr. Timothy J. Manning
Fabex, Inc.
27950 Orchard Lake Road
Suite 101
Farmington Hills, MI 48018-4793

Dear Mr. Manning.

In your letter of October 2, 1985, you asked about the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to imported steel strip that would be exported to Mexico for processing into tubing and returned to the United States for further processing. A similar request was the subject of a previous letter dated September 25, 1985, No. 553828.

You stated that large steel sheets would be imported from a country of Europe and cut into specified widths while it was in the United States before exporting the sheets to Mexico for processing into steel tube.

Item 806.30, TSUS, provides that any article of metal (except precious metal) manufactured in the United States, or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing, is subject to the payment of duty only upon the value of the processing performed outside the United States.

Based on the information submitted, it appears that cutting foreign-made steel sheets into special widths before exporting the metal would not qualify as a process of manufacture in the United States. The described cutting appears to be little more than a preparation for the further processing to be carried out in Mexico and certainly can not be considered a manufacturing process.

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Accordingly, before the foreign steel can be entitled to item 806.30 tariff treatment, the steel sheets must first be subjected to a process of manufacture before exportation to Mexico, and cutting the sheets into smaller sheets is not considered a sufficient manufacture.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value & Special
Classification Branch

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JAN 27 1986

DATE:

FILE: CLA-2 CO:R:CV:V
553868 EG

TO : Area Director of Customs
New York Seaport
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Reconsideration of Headquarters Ruling 553245 Regarding Classification of Ceramic Works by Gordon Thorlaksson

This is in reference to your memorandum of August 12, 1985, requesting reconsideration of Headquarters ruling 553245 which classified ceramic works by Gordon Thorlaksson under the provision for original sculptures in item 765.15, Tariff Schedules of the United States (TSUS), and entitled to duty-free treatment.

It is not necessary to reiterate that which was discussed in our prior memorandum. The articles, in order to be entitled to duty-free status under the provision for original sculpture in item 765.15, TSUS, must meet the criteria mentioned and discussed at length in our prior memorandum.

You indicate that the question of utility is crucial in the determination of whether an item can be considered a work of art. We agree that the utility of an object is important; however, it is our opinion that in the instant case this factor does not exclude the articles from the category of works of art. The works of the type at issue here merely constitute a mode in which the artist chose to express himself. As indicated in our prior memorandum, this fact will not negate the status of a work of art. In this case, the requisite elements of originality, professional status, specifically limited quantity, method of creation and individual merit are all present. The use of the articles as an everyday vase or bowl is entirely inconsistent with the elements listed.

Again, this conclusion is based on the facts presented. Every determination is made on a case-by-case basis.

It is our opinion that based upon all the information provided, Mr. Thorlaksson's work may qualify as original sculpture under item 765.15, TSUS, and is entitled to duty-free treatment.

(Signed) Harvey B. Fox

Harvey B. Fox

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[redacted]

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

NOV 26 1985

CLA-2 CO:R:CV:V
553912 EM

Mr. George J. Saavedra
President
Saavedra Imports Co.
Post Office Box 1999
Hawthorne, California 90251

Dear Mr. Saavedra:

In your letter of November 9, 1985, and your letter of June 29, 1985, addressed to our New York office and referred to us for reply, you inquired regarding the tariff status of a cologne made in Chile with essential oils from the United States.

Colognes containing alcohol are classifiable under item 461.35, Tariff Schedules of the United States and may be free of duty under GSP if the product of Chile upon compliance with the Customs Regulations. Information on the GSP requirements is enclosed.

A copy of our publication on marking of country of origin is enclosed for your information. You will note that the English name of the country of origin is used for marking purposes unless there is an exception provided for by law. You state that the oils used are from the United States but do not say whether they were made here. You also indicate that these oils are not the only ingredients and that other foreign-made chemicals, such as alcohol, are added in the blending process. On the basis of the information furnished it appears that the finished cologne is manufactured and not merely packaged in Chile and should be marked accordingly.

Sincerely,

(Signed) RUSSELL ARNOLD

File N.Y. Ruf. 81-401

Russell Arnold
Chief, Value and Special
Classification Branch

Enclosure

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DEC 6 1985

CLA-2 CO:R:CV:V
553915 EM

Mr. Steve M. Barringer
North Hand Protection
Post Office Box 587
Maiden, North Carolina 28650

Dear Mr. Barringer:

In your letter of November 13, 1985, you asked for information about the tariff status of rolling finger cots in Haiti and returning them to the United States.

You explained that finger cots are made by dipping finger forms into natural rubber (latex) and exporting them to Haiti for rolling up for customer use, and finally returned to the United States. Finger cots are used in the electronics industry to fit over the fingers to guard against moisture and contamination. Only the rolling process is carried out in Haiti.

Item 806.20, Tariff Schedules of the United States (TSUS), provides for a duty upon the value of repairs or alterations that are made on certain articles exported for that purpose. Repairs and alterations are considered an advance in value or improvement in condition of the exported articles.

Since you explained that they are rolled up in some cases for the customer and are exported for that purpose, it would appear that finger cots, whether or not rolled, may be sold in the same markets to the same classes of buyers and are, therefore, considered to be finished articles of commerce. Certainly rolled finger cots are not regarded as different articles of commerce from those that are unrolled. In these circumstances, the imported rolled finger cots may be classifiable under the alterations provision of item 806.20, TSUS, upon compliance with the regulations. This would also include those finger cots that are exported for the purpose of re-rolling.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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[redacted]

5-REVIEWER	6-REVIEWER	7-REVIEWER	8-REVIEWER	9-REVIEWER
10-REVIEWER	11-REVIEWER	12-REVIEWER	13-REVIEWER	14-REVIEWER

RVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEC 11 1985

CLA-2 CO:R:CV:V
553916 EM

Peter Buck Feller, Esq.
Rose, Schmidt, Chapman, Duff
& Hasley
International Square
1825 Eye Street, NW.
Washington, D.C. 20006-5486

Dear Mr. Feller:

In your letter of November 5, 1985, on behalf of Consolidated Cigar Corporation, you asked for clarification of the Customs Regulations governing importations under item 806.20, TSUS. This was the subject of a previous letter dated November 1, 1985, 553881.

Sections 10.8 and 10.9 of the regulations have recently been modified by removing that portion of the section which provided for waiver of Certification of Registration CF 4455 if the district director is satisfied that the failure to comply with the registration requirement was due to inadvertence, mistake, or inexperience, and not to negligence or bad faith.

With this in mind, item 806.20, TSUS, will not be denied where the exporter of the wrapper tobacco fails to file a Certificate of Registration so long as the district director is satisfied that the imported wrapper leaves and stems are the same as the unstemmed tobacco that was exported, keeping in mind, however, that the district director still retains discretion to require additional documentation if believed necessary as proof of exportation.

Moreover, the modified provisions of the regulations, sections 10.8 and 10.9, are applicable to articles exported to any foreign country. In the final analysis, and in accordance with the rules and regulations, the question of whether claims for allowances under the tariff provision involved are justified by the facts rests ultimately with the area or district director of Customs.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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(5) REVIEWER			(6) REVIEWER	(7) REVIEWER
(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER

SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
Previous editions may be used.

17 DEC 1986

CLA-2 CO:R:CV:V
553920 EM 553919
815851 NY

Donald W. Paley, Esq.
Sharretts, Paley, Carter
& Blauvelt, P.C.
Eighty Broad Street
New York, New York 10004

Dear Mr. Paley:

In your letter of October 17, 1985, on behalf of American Dade Division of American Hospital Supply Corporation, addressed to the New York Customs office, you asked for information about the tariff status of several articles used in hospital and clinical laboratories, including certain racks for holding glass tubes, all imported from Mexico.

The racks, referred to as sedimentation racks, are made of, as described, an easy cleaning plastic construction and are designed for holding up to 8 glass tubes in numbered positions in hematology laboratories. Each rack is imported with a package of 200 glass tubes and is described as having adjustable legs with a level indicator.

You explained that the racks may be made either in the United States or Mexico but, if of foreign origin, would be classified as an entirety when imported with glass tubes.

Under item 800.00, Tariff Schedules of the United States (TSUS), American goods may be returned free of duty after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad.

On this basis, assuming the racks to be of American origin and are imported separately from the packet of glass tubes, the racks would be entitled to free entry as American goods returned, without having been advanced in value or improved in condition while abroad, under item 800.00, TSUS. However, racks, whether of foreign or domestic origin, imported with laboratory glass tubes would be dutiable under the laboratory glassware provisions of the tariff schedules, in either item 547.53 or 547.55, TSUS. The importation, consisting of racks and laboratory glassware, would be classifiable as an entirety under the provision for glassware, whether or not furnished with support , frames or mounts of other materials. See Headnote 2, Subpart C of Part 3, Schedule 5, TSUS.

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This tariff provision for laboratory glassware would include racks of American origin that are imported with glassware since there can be no constructive segregation, or separating out for different classification, of components making up a tariff entity. The American origin of the racks is merged in the imported entity and the exemption for American goods returned is precluded.

Sincerely,

(Signed) J. T. Rosa

For Harvey B. Fox
Director, Classification
and Value Division

553918

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PUBLIC _____

DEC 6 1985

CLA-2 CO:R:CV:V
553925 KP

Mr. Tor Vatne
President
United Casing Inc.
16800 Greenspoint Park Drive
Houston, Texas 77060

Dear Mr. Vatne:

This is with reference to your letters dated May 23, 1985, and August 7, 1985, wherein you asked us to reconsider your request for a determination that certain pipe which is upset, heat treated, and threaded in the United States Virgin Islands may be imported free of duty under General Headnote 3(a), Tariff Schedules of the United States (TSUS), as a product of that possession.

In our letter of April 2, 1985 (our reference CLA-2 CO:R:CV:V 553539 KP), we indicated that we did not believe that the operations performed on the pipe imported into the Virgin Islands would be sufficient to substantially transform it into products of the Virgin Islands. However, in your recent correspondence, you more fully described the heat treatment aspect of the processing as one which incorporates a full heat treatment line that alters the metallurgical characteristics of the imported raw steel tubes accordingly to grade within the entire spectrum defined by the American Petroleum Institute, as well as special custom grades.

Without a complete description of the entire process to which the imported steel tubes would be subjected, we are unable to definitively state whether that process would effect a substantial transformation of the steel tubes. Nevertheless, we recently ruled that steel tubes used as constituent materials in producing oil country tubular goods were substantially transformed by undergoing a substantial process which included upsetting, quenching, tempering, threading, coupling, and testing operations. See Customs Ruling CLA-2 CO:R:CV:V 553739 KP (Nov. 21, 1985), copy enclosed. If the process which you are considering is substantially the same as the second processing stage described in the enclosed ruling, then it would be sufficient to substantially transform the imported steel tubes into products of the Virgin Islands. In that case, the finished

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products would be eligible for duty-free entry into the United States under General Headnote 3(a), TSUS, provided that all other pertinent requirements were satisfied.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

Enclosure

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FEB 1 1996

CLA-2 CO:R:CV:V
553936 MS

Richard J. Kaplan, Esq.
Lamb and Lerch
233 Broadway
New York, New York 10279

Dear Mr. Kaplan:

In your letter of November 1[illegible], 1995, you request a ruling regarding the tariff classification and General System of Preferences (GSP) eligibility of certain footwear uppers which your client, Converse, Inc., intends to import from Mexico.

Converse will ship to Mexico raw materials consisting of leather in sides, vinyl in sheets, plastic in sheets, polyfoam in sheets, rolls of laminated nylon and foam, and non-woven fabric in sheets, all of which are the growth, product or manufacture of some country other than Mexico. In Mexico these materials will be rye cut to size and shape and converted into assembly-ready components. The leather sides will be converted into quarters, vamps, eyelet stays, toe pieces and heel pieces and tabs. The vinyl sheets will be converted into tongues and collars. The plastic will be converted into collar lacs, the non-woven fabric sheets into vamp reinforcements, and the nylon/foam into quarter reinforcements.

After the raw materials have been converted into assembly-ready components, they, along with labels, thread and foil (the products of countries other than Mexico) will be used in assembling and producing complete footwear uppers. The assembly of the components into footwear uppers in Mexico will involve perforation of the quarter and vamp using a Freeman press machine, the trimming or skiving of the toe piece, various stitching operations, punching eyelet holes, inserting and tacking the counter, applying lasting lace through the eyelet holes and cutting the lace keeper into the tongue.

While well over 50 percent of the value of the component materials of the complete footwear uppers is represented by the value of the leather, the uppers contain a substantial amount of material other than leather.

As Customs has ruled in the past, the correct classification of complete footwear uppers that are in chief value of leather, but contain substantial amounts of material other than leather, is under item number 791.0010, Tariff Schedules of the United States. Products receiving this classification, "Articles not specially provided for, of leather: Other... Footwear uppers," are entitled to GSP treatment, if they otherwise qualify.

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It is Customs view that the described uppers which Converse plans to import into the United States from Mexico would be considered products of Mexico for purposes of GSP; that the conversion of the raw materials (leather sides, vinyl, plastic, polyfoam, non-woven fabric and nylon sheets) into finished parts for footwear uppers results in a substantial transformation of such raw materials into intermediate products of Mexico; and that the cost or value of such intermediate products may be included as part of the 35 percent value requirement for determining the GSP eligibility of the finished footwear uppers.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

553935

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DEC 18 1985

CLA-2 CO:R:CV:V
553936 EM
814513 NY

Mr. James J. Kelly
Campbell Soup Company
Post Office Box 202
Essington, Pennsylvania 19029

Dear Mr. Kelly:

In your letters of July 11 and November 11, 1985, on behalf of Campbell Soup Company, you asked about the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to sliced frozen mushrooms and diced chicken meat, that are proposed for export to Canada for the purpose of freeze-drying and return to the United States.

Freeze-drying is defined as a drying process whereby ice in frozen products is transformed or sublimated into vapor without passing through the liquid state. The frozen product is placed in a vacuum under a gradual application of heat, the ice is drawn off as a vapor, and the result is a freeze-dried food product that weighs less than its original weight.

Item 806.20, TSUS, provides for a duty upon the value of repairs or alterations that are made on certain articles exported for that purpose. Repairs and alterations are considered an advance in value or improvement in condition of finished goods.

In the described circumstances, both foods are considered finished products and their identities as foods are not lost or destroyed in the process. On this basis, we believe that these foods, whether in the frozen or freeze-dried state, retain their same value and quality as foods and, therefore, the change in condition is considered to be within the alterations provisions of item 806.20, TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

AS

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DEC 20 1985

CLA-2 CO:R:CV:V
553947 EM

Ms. Patricia Jester
Creative Foods Limited
1700 Vine Street/West
Des Moines, Iowa 50265

Dear Ms. Jester:

In your letter of July 22, 1985, which was recently referred to this office for reply, you inquired concerning the duty-free status of lithographs, Canadian Indian wood carvings, paintings signed by the artist, and handwoven wall hangings.

Paintings, pastels, drawings, and sketches, whether or not originals, if executed wholly by hand (no stencils or mechanical methods) are free of duty under item 765.03, Tariff Schedules of the United States (TSUS).

Lithographs, etchings, woodcuts and other prints, if printed by hand from plates, stones, or blocks (etched, drawn, or engraved with hand tools) are free of duty under item 765.10, TSUS. They need not be signed or numbered by the artist. The United States Customs Service does not maintain an accepted artists list.

There is no free entry provision applicable to Canadian Indian totem poles or animal carvings so they would probably be dutiable unless by a professional sculptor who qualifies for the benefits of item 765.15, TSUS. Handwoven wall hangings would be subject to duty at various rates depending upon the textile material used in their weaving.

A copy of Part II, Subpart A, Schedule 7, TSUS, which covers works of art is enclosed for your information.

Sincerely,

(Signed) RUSSELL ARNOLD

[redacted]

Russell Arnold
Chief, Value and Special
Classification Branch

A6

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEC 20 1985

CLA-2 CO.RCV.V
553949 EM

Mr. Jorg O. Berger
Telesensory Systems Inc.,
1610 Rollins Road
Burlingame, California 94010

Dear Mr. O. Berger:

In your letter of October 3, 1985, you inquired concerning the possible duty exemption on parts or accessories for the EZ Reader which allows people with low vision to read fine print.

You indicate that the device magnifies many times and displays the magnified picture on a monitor. Molded plastic parts and other components for use in manufacturing this product will be imported. These could be housings for the apparatus, lenses, battery packs, monitors, teleprinters, etc.

Item 960.12, Tariff Schedules of the United States, provides for the free entry of the following articles for the blind:

> Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.

Accordingly, the free entry provision only covers articles which can be described as special apparatus or machines for the exclusive use or benefit of the blind. The statute is not applicable to apparatus or machines of the type used by the general public or to parts of articles for the blind. See enclosed ruling on braille watch parts.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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DEP. CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (1-15-71)

DEC 20 1985

CLA-2 CO:R:CV:V
~~553945~~ FM
553954

Ms. Margaret Y. Ullman
Yoma Ullman
374 Franklin Avenue
Princeton, New Jersey 08540

Dear Ms. Ullman:

In your letter of November 6, 1985, you ask for information concerning the dutiable status of certain household goods you may inherit in England. They would include pictures, old china, old rugs, silver objects, and a wooden chest.

All articles imported into the United States are subject to duty unless specifically exempted. The paintings or pictures, if executed by hand, are entitled to free entry under the provisions of item 765.03, Tariff Schedules of the United States (TSUS). Articles made at least 100 years ago are free of duty as antiques under item 766.25, TSUS.

Articles acquired abroad and brought back by a returning resident as an incident of the journey are free of duty to the amount of $400 retail value under item 813.30, TSUS. Other household articles which also accompany the resident on return if valued not over $1000 would be subject to a duty of 10 percent of their retail value under item 869.00, TSUS.

Articles not covered by any of the specified exemptions would probably be dutiable at various rates of duty depending upon the commodities involved.

Copies of our publications "Import Requirements" and "Importing into the United States" are enclosed for your further information.

Sincerely,

(Signed) RUSSELL . ARNOLD

[redacted]ussell Arnold
Chief, Value and Special
Classification Branch

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

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JAN 16 1986

CLA-2 CO:R:C:V:V
553957 RH

Ronald A. Daley, Esq.
Charrette, Daley, Carter
& Blauvelt, P.C.
Forty Broad Street
New York, New York 10004

Dear Mr. Daley:

In your letter of December 10, 1985, on behalf of C. R. Bard, Inc., you ask for information about the tariff status of certain urethral tray units that are assembled and packaged in Mexico from components of United States origin.

Samples of complete trays and accessorized components were submitted. The urethral tray units are designed to facilitate closed-system or timed drainage procedures in hospitals and clinics and are identified as urethral tray #772414Y and Foley trays #897400Y and #864100Y. All components, including packaging materials, are of United States origin. It is explained that the foreign operations generally consist of packaging the components in a tray, sealing each tray in a polybag, and packaging a quantity of polybag units in corrugated cartons for return to the United States.

The components for each tray unit are similarly listed as drainage bags, drainage bag hangers, drainage tubes, catheter assemblies, clamp/outlet assemblies, suturing clamps, specimen containers with lids and labels, cleansing solution, underpads, lubricant jelly, foam balls, forceps, and tag and letter trays with insert sheets and adhesive, of polymers.

In addition to packaging the trays, some foreign components are joined together in an assembled condition, such as drainage tubing and bags, hangers, catheter assemblies, connector [illegible], bags, and suturing clamp assemblies.

With respect to the packaging of articles abroad, item 807.00, Tariff Schedules of the United States (TSUS), provides that products of the United States may be returned free of duty after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad. The test specified in item 807.00 cases is whether the percentage of foreign origin has itself been the effect of an advance in value or improvement in condition while abroad.

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So long as most of the exported articles making up the trays have not been the subject of some change, such as a permanent bond, the mere packaging of the products is not sufficient to preclude them from being classified as American goods returned free of duty under item 800.00, TSUS.

On the other hand, with respect to foreign assembly operations, item 807.00, TSUS, provides for the assembly of American components abroad, that are exported in condition ready for assembly without fabrication.

On the basis of the samples and information submitted, allowances would be made under item 807.00, TSUS, for those components of United States origin that are considered to have been joined together in an assembly. This would include bonding parts with glue and assembling connectors, port connectors, sheeting clamp assemblies, joining catheters to drainage tubes or drainage bags, in a fitting together of components, are all regarded as assembly operations within the tariff provision.

Containers or holders of United States origin may be returned free of duty under the provisions of General Headnote 6(b)(i), TSUS, as the usual type of unreusable containers ordinarily sold with their contents.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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A10

JAN 14 1986

CLA-2 CO:R:CV:V
553959 EM

District Director of Customs
U.S. Customs Service
Post Office Box 3130
Laredo, Texas 78041-3130

Dear Sir:

This is in reply to the request for Internal Advice No. 85/65, concerning the eligibility of belt loops used in the assembly of jeans and other trousers.

ISSUE:

The question raised concerns the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain belt loops made in Mexico for use in the assembly of jeans that are returned for sale in the United States.

FACTS:

Sample fabric and belt loop strip materials were submitted. Belt loop fabric is determined by the style trousers to be assembled and the belt loop length is based on the width of the belt contained within the loops. Strips are cut from matching fabric making up other components that are exported for assembly into trousers.

Belting fabric material is cut to length and width before being exported to Mexico. In making a roll of belt loop material, the foreign process consists of placing the exported fabric material on a two-needle chainstitch sewing machine which not only folds the fabric material upon itself but also stitches the folded strip into a roll of belt loop material.

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In a further operation, the length of sewn belt loop material is mounted on an automated belt loop attaching machine which cuts the loop material to appropriate length in assembly line fashion, depending upon the belt width to be contained, and at the same time attaches the cut lengths of belt loops by two bartacks to the trousers in a machine cycle.

LEGAL ANALYSIS:

With respect to a textile assembly, item 807.00, TSUS, applies to United States components that are required to be fitted with other components in an assembly process, with no operation performed except the attachment of the components to form the imported merchandise and operations incidental thereto.

On the basis of the samples and information submitted, the intermediate operation carried out in Mexico of first making the belt loop strip from the exported fabric and then cutting the strip into individual belt loops and attaching to the pants, constitutes a fabrication of the exported textile strip fabric. The belt loops must be manufactured first from the exported strip fabric. Making belt loop strip from exported fabric is not an assembly operation. Nor is it considered incidental to assembly. On basis of these conditions, the requirement under the tariff provision that a component "be ready for assembly without further fabrication" dictates that the component be a finished article ready for assembly, except for the process of assembly itself and operations incidental thereto. Cutting the belt loop strip into proper lengths to form belt loops is considered incidental to the assembly but the intervening operation of first making the belt loop strip material is not within the contemplation of item 807.00, TSUS.

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CONCLUSION:

Accordingly, no allowances can be made under item 807.00, TSUS, for the belt loops made abroad from exported fabric in the manner described.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

553959

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A13

04 FEB 1986

CLA-2 CC:R:CV:V
553976 EM

Mr. J. Gilbert Donaldson
Vice President
The Jennings Company
Post Office Box 10126
Savannah, Georgia 31412

Dear Mr. Donaldson:

In your letter of January 10, 1986, on behalf of the Arrow Company, you asked about the applicability of item 860.30, Tariff Schedules of the United States (TSUS), to certain shirts that will be entered as samples and marked with a "sample" stamp.

With respect to samples used in the United States for soliciting orders for foreign merchandise, item 860.30, TSUS, provides for the free entry of any sample valued not over $1 each, or marked, torn, perforated, or otherwise treated so that it is unsuitable for sale or for use otherwise than as a sample, to be used in the United States only for soliciting orders for products of foreign countries.

Accordingly, if the entered sample shirts are indelibly marked with at least 3-inch "sample" stamp across the front or back panels, or mutilated in such manner that there is no question but that they may only be used as sample merchandise for soliciting orders for foreign merchandise, they may be accorded free entry under the tariff provision.

Sincerely,

[illegible]

For Harvey B. Fox
Director, Classification
and Value Division

A14

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JAN 24 1986

CLA-2 CO:R:CV:V
553978 EM
815561 NY

Mr. C. Arnone
Manager
International Distribution
ICI Americas, Inc.
Wilmington, Delaware 19897

Dear Mr. Arnone:

In your letter of May 28, 1985, addressed to our New York office and forwarded to us for reply, you asked for information about the tariff status of a certain pesticide called Atroban, which you propose to export to the United Kingdom for packaging into aerosol cans and return to the United States.

You explained that the pesticide and aerosol propellant gas (butane) will be filled on a tolling basis into foreign-made aerosol cans. The can will be housed as cartridges on battery-operated garden sprayers. When the trigger of the sprayer is pressed, as explained in a brochure submitted, electrostatically charged droplets of the insecticide or weedkiller are propelled from the nozzle of the container cartridge. Presumably, the aerosol cans will be filled with the insecticide, capped and sealed, and charged with the propellant gas.

With respect to the packaging of American products abroad, item 800.00, Tariff Schedules of the United States (TSUS), provides for the free entry of American goods returned which have not been advanced in value or improved in condition while abroad. The test specified in these cases is whether the merchandise of American origin has itself been the object of an advance in value or improvement in condition. Absent some change or alteration in the packaged products themselves, the mere packaging of goods is not sufficient to preclude the American merchandise from being classified as American goods returned under item 800.00, TSUS.

The foreign operations consist merely of filling foreign-made cans with the insecticide and returning them to the United States. The propellant gas appears to have no effect on the exported insecticide other than as a means for expelling the product from the cans. The propellant appears to be a part of the packaging process. In these circumstances, the contained packaged insecticide product may be entitled to free entry as American goods returned under item 800.00, TSUS.

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Further, with respect to foreign-made containers, the Customs Service will accord duty-free treatment to packaging costs and the usual unreuseable containers holding duty-free merchandise under item 800.00, TSUS. The containers may be marked to show the United States as the country of origin.

Sincerely,
(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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B2

FEB 3 1986

CLA-2 CO:R:CV:V
553991 EM

Mr. Frank Brennan
Consultant
Mudge Rose Guthrie Alexander
& Ferdon
2121 K Street, NW.
Washington, D.C. 20037

Dear Mr. Brennan:

In your letter of January 16, 1986, on behalf of Sidermex International, Inc. you asked about the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to certain metal static arms used in transmission line structures, that are made in Mexico from alloy steel plate of United States origin.

A drawing was submitted. The arm shaft is about 6 ft. 7in. long and is made in Mexico from exported steel plate material. On return to the United States, a series of some six holes, each presumably about 1/2 in. in diameter are burned into the shaft. In addition, the shafts undergo a dulling process of the galvanized steel by immersion in an oakite bath at a raised temperature and a rust-prevention coating is applied.

With respect to a duty allowance for articles of metal made abroad from United States-made base metal, item 806.30, TSUS, requires further processing to be performed on exported articles both in the foreign country and again upon return to the United States. In order to meet the requirements of "further processing," some operations must be applied to the metal articles that will change their shape or form or impart new and different properties and characteristics to the metal that did not exist before and which become an integral part of the metal itself.

On the basis that steel alloy plate of United States origin is exported and converted into static arm structures which are returned for further processing mainly by the drilling of a series of holes through the metal arms, it appears that both the foreign and domestic segments of the processing cycle are met. In these circumstances, we are of the opinion that the processing requirements are satisfactorily complied with and the imported static arms are eligible for item 806.30 tariff treatment, upon compliance with the regulations.

Sincerely,

(Signed) RUSSELL J. ARNOLD

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

[redacted]
Russell Arnold
~~Chief, Value and Special~~
Classification Branch

CORRESPONDENCE APPROVAL AND CLEARANCE

OCT 23 1979

ENF 4-02.3 R:E:M
610176 ST

610176

Regional Commissioner of Customs
Los Angeles, California 90053

Director, Entry Procedures
and Penalties Division

Internal Advice Request: Disposition of Forfeited and Abandoned Gold Coins

An internal advice request from your office, dated July 30, 1979, concerned the auctioning process for forfeited and abandoned gold coins.

In answer to your first question, the Customs Service may now sell gold at auction inasmuch as restrictions on importing gold were lifted, effective December 31, 1974 (P.L. 93-373).

The auction must be open rather than done under sealed bids since there is no provision in the law, the regulations, or the Customs Manual which authorizes the use of sealed bids.

In respect to the question concerning the treatment at auction of formerly restricted gold coins and those which were seized for failure to declare and similar violation, all such gold items are treated alike when they reach the auction stage since the importation of gold is no longer restricted.

If entry of the merchandise were presently restricted, the buyer at auction would have to obtain the approval of the appropriate government agency before taking possession of the article. It therefore makes no difference, for auction purposes, whether some of the gold coins were originally detained as restricted merchandise.

(Signed) KATHRYN C. PETERSON

Harvey B. Fox

[redacted]

B4

THIS DOCUMENT
PUBLIC

Date: 25 FEB 1985

File: ENF 4-02.12 CO:R:E:M
617367 JB

617367

TO : Regional Counsel
New York Region

FROM : Chief, Miscellaneous Penalties Branch

SUBJECT : Request for Internal Advice; [redacted]
District Case No. 81-1001-53039

This is in regard to the request for internal advice submitted by counsel for [redacted] Such request is based on facts arising in the above-noted case. Specifically, counsel asks for a ruling on the issue of whether Customs is, in accordance with the provisions of section 1.97 of the Food and Drug Administration Regulations (21 CFR 1.97), bound by the recommendation of that agency in all cases for liquidated damages arising from violations of bonds issued pursuant to section 801(b) of the Food, Drug, & Cosmetic Act.

Counsel also includes a supplemental petition for relief with the internal advice request. This memorandum will make no recommendation as to cancellation of the claim for liquidated damages imposed in this case, but will only deal with issues regarding liquidated damages cancellation authority.

It is current practice for Customs to forward to FDA for recommendation all petitions for relief regarding claims for liquidated damages arising from any violation of the bond when the merchandise involved is refused admission into the United States by the FDA. The recommendations of FDA regarding cancellation are routinely followed by Customs in all cases. The basis for this procedure is 21 CFR 1.97(b) which states, in pertinent part, that the collector (sic) of Customs "may cancel the liability for liquidated damages ... upon payment of a lesser amount or upon such terms and conditions as shall be deemed appropriate ... but the collector shall not act under this regulation in any case unless the District Director (i.e., of FDA) is in full agreement with the action."

Counsel suggests that this procedure has developed as a result of an incomplete reading of section 1.979. He posits that Customs is only bound by the FDA recommendation in limited instances. It is claimed that the regulation does not provide a wide swath of jurisdiction for the District Director of the FDA. We agree.

BS

As counsel aptly notes, section 601(b) of the Food, Drug and Cosmetic Act authorizes the Secretary of the Treasury to release imported articles to the owner upon execution of a "good and sufficient bond providing for payment of liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury (emphasis theirs)." The authority to cancel claims for liquidated damages is generally granted to the Secretary of the Treasury pursuant to section 623(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1623(c)). Section 1.97 of the FDA Regulations is promulgated pursuant to authority granted the Secretary of (then) HEW to prescribe regulations for the efficient enforcement of section 801.

We concur with counsel's close reading of section 1.97, which limits the requirement of full agreement of the District Director of FDA with regard to cancellation of claims for liquidated damages to two specific situations.

Section 1.97 reads as follows:

> (a) The bonds required under section 801(b) of the Act may be executed by the owner or consignee on the appropriate form of a Customs single entry or term bond, containing a condition for the redelivery of the merchandise or any part thereof upon demand of the collector of Customs and containing a provision for the performance of conditions as may legally be imposed for the relabeling or other action necessary to bring the article into compliance with the Act or rendering it other than a food, drug, device or cosmetic, in such manner as is prescribed for such bond in the Customs Regulations enforced on the date of request for authorization. The bond shall be filed with the collector of Customs.
>
> (b) The collector of Customs may cancel the liability for liquidated damages incurred under the above-mentioned provisions of such bond, if he receives an application for relief therefrom, upon the payment of a lesser amount or upon such other terms and conditions as shall be deemed appropriate under the law and in view of the circumstances, but the collector shall not act under this regulation in any case unless the District Director is in full agreement with the action.

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Counsel avers, and we concur, that subsection (a) of section 1.97 requires that the bond contain a clause that authorizes demands for redelivery and two specific provisions that (1) require performance by the bond principal of conditions that may be legally imposed for relabeling or other action necessary to bring the article into compliance with the Act, or (2) require a rendering of violative merchandise into that which is other than a food, drug, device or cosmetic.

Accordingly, the provisions of the regulation are only in force in those two limited situations. For example, a claim for liquidated damages based on the exportation of refused merchandise without Customs supervision would not fall into the specific language of the regulation. Exportation without supervision is not a circumstance which involves bringing the article into compliance or rendering it into a product not within the purview of the act.

The provisions of subsection (b) strictly limit the requirement of agreement of the District Director (FDA) to any mitigation decision regarding a breach of a bond and assessment of a claim for liquidated damages for violation of the "above-mentioned provisions of the bond", i.e., those provisions listed in subsection (a). If the gravamen of the offense is not related to those specific provisions, agreement of the District Director, FDA, would not be required. A recommendation as to cancellation should still be solicited, but Customs would not be constrained by law to follow it.

This situation is not dissimilar to current procedures regarding remission of forfeitures incurred pursuant to title 22, United States Code, section 401, in which recommendations as to remission are solicited from the Department of Commerce or Department of State (as appropriate). Remission authority in those cases lies with the Secretary of the Treasury pursuant to section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), and the recommendations of the other agencies, while persuasive, are advisory only.

Accordingly, we are of the view that the subject case, which involves a failure to export refused merchandise under Customs supervision, may be administratively processed by your office and it is not mandatory that the recommendation of the District Director, FDA, be followed.

Marilyn G. Morrison

Marilyn G. Morrison

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617367

WD

OCT 16 1979

RMF 4-02.2 [illegible]
651107
651001 DP/RC

[redacted]

Dear [redacted]

This is in reference to two supplemental petitions filed by you on behalf of your client [redacted]. These petitions were filed in relation to Seattle District Penalty Case No. 73-[illegible]-13193 and Anchorage District Penalty Case Nos. 74-3123-[illegible], 10123, -33, and 10360.

After careful consideration of your submissions on these matters and a review of the comments provided by the involved field personnel, it has been decided that the issue relating to the retroactive application of the current regulations found at 14, CFR, Part 171 to the facts and circumstances of these cases presents a significant policy issue. As such, the issue is being referred to the Department of Treasury for their review and comments. You will be notified further upon the completion of the review by the Department.

Sincerely,

Marilyn G. Morrison

Marilyn G. Morrison
Chief, Commercial Fraud
and Negligence Penalties Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

10 DEC 1981

REFER TO

ENF-4-02.2 CO:R:E:C
652754 HL

[redacted]

Area Director of Customs
Airport International Plaza
Newark, New Jersey 07114

Dear Sir:

Your letter of July 30, 1981, forwards the submission of [redacted] dated June 15, 1981, which attempts to settle a claim for monetary penalty of $17,553,111.00 proposed in a pre-penalty notice issued against the [redacted] in Newark Area Case No. 81-4601-50867. The proposed claim was issued for violation of 19 U.S.C. 1592 in connection with the importation of wearing apparel entered under cover of 467 Customs entries filed during the period from January 1978 through December 1980. Entry documents falsely described blue jeans as culottes, short sets as swimwear, boys' wearing apparel as girls' wearing apparel, sweaters as dresses, short sets as playsuits, tops as shirts, shorts as underwear, and jackets as sweaters.

Misdescription in this case resulted in the entry into the United States of wearing apparel with incorrect Textile Visa (Quota) Category Numbers. The total appraised domestic value of the merchandise entered or attempted to be entered by withdrawal from warehouse exceeded $17.5 million. The record shows that [redacted] the principal officer of [redacted] plead guilty in United States District Court, District of New Jersey, to charges that he paid a Customs officer $1,000.00 in order to allow blue jeans valued at $1,554,364.00 and misdescribed as culottes to enter the United States with improper Textile Visa licenses. [redacted] also plead guilty to similar charges. Investigation has revealed that other wearing apparel imported by [redacted] was misdescribed in order to obtain Textile Visa (Quota) Category Numbers which were more readily available. No loss of revenue is claimed.

Seizure of children's wearing apparel entered by [redacted] into warehouse was effected as security for collection of the proposed monetary penalty. This merchandise valued at nearly $4.5 million is restricted from entering the commerce of the United States without the proper Textile Visa (Quota) Category Numbers. Security of $514,000.00 has been deposited in order that a portion of this merchandise be released. The value of these warehouse entries is included in the proposed claim for monetary penalty.

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The seized merchandise consisted of short sets which were attempted to be entered for quota purposes as swimwear. It is pertinent to note that [redacted] has sued in the United States Court of International Trade on the issue of quota classification following its failed attempt to enjoin Customs from denying release of this merchandise from warehouse. In this regard, [redacted] contends that a bona fide quota classification question should not form the basis for a penalty case.

Pursuant to the proposed settlement of June 15, 1981, amended as to financial terms by further submission of September 28, 1981, [redacted] would pay an initial sum of $300,000.00, and each year thereafter, for three years, a sum of $75,000.00, to be evidenced by three notes, each bearing interest at 12 percent per annum. [redacted] would also agree to dismissal of its quota classification case pending in the United States Court of International Trade noted above. In return, the Government would release its claim in the penalty action, release the security deposit, cancel the pre-penalty notices issued against [redacted] foreign suppliers, and cease investigation of undervaluation of certain wearing apparel imported by [redacted]. According to [redacted] the proposed settlement takes into account the company's financial stringency, and the fact that criminal sanctions have already been imposed.

Inasmuch as [redacted] claims that its poor financial condition will affect the collectibility of any penalty claim, it has submitted on the question of financial ability to pay various financial information. This information includes audited, combined financial statements for [redacted] and its affiliate, [redacted]. These statements are prepared on a combined basis since both companies share common ownership, the same location, facilities, and employees. In fact, [redacted] is an officer of both companies, effecting the importation of merchandise on behalf of both companies. However, one company deals in girls' wearing apparel, and the other in boys' apparel. Federal income tax returns for each company have also been submitted.

Headquarters Regulatory Audit Division has reviewed the financial information submitted and advised that ability to pay should be determined with respect to the combined equity of both [redacted]. It has also been determined that the original pre-penalty notices to [redacted] should be cancelled and new pre-penalty notices issued against [redacted] and, in addition [redacted].

Investigation of other violations sought to be encompassed by [redacted] in its settlement proposal is still underway. Since this investigation involves an undetermined loss of revenue, we cannot negotiate a settlement until the extent of loss to the Government is ascertained.

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In view of the foregoing, we cannot now reach a settlement decision in this matter. However, counsel for [redacted] may submit an amended proposal at a more appropriate date in the future after completion of the pending investigation and opportunity to respond to the new pre-penalty notices.

You may provide counsel for [redacted] with a copy of this letter.

Sincerely,

Marilyn H. Morrison

for Donald W. Lewis
Director, Office of
Regulations and Rulings

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16 APR 1982

EMF 4-02.2 CO:R:E:C
652806 LR

Dear Sir:

This is in reference to your letter dated October 1, 1981, which forwarded the petition for relief submitted by counsel on behalf of [redacted] in connection with Penalty Case Nos. 79-4701-02425 (Case A) and 79-4701-59814 (Case B).

Case A involves the seizure of 20,973 pieces of men's and women's wearing apparel domestically valued at $192,486 which was entered at J.F.K. Airport under cover of Immediate Delivery No. 3176917 on September 13, 1979. Case B involves a claim for monetary penalty in the amount of $21,670 in connection with the importation of 19,024 pieces of men's shirts entered at J.F.K. Airport under cover of Consumption Entry No. K533433 on August 29, 1979. The merchandise was seized and the claim was assessed pursuant to title 19, United States Code, section 1592 (19 U.S.C. 1592) and 19 U.S.C. 1592, as amended by P.L. 95-410, respectively, because the documents submitted upon entry allegedly contained the material false statement that Dubai was the country of origin when in fact it was India. If, as alleged, the merchandise was made in India, it was subject to quota restrictions and would not have been permitted entry into the commerce of the United States.

The seized merchandise was released on November 6, 1979, and was re-exported upon deposit of a letter of credit in the amount of $32,000.

Petitioner requests remission and in the alternative mitigation of the claim for forfeiture and the monetary penalty based on its primary contention that it never intended to defraud or violate any statutes or regulations. In particular, petitioner maintains that it is not aware that Dubai is not the country of manufacture, that it has always had good relations with Customs, that it knew that quotas for Indian garments similar to the garments in issue were subject to reopening, that there has been no loss of revenue or other adverse effect on the Government, and that it has already been financially penalized.

Before addressing petitioner's claims, we will discuss whether there was a material falsity on the entry documents, an essential element of the alleged violation.

Material Falsity

Under the provisions of 19 U.S.C. 1592, any person who enters or attempts to enter merchandise into the commerce of the United States by means of any document which is material and false may be subject to penalty. As indicated above, the instant penalties are based on the allegation that petitioner's statements on the entry documents with regard to country of origin constituted material falsities. There can be no question that petitioner's statements in this regard were material since they directly affected whether the merchandise

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could be entered into the commerce of the United States. At the time of these two importations, the subject merchandise if manufactured in India was subject to quota restrictions and would not be permitted entry. If, as stated, [redacted] was the country of origin, there were no such quota restrictions. Furthermore, we believe that petitioner's statements that [redacted] is the country of origin are false. Although there is evidence in the record which supports a determination that either India or [redacted] is the true country of origin, the preponderance of the evidence supports the former conclusion.

The evidence supporting the conclusion that Dubai is not the country of origin consists of the following.

The Customs Import Specialist responsible for handling this line of merchandise has indicated that there are no facilities in Dubai for the manufacture of the imported garments. He further reports that the only two importations on record which had ever shown this type commodity having been made in [redacted] are the ones involved in these penalty cases. The record further shows that petitioner had previously imported all of its garments from India. In fact, it is reported that a comparison of a shirt allegedly made in [redacted] with a shirt made in India revealed that they are absolutely identical and were no doubt produced by the same manufacturer. It is also significant that a close inspection of the garments revealed that underneath the present labels showing "Made in [redacted]" were stitches from previously removed labels, indicative of the fact that these labels may have been substituted for previous labels. Also, despite the fact that petitioner imported close to 4[illegible] garments, the record indicates that there was virtually no contact between petitioner and Abu-Khalil General Establishments, the alleged Dubai manufacturer. The only correspondence presented is a letter of introduction by [redacted] stating that it was aware that petitioner had a quota problem on deliveries from India and that it could manufacture and export garments as per petitioner's specifications and models and a purchase order dated June 1[illegible], 1976, for the purchase of 2[illegible] different items from the [redacted] firm. There is no other written communications regarding the means by which orders were placed or any communications involving specific manufacturing requirements.

In addition to the letter of introduction and the purchase order referred to above, the evidence in the record which supports the opposite conclusion, i.e. that [redacted] is the country of origin, consists of a certificate of origin issued by the [redacted] stating that the goods in question "are of fabrics of Indian Origin and garments manufactured in [redacted]." Petitioner has also presented proof of payment to [redacted] General Establishment for one of the shipments.

Upon consideration of the above, we believe that the evidence of record supporting the conclusion that [redacted] is not the true country of origin of the subject merchandise is more credible and probable than evidence to the contrary. The statements of the Import Specialist that there are no facilities in [redacted] for the manufacture of the imported garments are especially persuasive. Also, the absence of communication between petitioner and the alleged [redacted] manufacturer is significant. Accordingly, we find that petitioner's statements that Dubai is the country of origin constitute material falsities.

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Degree of Culpability

The claim for $21,870 (Case B) was based on the preliminary determination that the violation occurred as a result of gross negligence. No preliminary determination has been made with respect to Case A.

For the reasons set forth below, we find that there is insufficient evidence to support either a finding of fraud or gross negligence.

Although it has been established that petitioner's statement regarding country of origin was false, there is no evidence that petitioner had actual knowledge of the true facts, a prerequisite for either a finding of fraud or gross negligence.* Although it is possible that petitioner knew that India was the country of origin and was involved in a scheme to avoid quota restrictions, the record contains no evidence of such knowledge or involvement. It is also possible that petitioner was totally unaware that [redacted] was making misrepresentations to him regarding the country of manufacture. Indeed, the documents presented by petitioner are consistent with the latter interpretation.

After reviewing the record, we are of the opinion that the material falsities were a result of negligence on the part of petitioner. Although petitioner may not have been aware of the fact that the garments were manufactured in India, such lack of knowledge was the result of its failure to use due care is ascertaining the true facts. In view of the fact that petitioner was in the business of importing garments from India and that during the time in question such garments were subject to quota restrictions, we believe that it had an affirmative obligation to verify that the imported garments were not in fact manufactured in India. In these circumstances, petitioner's total reliance on letter of introduction by the [redacted] firm was misplaced. Accordingly, petitioner's request for total remission of the penalties is denied.*

Mitigating Factors

As mitigating factors petitioner claims that it has no previous violations, that there has been no loss of revenue or other adverse effect on the Government, and that it has already been financially penalized.

The record supports petitioner's claim of no prior Customs violations. We find this to be a mitigating factor.

Although petitioner is correct in its assertions that there was been no loss of revenue in this case, we cannot consider this to be a mitigating factor. By its very nature, a quota violation usually results in no loss of

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*Under the mitigation guidelines, a finding of gross negligence is also proper if it can be established that petitioner acted with a wanton disregard for the relevant facts. Although the record clearly establishes that petitioner failed to use due care to ascertain what the true country of origin was, there is insufficient evidence showing a wanton disregard for the facts.

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*In light of our finding that there is insufficient evidence of fraud, petitioner's claim that it knew that quotas for Indian garments similar to the garments in issue were subject to respondent is irrelevant.

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revenue. However, it is potentially a very serious violation in that it may result in prohibited merchandise entering the commerce of the United States. Indeed, in this case one of the shipments did enter the commerce of the United States.

With regard to petitioner's claim that it has already been financially penalized, it claims that substantial business was lost because it was unable to fill orders, that costs have been incurred and will be generated in the search for new suppliers, and that money was spent to release the merchandise for removal from its warehouse area to Customs custody and to reexport the goods back to [redacted]. Although there is notable in the record contradicting these claims, we decline to grant further mitigation on this basis. As indicated above, we believe that petitioner's conduct contributes to the violations in this case and as a result it should bear the resulting financial burdens.

Conclusion

In light of our findings of negligence and one mitigating factor, the forfeiture is remitted upon payment of $[illegible] and the penalty claim is mitigated to $[illegible]. Upon such payment, the letter of credit should be returned to petitioner.

Please notify petitioner, through counsel, of this decision enclosing a copy of this letter thereto.

Sincerely,

(Signed) [illegible]

[illegible]
Director, [illegible]
and Penalties Division

[redacted]

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[redacted]

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

14 JUL 1982

REFER TO

ENF-4-02.2 CO:R:E:C
652908 HL

District Director of Customs
DFW Airport, Texas 75261

Dear Sir:

Your memorandum of February 5, 1982, forwards the petition of [redacted] of Dallas, Texas, requesting relief from a claim for monetary penalty of $731,398.00 assessed for violation of 19 U.S.C. 1592 and 1595a in connection with Dallas/Fort Worth Penalty Case No. 80-5501-50560 and Seizure Case No. 80-5501-00176.

On May 13, 1980, two forty-foot containers imported by petitioner from Taiwan were seized for violation of 19 U.S.C. 1592 and 1595a. Entry papers filed in connection with one container (CE 80-109209-7 dated May 12, 1980) described the merchandise therein as 1000 cartons (2000 dozen) of men's ornamented polyester-cotton jeans. The first four rows of boxes in the container contained 220 boxes of jeans as described. However, beginning with the fifth row, 100-percent cotton jeans were bulk-packed in bundles, followed by 77 boxes of women's blouses, 47 boxes of men's shirts, as well as more rows of 100-percent cotton jeans. In total, there were 2,373 dozen bulk-packed 100-percent cotton jeans, 770 dozen blouses, and 235 dozen shirts, which were not invoiced.

Entry papers filed in connection with the second container (CE 80-109199-1 dated May 5, 1980) also described the merchandise as 1000 cartons of men's ornamented polyester-cotton jeans. The container was packed in a manner similar to the other. The first two rows of boxes contained 101 cases of polyester-cotton jeans. Beginning with the third row, however, 100-percent cotton jeans were bulk-packed or in boxes. total, 2,827 dozen 100-percent cotton jeans were unmanifested.

The total loss of revenue associated with the two entries was reported to be $58,567.48. However, because visas for the unmanifested 100-percent cotton articles were not provided, both shipments were in violation of quota restrictions. The penalty amount of $731,398.00 represents the domestic forfeiture value of the merchandise seized. The 321 cases of polyester-cotton jeans covered by visa were released on October 2, 1980, upon submission of a letter of credit in the amount of $52,695.00.

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REPLY TO COMMISSIONER OF CUSTOMS WASHINGTON, D.C. 20229

Customs is convinced that the subject containers were packed in a manner designed to conceal and smuggle non-visa merchandise into the United States. The entry papers were false because they failed numerically to report the large overage of wearing apparel and, in addition, misdescribed the contents of the containers. The record shows that [redacted] own agent in Taiwan gathered the merchandise from small Taiwanese suppliers and packed the containers. An audit of [redacted] financial records obtained through grand jury subpoena compared petitioner's domestic sales of record to imports of record during the period November 1979 through May 1980. Audit results indicated that [redacted] imported at least 11 percent more blue jeans than reported to Customs on consumption entries. Following criminal investigation with respect to the subject entries, [redacted] was indicted and pled guilty to two counts of criminal fraud under 18 U.S.C. 542 and two counts of criminal smuggling under 18 U.S.C. 545. It is pertinent to note that a third and fourth container of jeans, packed in the same manner as those seized, and also containing a large number of unmanifested non-visa 100-percent cotton jeans, were both refused upon arrival by [redacted] after the first seizure and placed in General Order Warehouse.

We conclude from the foregoing that [redacted] intended to smuggle non-visa, 100-percent cotton apparel into the United States in order to avoid quota restrictions and, in addition, intended to avoid the payment of duties on the unmanifested and misdescribed articles, in fraudulent violation of 19 U.S.C. 1592.

Petitioner alleges no violation of 19 U.S.C. 1595a pursuant to which the 321 cases of polyester-cotton jeans with correct visas were seized. These boxes were used to conceal the non-visa merchandise, but (as petitioner contends) are not ejusdem generis with vessels and vehicles subject to seizure and forfeiture under 1595a for their use in smuggling. The terms of the statute are broad, however, referring to any "other thing used in . . . concealing . . . any article which is being or has been introduced . . . into the United States contrary to law . . . ." Customs policy subjects to seizure and forfeiture under 1595a non-prohibited merchandise used to conceal smuggled merchandise. We find, therefore, that the 321 cases of polyester-cotton jeans were properly seized under 1595a. Petitioner also finds fault with Customs for assessing a monetary penalty against these 321 cases under 1595a when the proper remedy is forfeiture. (The 321 cases were released upon deposit of a letter of credit of $52,695.00.) We are not persuaded by this argument especially in view of the fact that the 321 cases of polyester-cotton jeans were falsely described in the entry papers as 2000 in number, subjecting them to assessment for monetary penalty under 19 U.S.C. 1592.

Illegal seizure is also claimed by petitioner on the ground that notice of seizure was defective in failing to state the reasons

Page 908

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for seizure, by omitting a description of the acts forming the basis of the alleged violations as well as a breakdown of the loss of revenue attributable to each entry. The language of 19 U.S.C. 1592(c)(5) requires that a written statement containing the reasons for the seizure be issued to the person concerned within a reasonable time after any such seizure is made. Section 162.31, Customs Regulations, contains more precise requirements. The seizure notice in question consisted of a May 20, 1980, letter to petitioner citing the fact of seizure, entries involved, and type of merchandise. Attached was a receipt for merchandise seized which specified the precise contents of both containers, values associated with the merchandise, applicable duty rates, and total loss of revenue of $58,567.48. The statutes violated were cited, and the pre-penalty case number was cross referenced. Further attached was a "Notice of Seizure and Information to Claimants" letter. Within two days thereafter, on May 22, 1980, the cross-referenced pre-penalty notice was issued expounding upon the facts establishing the violation, loss of revenue, and a tentative determination of culpability regarding avoidance of quota requirements and payment of duties. The reasons for seizure were thus made readily apparent to petitioner. [redacted] was not prejudiced, but rather was made fully aware of the circumstances of seizure as required by 19 U.S.C. 1592 within a very short time after seizure was made. Notice was therefore prompt, explanatory, and descriptive, offering avenues of recourse open to petitioner.

In support of its claim of illegal seizure by defective notice, petitioner cites United States v. Eight (8) Rhodesian Stone Statues, 449 F.Supp. 193 (1978), in which a particular Customs seizure notice was held to be inadequate. In that case, however, notice was finally accorded claimant 16 months after seizure. The court stated that the minimum requirements for notice contents are: (1) that a seizure has occurred, describing what has been seized and where; (2) the authority under which the seizure has been made, i.e., the alleged violation of law; and (3) that the claimant has the right to file a petition for remission and mitigation under 19 U.S.C. 1618. The seizure notice before the court failed to contain even these minimum items of information. That is not the case in the matter of [redacted] Petitioner received prompt notice of seizure which exceeded the minimum requirements set forth above. The seizure was therefore legal.

Mitigating factors cited by petitioner include cooperation, inability to pay the assessed penalty amount, and improper Customs action in releasing details of the case to the public. As to the latter charge, we note that criminal indictment of petitioner was a matter of public record. Bad press in this instance therefore cannot be blamed on Customs. Furthermore, whatever cooperation has been demonstrated by [redacted] is cancelled out by a prior violation attributable to the principal officer and stockholder, [redacted]

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who, doing business in 1977 as [redacted] was fined $22,792.00 for failure to declare ornamentation on men's coveralls in violation of 19 U.S.C. 1592. A finding of gross negligence was made.

Financial inability to pay the assessed penalty amount has been claimed. Financial information has been submitted and reviewed by the Regulatory Audit Division at Headquarters which has concluded that over a period of time, 5 years for instance, [redacted] is capable of paying a mitigated penalty amount as set forth below.

The claim for monetary penalty is hereby mitigated to $468,540.00, provided the loss of revenue of $58,567.48 is immediately paid upon liquidation of the subject entries. Payment of the penalty amount may be made by promissory note executed in accordance with Circular FIS-4-A:A:O dated April 26, 1977, and coordinated with the regional financial management division. Following execution of such note, seized merchandise covered by CE 80-109209-7 and CE 80-109199-1 may be released provided petitioner posts a bond equal to the mitigated penalty amount and pays prior to release any costs of hauling and storage associated with the two containers.

Petitioner must comply with this decision within thirty (30) days of notice thereof. Accordingly, please notify petitioner (through counsel), enclosing a copy of this decision with your letter of notification.

Sincerely,

Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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RELEASED TO THE

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03 DEC 1982

HQ 4-02.2 CO:R:E:C
653157 RJP

Dear Sir:

Re: Your May 27, 1982, request for internal advice; your file
R108CT134004

The questions you raise in your request for internal advice concerning temporary importations under bond (TIB) entries and their relationship to potential violations of title 19, United States Code, section 1592, and title 18, United States Code, sections 496, 542 and 1001, have been forwarded from the Carriers, Drawback and Bonds Division to this office for a separate reply.

With respect to title 19, United States Code, section 1592, you ask whether the fact that a TIB importer submitted false documents to Customs containing forged signatures constitutes a violation of section 1592. Specifically, you indicate that [redacted] imported certain articles from Brazil under TSUSA 864.30 duty free as TIB entries. Some of the articles were imported under TSUSA 685.00 as duty paid consumption entries. The TIB entries were otherwise proper except for the fact that in several instances, a Customs Form 3495 (Application for Exportation of Articles under Special Bond) was submitted with a xeroxed (forged) Customs Inspector's Signature.

You also indicate that investigation thus far has revealed that some of the articles imported under TIB entries were subsequently commingled with the duty paid articles and shipped to another location in the United States. However, no hard evidence is presented which establishes that the articles were used domestically, instead of exported according to the terms of the TIB. As indicated by the Carriers, Drawback and Bonds Division, there is no prohibition against shipping articles from one location to another in the United States, so long as there is the ultimate intent to timely export or destroy the articles.

While it is certainly conceivable that an importer could well be liable for a section 1592 penalty in cases involving entry under a TIB, the circumstances and evidence you describe illustrate the difficulties in applying section 1592 to the TIB situation.

First, in order to establish a violation of section 1592, there must be a material omission or false statement. Thus, for example, if merchandise is entered under TIB and circumstances cause the importer to alter his plans for the merchandise and he duly informs Customs of the disposition of the goods, there would be no false statement or material omission and hence no penalty under section 1592.

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It is clear from the facts you describe that [redacted] has not informed Customs of any intention to depart from the terms of the TIP entries in question. But, there is evidence which may indicate that [redacted] never intended to use the merchandise in the manner required under TIP entry (e.g., commingling of TIP articles with duty paid merchandise, forged proof of export documents). At this stage of the investigation, we do not believe that this evidence is sufficient to establish a violation of section 1592. Although the TIP merchandise was commingled with duty-paid merchandise in certain instances, there is no proof that the TIP goods were not timely exported and/or diverted for domestic use.

However, further investigation may reveal a pattern of conduct which demonstrates that the importer never intended to use the merchandise in the manner required under TIP entry, and, in fact, diverted the merchandise for domestic use. In that case, a section 1592 penalty would be warranted on the basis of the fact that the statements made by the importer were false. Consequently, it would be possible to demand a monetary penalty in addition to any liquidated damages under the TIP entry.

With respect to title 18, United States Code, sections 496, 542 and 1001, we recommend that you contact the Regional Counsel in Boston to discuss the applicability of these criminal provisions to the situation you describe.

Sincerely,

(Signed) DONALD W. LEWIS

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

[redacted]

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NOT TO BE RELEASED TO THE PUBLIC

FMF 4-02.2 CO:F:E:C
653362 LR

09FEB 1984

District Director of Customs
Duluth, Minnesota 55802

Dear Sir:

This is in reference to the petition submitted by counsel on behalf of [redacted] requesting relief from a penalty claim in the amount of $50,000, assessed for an alleged fraudulent violation of title 19, United States Code, section 1592 (District Case No. 83-3613-00013).

The case, which involves the importation of a Mercedes automobile from Germany, has been held in abeyance pending review by [redacted] for possible criminal prosecution. By letter dated January 27, 1984 (copy enclosed), our office was advised by [redacted] that although he intends to prosecute [redacted] the importer of record, for his involvement with the importation, no such action will be taken against the owner, [redacted] (According to [redacted] could reasonably argue that [redacted] made all the false statements on this own).

Although the United States Attorney would like to obtain [redacted] cooperation, he recognizes that this is not feasible so long as the $50,000 civil penalty is looking over [redacted] shoulder. Apparently [redacted] is willing to cooperate with the United States Attorney provided the Customs Service assures [redacted] that it will not find higher than negligence in the 1592 penalty action pending against him and that the car will eventually be released to him. [redacted] states in his January 27 letter that he believes that a negligence penalty against [redacted] is a reasonable disposition in the case. Thus, consistent with a reasonable view of the facts and with the need to obtain complete candor, he recommends that Customs impose a negligence penalty against [redacted] Furthermore, he states that if [redacted] speaks candidly and truthfully, he will recommend that the vehicle be returned to [redacted] upon the posting of a bond to assure that the vehicle is brought into compliance.

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Upon review of the record, it is our view that at this time there is insufficient evidence of [redacted] involvement in the alleged fraudulent importation to warrant the imposition of any section 1592 penalty against him. At most, we could possibly establish that [redacted] was negligent for permitting the violations connected with the importation of his car to occur. Accordingly, we are in a position to assure [redacted] that we will not find higher than negligence in the 1592 penalty action pending against him, provided he cooperates with the U.S. Attorney. Furthermore, since the evidence establishes that [redacted] is the owner of the vehicle and the U.S. Attorney intends to recommend that the car be released to [redacted] after he cooperates, we are also in a position to advise [redacted] that the car will eventually be released to him.

Based on the above, please advise [redacted] through counsel, only of the following:

1) Upon the receipt of a statement from either the U.S. Attorney or Special Agent [redacted] that [redacted] has spoken candidly and truthfully to the U.S. Attorney about the importation of the 1983 Mercedes Benz automobile, VIN WDB12604412003082, Customs Headquarters will issue a mitigation decision in the related section 1592 action (Case No. 83-3613-00013) finding that [redacted] was no more than negligent.

2) Upon receipt of the above statement, the filing of a proper entry for the vehicle, the payment of duties, the filing of a bond to ensure compliance with EPA/DOT standards, and the payment of all seizure and storage expenses, [redacted] may obtain release of the vehicle under seizure.

If you have questions or comments concerning this action, please do no hesitate to contact us. Enclosed for your records are copies of hold harmless agreements submitted by [redacted] and [redacted]

Sincerely,

/s/ Edward T. Rose

for Donald W. Lewis
Director, Entry Procedures
and Penalties Division

Enclosures

[redacted]

C9

23 AUG 1984

ENF 4-02.2 CO:R:E:C
653597 SLG

Dear [redacted]

This is in response to your letter to the Regional Commissioner of Customs, Miami dated April 3, 1984, and to your telex to the Commissioner of Customs dated April 12, 1984 concerning Customs seizures of wearing apparel in Miami (84-5201-00282) and in Secaucus (84-4601-00182). A response to the above correspondence was not made by the Customs Service prior to your July 27, 1984 letter to the Secretary of Treasury concerning this matter because, as you were advised telephonically, the relevant report of investigation had not been completed.

The seizures in the above cases were made pursuant to title 19, United States Code, section 1592, because the goods, which consisted of men's and women's wearing apparel subject to visa requirements, reportedly had been smuggled into the United States via a diversion of an Immediate Exportation entry by Exporther Bonded Corporation (hereinafter, "Exporther"). In addition, the required visas for importation of the goods into the United States did not accompany the shipments. Consequently, in light of the material omissions in violation of section 1592 (i.e., failure to file entry as required under section 1484, for the subject shipments) seizure was necessary to prevent the introduction of restricted or prohibited merchandise into the commerce of the United States. We are advised further that title 18, United States Code, section 545, also has been included as a basis for the subject seizures. Our discussion herein, however, will address only the propriety of the seizures pursuant to section 1592.

It is your primary contention that the seizures of wearing apparel from the [redacted] and from the bonded warehouse of Exporther in Miami and the seizures of the same type of goods from the [redacted] warehouse in Secaucus were made from an innocent purchaser, your client, [redacted] (hereinafter, [redacted]). Thus, you submit that the seizures were contrary to the provisions under title 19, Code of Federal Regulations, section 162.41(a)(2), that merchandise in the possession of an innocent purchaser, shall not be seized. In addition, you claim that the above seizures were not authorized under section 1592, because these shipments already had been "introduced" into the commerce of the United States. Consequently, you request release of the above shipments to your client for import into the United States, without payment

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of duties and filing of appropriate visas. As to the goods seized while still in Customs physical custody in Miami, you request release to your client for immediate export or for the filing of a duty paid entry.

First, it is our position that textile goods subject to export visas requirements are absolutely prohibited from importation into the United States without the requisite visas at the time of importation. Accordingly, under no circumstances will any of the seized merchandise be released to [redacted] for importation into the United States without the required visas or a waiver thereof by the Government of Taiwan. We believe that our position is supported by the administrative arrangement made between the Republic of China (Taiwan) and the United States to facilitate the implementation of the Agreement on the Trade in Cotton Textiles and the Agreement on the Trade in Wool and Manmade Fiber Textile Products. By letters dated August 16, 1972 and September 20, 1972, the United States and the Republic of China established a visa system whereby

> "Cotton, wool, and man-made fiber textiles and textile products produced or manufactured in the Republic of China and exported to the United States shall be accompanied by an export visa issued by the Government of the Republic of China...." and if such goods "are not accompanied by an export visa... shall be denied entry" by the United States, "except upon specific request by [the Republic of China]".

In light of the above, even assuming arguendo that [redacted] was an "innocent purchaser" of the goods seized in Miami and in Secaucus, section 162.41(a)(2), is of no avail to invalidate the subject seizures. The regulatory history of section 162.41(a), clearly indicates that the provision that merchandise in the hands of innocent purchasers shall not be seized, does not apply to cases where the merchandise involved is prohibited from importation into the United States in the first instance. In discussing the general purpose of section 162.41(a), to avoid the harsh consequences of seizure, the Department of Treasury specifically noted that the regulations were applicable only to "circumstances where absolutely prohibited importations are not involved." (Emphasis added.)(T.D. 77-136 at 261.) Thus, it was recognized that seizure to prevent the introduction of prohibited goods into the United States can be made even when such prohibited goods have been transferred to an innocent purchaser.

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Inasmuch as a material omission (failure to file an entry) had been made in connection with the attempted introduction of prohibited goods into the commerce of the United States, we find that each of the subject seizures was authorized under section 1592, to prevent the introduction of prohibited merchandise "into the customs territory of the United States." (19 U.S.C. 1592(c)(5).) Although the wearing apparel seized from the railway in Miami and from the [redacted] warehouse in Secaucus were beyond the physical control of Customs, they still were under the legal custody of Customs. As merchandise that had been smuggled into the United States via diversion of an Immediate Exportation entry, they remained in "constructive" Customs custody, inasmuch as a "formal release" of the goods which had entered into Customs custody under the Immediate Exportation entry, had not been obtained.

It is well-settled that "imported goods are in the constructive custody of Customs from the moment of their arrival in a United States port until their formal release by the Customs Service, regardless of whether Customs has actual, physical possession." United States v. Slocum, 708 F. 2d 587, 597 (11th Cir. 1983) (Citing the weight of authority on this issue.) In United States v. Slocum, supra, the Court held that a shipment of diseased birds, which by law were condemned to extermination and accordingly prohibited from entry into the United States, remained under Customs custody or control even when they were outside of the physical possession of Customs. Therefore, we find that inasmuch as the goods in this case had not been formally released from Customs custody at the time of seizure under section 1592, was still available as a provisional remedy to prevent the importation of prohibited goods (See S. REP. NO. 95-778, 95th Cong., 1st Sess. 19 (1978).

Notwithstanding your contentions regarding the propriety of the seizures under section 1592, we find with regard to the seizures in Miami, that there is a serious question of whether or not title to these goods had passed to your client at the time of the seizure. Relevant to this issue, the Uniform Commercial Code, [adopted by Florida, New Jersey and New York] provides as follows:

> "Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods,...and... (a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but (b) if the contract requires delivery at destination, title passes on tender there." U.C.C. 2-401(2)

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Throughout this proceeding, you have represented on behalf of [redacted] that the subject wearing apparel had been purchased on a landed duty paid basis. As evidence of its ownership interest in the seized goods, [redacted] has submitted copies of accounts payable and statements of account from the exporter [redacted] (hereinafter, [redacted]) pertaining to the subject shipments as well as the relevant purchase orders. [redacted] invoices pertaining to the seized shipments also have been reviewed in this regard. In our view, the most important evidence of the terms of the contracts governing the subject shipments are those reflected on purchase orders corresponding to the invoices forwarded with the subject shipments. The terms reflected on the purchase orders for the subject shipments reflect that the goods were to be shipped to New York, with "delivery" to be made in New York on specified dates and that the prices therefor were described as "landed."

Based upon the foregoing evidence of record, we conclude that the contracts represented by the foregoing purchase orders and invoices did require "delivery" of the goods by [redacted] to New York [which reasonably included delivery to [redacted] leased space at the [redacted] warehouse in Secaucus]. In this regard, U.C.C. 2-503(1), provides that "tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery." Inasmuch as the seizures of the goods in Miami were made prior to tender of delivery to [redacted] as provided under the contract, we cannot conclude that at the time of these seizures, [redacted] had completed its performance under the terms of the contract. To release the goods seized in Miami to [redacted] under the foregoing circumstances would be tantamount to concluding that title to those goods had passed to [redacted] prior to the seizures. Such a conclusion is not supported by the facts.

Although in the absence of specific agreement, the time of payment for goods is not determinative of when title thereto has passed to the purchaser, this fact is relevant to the question of the parties' intent regarding the passage of title. In this case, however, we cannot conclude based upon [redacted] accounts payable and [redacted] statement of accounts, that payment for the goods seized in Miami had been made prior to the dates thereof. First, [redacted] accounts payable ledger cannot be accepted at face value as evidence of [redacted] payments for shipments received from [redacted]. For Example, none of the $71,100, worth of charges reflected on [redacted] statement of account for June 30, 1985, were reflected on [redacted] accounts payable ledger for [redacted]. Secondly, notwithstanding that the [redacted] accounts payable is unreliable as reflecting all of the [redacted] charges incurred, they

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still show that as of January 16, 1983, [redacted] owed [redacted] approximately $80,606, for those [redacted] charges that were shown on [redacted] books. More significantly, while Kemtrade's accounts payable show no new charges from [redacted] after January 16, 1984, at the same time they show that two payments to [redacted] in the amounts of $133,920, and $36,873, were made on February 21, 1984, after [redacted] was aware of the seizures of the subject goods in Miami.

In sum, we find with respect to the goods seized in Miami, that there is insufficient evidence to support a conclusion that title thereto had passed to [redacted] prior to January 24, and 25, 1984, the dates of the seizures. Consequently, we cannot authorize release of these goods to [redacted] for export. We find totally irrelevant and self-serving, [redacted] and Exporther's statements, made after the seizures, renouncing their ownership interests in the subject goods. This is especially relevant in light of the fact that the above parties reportedly were responsible for the smuggling or attempted smuggling of the goods into the country, a matter now under criminal investigation. If [redacted] still owned the subject goods at the time of seizure they could be forfeited under section 545 (at least the goods seized at the railway). In the event that some of the goods are not referred for forfeiture under section 545, but rather are held as security for a penalty that may be assessed against the appropriate parties under section 1592, [redacted] may file a petition in connection with that proceeding and obtain release of the goods for export upon payment of security (either by [redacted] or by the party charged with the violation). [redacted] of course, would be required to provide a hold harmless agreement in accordance with 19 CFR 162.75(d)(2)(ii), in light of the fact that the apparent owner of the goods seized in Miami is [redacted]

With respect to the goods seized from the [redacted] in Secaucus, New Jersey, on February 3, and 29, 1984, we are satisfied that title to the subject cartons of wearing apparel had passed to [redacted] by the dates of seizure. Although it is not clear as to whether [redacted] had paid [redacted] for all of the cartons of wearing apparel by the date of seizures, it reasonably clear that in accordance with U.C.C. 2-401(2), [redacted] had completed its performance with reference to delivery of the goods to [redacted] in New York [which included delivery to [redacted] in Secaucus, reportedly authorized to receive shipments for [redacted] since June 1983] as provided on [redacted] purchase orders. In addition, there is no report of either [redacted] involvement in the diversion of the Immediate Exportation entry which resulted in the smuggling of the goods into the United States or [redacted] knowledge thereof. Accordingly, release of the goods seized in Secaucus is authorized to be made to [redacted] without requirement of a security deposit, for export only.

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under Customs supervision, unless the appropriate visas or a waiver thereof is obtained from the Government of Taiwan and the goods are formally entered.

After careful consideration of your request and the evidence presented thus far, we have concluded that the goods seized in Secaucus may be released to [redacted] only for export under Customs supervision. There, however, is insufficient evidence of [redacted] ownership of the goods seized in Miami at the time of the seizures. Therefore, at this time we cannot authorize release of the wearing apparel under seizure in Miami to [redacted] The Area/District Directors of Miami and New Jersey will be advised of the foregoing respective dispositions regarding the release of the subject seized goods to [redacted] Moreover, the Area Director of Newark will be advised to obtain a hold harmless agreement from [redacted] before the goods are released.

Sincerely,

John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

[redacted]

[redacted]

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RELEASED TO THE PUBLIC

11-13-84

ENF 4-02.2 CO:R:E:C
653648 BLS

653648

District Director of Customs
Portland, Maine 04112

Re: District Case No. 84-00015-00027, [redacted]

Dear Sir:

This is in reference to your letter dated August 9, 1984, in which you forwarded a petition on behalf of [redacted] customhouse broker, requesting relief from a monetary penalty of $291,973, assessed under title 19, United States Code, section 1592.

The record shows that the merchandise was presented for entry at the port of Calais, Maine, with the use of a pro-forma invoice reflecting that the value of the goods was $65,935. The petitioner was identified as the shipper and consigee. No country of origin information was submitted with the invoice. However, three commercial invoices subsequently provided by the truck driver after questioning by the Customs Inspector revealed that the merchandise had apparently originated in Hong Kong, Taiwan, and Korea, and that the required visas were not included with the shipment. These invoices reflected, in each case, that the shipper was a Taiwanese, Korean, and Hong Kong company, and that the consignee was [redacted], a company based in Panama. Closer examination of the shipment revealed that labels describing the originating country as "Lebanon" had been placed over labels showing Korea, Hong Kong, and Taiwan as the country of origin. In addition to the false markings, the merchandise was found to be grossly undervalued. The shipment was seized in order to prevent the entry of prohibited merchandise.

The notice of penalty alleges fraud on the part of petitioner in connection with the attempted entry of this merchandise.

Petitioner denies any interest in the transactions other than as coordinating broker, and rejects any claims regarding its involvement in the alleged violations. Petitioner alleges the following sequence of events with regard to its role in the subject transaction:

By letter dated December 19, 1983, a company called [redacted] requested that petitioner move the goods from Halifax, Canada, to Miami, Florida, in bond. [redacted] advised that 2 containers of merchandise were in Halifax, purchased from a company in Paris, and that [redacted] should place the merchandise under their bond and then "we

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will ship it to South America". At this time [redacted] claims that it had no knowledge of an earlier seizure of merchandise at Savannah, also involving the [redacted] family. [redacted] is said to be the controlling stockholder in [redacted]

When the containers were ready to move, [redacted] contacted [redacted] the Customs broker in Miami, to prepare the necessary documents for a Transportation and Exportation entry ("T&E"). However, both the Canadian broker [redacted]) and [redacted] failed to follow instructions. First, [redacted] prepared a manifest and invoice erroneously showing [redacted] as the shipper and consignee. The invoice was also incomplete and failed to provide the country of origin and description of the merchandise, although [redacted] claims that this information was available to [redacted] and had previously been provided by [redacted] and [redacted] Second, [redacted] contends that [redacted] failed to prepare the requested T&E, contrary to its instructions.

In summary, [redacted] claims that it has no proprietary interest in the merchandise; that it was [illegible]ely acting as coordinating broker; that it had never seen the goods, and had assumed the merchandise was properly marked; that as coordinating broker it had no obligation to examine merchandise prior to entry into the United States; that the designation of [redacted] as consignee was erroneous since the intention was to have the goods shipped care of [redacted] on behalf of [redacted] the ultimate consignee in Panama. [redacted] claims that it had no hand in preparing the invoices, handled by [redacted] and [redacted] nor was it responsible for their accuracy.

As support for its claim, petitioner submits in evidence certain telexes between itself and [redacted] regarding the transaction. By telex of December 30, 1983, [redacted] advises [redacted] to move the merchandise in bond to Miami consigned to [redacted] responded on January 17, 1984, that "We must also know ultimate consignee". A third telex from [redacted] discusses rates and provides that this was an "in-bond shipment".

Contrary to petitioner's claims, you question whether a T&E was ever intended. If so, you ask why [redacted] failed to prepare invoices, etc., showing [redacted] as consignee and forward them to [redacted] for inclusion with the shipping documents. You also point out that while [redacted] claims it advised [redacted] and [redacted] of the intended movement in bond, no documentary evidence in this regard is submitted. Rather, both [redacted] and [redacted] (the importing carrier) have denied they were ever advised to enter the merchandise on a T&E. While you take note of references in the correspondence to moving

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the merchandise in bond, in your view these references more realistically suggest a request for an Immediate Transportation entry, rather than a T&E. Furthermore, you note that the claimed consignee in Panama has denied any involvement with the subject transaction.

Under these circumstances, you believe that petitioner was the correct shipper/consignee, and failed to exercise due care to assure that proper documentation was provided to Customs at the port of entry. You recommend that the penalty against petitioner be mitigated to $10,000.

While petitioner is unable to satisfactorily explain why its alleged instructions to [redacted] and [redacted] to file a T&E were never communicated, we find no evidence that petitioner was involved in preparation of the false invoices, or was aware of the fraudulent nature of these documents. However, we do find that as coordinating broker, petitioner failed to exercise reasonable care to ensure that the proper entry was filed and the proper consignee shown.

Under the circumstances, the penalty is mitigated to $500. Please advise petitioner of this decision and furnish a copy thereof with your notice.

Sincerely,

/s/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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11-13-84

ENF 4-02.2 CO:R:E:C
653648 BLS

District Director of Customs
Portland, Maine 04112

Re: District Case Nos. 84-0115-50015 and 84-0115-00027;
[redacted]

Dear Sir:

This is in reference to your letter dated August 9, 1984, in which you forwarded a petition on behalf of [redacted], requesting relief from a monetary penalty of $291,973, assessed under title 19, United States Code, section 1592. The record reflects that the involved merchandise, 595 cartons of women's wearing apparel, is currently under seizure in Savannah, Georgia.

The record shows that the merchandise was presented for entry at the port of Calais, Maine, on February 16, 1984, with the use of a pro-forma invoice reflecting that the value of the goods was $65,935. No country of origin information was submitted with the invoice. [redacted] was identified as the shipper and consignee. However, three commercial invoices subsequently provided by the truck driver after questioning by the involved Customs inspector revealed that the merchandise had originated in Hong Kong, Taiwan, and Korea, and that the required visas were not included with the shipment. These invoices reflected, in each case, that the shipper was a Taiwanese, Korean, and Hong Kong company, and that the consignee was [redacted] Closer examination of the shipment revealed that labels describing the originating country as "Lebanon" had been placed over labels showing Korea, Hong Kong, and Taiwan as the country of origin. In addition to the false markings, the merchandise was found to be grossly undervalued. The shipment was seized in order to prevent the entry of prohibited merchandise.

In order to determine ownership, notices of seizure were sent to various parties, including [redacted] The latter did not respond directly to the notice, however, a company called [redacted] did respond, claiming ownership of the goods, and sought their return. [redacted] also responded, but denied any interest in the merchandise or any connection with the transaction.

Subsequently, pre-penalty and then penalty notices were issued to [redacted] detailing the circumstances of the attempted entry, as heretofore described, and alleging false declarations and material omissions, and violation of title 19, United States Code, section 1592, the culpability alleged was fraud.

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The background file reveals that in September, 1983, [redacted] had been involved with the attempted entry of textile merchandise at the port of Savannah under circumstances similar to the instant case. The merchandise was seized and a criminal prosecution initiated. The prosecution resulted in a plea agreement pursuant to which [redacted], who operated [redacted] pleaded guilty to violations of title 19, United States Code, section 542, fraudulent entry of merchandise by means of false declarations and to value.

We note that while [redacted] has not responded directly to the assessed claim, [redacted] has directed a response to the penalty, and, therefore, we are treating their reply as a petition on behalf of [redacted]. In this regard, the record is unclear as to the exact relationship between [redacted] and [redacted]. However, [redacted] advises that [redacted] the father of [redacted] is the controlling stockholder in [redacted], and that the [redacted] are also stockholders in [redacted] also advises that were it not for the seizure in Savannah, the paperwork would have reflected [redacted] as the shipper, and [redacted] as the consignee, [redacted]

In its explanation of the transaction, [redacted] advises that the goods were originally intended to be shipped in the same manner as the goods seized in Savannah. However, when Customs made its Savannah seizure, it was decided not to disembark in the United States, and thus a bill of lading was issued reflecting [redacted] as shipper and [redacted] as consignee (rather than [redacted] and [redacted] as shipper and consignee, respectively). Sometime after the goods arrived in Halifax, Canada (October 17, 1983), a buyer in Panama, [redacted] was located. Since the cost of shipping by vessel from Halifax to Panama was too expensive, it was decided to have the goods moved by truck from Halifax to Miami, and from that point by vessel to Panama. Thus, the shipment was to move in bond through the United States, and at no time did petitioner intend that the merchandise enter the commerce of the United States. However, [redacted] also claims that [redacted] incorrectly prepared the paperwork, so that the documents failed to reflect that the shipment was to move in bond, with the ultimate desti-nation [redacted]. The petitioner includes in evidence the following documents in support of its claim:

1) A letter dated December 19, 1983, in which [redacted] advises [redacted] of the merchandise in Halifax, to place it under their [redacted] bond, and that subsequently "we will ship it to South America".

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2) A telex dated February 9, 1984, from [redacted] to [redacted] advising of cost problems with a freight forwarder because this was an in-bond shipment;

3) A letter dated March 5, 1984, in which [redacted] advises [redacted] that the goods were mistakenly consigned to [redacted] rather than [redacted] that the merchandise should have been sent in-bond, and it was never intended to enter the commerce of the United States;

4) Copy of a bill of lading reflecting [redacted] as shipper to [redacted] in Halifax;

5) Shipper's manifest from [redacted], [redacted] to [redacted] reflecting that the shipment was to be in-bond.

Contrary to petitioner's claims, you question whether a T&E was ever intended. If so, you ask why [redacted] failed to prepare invoices, etc., showing [redacted] as consignee and forward them to [redacted] for inclusion with the shipping documents. You also point out that while [redacted] claims it advised [redacted] and [redacted] of the intended movement in bond, no documentary evidence in this regard is submitted. Both [redacted] and [redacted] (the importing carrier) have denied they were ever advised to enter the merchandise on a T&E. While you note references in the correspondence to movement of the merchandise in bond, in your view these references more realistically suggest a request for an Immediate Transportation entry, rather than a T&E. Furthermore, you note that the claimed consignee in Panama, [redacted] has denied any involvement with the subject transaction. You also believe that [redacted] was the true owner of the merchandise, and that the false declarations as to country of origin and value was the result of fraud on the part of [redacted]

With regard to [redacted] you question the bona fides of this petitioner's claimed ownership of the merchandise, since the only evidence of ownership submitted is a bill of lading. You believe that [redacted] became involved only because of [redacted] problems with Customs in Savannah. You also note certain inaccuracies or contradictions in this petitioner's response which reflect upon its credibility. Thus, while [redacted] claims that a buyer (allegedly [redacted]) was located sometime after October 17, 1983 (after the goods arrived in Halifax), the commercial invoices found with the shipment reflect that [redacted]

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as the consignee was known in August and September 1983. There is also evidence that at least one these invoices was fraudulent not only as to value, but also as to the shipper involved. Based on all of these factors you recommend that the [redacted] petition be denied.

Initially, we note that petitioner has not challenged the assertions set forth on the notice of penalty with regard to the alleged false invoicing, false labeling, material omissions, etc. Rather, petitioner has sought to circumvent these issues by contending that the merchandise was intended to be transported through the United States via a T&E entry, and was not intended to enter the commerce of the United States. However, this intent was said to be thwarted due to the negligence of the coordinating broker, [redacted]

While there is evidence which tends to show that the petitioner intended to enter the merchandise on a T&E entry, this intention, even if established, is not proof positive of the fact that petitioner intended to ship the merchandise in transit through the United States. In fact, the alleged consignee's disclaimer of any involvement with the transaction leads to the inference that had the goods been entered on a T&E, a diversion into the commerce of the United States would have occurred. This inference is supported by the record and reputation of the involved principals.

In conclusion, we find that whether or not a T&E was ever intended, petitioner's intention was to enter the merchandise into the commerce of the United States by means of false and fraudulent declarations, and material omissions, as set forth on the notice of penalty. Under these circumstances, the claim against [redacted] is mitigated to $160,205, an amount equal to 80 percent of the dutiable value ($200,256) of the merchandise. This is in accordance with our guidelines involving fraudulent, non-revenue loss violations, and is conditioned upon payment of storage and transportation charges, and exportation of the merchandise under Customs supervision. In addition, the merchandise should be released to [redacted] for exportation only upon adequate proof of ownership.

Sincerely,

[redacted]

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

D8

DATE: 05 OCT 1984

FILE: ENF 4-02.2 CO:R:E:C
653678 SLG

TO : District Director of Customs
San Francisco, California 94111

FROM : Director, Entry Procedures and Penalties Division

SUBJECT: Wearing Apparel under Seizure in San Francisco District
Case No. 84-2808-00109

This is in reference to the request from counsel for the importers of the above seized wearing apparel, [redacted] et al. and [redacted], for permission to export the seized goods. The seized goods consist of ladies wearing apparel containing 50 percent or more cotton by weight, which were falsely labeled and described as having fiber content of less than 50 percent cotton by weight (e.g., 55 percent linen and 45 percent cotton). As garments with more than 50 percent cotton by weight, they were subject to a duty rate of 16.5 percent ad valorem instead of the duty rate of 5.3 percent, as entered. Since they were imported from China, Hong Kong, Taiwan, Korea and Macau, the garments also were subject to textile quota and visa restrictions.

[redacted] through counsel, have waived their rights to timely issuances of seizure and prepenalty notices, until the matter of releasing the seized goods for export has been reviewed by Headquarters. As we advised in our telex to all field offices dated September 18, 1984 (653682 SLG), textile quota goods seized for violation of title 19, United States Code, section 1592, should not be released, even for export, without the deposit of security in an amount not to exceed the maximum penalty that may be assessed for the violation pertaining to the seized goods.

Notwithstanding the current waivers of notice rights by the importers and the ongoing foreign investigation on this matter, it is not advisable to withhold issuance of a seizure notice and notice of the required security deposit, any longer. Based upon the evidence developed thus far, it is recommended that a deposit in an amount equivalent to a maximum penalty for a gross negligence violation, be required for release of the goods seized in this case. The required deposit, of course, would be based upon a gross negligence penalty attributable only to the

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goods under seizure. [It appears from the record that a penalty claim against the importers also would include goods already released from Customs as well as goods that were not entered but authorized to be exported; the value and/or loss of revenue attributable to these goods, however, would not be computed in determining the security deposit required for releasing the seized goods.]

With respect to the alleged violations and seizure, counsel for the importers essentially claims that his clients fulfilled their obligations to exercise due care in entering the subject garments, notwithstanding that Customs has determined that fabric contents described on the invoices as well as on the labels were false. In this regard, counsel has presented numerous telexes between the importer, [redacted] and its Hong Kong agent, [redacted], wherein [redacted] is shown to have stressed to Colby & Staton, the importance of ensuring that the fabric content consisted of chief weight, ramie, as opposed to cotton. Counsel also has presented copies of laboratory tests supposedly performed on the fabric prior to the subject importations, which showed a chief weight content of ramie [although the laboratory report of testing performed at the China Textile Testing and Research Center is dated December 9, 1972]. Counsel further claims that both the importers and their agent, [redacted] relied upon the results of the tests in claiming to Customs that the garments were chief weight, ramie.

Our review of the documents forwarded by counsel for the importers confirms that [redacted] (Hong Kong) was advised by [redacted] that articles containing more than 50 percent cotton by weight were subject to quota and visa restrictions and that fabric with more than 50 percent ramie should be used. Nevertheless, it appears from the facts developed thus far, that [redacted] was the primary buying agent for the importers' shipments from the Orient and reportedly was responsible for (1) placing the importers' orders with the mills for the fabrics, (2) placing the importers' orders for the garments with the manufacturers, as well as (3) shipping the finished products. Moreover, telexes such as the following from [redacted] (Hong Kong) dated October 7, 1983, suggest that [redacted] was delegated specific responsibility regarding the fabric weight content of the garments.

> "... THE WEIGHT OF THE RAMIE VS. COTTON IS ALSO CALCULATED N IF CTN CONTENT MORE THEN VISA IS REQUIRED U MUST FIGURE OUT THE WEIGHT AS WELL AS PX N ADV WE REALIZE IT SOUNDS MORE N MORE COMPLICATED HOWEVER, THIS IS WHAT IS REQUIRED N THE FAB SUPPLIERS DEFINITELY SHLD HV THE INFO U NEED TO FIGURE THIS OUT PLS RESPOND GERI"

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Even if [redacted] did not have actual knowledge of the true fabric content of the subject seized articles which were falsely labeled, they had the ability to obtain this information prior to shipment of the merchandise. The fact that the fabric content by weight as indicated on the garments were so grossly disproportionate to the actual content demonstrates in our view a wanton disregard on the part of [redacted] for the relevant facts as well as a disregard for its legal obligations. Evidence as to whether or not there also was intent to violate the law or defraud the revenue may be established by the ongoing foreign investigation.

Reportedly, [redacted] has admitted that in connection with the subject shipments [redacted] selected the manufacturers and obtained the sample of fabrics pursuant to styles, fabrics, and prices specified or approved by [redacted]. Moreover, Tres [redacted] admitted that it is [redacted] only customer in the United States and that [redacted] has offices in every country in which [redacted] does business. Thus, [redacted] hardly can deny at this point that [redacted] was its buying agent with respect to the subject import transactions. Although the facts developed thus far do not clearly reveal the direct relationship between [redacted] reportedly admitted that the subject importations represented a joint venture between [redacted] For a 15 percent commission to cover expenses and profit, [redacted] selected the styles, colors, etc., of the garments and sent the orders to [redacted] while [redacted] in turn issued the letters of credit covering the orders.

It is well-settled that the acts and culpability of an agent, such as [redacted] acting within the scope of its authority in connection with an import transaction, may be imputed to a principal, importer, such as [redacted] for purposes of determining liability under section 1592. See Clicquot's Champagne 70 U.S. 114, 141-144 (1865). In light of our conclusion that there is reasonable cause to believe that the false descriptions and labels resulted from gross negligence on the part of [redacted] there is sufficient grounds for demanding a security deposit from [redacted] principals in these transactions, in an amount commensurate with this degree of culpability. In the event that evidence establishing greater culpability is developed prior to the issuance of the penalty notice, the fact that a security deposit based upon gross negligence has been demanded for releasing the seized goods would not preclude issuance of a penalty claim in an amount based upon the degree of culpability established by the evidence.

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If further assistance is needed during the prepenalty and penalty proceedings relating the subject seizure case please do not hesitate to contact us.

Sincerely,

Donald W. Lewis

Donald W. Lewis

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[redacted]

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653701

10 DEC 1984

ENF 4-02.2 CO:R:E:C
653701 RJP

District Director of Customs
Houston, Texas 77052

Dear Sir:

Your memorandum dated October 1, 1984, forwarded the petition submitted on behalf of [redacted] (petitioner), requesting relief from a claim for monetary penalty of $302,967.76, assessed for an alleged violation of title 19, United States Code, section 1592, in Houston District Case No. 84-5309-51025. The alleged violation was determined to have been the result of fraud, and involved four immediate delivery ("ID") entries consisting of 13 cases of watches imported into the United States in 1984.

The basis for the alleged violation involves petitioner's false certification regarding the country of origin marking for the subject watches. Upon presentation of the subject ID entries to Customs, requests were submitted to move each shipment to the petitioner's premises for marking. Each request was granted by Customs. Subsequently, one of petitioner's employees certified to Customs on each Customs Form 4647 that the marking of the watches had been completed. Customs inspectors visited the petitioner's premises and, upon inspection, discovered that of the total of 3509 watches covered by the four ID entries, 2500 watches had not been marked. Because petitioner had certified that the marking of the watches had been completed, when in fact, it had not, Customs initiated the instant penalty case. (We note that consumption entries were filed for the subject watches and that the appropriate duty has been paid, therefore, no loss of revenue is involved in the case.)

With respect to the section 1592 action before us, a pre-penalty notice alleging fraud was issued to the petitioner on May 14, 1984, and a response was submitted on May 17, 1984. After consideration of the response, a no-change penalty notice was issued by Customs on June 6, 1984. The instant petition has been submitted for our consideration, and petitioner's claims are set forth below.

First, petitioner claims that Customs has failed to identify the unmarked watches as those described on the consumption entries subject to the instant penalty action, and that these unmarked watches may have been domestic purchases...i.e., not subject to marking requirements. Further, petitioner indicates that because Customs inspectors found many marked as well as unmarked watches, Customs is incorrectly penalizing petitioner for those watches which had been properly marked.

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Second, petitioner maintains that the failure to properly mark the watches (if in fact they required marking), resulted from an innocent mistake, in that petitioner's employees who certified the goods as being properly marked, reasonably believed the merchandise had been so marked. According to petitioner, when its owner was overseas, the owner phoned one of petitioner's employees responsible for marking and inquired whether the subject shipments were "ready to go" (i.e., were they marked?). The employee told the owner "yes," because the employee was aware that the watches were located in the storage area where watches were put after marking. The owner then informed the employee who handled Customs matters for the petitioner that it was appropriate to certify to Customs that the watches had been marked.

Petitioner cites its unblemished prior record with respect to Customs marking requirements, and requests that the penalty claim be cancelled, either because Customs failed to identify the watches examined as those corresponding to the entries in question, or because the failure to mark was merely the result of inadvertence on the part of an employee acting in good faith.

Our review of the evidence in this case leads us to conclude that petitioner's claims are unsupported by the record. The file reveals that petitioner kept a tight inventory control, and the petitioner's owner has stated that "a shipment is kept together and when it is ready for marking, it is moved into the marking room, and when the marking is over, the shipment is moved into a separate area." This statement, coupled with the lack of evidence that the unmarked watches were of domestic origin, indicates that it would not be expected that petitioner would have mixed a shipment not yet released by Customs with a domestic shipment. Moreover, in a letter presented to a Customs Inspector, the petitioner's owner stated that the "unmarked 2500 watches are from the 4 April shipments" (i.e., the shipments subject to the instant penalty action). The record also reveals that at the time of Customs inspection, petitioner's owner initially produced marked watches which he selected from boxes identified with a red mark. Subsequently, petitioner's owner attempted to conceal the unmarked watches which were discovered in unmarked boxes in a separate room. The file reflects that the behavior of petitioner's owner during the course of the inspection does not support a claim that the failure to properly mark was an inadvertent employee error or mistake. Also, we note that petitioner's prior marking record is not relevant to the instant case, inasmuch as Customs had not verified petitioner's previous importations. Finally, the proper marking of a minority of the subject watches does not obviate the falsity of petitioner's certification that the goods in question were correctly marked.

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In view of the above, we agree with your office that petitioner committed a grossly negligent violation of title 19, United States Code, section 1592, in that petitioner certified to Customs that the shipments were properly marked, when in fact, they were not. The penalty incurred under section 1592 will be remitted upon payment of $121,187.

Please notify petitioner (through counsel) of this decision, and enclose a copy of this letter with your notification.

Sincerely,

(Signed) Edward T. Rose

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

[redacted]

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18 JAN 1985

ENF 4-02.2 CO:R:E:C
653711 SLG

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District Director of Customs
Ogdensburg, New York 13669

Dear Sir:

This is in reference to the supplemental petition filed by the firm of [redacted] on behalf of [redacted] ("petitioner"), requesting further relief from the penalty assessed in the amount of $553,850, for violation of title 19, United States Code, section 1592 (Ogdensburg District Case No. 83-0701-50019).

The penalty was assessed because petitioner, allegedly as a result of fraud, entered shipments of sugar into the commerce of the United States during the period of November, 1977 through January, 1978, by means of false contract claims. Petitioner falsely claimed that shipments of sugar identified in the penalty notice, were being entered to fulfill contracts that were executed prior to November 11, 1977, the effective date of Presidential Proclamation No. 4539 (42 Fed. Reg. 59039, November 15, 1977). Inasmuch as the higher duty rates for sugar imposed under the foregoing proclamation applied to the subject entries, if they, in fact, were not covered by a contract entered into prior to November 11, 1977, the false claims in this case resulted in an actual loss of duties of $15,458.97, a potential loss of duties of $53,772.38, for a total loss of duties of $69,231.35. Based upon determinations made in the previous decision, however, the amount of the actual loss of duties has been adjusted to $15,170.93.*

By our decision dated January 17, 1984, the following findings of facts and conclusions of law were made:

1. The [redacted] Confirmations, which petitioner claimed with respect to 96 of the 123 entries involved in this case, were not the actual contracts under which the shipments were made;

*Due to a arithmetical error the previous decision cited $14,788.43 as the adjusted actual loss of revenue amount because the amount of $670.54, instead of $288.04, was mistakenly subtracted from the original actual loss.

E2

2. The true contracts covering the subject shipments represented the terms of sale reflected under the numbers and dates recorded in petitioner's contracts ledger and on the R.F.Q.'s, which petitioner claimed represented "calls" against "master contracts;"

3. Petitioner's claims of the [redacted] Confirmations as pre-November 11, 1977, contracts covering the subject shipments were made as a result of petitioner's intent to defraud the revenue;

4. Petitioner's claims of [redacted] Confirmation numbers, 7054, 7060, 6868, 6982, 6946, with respect to the remainder of the entries involved in this case also were false either with respect to the identities of these contracts as covering the shipments or with respect to the dates indicated for these contracts; and

5. Finally, with the exception of the entries covered by the claimed contract 6868, there was sufficient evidence that the false contract claims involving [redacted] Confirmation numbers also resulted from petitioner's intent to avoid payment of the higher duties imposed under the Proclamation.

On supplemental, petitioner essentially claims as follows:

1. Petitioner has not been provided a fair opportunity to make a reasonable response to the allegations in this case due to a claimed insufficiency of the facts provided by Customs prior to the initial decision and a claimed bias in the Customs investigation;

2. The entries made under [redacted] Confirmation numbers 6982, 6946, 7060, and 7054, were properly claimed as covered by contracts made prior to November 11, 1977;

3. The 7000 series [redacted] Confirmations represented the true contracts covering the remaining entries in this case against which the 7000 series calls were made; and

4. Even assuming arguendo that the [redacted] Confirmations were not contracts, they were reasonably believed to have represented binding commitments made prior to November 11, 1977, for the purchase of the subject sugar.

At the outset it must be stated for the record that we find no merit in petitioner's claim (1) above. First in our view, the penalty notice sufficiently provided notice to petitioner or the

charges alleged by Customs with respect to petitioner's importations of sugar into the United States. Secondly, petitioner has not demonstrated that it has been prejudiced by the lack of facts not disclosed until the initial decision in this case. Moreover, petitioner was one of the first parties interviewed during the Customs investigation which began around mid-1978, almost five years before the penalty notice was issued in this case. Our record of those interviews reflect that petitioner was aware, long before the initial decision in this case, of the entries involved and nature of the Customs problem relating thereto. Finally, there is no merit in petitioner's claims that the Customs agents "either ignored or refused" certain "exculpatory documentary evidence". As will be later referenced in some instances herein the Customs agents affirm all facts reported and previously discussed in our initial decision in this case. Petitioner should be advised, however, that the ten-page initial decision hardly could be proffered as an outline of the 57-page initial report of investigation, the 10 page report on the initial petition, as well as collective documentary exhibits, "A" through "GG" that we have considered in this proceeding. Hence, we are confident that this is <u>not</u> a case where the Customs agents "either ignored or refused" during the investigation any documentary evidence, exculpatory or otherwise.

[redacted] <u>Confirmation Contract Claims</u>

With respect to the [redacted] Confirmation type contract claims (item 2 of petitioner's supplemental claims), in our initial decision we found:

> 1) Contract 7054 covering shipments to [redacted] and contract 7060 covering shipments to [redacted] actually were made on November 15 and 18, 1977, respectively, rather than on November 7 and 8, 1977, as claimed by petitioner; 2) Some of the shipments to [redacted] claimed as covered by contracts 6946 and 6982 [contracts actually made prior to November 11, 1977], in fact were covered by contract 7096, made after November 11, 1977; and 3) Shipments to [redacted] under entries 112220, 112221, and 111525 that were claimed by petitioner as covered by contract 6982, actually represented "Spot" shipments, not covered by any contract.

There was no finding in our initial decision that contracts 6982 and 6946 were backdated.

E4

It is our position that petitioner has not presented any evidence on supplemental to refute the basis for the foregoing findings of facts. Concerning contracts 7054 and 7060, petitioner now claims that the foregoing agreements were reached on November 7 and 8, 1977, with the price terms to be determined on the dates of the calls from [redacted] for deliveries. Thus, as has been similarly claimed with respect to petitioner's [redacted] Confirmation contract claims, petitioner now claims that the dates of November 15 and 16, 1977, noted on the Refined Futures Quotation (R.F.Q.'s) and in its contract ledger, represented the dates of calls against contracts 7054 and 7060, which themselves were made on November 7 and 8, 1977.

Concerning contract 7054, we find unpersuasive on the foregoing claim petitioner's submission of a copy of 7054 which has been signed by the customer and which shows the date of November 7, 1977. Petitioner admits that the contract was not "written up" until November 15, 1977. More importantly as to having agreed even orally on November 7, 1977, to purchase sugar from petitioner at an LDP (London Daily Price) + points price, [redacted] of [redacted] specifically advised Customs during the investigation that he had no recollection of making an LDP + 766 points price arrangement covering shipments from petitioner,* but commented that such arrangement might have resulted from "blind booking" by a broker. Therefore, based on record of the Customs interview of [redacted] in January 1979, we find that petitioner's present claim that [redacted] (petitioner's employee) and [redacted] made an oral agreement on November 7, 1977, to purchase up to 195,000 kilo grams of sugar at an LDP + points price, is not substantiated.

As with respect to both contract 7054 and 7060, the Customs agents affirm their original report that both [redacted] and [redacted] of petitioner's company stated during the investigation that the dates of November 7 and 8, 1977, shown on the contracts, were not correct. More significantly, on November 29, 1978, [redacted] reportedly presented to the Customs agents, three entries claimed under contract 7060 that had been entered previously at the pre-proclamation duty rate, which he stated should have been dutiable at the post proclamation duty rate. Thus, petitioner's claims on supplemental that contracts 7054 and 7060 were made on November 7 and 8, 1977, not only are refuted by the documentary evidence in petitioner's contract ledger and R.F.Q.'s but also by the previous statements and

*These were the terms of [redacted] Confirmation 7520, also claimed by petitioner for a shipment to [redacted]

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actions of petitioner's employees and customer. In view of the foregoing, we affirm our decision that petitioner's presentation of the false dates for contracts 7054 and 7060, resulted from its intent to avoid payment of the higher duties under the proclamation.

We also cannot accept petitioner's present contention that it did not act with intent to avoid the higher duties in falsely claiming that certain shipments to [redacted] were covered by pre-November 11, 1977, contracts 6982 and 6946, when in fact they were covered by contract 7096 (December 13, 1977). Petitioner states on supplemental that it did not realize that contracts 6946 and 6982 were filled until after the shipments were sent. The billing invoices covering the above shipments showed the correct contract number, 7096. These billing invoices, however, are dated December 16 and 21, 1977, when as late as January 19, 1978, petitioner (through its agent [redacted]) claimed in a letter to Customs that entry 112520 dated December 15, 1977, and made under the 6982 con tract claim, was covered by a contract entered into prior to November 11, 1977. It appears that around January 31, 1978, a copy of contract 6982 was forwarded in response to the specific request for such from Customs. Thus, even after petitioner's own record reflected that it knew that the shipments were covered by contract 7096 (dated December 13, 1977), petitioner not only did not advise Customs of the true contract but also took deliberate steps to ensure that Customs liquidated the entry at the pre-proclamation duty rate on the basis of their previous false claim that the shipment was covered by a pre-November 11, 1977, contract. In view of the above, we affirm our decision finding fraud with respect to petitioner's false contract claims for shipments made under the above entry (112520) as well as the others involving false contract claims of 6946 and 6982 for petitioner's shipments to [redacted] that actually were covered by contract 7096 (113280, 113281, and 113385).

We also find no support for petitioner's present contention that the shipments to [redacted] under 112525, 112220, and 112221, actually were covered by contract 6982 as claimed, but merely were billed at "spot" prices at the request of [redacted] made after the shipments were sent. As stated in the initial decision, neither the billing invoices nor the bills of lading for the above shipments reflected either a contract number or a running contract balance. In addition, there was no reference to a [redacted] 2360-purchase order number, which petitioner has claimed corresponded to pre-November 11, 1977, contract 6982.

E6

Moreover, in contradiction to the foregoing claims by petitioner is the fact that petitioner billed [redacted] at prices which included the higher post-proclamation rate of duty. Even after the date of the billing invoice (November 28, 1977) for the shipment covered by entry 111525, reflecting prices which included the higher duty rate, petitioner persisted in its attempts to convince Customs to liquidate the entry at the pre-proclamation rate of duty based upon the false contract claim. By memorandum dated January 30, 1978, to [redacted] subject: "Exemption from Increased Duty Rates", petitioner provided a list of orders shipped after November 11, 1977, which cited contract 6982 for the shipment covered by entry number 111525. Hence, petitioner charged [redacted] prices which included the amount of duties properly owed on the post-proclamation transaction and then, subsequently, tried to get Customs to liquidate the entries on the basis of a false claim of a pre-proclamation contract. In view of the above as well as other evidence in the record, we affirm our previous decision that 1) the shipments entered by petitioner under cover of entries 112220, 112221, and 111525, represented spot shipments, falsely claimed as covered by contract 6982, and 2) these false contract claims resulted from petitioner's intent to defraud the revenue.

[redacted] Confirmation Contract Claims

As to the shipments for which petitioner claimed [redacted] Confirmation numbers as the applicable contracts, we found in our initial decision that the true contracts governing these shipments were represented by the terms recorded in the 7000 series entries of petitioner's contract ledger and corresponding R.F.Q.'s. On supplemental, petitioner has not presented any evidence that would persuade us to change these findings.

Primarily, it should be noted that petitioner's latest claim, that the R.F.Q.'s never were prepared for calls against a contract with a pre-determined fixed price, is directly refuted by the record. The record at Customs Headquarters alone reflects that R.F.Q.'s were prepared by petitioner in connection with at least the following contracts which did not provide for a variable price term, but rather a fixed unit price per 100 pounds of sugar: 6868, 6917, 6927, 6946 and 7038.

Secondly, we still find no merit in petitioner's claim that an analogy of its "C" and "V" Canadian contracts to the [redacted] Confirmations supports the conclusion that the latter represented the contracts under which the shipments in this case were made. With regard to the lack of references to the [redacted] Confirmations

in the contract ledger, petitioner claims that the cross-references between "C" and "V" contracts, which we noted in our previous determination, were not made as a general practice. Even accepting as true, the foregoing statement, it remains our opinion that the "C" and "V" contracts were separate and distinct from one another: the shipments by petitioner were made pursuant to either the "C" contract or the "V" contract. Hence, assuming arguendo that the transactions covered by the 7000 series numbers were related to the [redacted] Confirmations and that the [redacted] Confirmations represented actual contracts, we still would conclude that the shipments in this case were made pursuant to the new and separate agreements represented by the 7000 series transactions entered into petitioner's contract ledger.

As was noted in our initial decision, in addition to the fact that the 7000 series numbers were reflected in the contract blocks of the bills of lading and billing invoices relating to the subject entries, the quantity of the "balance of contract" shown thereon always corresponded to the remainder of the total quantity reflected in the contract ledger for the applicable 7000 series number and on the applicable R.F.Q. Moreover, based upon the records obtained during the investigation, it appears that the prices shown on the R.F.Q.'s rarely were calculated under the "LDP + 766 points" formula reflected in the [redacted] Confirmations. A review of the approximately 40 R.F.Q.'s in the record pertaining to [redacted] Confirmation numbers revealed only two instances where a net margin of $7.66, over the LDP, was used to determine the unit prices.* Hence, in further consideration of the record in this case, we find that petitioner has not presented sufficient evidence to support its threshold contention that the [redacted] Confirmations represented commitments made prior to November 11, 1977, by the customers identified therein to purchase sugar for delivery during the fourth quarter of 1977. On the other hand, we affirm our previous findings that the record does show that true contracts covering the shipments entered by petitioner under the [redacted] Confirmation contract claims, represented the dates and terms corresponding to the 7000 series numbers recorded in the normal sequence of petitioner's contract ledger.

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*1) R.F.Q. for contract 7099 covering shipments to [redacted] which petitioner has claimed under [redacted] Confirmation 7531 and 2) R.F.Q. for contract 7093 covering shipments to [redacted] claimed under [redacted] Confirmation 7501.

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On supplemental, petitioner has claimed with precision as to the time and date (5:30 p.m., November 10, 1977), that by telex [redacted] confirmed "that various customers had agreed to purchase sugar for the fourth quarter of the year" and that based on the "broker's written assurances"... [it] "reasonably believed...that its offers had been accepted by the various customers indicated on the [redacted] telex and corresponding confirmations". In addition to the fact that no evidence of such written assurance or confirmation from the broker has been submitted by petitioner, petitioner's present claim of total reliance upon [redacted] (broker) is inconsistent with statements made in the petitions as well as with those made by [redacted] of [redacted] repeatedly has claimed just as petitioner that both [redacted] and petitioner contacted the customers identified in the [redacted] Confirmations presented to Customs, prior to November 11, 1977, and received agreements to purchase sugar. More significantly, in our view, none of the customers identified in the [redacted] Confirmations who were interviewed either by Customs or by petitioner either have stated that the agreements purported to be reflected by the [redacted] Confirmations were made prior to November 11, 1977, or in any other way have supported petitioner's contention of having reasonably believed that the [redacted] Confirmations were pre-November 11, 1977, "contracts".

Petitioner has submitted on supplemental an affidavit from [redacted] wherein she states that she "recall[ed] retrieving a copy of the [redacted] Confirmation number 7500 from [redacted] files and offering it to the investigating Special Customs Agents." The foregoing statement, however, is directly contradicted in the record, which reflects that while during the Customs interview of [redacted] and [redacted] on January 23, 1979, bills of lading showing [redacted] Confirmation number 7500 in the "special instructions" blocks were provided, a copy of the [redacted] Confirmation, itself, neither was provided nor discovered by Customs at that time. Customs was advised by [redacted] [who stated that he never had seen nor known of [redacted] Confirmation 7500] during a September 16, 1978, interview that the person in charge of purchasing for [redacted] during the period of the subject shipments was no longer with the company. [redacted] who was not in charge of purchasing and who now states that it was not unusual for [redacted] to purchase sugar at "a market price, e.g. #11 or LDP, plus a refining margin, e.g., 766 points", however, was unable to verify from a review of the relevant purchase orders during the Customs interview on January 23, 1979, whether or not the LDP even was used during the period the subject entries. In view of the foregoing, we

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find that the affidavit by [redacted] submitted by petitioner on supplemental does not support petitioner's contentions that the [redacted] Confirmations constituted pre-November 11, 1977, contracts or that petitioner reasonably believed such.

The representative from the single company that did have a [redacted] Confirmation (unnumbered) on hand,* [redacted] of [redacted], could neither explain the meaning of the pricing formula, "LDP + 766 points" stated therein nor confirm when the purported purchase agreement was made. Although [redacted] advised that [redacted] orders from petitioner were placed through [redacted] Confirmations covering [redacted] purchase orders filled by petitioner's shipments under [redacted] Confirmation 7531, however, did not reflect any terms even remotely related to those of the [redacted] Confirmation. [redacted] Confirmation 7531 called for 8,000 bags of sugar to be shipped on an LDP + 766 points basis, while [redacted] Confirmation No. DY 7066 and [redacted] purchase requisition 17624 both of which were dated November 16, 1977, called for the shipment of five truckloads (475 bags/load) at the fixed price of $.1755 per pound and $15.48 per bag. In fact, rather than the 766 points over LDP specified in [redacted] Confirmation 7531, petitioner used a net margin of $8.60 over LDP to fulfill [redacted] purchase order 17624. It is hardly likely that [redacted] would have paid the foregoing price for its purchase order 17624, if it perceived the order to have been made pursuant to a contract calling for a lower margin (766 points) over LDP.

It remains our opinion that as was done with respect to a few other R.F.Q.'s in the record, petitioner's notation of [redacted] Confirmation 7531 on the R.F.Q. corresponding to the true contract covering its shipments to [redacted] (7057 dated November 16, 1977), was made primarily for the purpose of ensuring that a pre-November 11, 1977, contract was claimed to Customs in order to avoid the impact of the Proclamation. As was noted in our initial decision, our records reflect that at least one R.F.Q. noted in the remarks sections thereof, a [redacted] Confirmation number representing a contract made prior to November 11, 1977 (e.g. R.F.Q. for contract 7064 dated November 18, 1977, showed a "reference to e-7018-0", dated October 31, 1977). Notwithstanding the foregoing, however, we recognize

*This [redacted] Confirmation (7531) was produced two weeks after the initial Customs interviews of petitioner as well as other customers concerning the [redacted] Confirmations.

E10

that as to the false [redacted] Confirmation contract claims made by petitioner at the time of entry*, the evidence established thus far, might not be considered "clear and convincing" as to petitioner's intent to defraud the revenue or otherwise violate the laws.

On the other hand, we find that the evidence of record is overwhelming that petitioner acted with actual knowledge of or wanton disregard for the fact that the [redacted] Confirmations did not represent contracts covering most of the shipments in this case, and with a disregard for its obligations under the laws requiring true facts to be reported to Customs. Compelling evidence the foregoing can be noted from the following facts inter alia, established in the record:

1) While [redacted] Confirmations were claimed to Customs petitioner always indicated the true contracts in the "contract" blocks of both the relevant bills of lading and billing invoices;
2) At the same time, petitioner indicated a [redacted] Confirmation number in the "Special instructions" block on some of the relevant bills of lading; and
3) Petitioner at all times referenced on the bills of lading as well as on the billing invoices, as the "balance of contract", the quantity outstanding under the 7000 series contract reflected in the contract ledger, as opposed to any quantities indicated on the [redacted] Confirmation.

Decision

In view of our finding that petitioner's false claims involving the [redacted] Confirmations resulted from at least gross negligence, the penalty assessed against those entries filed with false [redacted] Confirmation contract claims is mitigated further on this basis. In accordance with the foregoing determinations the instant penalty claim is mitigated further to the amount of $340,416, provided that the actual loss of revenue amount of $15,170.93, is deposited as withheld duties.

*Petitioner during the penalty proceeding changed some of its false contract claims that were not [redacted] Confirmation claims to [redacted] Confirmation contract claims. As to the false [redacted] Confirmation contract claims our conclusion that these false claims were made with intent to defraud the revenue remains the same.

E11

In view of the fact that petitioner's waiver of the statute of limitations will expire July 7, 1985, petitioner should be notified by telephone through counsel that it must comply with the terms of the decision within 30 days of the decision, or the matter will be referred to the Department of Justice for enforcement proceedings.

Please provide counsel with a copy of this decision.

Sincerely,

/S/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

[redacted]

E12

653711

11 JAN 1985

ENF 4-02.2 CO:R:E:C
653762 EKC

District Director of Customs
Chicago, Illinois 60607

Dear Sir:

Your memorandum in District Case No. 84-3901-50214 forwarded the petition of [redacted] requesting relief from a penalty in the amount of $31,500 assessed for violation of title 19, United States Code, section 1592. The penalty was assessed under a culpability determination of negligence and is approximately twice the $15,702 loss of revenue.

The penalty was assessed because, although it accurately declared the unit price of jewelry purchased from the Italian concern [redacted] did not disclose interest charged by and paid to [redacted] on the purchases. The discrepancy ran through 47 entries, the first of which was filed July 11, 1980, and the last of which was filed December 17, 1982.

Apparently [redacted] had 45 days in which to pay the original invoice value of the merchandise purchased. Payments beyond 45 days resulted in interest charges. The interest was identified to specific purchases of jewelry. Under these circumstances the interest charged and paid is considered part of the transaction value of the jewelry and the failure to report it constitutes a material omission under the statute.

[redacted] petition asserts that the failure to report the interest was not done with the intention of violating any law. To interviewing agents [redacted] owner made the statement that the interest was not declared because it was not thought to be dutiable. She also characterized the interest charges as monies paid in addition to the cost of the merchandise.

The file does not establish that [redacted] failed to disclose the interest in an effort to conceal it from duty or that [redacted] in fact knew the interest would be dutiable. We nevertheless find [redacted] negligent in that it failed to apprise itself of the Customs laws and regulations regarding the reporting of all charges and payments in respect of the imported merchandise. Accordingly, the penalty is mitigated upon payment of $7,851, provided duties on the interest charges are paid under section 1592(d).

E13

Please notify petitioner of this decision and include a copy of this letter with your notification.

Sincerely,

/s/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

[redacted]

E14

5 AUG 1977

RES-2-11-RIR
708059 O

708059

The Honorable
Frank E. Evans
House of Representatives
Washington, D.C. 20515

Dear Mr. Evans:

This is in further response to your letter of July 6, 1977, enclosing a copy of correspondence you received from [redacted] concerning the procedures for importing silver coins, silver bars or gold coins into the United States. [redacted] is particularly concerned with the permit requirements of Public Law 91-508, "Currency and Foreign Transactions Reporting Act."

Silver bars and gold coins are not subject to the currency reporting requirements of Public Law 91-508. The Secretary of the Treasury has determined that, in addition to U.S. coin and currency all foreign coin and currency which circulate and are customarily used and accepted as money in the issuing country must be reported when the amount being transported exceeds $5,000. Based on information currently available, gold coins do not at this time customarily circulate as money anywhere in the world; and, therefore, they currently are not required to be reported.

Gold or silver bullion and coins may be entered free of duty. While not subject to the currency reporting requirements, gold coins and other coins imported for non-monetary purposes must be declared and are subject to Customs entry requirements as merchandise. Additional information which may be helpful to your constituent is contained in the enclosed pamphlet entitled, "United States Import Requirements."

If we can provide any additional information or be of further assistance, please feel free to call on us. Your enclosures are returned herewith.

Sincerely yours,

[redacted]

(Signed) LEONARD LEHMAN

Leonard Lehman
Assistant Commissioner
Regulations and Rulings

Enclosure

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F1

JUN 29 1979

710697

RES-11-05 R:E:E
710697 SO

[redacted]

Dear [redacted]

You asked for information about the tariff status of samples of "Party Gags" from Korea or Japan. Samples were submitted.

The submitted samples were examined.

Section 305 of the Tariff Act of 1930, as amended (19 U.S.C. 1305), prohibits the importation into the United States of any article which is obscene. The definition of that term was enunciated by the Supreme Court in Miller v. California, 413 U. S. 15 (1973). The basic guidelines are (a) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes sexual conduct in a patently offensive way; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

It is our policy to refrain from issuing advisory opinions for purposes of the obscenity provisions of section 305, since it appears contrary to the sound administration of the Customs and related laws to issue a ruling in this situation.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

F2

[redacted]

CODE AND DATE
SURNAME
CODE AND DATE
SURNAME

DEPARTMENT OF THE TREASURY

9340

AUG 17 1979

RLS-1-R:E:E
710820 AH

[redacted]

Dear [redacted]

This correspondence is in reference to your letter of June 15, 1979, concerning the importation of gold coins into the United States.

Genuine gold coins which have been officially issued by a foreign government are admissible into the United States upon proper declaration and are entitled to entry free of duty under the provision for metal coins in item 653.22 of the Tariff Schedules of the United States, TSUS.

Please note, however, that copies of coins are prohibited entry unless marked "COPY" in accordance with the Hobby Protection Act regulations administered by the Federal Trade Commission. Copies of coins must be marked with country of origin and are also dutiable at a rate depending on the metal of which they are made.

There are no restrictions on the importation of gold coins into the United States.

The pamphlets entitled, "GSP and the Traveler" and "United States Import Requirements" are enclosed for your information.

Sincerely,

(Signed) D. D. [illegible]

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

Enclosures

[redacted]

CODE AND DATE
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CODE AND DATE
SURNAME

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE

F3

JAN 23 1981

ENT-1-01 CO:R:E:E
715632 M

715632

[redacted]

Dear [redacted]

This in reply to your letter of October 17, 1980, requesting a ruling concerning the application of the effective date set forth in Presidential Proclamation 4768, Annex II, Section C as to the new valuation system and the new effective rates of duty.

Annex II, Section C of this Presidential Proclamation is "effective as to articles both exported to the United States on and after July 1, 1981, and entered or withdrawn from warehouse for consumption, on and after July 1, 1981."

We have been advised by the special trade representative that this means that the merchandise involved must meet both criteria before the new valuation system and effective rate of duty apply.

Section 315, Tariff Act of 1930 as amended (19 U.S.C. 1315) sets forth the usual effective date of the rates of duty changes. However, section 315(a), Tariff Act of 1930, provides that "except as otherwise specially provided for," the provisions of that section apply. We believe that the effective date, as written by Annex II, Section C of Presidential Proclamation 4768 was not limited to the new valuation system and therefore, specially provides, as well, for the effective rate of duty.

The old valuation system and the old effective rates of duty would apply in all the situations set forth in example A of your letter because the footwear was exported on June 1, 1980, prior to July 1, 1981. The new valuation system and the effective rates of duty would apply in all the situations set forth in example B of your letter because the footwear will be exported on July 2, 1981, and the new valuation system and the new rates of duty would apply to such merchandise exported on July 1, 1981, or afterward.

If you have any further questions on this matter, please feel free to contact us.

Sincerely,

(Signed) Anthony L. Piazza

Salvatore E. Caramagno
Director, Entry Procedures
and Penalties Division

[redacted]

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CODE AND DATE							
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PARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

NOV 3 1982

RES-1 CO:R:E:E
720599 SO

720599

Dear Mr. Brock:

Thank you for your letter of October 5, 1982, bringing to our attention certain laws and practices of foreign governments which limit the ability of U.S. trademark owners to control the use of their trademarks by foreign licensees. You stated that these laws may indicate that the time has come for the U.S. Customs Service to change our present enforcement practices with regard to articles bearing trademarks owned by U.S. citizens or corporations imported in violation of Section 1526 of Title 19, United States Code (19 U.S.C. 1526). You suggested that importation of trademarked merchandise would be lawful only if written consent of the U.S. trademark owner is produced at the time of making entry and that the U.S. Customs Service could enforce the law simply by requiring the importer to produce the written consent of the trademark owner when entering his merchandise.

You will be pleased to hear that we are considering changing our enforcement practices as you have suggested. However, pursuant to Section 177.10(c)(2) of the Customs Regulations (19 CFR 177.10(c)(2)) and Sections 552 (a)(1)(D)&(E) of the Administrative Procedure Act (5 U.S.C. 552(a)(1)(D)&(E)), publication of notice of our proposed change in position in the Federal Register and consideration of the comments of the public is required before the change can be implemented. Early, publication of a Notice of Proposed Rulemaking is contemplated.

We appreciate receiving your views on this important matter.

Yours faithfully,

(Signed) Alfred R. De Angelus

The Honorable
William E. Brock
The United States
Trade Representative
Washington, D.C. 20506

[redacted]

CODE AND DATE	(a) INITIATOR	(b) REVIEWER	(c) REVIEWER				(d) REVIEWER
CODE AND DATE	(e) REVIEWER	(f) REVIEWER					(g) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUL 1 1983

MAR-2-05 CO:R:C:E
721706 FDO

This ruling concerns the country of origin marking requirements for imported wooden lids.

ISSUE:

Whether imported wooden lids need to be individually marked to comply with 19 U.S.C. 1304.

FACTS:

The importer is a manufacturer of glassware in the United States. They purchase wooden lids for their line of storage jars from a vendor in Pennsylvania who imports them from Taiwan.

It is their request to have the requirement of a label on each individual lid waived. This request is being made to avoid any form of misrepresentation of finished products.

Samples of the lids as they arrive have been submitted to Customs with the "Made in Taiwan" labels on them. Also, included are samples of the lids as assembled with other U.S. made components. Those components being a rubber gasket which is attached to the lid itself, a wire bail assembly, and the jar bottoms.

The importer further processes the lids via attachment of the rubber gasket etc., and feels the identity of the wooden lid changes to that of a storage jar. Additionally, they feel that there is a very good possibility that they would be the "ultimate purchaser" within the contemplation of Section 304 of the Tariff Act of 1930, as amended.

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LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the United States shall be marked in a legible and conspicuous manner to indicate the English name of the country of origin to the ultimate purchaser in the United States. The ultimate purchaser of an imported article is broadly defined in 19 U.S.C. 1304(a) as the last person in the United States who will receive the article in the form in which it was imported.

After viewing the samples, it appears to Customs that the jar is the most important item and the basis of the entirety. The rubber gaskets, the wire bail assembly and the wooden lid are accessory type items and not integral to the jar, but part of the overall item.

In this case, the manufacturer who combines the imported wooden lids with United States manufactured jars, rubber gasket and wire bail assembly knows Taiwan to be the country of origin and is the ultimate purchaser of the lids. Accordingly, the imported lids may be excepted from marking under 19 U.S.C. 1304(a)(3)(D), if the containers in which they are imported are legibly and conspicuously marked to indicate the country of origin, and Customs officers at the port of entry are satisfied by the vendor that the lids will reach the ultimate purchaser in the United States (the manufacturer) in the original marked containers in which imported and will be used only in the further processing into finished decorative jar sets and are not otherwise sold. The importer (the vendor) should be prepared to furnish statements or affidavits to this effect for each entry for which the exception is requested.

THIS DOCUMENT [illegible] TO THE PUBLIC

731706

HOLDING:

The imported wooden lids are excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D) if the above requirements are met.

- (S[illegible] [illegible] W. LEWIS

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

731706

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58

JUL 2 7 1983

TMK-3 CO:R:E:E
722700 SO

The Honorable
Wyche Fowler, Jr.
Member of Congress
32 Peachtree Street
Atlanta, Georgia 30303

Dear Mr. Fowler:

Thank you for your letter of July 18, 1983, on behalf of [redacted] concerning the policy of the U.S. Customs Service with regard to the importation of "gray market merchandise." [redacted] feels that the Customs Service should change its interpretation of Section 526 of the Tariff Act of 1930, as amended, which permits the unrestricted importation of articles bearing genuine trademarks applied overseas by firms related to the U.S. trademark owner. Customs' present position is based on a judicial decision in the consolidated "perfume" cases which held that the American part of a single international enterprise could not avail itself of the provisions of section 526 to prevent the importation into the United States of authentic products sold abroad by the foreign part of the enterprise.

[redacted] is aware that the Customs Service has prepared a draft Federal Register notice to begin the process of changing the Customs Regulations to restrict the importation into the United States of goods bearing genuine American-owned trademarks, except by or with the consent of the American trademark owner. This change is supported by a recent decision of a Federal District Court (now on appeal) which presents a strong case that Customs' current position may be incorrect. The draft Federal Register notice is currently under review. When published, it will request public comment on this important matter. You may be assured that [redacted] views, and those of others who submit comments supporting [redacted] position, will be given full consideration before a final decision is reached.

If we can provide any additional information or be of further assistance, please feel free to call on us.

Sincerely,

(Signed) Robert B. Schaffer

722700

[redacted]

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE · CORRESPONDENCE APPROVAL AND CLEARANCE · Form 106 (11-15-73)

OCT 17 1983

MAR-2-05 CO:R:E:E
722764 FDC

This ruling concerns the country of origin marking requirements for china plumbing fixtures used in toilets.

ISSUE:

Whether the china plumbing fixtures need to be marked with the country of origin.

FACTS:

The importer will import china plumbing fixtures used in a completed toilet. In the United States, a flushing mechanism is installed in the water closet tank.

LAW AND ANALYSIS:

Section 304 of the Tarrif Act of 1930, as amended (19 U.S.C. 1303), provides that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

Section 134.35, Customs Regulations, (19 CFR 134.35) states that an article used in the United States in manufacture which results in a article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of United States v. Gibson Thomsen Co. Inc., 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article within the contemplation of section 304(a), Tarrif Act of 1930, as amended (19 U.S.C. 1304 U.S.C. 1304(a)), and the article shall be excepted from marking.

F10

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In this case, the addition of the flushing mechanism into the water closet tank does not amount to a substantial transformation. Marking the bowl and tank by good quality adhesive labels indicating the country of origin in a legible and conspicuous manner is adequate.

HOLDING:

The requirements of 19 U.S.C. will be met if both the bowl and tank are marked as indicated above.

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

722764

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

AUG 25 1983

ENT-1-CO:R:E:E
722981 JL

722981

[redacted]

Dear [redacted]

This refers to your request for a ruling of August 8, 1983, filed in behalf of [redacted] regarding the application of Presidential Proclamation 4991 to a contemplated importation of a boring mill from Canada. Our response to your request is contained in the enclosed ruling.

Sincerely,

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

ENT-1-CO:R:E:E
722981 JL

AUG 25 1983

722981

This ruling concerns the application of Presidential Proclamation 4991.

ISSUE:

Which rates of duty apply to merchandise exported from Poland under the factual situation presented?

FACTS:

Merchandise was exported from Poland to Canada prior to November 1, 1982, the effective date of Presidential Proclamation 4991. It is now desired to import the merchandise into the United States.

LAW AND ANALYSIS:

Presidential Proclamation 4991, signed October 27, 1982, suspended column 1 rates of duty under the Tariff Schedules of the United States (TSUS) for products of Poland, effective November 1, 1982. The relevant portion of the document states as follows:

> This Proclamation shall take effect with respect to articles exported on and after the third day following the date of publication of this Proclamation in the federal register. (47 F.R. 210, pp 49005, 6).

This Proclamation is unusual in that its effective date is not the date of entry for consumption or withdrawal from warehouse for consumption. Nevertheless, the language used is clear and unequivocal. Accordingly, the fact that the merchandise at issue will be imported into the United States subsequent to November 1, 1982, does not affect its eligibility for entry at the lower column 1 rates. It should be noted that Presidential Proclamation 5048 of April 14, 1983, amended Proclamation 4991, but its effect is not germane to the resolution of this case.

F13

HOLDING:

Products of Poland which are exported from that country prior to November 1, 1982, are eligible for column 1 TSUS rates of duty whenever imported into the United States.

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

F14

CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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SURNAME							

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

723981

MAY 03 1984

BRO-3 CO:R:E:E
725085 PRO

This ruling concerns the billing procedure when a broker appoints another broker to act for an importer.

ISSUE:

1. Whether an importer may issue a Power of Attorney to one broker that would empower that broker to issue, on the importer's behalf, Powers of Attorney to other brokers in other ports?

2. May the outport broker bill the local broker or the importer?

FACTS:

A broker has considered the possibility of including on blank power of attorney cards a statement allowing them to appoint broker's in other districts to act on behalf of their clients. The broker wonders if a broker receives a copy of a power of attorney from a second broker to act for that broker's client may he file entries and bill the first broker or must the broker bill the importer directly.

LAW AND ANALYSIS:

Under C.S.D. 79-111, if the power of attorney between the principal (importer) and his local broker provides that the local broker may appoint one or more brokers in other districts to act as agents (customhouse brokers) of the importer, the

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G1

local broker in appointing a broker in another district to act on the importer's behalf creates a principal-agent relationship between the outport broker and the importer.

Therefore, the second broker, appointed by the first, may bill the importer directly and not go through the other broker, or the outport broker may go through local broker on the billing procedure.

HOLDING:

1. A broker who receives a power of attorney from an importer with authority to empower other brokers to act for the importer creates a principal-agent relationship between the outport broker and the principal-importer.

2. The outport broker may bill the local broker or the importer, depending on their agreed arrangement.

(Signed) DONALD W. LEWIS

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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PUBLIC _____

[redacted]

62

NOV 2 1984

ENT-1 CO:R:E:E
726396 JL

726396

[redacted]

Dear [redacted]

This refers to our letter of November 15, 1984, concerning entry procedures pertaining to currency and numismatic coins.

In the first paragraph on page three of our letter we stated that a check made out to you, whether or not endorsed for deposit, was a negotiable instrument within the purview of the Currency and Foreign Transactions Reporting Act and must be counted in the computation of the $5,000 threshold reporting requirement. Actually, a check made out to you which is not endorsed is not a negotiable instrument in bearer form within the purview of the Act and need not be counted in the computation of the $5,000. An unendorsed check made out to cash or to bearer or with no payee indicated would be considered a negotiable instrument in bearer form for purposes of the Act.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

THIS [illegible] PUBLIC [illegible]

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

NOV 1 1984

ENT-1 CO:R:E:E
726396 JL

726396

[redacted]

Dear [redacted]

This refers to your letter of September 10, 1984, concerning entry procedures pertaining to "collector type" coins.

You furnished copies of 2 earlier letters that you sent to Customs asking certain questions about clearing coins into and out of the United States. However, we have no record of receiving your letters. In your April 4, 1982, letter you ask the following questions:

1. What U.S. Customs form should be used to declare merchandise (collector coins of silver and copper) leaving the United States and reentering the U.S.?

2. Should checks that have been made out to myself but not yet endorsed be declared as part of the $5,000 in currency or negotiable instruments that is to be reported?

3. Are there any special procedures to be followed in order to clear Customs coming or going that would make it as easy as possible for both Customs agents and myself?

You mentioned that you have cleared Customs with numismatic coins through both Houston and Los Angeles, but under different procedures. You state that you do not want to use a customhouse broker and you would like to know what the regulations are so that you can clear the coins yourself.

Currency (metal or paper) in current circulation in any country and imported into the United States for monetary purposes is considered an intangible pursuant to General Headnote 5(b), Tariff Schedules of the United States (TSUS). Currency meeting the definition of an intangible is not subject to declaration as imported merhandise nor is it subject to the provisions of the Tariff Schedules of the United States. Nevertheless, the Currency and Foreign Transactions Reporting Act of 1970, (31 U.S.C. 1101, et. sec.) requires, in general, that any

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person transporting more than $5,000 in monetary instruments into or out of the United States must file a report (Customs Form 4790) with the Customs Service. For the purposes of this law, "currency" means "the coin and currency of the United States or any other country, which circulate in and are customarily used and accepted as money in the country in which issued". (31 C.F.R. section 103.11).

Notwithstanding the above, all coins imported into the United States for nonmonetary purposes (for example, for resale or numismatic purposes) are considered merchandise subject to Customs entry requirements. Therefore, any coins you acquire while you are out of the country should be reported on your Customs declaration (Customs Form 6059B) when you reenter the United States. The value which should be declared for the coins should be the actual price paid for them. You should be prepared to produce proof to Customs at the port of entry that numismatic coins being imported do not meet the definition of "currency" under the Currency and Foreign Transactions Reporting Act. Unless such proof is offered and accepted by Customs, the coins will be considered "currency" for purposes of the Act. For the purposes of the Act and the $5,000 threshold reporting requirement, the face value of the coins should be used.

We note that you mentioned that you used a Customs Form 4455, Certificate of Registration, on one of your trips. Any person, except a non-resident seaman, airman, or person engaged in similar employment, who intends to take effects of foreign origin abroad may register such articles before departure from the United States in order to facilitate their identification upon return. Only articles of foreign origin having serial numbers or other distinctive, permanently affixed, unique markings can be registered. It would not appear that most numismatic coins would have permanently affixed unique markings which would enable them to be registered on the Customs Form 4455. In any case, the major reason for using the form is so that a returning resident may avoid having to pay duties on personal effects which he had on his person when he departed the United States. Metal coins are free of duty pursuant to item 653.22 TSUS. Therefore the use of the registration procedure would not be appropriate in the case of numismatic metal coins which are being taken out of the country temporarily for display or for sale.

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For purposes of the Currency and Foreign Transactions Reporting Act mentioned earlier, you must report on Customs Form 4790 at the time of entry into the United States in addition to coin or currency, all travelers checks, money orders, and negotiable instruments or investment securities in bearer form if they total more than $5,000. A check made out to you, whether or not endorsed for deposit, is a negotiable instrument within the purview of the Act and must be counted in the computation of the $5,000.

Concerning special procedures, there are no specific Customs Regulations which pertain exclusively to numismatic coins. However, we think it would be prudent to have a detailed inventory of all coins that you take out of the United States and appropriately notate the ones that are sold or traded during the course of your trip before returning to this country. This inventory will serve to corroborate your declaration if the Customs inspector at the point of entry questions you about the coins. As we mentioned earlier, you should be prepared to prove that the coins do not meet the definition of "currency" under the Currency and Foreign Transactions Reporting Act.

The usual procedure in the case of American residents returning from abroad is to handle the importation of articles carried in the traveler's baggage with the Customs declaration and such oral information as may be requested by the Customs inspector at the time of entry, regardless of the value of the articles being imported. However, you should be aware that the district director of Customs office at ports of entry has the descretion to require a formal Customs entry to be made if he is of the opinion that the particular importation could be handled more properly by that procedure. A commercial invoice is usually furnished with a formal Customs entry. We are of the opinion that it would be beneficial in any case for you to obtain an invoice executed by the seller for any coins that you purchase while abroad. Even if a formal entry is not required by the district director's office, the invoices will serve as corrobration for your declaration. You should be aware that Customs never requires an importer to utilize the services of a licensed customhouse broker.

You may be interested to know that while gold coins may actually remain legal tender in the United States and in other countries, they are not regarded as "currency" in general circulation within the meaning of the Currency and Foreign

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Transactions Reporting Act. Consequently, gold coins are exempt from the reporting requirements of the Act and should not be included in the $5,000 computation for purposes of deciding whether to file a Customs Form 4790.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

THIS [illegible] MAY BE RELEASED TO THE PUBLIC

67

CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-70)

726396

[redacted]

MAR 14 1985

MAR-2 CO:R:E:E
727292 TL

[redacted]

Dear [redacted]

Your January 8, 1985, letter concerned the change in the country of origin marking of articles due to the enactment of the Trade and Tariff Act of 1984. In your letter you state two possible classifications for the articles imported by your client, items 657.25 and 696.15, Tariff Schedules of the United States (TSUS).

As you note in your letter, section 207 of the Trade and Tariff Act of 1984 changes the marking required on pipe and pipe fittings. A January 9, 1985, Federal Register notice (copy enclosed) sets forth the scope of the change created by this enactment. Articles affected by the change are identified by TSUS number.

Neither 657.25 nor 696.15, TSUS, are among those tariff provisions. For that reason, section 207 does not change the country of origin marking requirements applicable to the articles imported by your client, which are classified under these two tariff provisions.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME							
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

*U.S. GPO: 1984-719-979

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 22 1985

REFER TO
TMK-3 CO:R:E:E
727744 SO

Mr. Efrain Picon
Assistant District Director, C&V
U.S. Customs Service
P.O. Box 2112
San Juan, Puerto Rico 00903

Dear Mr. Picon:

In your memo of November 28, 1984, you asked for advice as to when a trademark recorded for one class of merchandise is protected in another class. Specific problems have been encountered in cases where articles have been imported bearing famous trademarks registered for other lines of merchandise. Examples include (1) men's trousers from the Dominican Republic, hosiery from Panama and men's billfolds from Taiwan, all bearing the "Yves Saint Laurent" trademark (recorded with Customs for perfume and other articles in Class 51); (2) shirts from Panama bearing the "Oscar de la Renta" trademark (recorded for perfumery), and; (3) footwear manufactured in South Korea and imported from Panama bearing the "Kangaroo" trademark (recorded for handbags in Class 18). You asked us to furnish guidelines for use in determining whether the marks in question are "strong" marks.

You also mentioned our trademark recordation for "SEIKO," which states that "SEIKO" is a "strong" mark, and that "strong" marks are protected not only for articles to which the trademark is applied by the trademark owner (in this case watches, clocks and parts thereof in Class 27), but also for other goods which might naturally come from the same trademark owner. Please note that the numbered Classes of merchandise referred to above have been established for purposes of organizing the work of the U.S. Patent and Trade mark Office and are not legally significant for purposes of establishing Customs' trademark violations.

It is firmly established that the owner of a trademark which is "original, arbitrary, fanciful, or a strong mark," may exclude or prevent anyone from the use of that trademark, not only for the commodity he manufactures and sells, but for a wide variety of products. Where the mark itself is inherently unique or has been the subject of wide advertising, it is a "strong" trademark. The courts have pointed out such outstanding examples of this type of trademark as "Kodak," or "Aunt Jemima." In these cases, the trademark laws protect the senior user's interest in being able to enter a related field at some future time, with his good reputation intact.

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This issue is discussed in the Konica case (C.S.D. 79-410), copy enclosed. In that case, the Konica trademark was found to be a strong mark entitled to protection against infringing importations of watches, even though the "Konica" trademark had been applied exclusively to cameras and camera accessories. While it is not apparent from reading the Konica decision, we note that the trademark protected by Customs (Konica) appears in stylized script form. Even though the mark on the inexpensive imported watches was in block letters (KONICA) there was, nevertheless, a "counterfeit" trademark violation.

Applying the above guidelines to the specific questions you raised, we note that the protected trademarks "Yves Saint Laurent," "Oscar de la Renta" and "Kangaroo" are unique or "strong marks." The first two are the names of famous designers of a variety of high quality articles. The unauthorized use of the designers' names on poor quality items would strongly tend to confuse the public as to the source of those items. While the kangaroo is a creature of nature, its use as a trademark for handbags is unique and not descriptive of the handbags in any way. Through advertising, the "Kangaroo" trademark for handbags has become a "strong mark." Therefore, in our opinion, Customs cannot sanction the unauthorized use of the mark "Kangaroo" on footwear as simply being descriptive of the article. Certainly, the ordinary purchaser at retail would not expect to be buying footwear made of kangaroo hide because the shoes being purchased are marked "Kangaroo." Accordingly, we are of the opinion that the trousers, hosiery, billfolds, shirts and shoes in question, if imported bearing marks identical with or substantially indistinguishable from the "strong" trademarks "Yves Saint Laurent," "Oscar de la Renta" and "Kangaroo," applied without the authorization of the trademark owners, would be "counterfeit" trademark violations.

Section 526(e) of the Tariff Act of 1930, as amended (19 U.S.C 1526(e)) provides for the seizure and forfeiture of merchandise bearing a counterfeit mark (within the meaning of section 1127 of Title 15) imported in violation of the provisions of section 1124 of Title 15. A "counterfeit" is a spurious mark which is identical with or substantially indistinguishable from, a registered mark (15 U.S.C. 1127; 19 CFR 133.23a(a)).

Section 42 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 440, 15 U.S.C. 1124) prohibits the entry at any customhouse of the United States of articles of imported merchandise which shall copy or simulate a U.S. registered trademark, provided a copy of such trademark registration is filed with the Secretary of the Treasury and recorded in the manner provided by regulations (19 CFR 133.1 - 133.7). Infringement of federally registered trademarks is governed by the test of whether defendant's use is likely to cause confusion, or to cause mistake, or to deceive.

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When comparing conflicting marks to determine whether or not they are "counterfeit," we must first determine that the marks are "spurious." The term "spurious" refers to marks that are applied to goods without authorization of the trademark owner. Therefore, genuine trademarked articles could not fall within the definition of the term "counterfeit." It is also important to compare the accused mark with the protected mark as it appears on the trademark owner's merchandise, and that the comparison be made from the perspective of an average purchaser rather than an expert. If, upon examination of the marks as they appear on the imported merchandise, an average purchaser would find them to be "the spitting image of," or "substantially indistinguishable" from the trademark owners' merchandise, then a "counterfeit" trademark violation is established. See Montres Rolex, S.A., Plaintiff-Appellee, against Dennis Snyder, Regional Commissioner, U.S. Customs Service et al., U.S. Court of Appeals for the Second Circuit, 718 F.2d 524; 220 U.S.P.Q. 10. This was an appeal from a judgment of the U.S. District Court for the Southern District of New York, Vincent L. Broderick, Judge, declaring imported gold watch bracelets to be counterfeits and therefore subject to forfeiture under 19 U.S.C. 1526(e), and directing defendant U.S. Customs Service to dispose of the merchandise.

The imported articles in question, bearing marks which are "counterfeits" of the Customs protected trademarks "Yves Saint Laurent," "Oscar de la Renta" and "Kangaroo," are subject to seizure and forfeiture. The owner of the trademark shall be notified of the seizure and the quantity of the articles seized. Unless the trademark owner, within 30 days of notification, provides written consent to the importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of (after removal or obliteration of the "counterfeit" marks) as follows: (19 CFR 133.23a)

(1) By delivery to federal, state or local government agencies which have a need for them, or

(2) By gift to charitable institutions which have a need for them, or

(3) By sale at public auction, after 1 year from forfeiture, after first determining that no federal, state or local government agency or charity has a need for them, or

(4) By destruction, if they are unsafe or a health hazard.

Please note that there is no preference stated in the law or regulations (19 U.S.C. 1526(e) and 19 CFR 133.52(c)) between options (1) and (2) above, and that option (3) cannot be used unless the district director is satisfied that no government

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agency or charitable institution needs the goods. While it would appear that 19 U.S.C. 1526(e) authorizes Customs to dispose of forfeited articles with the "counterfeit" marks still in place in cases where it is not "feasible" to remove or obliterate the marks, we are no longer interpreting the law in that manner. We note that the Trademark Counterfeiting Act of 1984 (Public Law 98-473, 18 U.S.C. 2320) imposes criminal sanctions for trafficking in counterfeit goods. If Customs were to sell or give away forfeited articles bearing counterfeit marks, Customs would be acting contrary to the intent of Congress in enacting the Trademark Counterfeiting Act of 1984.

Therefore, articles forfeited to the Government bearing "counterfeit" marks shall no longer be given away or sold pursuant to options (1), (2) or (3) above unless the counterfeit marks are removed or obliterated. In cases where removal or obliteration of the marks is not feasible (the articles would be defaced, or obliteration would be disproportionately expensive considering the value of the articles), the articles shall be destroyed (19 U.S.C. 1611). However, before destroying a shipment of articles which would be useful to a government agency or charity, you may invite the trademark owner or a potential donee agency or charitable institution to assist in removing or obliterating the "counterfeit" marks.

Copies of this decision will be circulated to all Customs officers for their guidance.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 21 1985

REFER TO
RES-3 CO:R:E:E
728062 SO

Mr. Philip Metzger
Assistant Area Director, Commercial Operations
New York Seaport
U.S. Customs Service
6 World Trade Center, Room 423
New York, New York 10048

Dear Mr. Metzger:

In your memo of November 28, 1984, you asked for advice regarding the responsibility, if any, imposed on Customs officers by a recent amendment to Section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b). Pursuant to this amendment, textile fiber product advertising in any mail order catalog or in mail order promotional material shall be considered to be false or deceptive, unless the product description clearly states that the textile fiber product is processed or manufactured in the United States, or imported, or both. Particularly, you asked if Customs officers would be responsible for examining imported mail order catlogs and promotional material to determine if there are any textile fiber products advertised therein which are falsely described. You also asked if any action should be taken against shipments of such printed matter found to contain false or deceptive advertising, as now defined.

We are of the opinion that the amendment to Section 4 of the Textile Fiber Products Identification Act referred to above does not impose a legal obligation on Customs officers to review shipments of mail order catalogs or promotional material specifically to discover violations of this type. The law (15 U.S.C. 70b(i)), in our opinion, does not grant authority to Customs officers to seize or otherwise detain shipments of mail order catalogs or promotional material which fail to meet the standards of fair advertising set forth in the law. If, however, a violation is discovered by a Customs officer in the normal course of his/her duties, it would be prudent to warn the importer that penalties may be assessed by the Federal Trade Commission if the catalogs are distributed with the "false advertising" in place.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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File card made 2/6/70 Bro

FEB 2 1970
799615
IN 363.2 K

Dear

This is in reference to your letter of December 4, 1969, enclosing two sample screwdriver blades which include a plastic and spring device attached to the blades to enable the user to clamp the screw to the end of the blade while the screwdriver is in use. The blades would be imported without handles and completed by the attachment of handles made in your Houston, Texas, facility.

The Bureau has previously advised you that in the case of ordinary screwdriver blades imported without handles, your company may be considered the ultimate purchaser of the blades within the meaning of 19 U.S.C. 1304(a), and such blades may accordingly be excepted from country of origin marking in the appropriate circumstances.

In the case of the screwdriver blades with the screw holding attachment, however, the Bureau is of the opinion that the portion of the finished screwdriver that will be represented by the imported component will be so substantial that the addition of the domestic handle cannot be considered to result in the manufacture of a new and different article in the United States, or a substantial transformation of the imported component. Accordingly, the Bureau is of the opinion that a marking such as "Blade made in (name of country)" must appear legibly and conspicuously either on the blade or the plastic screwholding attachment affixed to the blade.

Sincerely yours,

(Signed) R. E. TURNER

RAYMOND E. TURNER
Director, Division of
Entry Procedures and Penalties

799615

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

2 JAN 1986

REFER TO

MAR-3 CO:R:E:E
729096 LR

729096

ISSUE:

Whether the country of origin marking at the base of the tongue or inside the heel on athletic footwear satisfies the requirements of 19 U.S.C. 1304 where the footwear and/or the box also displays symbols associated with a country other than the country of origin.

FACTS:

It has been brought to Customs attention that certain athletic shoes are being imported which may not satisfy the country of origin marking requirements of 19 U.S.C. 1304. The specific circumstances are described below.

Case I

The shoes in question are manufactured in the Republic of Korea. Although they are marked "Made in Korea" at the base of the tongue label, a variety of British symbols appear on the shoes. First, a British flag is prominently displayed on the top of the footwear. Second, the size labels on the inside of the shoe and on both ends of the box make reference to UK and USA sizing. Finally, the shoe box lid is a reproduction of the British flag. There is no country of origin marking on the shoe box.

Case II

The shoes are manufactured in the R.O.C. (Taiwan). The country of origin is printed on the inside of the heel of the shoe and on the bottom of the shoe box. The American flag appears on the side of the shoe. The box has a reproduction of the American flag as its lid and the sides of the box are labeled "Action Shoes Dallas, Texas."

APPLICABLE LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) requires that every article of foreign origin imported into the United States be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit in such manner as to indicate to an ultimate purchaser in

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the United States the English name of the country of origin (emphasis added). The Customs Service has interpreted the requirement that articles be marked in a conspicuous place to mean that they must be marked in a place where the ultimate purchaser is able to find the marking easily. (See 19 CFR 134.41(b)).

Although Customs would normally consider a country of origin marking at the base of the tongue label or on the inside of the heel to be conspicuous, this is not necessarily the case where foreign symbols (other than that of the country of origin) appear on the article and/or its container.

The Customs Service has recognized that the presence of a geographic location other than the country in which the article was produced on an imported article or its container may mislead the ultimate purchaser as to the true country of origin. Thus, in cases where words indicating possible origin other than the actual country of origin appear on the article, Customs requires that the country of origin marking shall appear in close proximity to and in at least comparable size letters to such words, and preceded by "Made in," "Product of," or other words of similar meaning. (19 CFR 134.46). The purpose of this regulation is to alleviate the possible confusion that is created by these words.

We believe that the presence of symbols associated with a country other than the country of origin may also mislead the ultimate purchaser as to the country of origin. This is especially true where the foreign symbols are more readily visible than the country of origin marking.

In this case, the British and American symbols on the shoes and the boxes are far more prominent than the country of origin marking in the shoes or at the bottom of the box. After viewing the British or American flag on both the lid of the box and the shoes, the UK/USA size label on the shoes and the box (or the words "Action Shoes Dallas, Texas" on the box), we believe that most consumers would conclude that Great Britain or the United States is the country of origin. In light of these prominently displayed British or American symbols, it would take a very determined consumer to ascertain that the country of origin is the Republic of Korea or Taiwan. Based on the facts presented, we find that the country of origin marking at the base of the tongue or inside the heel is not conspicuous.

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In order to satisfy the statutory requirements that the imported articles be marked in a conspicuous place, Customs will require that both the shoes and the shoe box be marked with the country of origin (in the manner described below). The marking of the shoe box will immediately alert the ultimate purchaser of the true country of origin and eliminate any confusion caused by the symbols. Although 19 CFR 134.24(d)(3) states that if the container is normally opened by the ultimate purchaser prior to purchase, only the article need be marked, this regulation would not apply where Customs finds that the article itself is not conspicuously marked and that the marking of the container was necessary to satisfy the basic requirements of section 1304.

We also find that the presence of the UK/USA size labels on both the shoes and the box or the words "Action Shoes Dallas, Texas" on the box creates confusion as to the country of origin which can be alleviated by application of 19 CFR 134.46.

729096

HOLDING:

Due to the presence of symbols associated with a country other than the country of origin on the shoe and/or the shoe box, the country of origin marking at the base of the tongue or inside the heel is not conspicuous. This defect would be cured by an additional permanent country of origin marking on the outside of the box which is: 1) preceded by the words "Made in" or "Product of"; 2) placed either on the top of the lid or the side of the box - preferably on the side of the box containing information about the size and style of the shoe; and, 3) in lettering at least 1/8 inch high.

Also, due to the presence of words of geographic location (e.g. UK/USA on the size labels on the shoes and the shoe boxes or the words "Action shoes Dallas, Texas" on the boxes) the country of origin marking on the inside at the base of the the tongue or on the inside of the heel does not satisfy the requirements of 19 CFR 134.46. This defect would be cured by placing a country of origin marking preceded by the words "Made in" or "Product of" in close proximity to and in letters of at least comparable size to such words.

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Case I

In order to satisfy the statutory requirements, both ends of the shoe box must be permanently marked "Made in Korea" or "Product of Korea" in close proximity to and in at least comparable size letters to the UK and USA references. The shoes must also be permanently marked "Made in Korea" or "Product of Korea" in close proximity to and in at least comparable size letters to the UK/USA sizing labels.

Case II

In order to satisfy the statutory requirements, in addition to the country of origin markings on the shoes, both sides of the shoe box must be permanently marked "Made in Taiwan" or "Product of Taiwan" or other similar words in close proximity to and in at least comparable size letters (but not less than 1/8 inch high) to the words "Action Shoes Dallas, Texas".

EFFECTIVE DATE:

Merchandise entered for consumption or withdrawn from warehouse for consumption on or after March 1, 1986, is subject to the ruling.

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

CLA-2-06:S:C:D1:06-365
800945

800945

JUL 27 1981

[redacted]

Dear [redacted]

In a letter dated June 4, 1981, you inquired as to the dutiable status of a smokehouse produced in Northern Ireland.

The smokehouse, which will be shipped in pieces for final assembly at your U.S. plant, is used in small meat plants to smoke and cook meat. General Headnote 10(h) of the Tariff Schedules provides that unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished.

The smokehouse is classifiable under the provision for industrial machinery, whether or not electrically heated, for the treatment of materials by a process involving a change in temperature, such as heating, cooking, roasting... and parts thereof, other, other in item 661.68, Tariff Schedules of the United States, and dutiable at the rate of 5.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

A7

REPLY TO AREA DIRECTOR NEW YORK SEAPORT, U.S. CUSTOMHOUSE NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 18 1983

REFER TO

CLA-2-04:S:C:D6:62-15
804291

Dear

In your letters of October 7, 1982, November 29, 1982 and January 7, 1983, you inquired on behalf of of Canada as to the dutiable status of fifteen concrete curing compounds manufactured in Canada.

Samples of Kurowax-Clear, Masterseal, MB-429, CLF-100-3 and CLF-100-2 were submitted.

Based upon our analysis and the additional information that you have furnished, Kurowax-Clear, Light Reflective Kurowax, Terra Cotta Kurowax, French Gray Kurowax, Nile Green Kurowax, Tile Red Kurowax, Cocoa Brown Kurowax, Hi-Reflective Kurowax, Battleship Gray Kurowax, Coral Gables Beige Kurowax and Black Kurowax are mixtures, in part, of products having a benzenoid structure, which are provided for in Schedule 4, part 1, subpart C, Tariff Schedules of the United States (TSUS).

Masterseal and MB-429 are mixtures, in part, of products having a benzenoid structure, which are provided for in Schedule 4, part 1, subpart B, TSUS.

CLF-100-3 and CLF-100-2 are mixtures of non-benzenoid compounds or materials.

Your letter states that each of these products, with the exception of Masterseal and MB-429, include wax as the major functional component and therefore you suggest TSUS item 494.22 as the correct classification. The waxes covered by TSUS item 494.22 embrace only crude or refined wax, not waxes which have been combined with other ingredients to make up formulated products.

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Kurowax-Clear, Light Reflective Kurowax, Terra Cotta Kurowax, French Gray Kurowax, Nile Green Kurowax, Tile Red Kurowax, Cocoa Brown Kurowax, Hi-Reflective Kurowax, Battleship Gray Kurowax, Coral Gables Beige Kurowax and Black Kurowax are classifiable under the provision for benzenoid mixtures, in item 413.51, TSUS, and dutiable at the rate of 17.5 percent ad valorem, but not less than the highest rate applicable to any component material. Currently, the highest rate applicable to any component material is less than 17.5 percent ad valorem.

Masterseal and MB-429 are classifiable under the provision for benzenoid mixtures in item 407.16, TSUS, and dutiable at the rate of 1.7 cent per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component material with the highest rate is that of TSUS item 402.36 with a rate of duty of 1.1 cent per pound plus 17.5 percent ad valorem.

CLF-100-3 and CLF-100-2 are classifiable under the provision for mixtures not specially provided for, that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas in item 432.10, TSUS, and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component material. The component material with the highest rate is that of TSUS item 425.52 with a rate of duty of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

for J. Mattuge

John J. Mattuge
Area Director
New York Seaport

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204391

A9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 08 1983

REFER TO

CLA-2-01:S:C:D4:39-286
806375

Dear

In a letter dated June 6, 1983, you inquired as to the dutiable status of two caramel pastes produced in Switzerland.

The two pastes, designated TM 52 and TM 30, are ingredients used in fillings in baked goods and confections. Your inquiry includes percentage breakdowns both by weight and by value for the component materials in each paste. The component value breakdowns, unfortunately, are defective in that they include a separate percentage allocated to "processing costs" involving heat transforming operations performed in the manufacture of these products. Please note that a component material breakdown by value is aimed at determining the cost or value of each ingredient at that point just prior to final assembly or mixing, when nothing further remains to be done to it. Consequently, such expenses as packing, overhead and, generally, labor (unless required to process or prepare a particular ingredient for assembly or mixing) would not be included in a component value breakdown. Processing costs, when they are applicable in such a breakdown, are included not as a separately itemized cost, but are added to the cost of an ingredient, if such processing is performed on that ingredient in order to prepare it for final assembly or mixing with other component materials in the product. Costs incurred for processing performed on all ingredients--such as, for example, costs incurred in mixing all the ingredients together, or in drying the mixture to obtain a specific moisture content--pertain to the product itself, rather than to any one ingredient. Such processing costs would not be included in a value breakdown.

The component weight breakdown included in your inquiry indicates that product TM 52 is composed of sugar (51 percent), vegetable fat (12 percent), sorbitol (17 percent), skimmed milk powder (5 percent), and water (15 percent). A product of this composition would be classified under the provision for other edible preparations not specially provided for in item 183.05, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 10 percent ad valorem.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A10

A sample of TM 52, previously forwarded by you under separate cover and analyzed by the Customs laboratory at New York, appears to have been of a different composition. The laboratory report on this sample states that TM 52 is composed of sucrose (27.0 percent), fat (12.2 percent), sorbitol (1.0 percent), nonfat milk solids (40.7 percent), and water (19.1 percent). A caramel paste formulated with ingredients in these amounts would be classified, if in chief value of milk, under the provision for malted milk; and articles not specially provided for, of milk or cream, in item 118.30, TSUS, and dutiable at the rate of 17.5 percent ad valorem. Articles classified in item 118.30 are subject to the quota limitations set forth in item 950.11, Appendix to the Tariff Schedules, which allows for a world-wide quota allocation of 6,000 pounds per quota year. Additionally, an import license, issued to the importer of this merchandise by the U.S. Department of Agriculture, would be required at the time of entry into the United States.

If TM 52 is not in chief value of milk or cream, and contains 5.5 percent by weight, or less, of butterfat, the product would probably be classified under the provision for other edible preparations not specially provided for, in item 183.0040 TSUS, and subject to quota proclaimed pursuant to section 22 of the Agricultural Adjustment Act, as amended, as provided for in item 950.19, Appendix to the Tariff Schedules. As no quota Quantity has been allocated under item 950.19, merchandise covered by this quota provision may not be imported into the United States.

The component breakdowns for TM 30 indicate that this product contains cream powder (70 percent fat) in amounts of 17 percent by weight and 65 percent by value. Other listed ingredients include, by weight, sugar (51 percent), sorbitol (17 percent), and water (15 percent). The laboratory report on the sample submitted indicates that TM 30 consists of cream powder of about 71 percent fat (55.0 percent by weight), sucrose (24.1 percent), sorbitol (3.5 percent), and water (17.5 percent).

Caramel paste TM 30 in either formulation is classifiable under the provision for malted milk, and articles not specially provided for, of milk or cream, in item 118.30, TSUS, and dutiable at the rate of 17.5 percent ad valorem. As stated previously, articles classified in item 118.30 are subject to quota in item 950.11, Appendix to the Tariff Schedules, which limits importations under this item number to 6,000 pounds world-wide each year. Additionally, an import license issued to the importer by the United States Department of Agriculture would be required at the time of entry of the merchandise.

Questions regarding [illegible] should be addressed to:

Head, Dairy and [illegible] Group
Dairy, Livestock and Poultry Division
Foreign Agricultural Service
U.S. Department of Agriculture
Washington, D.C. 20250

806375

All

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

This ruling is being issued on Caramel Paste TM 30 under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

With regard to Caramel Paste TM 52, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations (19 C.F.R. 177.1(d)(2).

Sincerely,

John J. Martuge
Area Director
New York Seaport

806375

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

AUG 0 8 1983

REFER TO

CLA-2-01:S:C:D4 39-305
806489

Dear

In a letter dated June 15, 1983, on behalf of your client, you inquired as to the dutiable status of a sirup topping produced in Mexico.

You state in your letter that this sirup topping, known in Mexico as "cajeta", is usually eaten alone with a spoon or used as a spread on bread. Further, the product will be imported in individual containers of 640 grams (about 22.5 ounces) and 310 grams (about 10.85 ounces), each containing sirup ready for immediate consumption. The percentage of ingredients by weight and their value in United States currency for the two sizes is listed as follows:

Ingredients	Percentage by Weight	Value-640 gr.	Value-310 gr.
cow's milk	27.56 percent	US$ 0.145	US$ 0.070
glucose	43.18 "	0.066	0.032
sugar	22.77 "	0.026	0.013
goat's milk	2.39 "	0.012	0.006
sorbitol	1.82 "	0.003	0.002
artificial vanilla flavor	0.23 "	0.002	0.001
lecithin	0.05 "	____*	____*

*The manufacturer has stated that the value for lecithin is so minute that he could not provide a value.

A13

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

You propose that this sirup topping be classified as candy, and other confectionery, not specially provided for, in item 157.10, Tariff Schedules of the United States (TSUS), or, alternatively, under the provision for sugars, sirups, and molasses, described in Part 10A of Schedule 1, flavored; and sirups, flavored or unflavored, consisting of blends of any of the products described in Part 10A, Schedule 1, in item 155.75, TSUS.

A sweet sirup topping, eaten by itself with a spoon or used as a spread on bread, would not be classified as candy or other confectionery in item 157.10. Further, the presence of a substantial amount (about 30 percent) of milk, a non-sugar ingredient not usually found in sugar sirups, renders this product more than a flavored sirup classifiable in item 155.75. In several administrative rulings, moreover, such as in Treasury Decision 56502(55), the Customs Service has consistently classified cajeta on the basis of the component material of chief value in the product, which is the milk.

Accordingly, cajeta is classifiable under the provision for malted milk; and articles not specially provided for, of milk or cream in item 118.30, Tariff Schedules of the United States, and dutiable at the rate of 17.5 percent ad valorem. Articles classifiable in item 118.30 are subject to quota in item 950.11, Appendix to the Tariff Schedules. Additionally, an import license issued to the importer by the Department of Agriculture would be required at the time of entry of such merchandise.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE DISCLOSED TO THE PUBLIC

806489

A14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 23 1984

REFER TO

CLA-2-4:S:C:D6:62-139
808636

Dear

In a letter dated January 31, 1984, you inquired as to the dutiable status of watersoluble dehydrated seaweed extract produced in The Netherlands.

The product is described as a watersoluble dehydrated seaweed extract derived from dried ground seaweeds, (ascophyllum Nodosum). Its trade name is ALGAN. It is used in agriculture for the purpose of soil and crop treatment.

This product is classifiable under the provision for other substances used chiefly for fertilizers, or chiefly as an ingredient in the manufacture of fertilizers, in item 480.80, Tariff Schedules of the United States, and free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

B1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N Y

DEC 1 9 1984

CLA-2-04:S:COM:N2:236-765
811320

Dear

In your letter dated October 29. 1984. you inquired on behalf of your client, about the dutiable status of head cleaning kit from Canada.

The head cleaning kit is composed of a bottle of cleaning solution and two cleaning diskettes. The floppy disk drive head cleaning diskette is a 5-1/4 inch square, envelope-like packets, consisting of a vinyl plastic outer shell and an inner cleaning sheet made from a non-woven polyester textile. You indicate that the textile component is in chief value.

The cleaning solution is classifiable under the provision for blackings, powders, liquids, and creams for polishing and cleaning, all the foregoing in immediate containers holding not over ten pounds each in item 493.1000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 2.7 percent ad valorem. Effective January 1, 1985, the rate of duty will be 2.6 percent ad valorem.

The cleaning diskette (in chief value polyester textile) is classifiable under the provision for articles of non-woven fabric of man-made fibers in item 355.2500, TSUSA, and dutiable at the rate of 6 cents per pound plus 13.8 percent ad valorem. Effective January 1, 1985, the rate will be 4 cents per pound, plus 13.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

B2

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.

DEC 07 1984

REFER TO

CLA-2-04:S:COM:N2:240-819
811469

Dear Sirs:

In your letter dated November 1, 1984, you inquired about the dutiable status of Nur So manufactured in West Germany. You submitted a sample and technical literature for our review.

Nur So is used to put in hems, attach linings, making trouser cuffs and reinforcing frayed collars, among other uses. The product is sprinkled in the area where needle and thread would otherwise be used. Heat is applied with an iron, and the two surfaces are bonded to each other.

Cement (adhesive) is a substance that is capable of holding materials together by surface attachment. Accordingly, since Nur So meets the definition of cement, it is classifiable under the provision for cement, not specially provided for, in item 494.6020, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 2.3 percent ad valorem. Effective January 1, 1985, the rate will be 2.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for Roger Silvestri

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

B3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 03 1985

REFER TO
CLA-2-01:S:COM:N2:229-271
812814

Mr. Anders Krageland
NCC, Ltd.
5805 N.W. Blue Lagoon Drive
Suite 311
Miami, FL 33126

Dear Mr. Krageland:

In your letter dated February 21, 1985, you inquired about the dutiable status of canned fish from Equador.

This product, described as Equadorian skipjack (Katsuwonus pelamis), is to be imported in cases containing forty-eight 6.5 ounce cans and packed either in brine or in vegetable oil. You state that skipjack, or oceanic bonito, according to your information, is a member of the bonito family.

Scientific reference works consulted indicate that the skipjack (Katsuwonus pelamis) is a member of the family Scombridae, a grouping which includes the mackerals, bonito, skipjack, albacore, and other mackeral-like fish. This fish is marketed commercially as a tuna, as noted in your letter, and, in fact, is one of several species of fish defined as "tuna" in the standard of identity established for that product by the United States Food and Drug Administration. Finally, the United States Customs Service has long considered skipjack to be a "tuna" for purposes of tariff classification.

Accordingly, skipjack tuna from Equador, in airtight tins of 6.5 ounces each, packed in brine, is classifiable under the provision for tuna fish, prepared or peserved in any manner, not in oil, in airtight containers, if within the quota for an aggregate quantity entered in any calendar year not to exceed 20 percent of the United States pack of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, in item 112.3040, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 6 percent ad valorem. If entered after the tariff rate quota period has closed, classification would be under the provision for other tuna fish, prepared or perserved in any manner, not in oil, in airtight containers, in item 112.3400, TSUSA, with duty at the rate of 12.5 percent ad valorem.

Skipjack tuna from Equador, in tins of 6.5 ounces each and packed in vegetable oil, are classifiable under the provision for tuna fish, prepared or preserved in any manner, in oil, in airtight containers, in item 112.9000, TSUSA, and dutiable at the rate of 35 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)). B4

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

BS

812814

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 02 1985

REFER TO
CLA-2-01:S:COM:N2:229-318
812935

Ms. B.A. Burton
Administrative Assistant
Pacific Giant
13327 Paxton Street
Pacoima, CA 91331

Dear Ms. Burton:

In your letter of March 12, 1985, you requested the tariff classification of "Cheese Sandwich" strips from South Korea.

"Cheese Sandwich" is a combination cheese and fish paste snack food, consisting of a thin layer of cheese sandwiched between two 4 inch strips of dried fish paste. Approximately three dozen of these combination strips are included in individual retail type packages of a clear plastic material. This product contains the following ingredients, listed in order of predominance by weight:

cheese	48.70 percent (origin: U.S.A.)
pollack	40.35
corn starch	4.70
D-sorbitol	2.83
sugar	1.10
gluten	1.08
salt	0.97
L. Glutamate	0.26
Sodium Sorbistat K	0.01

"Cheese Sandwich" strips are classifiable under the provision for other edible preparations not specially provided for (including prepared meals individually packaged) in item 183.0520, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 10 percent ad valorem.

Additionally, articles classifiable in item 183.0520, TSUSA, if containing sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients--except articles within the scope of TSUS items 958.10, 958.15, or other import restrictions provided for in part 3 of the Appendix to the Tariff Schedules--are subject to quota restrictions listed in item 958.18 in part 3, Appendix to the Tariff Schedules.

Finally, articles classifiable in item 183.0520, TSUSA, which are the products of South Korea, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

B6

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

812935

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B7

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK N.Y.

APR 1 1985

CLA-2-04:S:COM:N2:236-336
812985

Mr. Eli Winters
Sparkle Clear Industries
P.O. Box 1936
Kelowna, BC Canada V1Y 8P2

Dear Mr. Winters:

Your letter of March 6, 1985 concerns the dutiable status of a window and lens cleaner from Canada.

Lens and window cleaner imported in a plastic container holding a few ounces is classifiable under the provision for blackings, powders, liquids, and creams for polishing and cleaning, all the foregoing in immediate containers holding not over ten pounds each in item 493.1000, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 2.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B8

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.
MAY 28 1985

REFER TO
CLA-2-04:S:COM:N2:236-541
813603

Mr. D. James Brennan
H.Z. Bernstein Company, Inc.
One World Trade Center
Suite 1973
New York, New York 10048

Dear Mr. Brennan:

In your letter dated May 6, 1985 you inquired on behalf of your client, Toyomenka (America), Inc., about the dutiable status of "Sanwet" from Japan.

"Sanwet" is a super absorbent polymer internally cross-linked starch-grafted-polyacrylate made from starch and acrylic acid. A sample tested by the United States Customs Laboratory was reported out as a "chemically modified starch."

"Sanwet" is classifiable under the provision for dextrine and soluble or chemically treated starches in item 493.3000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 0.66 cent per pound.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JUL 25 1985

REFER TO
CLA-2-01:S:COM:N2E:232-571
813682

Mr. Peter Laternser
Max Felchlin AG
Bahnhofstrasse 63
CH 6430 Schwyz - Switzerland

Dear Mr. Laternser:

In your letter dated May 7, 1985, you inquired about the dutiable status of two food products, caramel cream and lacarot from Switzerland.

Caramel cream (TM 52 E) is a thick brown paste which will be imported in pails containing 5.5 kilograms each for use in the bakery and confectionery industry. This product will have the following composition expressed as a percentage of weight:

Cane or beet sugar	46.0
Moisture	18.0
Sorbitol	16.5
Vegetable fat	13.0
Non fat milk solids	5.0
Salt	1.0
Emulsifier	0.5

Lacarot (KB 80 E) is a similar product which will be imported in containers which hold 12 kilograms each. This substance is stated to have the following composition expressed as a percentage by weight:

Cane or beet sugar	35.0
Moisture	25.0
Carrot	14.0
Soy	11.0
Hazelnuts	9.0
Wheat starch	4.0
Corn syrup solids	2.0

As suggested in your letter both of these products are classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 10 percent ad valorem.

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B10

Import quotas were established upon food products, containing cane or beet sugar, classifiable under item 183.05, TSUS, by Presidential Proclamation 5294 on January 2?, 1985. These restrictions were later modified, and in some cases lifted on certain products, by Presidential Proclamation 5340 of May 17, 1985. However, since both Caramel Cream and Lacarot contain in excess of 10 percent sugar by weight, are not prepared for retail sale, and do not appear to be similar to cake decorations which will be used in the condition as imported without any further processing, importation of these products would still be restricted.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

813682

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 25 1985

CIA-2-01:S:C:M:N2:229-601
813756

Ms. Bobbie Burton
Administrative Assistant
Pacific Giant Inc.
13327 Paxton Street
Pacoima, CA 91331

Dear Ms. Burton:

In your letter dated May 13, 1985, you inquired about the dutiable status of Sea Jerky from Korea.

The subject merchandise is a sea food snack product composed of the following ingredients, listed in order of predominance by weight:

Minced Fish Meat (Surimi)	78.67 percent
Starch	9.16
D-Sorbitol	5.51
Sugar	2.15
Sorbistat K	0.01
Others	4.50

The product, marketed under the name, "Sea Jerky" is manufactured from Alaskan Pollack (Surimi) which is minced and processed into individual bite size strips. The snack is packaged in individual retail collapsible packs which weigh eight grams each. A sample package was tested by the New York Customs Laboratory and confirmed to be an airtight container.

Sea Jerky is classifiable under the provision for fish, prepared or preserved in any manner, not in oil, in airtight containers in item 112.1400, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 6 percent ad valorem.

The product, Sea Jerky, is not considered an edible preparation and thus is not within the scope of TSUS item 958.18 or other import restrictions provided for in part 3 of the Appendix to the Tariff Schedules.

Any questions concerning Food and Drug Administration labeling standards should be addressed to:

U.S. Food and Drug Administration
Division of Regulatory Guidance
HFF 314
200 C Street, S.W.
Washington, D.C. 20204

B12

REPLY TO: REGIONAL COMMISSIONER OF CUSTOMS, NEW YORK, NEW YORK 10048

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

This ruling is being issued under the provisions of section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Marture
Area Director
New York Seaport

813756

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

B13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 01 1985

REFER TO

CLA-2-01:S:COM:N2:228-615

813759

Mr. Ronald Warren Saul
796 Center Street
Des Plaines, IL 60016

Dear Mr. Saul:

In your letter dated April 16, 1985, you inquired about the dutiable status of cake decorations from Holland. The submitted samples were consumed in analysis.

The cake decorations are known as sprinkles. The small rod shaped sprinkles are approximately one sixteenth of an inch in diameter and one quarter of an inch in length. The sprinkles are used to decorate cakes, ice cream, and similar confections. The composition of the chocolate flavored sprinkles is sugar 82 percent, vegetable fat 10 percent, cocoa powder 5 percent, lecithin 1 percent, and moisture 2 percent. The composition of the rainbow sprinkles is sugar 66.4 percent, vegetable fat 17.7 percent, wheat starch 11.5 percent, lactose 2.7 percent, lecithin .2 percent, and moisture 1.5 percent.

The chocolate sprinkles and the rainbow sprinkles are classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

All products classifiable under the provision for edible preparations, that contain cane or beet sugar, were placed under strict quota restraint by Presidential Proclamation 5294 on January 25, 1985. However, these restraints were later modified by Presidential Proclamation 5340 of May 17, 1985 which specifically exempted certain products from the restraints. Among these were:

> Cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections...

The sprinkles you wish to import are covered by this exemption and they are not restricted at this time.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

B14

Please be advised that a copy of this ruling should be attached

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

813759

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

c1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 01 1985

REFER TO

CLA-2-01:S:COM:N2E:232-636
813841

Mr. Luc C. Pamerleau
Canadian Department of External Affairs
125 Sussex Drive - Lester B. Pearson Building
6th Floor, Tower "A"
Ottawa, Ontario, K1A 0G2 Canada

Dear Mr. Pamerleau:

In your letter dated May 9, 1985, you inquired about the dutiable status of a product named "Chocofix" from West Germany, on behalf of Oetker Ltd. of Mississauga, Ontario, Canada.

Chocofix is described as a chocolate flavored frosting for cakes, cookies, and ice cream. As imported, it is a thick paste sealed within a foil envelope which contains 100 grams of the product. The foil envelope is packaged within a small cardboard carton which instructs the retail consumer to place the envelope into hot water for five minutes or until the contents liquify. Once liquified, Chocofix may be poured onto the item to be frosted where it will solidify as it cools to room temperature.

The Chocofix formulation consists of the following ingredients expressed as a percentage of weight:

Hydrogenated vegetable fat	43.00
Cane or beet sugar	39.40
Cocoa	17.00
Lecithin	0.25
Vanillin	0.35

Chocofix is classifiable under the provision for confectioners coatings and other products (except confectionery) containing by weight not less than 6.8 percent non-fat solids of the cocoa bean nib and not less than 15 percent of vegetable fats other than cocoa butter in item 156.4700, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 2.5 percent ad valorem

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C2

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

813841

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 01 1985

REFER TO
CLA-2-04:S:COM:N2:236-669
813916

Mr. William W. Franks
M.E. Franks, Inc.
45 Rockefeller Plaza
New York, NY 10111

Dear Mr. Franks:

In your letter dated May 24, 1985, you inquired about the dutiable status of a modified sodium caseinate powder (Melfran 202-2) from Denmark.

The modified sodium caseinate powder identified as Melfran 202-2 is composed of 68 percent whey, 28 percent caseinate, and 4 percent butterfat. The caseinate is in chief value.

Melfran 202-2 is classifiable under the provision for casein and mixtures in chief value thereof: other in item 493.14, Tariff Schedules of the United States, and dutiable at the rate of 1.3 cents per pound.

Mixtures as indicated above, of caseinate and milk, are subject to quota restrictions and in the absence of a quota quantity may not enter the commerce of the United States. Please see "Additional Import Restrictions Proclaimed Pursuant to Section 22 of the Agricultural Adjustment Act, as Amended," in item 950.19, copy enclosed.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mattuye
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

C4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 19 1985

REFER TO

CLA-2-01:S:COM:N2:231-743

814135

Mr. David Fox
H.D. Fox Company, Inc.
3710 Commercial Avenue
Northbrook, Illinois 60062

Dear Mr. Fox:

In your letter dated June 7, 1985, you inquired about the dutiable status of a dry sugar/corn meal blend from Canada.

The product will be produced by blending 87 percent sugar and 13 percent corn meal. The mixture is intended for use as an animal feed ingredient. We assume that no separation of the sugar and corn meal will occur and that they are present in their final proportions and that neither sugar nor corn meal will be added to the mixture after importation.

This sugar/corn meal mixture would be classifiable under the provision for animal feeds and ingredients therefor, in item 184.8500, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roger J. Schuster

for John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.

SEP 20 1985

CLA-2-01:S:COM:V2:229-781
814234

Mr. John M. Poole
John A. Steer Company
136 Chestnut Street
Philadelphia, PA 19106

Dear Mr. Poole:

In your letter dated June 17, 1985, on behalf of your client, Bird-In-International, you inquired about the dutiable status of artifical crabmeat from Japan.

The artifical crabmeat is manufactured from both hake and pollack fish. The fish are processed, cooked with a crab flavoring and then frozen. The product will be marketed in the following forms; flakes and chunks shaped as crablegs, sticks, scallop shaped and scallop breaded sticks. This product is to be marketed as a ready to eat artifical crabmeat fish product.

The flakes and chunks, also shaped as crablegs, would be classified as follows:

1. If in airtight containers and made of pollack, as fish prepared or preserved in any manner, not in oil, under item 112.4000, Tariff Schedules of the United States Annotated, (TSUSA) and dutiable at the rate of 6 percent ad valorem.

2. If in airtight containers and made of hake, as fish prepared or preserved in any manner, not in oil, under item 112.3640, Tariff Schedules of the United States Annotated, (TSUSA) and dutiable at the rate of 6 percent ad valorem.

3. If not in airtight containers, and in bulk or in immediate containers weighing with their contents over 15 pounds each, as fish, prepared or preserved, not specially provided for, under item 113.5840, Tariff Schedules of the United States Annotated, (TSUSA) and free of duty.

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4. If not in airtight containers, and not in bulk or not in immediate containers weighing with their contents over 15 pounds each, as other fish, prepared or preserved, not specially provided for, under item 113.6040, Tariff Schedules of the United States Annotated, (TSUSA) and dutiable at the rate of 6 percent, ad valorem.

The sticks and scallop shaped items would be classified as follows:

5. If in an airtight container, as fish balls, cakes, puddings, pastes, and sauces, under item 113.0800, Tariff Schedules of the United States Annotated, and free of duty.

6. If not in an airtight container, as fish balls, cakes, pudding, pastes and sauces, under item 113.1100, Tariff Schedules of the United States Annotated, (TSUSA) and dutiable at the rate of 6 percent ad valorem.

7. If in an immediate container weighing over 15 pounds, whether or not airtight, under item 113.1500, Tariff Schedules of the United States Annotated, (TSUSA) and dutiable at the rate of 9.8 percent ad valorem.

The scallop breaded sticks would be classified as follows:

8. If neither cooked nor in oil, as fish sticks and similar products of any size or shape, fillets, or other portions of fish, if breaded, coated with batter, or similarly prepared, under item 113.2000, Tariff Schedules of the United States Annotated, (TSUA) and dutiable at the rate of 10 percent ad valorem.

9. If either cooked or in oil as fish sticks and similar products of any size or shape, fillets, or other portions of fish, if breaded, coated with batter or similarly prepared under item 113.2500, Tariff Schedules of the United States Annotated, (TSUSA) and dutiable at the rate of 15 percent ad valorem.

814234

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mortuge
Area Director
New York Seaport

814234

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.
OCT 2 0 1985

CLA-2-01:S:COM:N2:229-781
814234

Mr. John M. Poole
John A. Steer Company
136 Chestnut Street
Philadelphia, PA 19106

Dear Mr. Poole:

In your letter dated June 17, 1985, you inquired about the dutiable status of artificial crabmeat from Japan.

This letter is a revision of the previous ruling issued to your company (copy attached), on September 20, 1985. A clerical error was made in the descriptions of the various types of artifical crabmeat products. The revisions are as follows:

1. For the classifications listed under items numbered 1 through 4, only the flakes and diagonally cut chunks would be classified as such.

2. For the classifications listed under items 5 through 7, only the sticks, crab leg and scallop shaped items would be classified as such.

3. For the classifications listed under items 8 and9 only the breaded scallops and breaded sticks would be classified as such.

The rulling is being issued under the provision of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1 (a)(1).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs Officer.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 0 1 1985

REFER TO
CLA-2-01:S:COM:N2:231-802
814275

Mr. Peter Laternser
Max Felchlin Schwyz
Bahnhofstrasse 63
CH 6430 Schwyz
Switzerland

Dear Mr. Laternser:

In your letter dated June 11, 1985, you inquired about the dutiable status of food items from Switzerland.

Your inquiry requests classifications for the following.

1. DC 14E Praline Paste composed of 51 percent hazelnuts, 46 percent sugar and 3 percent vegetable fat is classifiable under the provision for filberts otherwise prepared or preserved in item 145.46, Tariff Schedules of the United States, and dutiable at the rate of 8 cents per pound.

2. KK 04E Marzipan composed of 51 percent almonds, 40 percent sucrose and 9 percent invert sugar exported in 7 kg. cartons is classifiable under the provision for almonds otherwise prepared or preserved, other in item 145.41, Tariff Schedules of the United States, and dutiable at the rate of 18.5 cents per pound.

3. FE 03E Serivosa, white composed of 51 percent powder sugar, 35 percent vegetable fat and 14 percent skim milk powder is classifiable under the provisions for other edible preparations in item 183.05, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

Articles and products containing sugar derived from sugar/cane or sugar beets, which are classifiable items 183.0520, TSUS, are currently subject to an absolute quota implemented by Presidential Proclamations 5294 and 5340. In general, products containing 10 percent or less by dry weight of cane or beet sugar, or if containing over 10 percent of such sugars, those products which are not principally of crystalline structure or not in a dry amorphous form, that are prepared for marketing to the retail

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REPLY TO: REGIONAL COMMISSIONER OF CUSTOMS NEW YORK, NEW YORK 10048

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consumer in the identical form and package in which imported, are exempt from the quota. Cake decorations and similar products to be used in the condition as imported without further processing other than the direct application to individual pastries or confections are also exempted.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Marrugo
Area Director
New York Seaport

814375

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C11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 1 1985

REFER TO:

CLA-2-01:S:COM:N2:231-801
814276

Mr. Adam M. Bak
Adamba Imports International, Inc.
59-22 Flushing Avenue
Maspeth, New York 11378

Dear Mr. Bak:

In your letter dated June 12, 1985, you inquired about the dutiable status of a sugar/corn meal mixture manipulated in a Foreign Trade Zone.

The product will be produced by blending 87 percent of non priveleged foreign sugar with 13 percent domestic corn meal. The mixture is intended for use as a pig starter feed. We assume that no separation of the sugar and corn meal will occur and that they are present in their final proportions and that neither sugar nor corn meal will be added to the mixture after importation.

This sugar/corn meal mixture would be classifiable under the provision for animal feeds and ingredients therefor in item 184.8500, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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C12

REPLY TO: REGIONAL COMMISSIONER OF CUSTOMS, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
AUG 30 1985

REFER TO

CLA-2-01:S:COM:N2E:232-813
814321

Mr. Clark D. Bien
Arbor Foods Incorporated
Post Office Box 7686
Ann Arbor, Mich 48107

Dear Mr. Bien:

In your letter dated June 24, 1985, you inquired about the dutiable status of four different combinations of chocolate liquor and sugar from Canada or to be produced in the Toledo, Ohio, Foreign Trade Zone.

These four combinations will have the following composition by weight:

	Chocolate Liquor	Cane or Beet Sugar
Combination 1	38 percent	62 percent
Combination 2	35 percent	65 percent
Combination 3	20 percent	80 percent
Combination 4	15 percent	85 percent

The method of production will be identical for each version of the product. Chocolate liquor will be combined with white granulated sugar, heated, and poured into either 40 or 55 gallon drums. When cooled and set, the product will form a solid block conforming to the shape of the drum. The submitted samples, which are assumed to have been produced in the same manner, are brown in color and quite grainy in structure.

It is your contention that all four varieties should be classified as sweetened chocolate under item 156.2500, Tariff Schedules of the United States Annotated (TSUSA). However, the United States Court of Customs and Patent Appeals held that sweetened chocolate would only contain "as much as 40 to 60 percent sugar". C.J. Van Houton & Zoon Blufries New York, Inc. v. United States, C.A.D. 775 (1961). The position of the Court has been consistently followed and endorsed by the Customs Service in all subsequent administrative decisions. In view of this past history of tariff classification, the products under consideration here would also be ineligible for classification as sweetened chocolate.

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C13

Consequently, all four versions of this chocolate and sugar product would be classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 10 percent ad valorem.

Articles and products containing sugar derived from sugar cane or sugar beets, which are classifiable in item 156.4500, 183.0100, and 183.0520, TSUSA, are currently subject to absolute quotas as implemented by Presidential Proclamations 5294 and 5340. Since these products contain over 10 percent by dry weight of cane or beet sugar and will not be packaged for sale at retail at the time of importation, the quota will apply under item 958.18, TSUS. This provision currently restricts importations of the subject merchandise to 84,000 short tons in each calendar year commencing on the first day of October.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

814321

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C14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, NY
AUG 19 1985

REFER TO:

CLA-2-01:S:COM:N2:228-839
814393

Mr. Robert Krasnor
President
Tradeshare Corporation
Building #77, Brooklyn Navy Yard
Brooklyn, New York 11205

Dear Mr. Krasnor:

In your letter dated June 20, 1985, you inquired about the dutiable status of sugar and gelatin blend from a Foreign Trade Zone.

The subject blend will be from 89 to 92.5 percent sugar and from 7.5 to 11 percent gelatin. The amounts will vary according to the bloom strength of the gelatin. The product is said to be in chief value of gelatin. Since you indicate components are not capable of separation, we assume no such separation will occur. Further, we assume that the sugar and gelatin are present in their final proportions and that neither gelatin nor sugar will be added to the blend after importation.

This sugar and gelatin blend is classifiable under the provision for edible preparations of gelatin in item 182.9000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roger J. Schuster

for John J. Martuge
Area Director
New York Seaport

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REPLY TO: REGIONAL COMMISSIONER OF CUSTOMS, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 1 1985

REFER TO

CLA-2-01:S:COM:N2:229-996
814775

Mr. William J. Marston
William J. Marston
Customhouse Broker
11938 Waveland Avenue
Franklin Park, IL 60131

Dear Mr. Marston:

In your letter dated July 19, 1985, on behalf of your client, Mr. Cesar Conde, you inquired about the dutiable status of shark fins from Peru.

The enclosed sample is that of a shark's fin which has been skinned, cleaned and dried. It is the substance or meat of the fin after the outer flesh has been removed. The fin is hard, rigid, straw colored and untrimmed at the base. This product will be used in the preparation of shark fin soup.

Shark fin is classifiable under the provision for fish, dried, whether or not whole, but not otherwise prepared or preserved, and not in airtight containers in item 111.1500, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 0.2 cents per pound.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 1985

CLA-2-01:S:CON:N2:229-998
814784

Mr. Charles L. Kantner
Kantner Trading Co.
713 N. Dixie Hwy. Box 424
Wapakoneta, Ohio 45895

Dear Mr. Kantner:

In your letter dated July 18, 1985, you inquired about the dutiable status of Goya cheese from Hungary.

A sample of the proposed cheese was submitted with the ruling request. Based upon a physical examination the cheese was found to be hard, pale yellow in color with a compact texture and irregular mechanical openings. An organoleptical examination proved the cheese to be of a salty nature with the piquant flavor of an Italian type cheese.

Based upon the information you provided, every effort has been made, on the part of the manufacturer, to duplicate Argentine Goya cheese in every important category. The submitted information indicates that your product meets the size and weight specifications of Argentine Goya and is said to have the correct butterfat and moisture content for this type cheese. The butterfat content is said to be in excess of 40 percent, on a dry basis, with a moisture content of 35 percent.

It should be noted that this cheese will be aged for five months prior to importation into the United States.

Goya cheese, in original loaves, from Hungary, similar to the sample provided, is classifiable under the provision for Goya cheese in item 117.4240, Tariff Schedules of the United States Annotated, (TSUSA), and dutiable at the rate of 25 percent ad valorem.

Cheese classified in item 117.4240 TSUSA is not subject to import quota quantity restrictions.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such

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documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roy K. Deuring

for John J. Martuge
Area Director
New York Seaport

814784

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
AUG 30 1985

REFER TO

CLA-2-01:S:COM:N2:229-1013
814839

Mr. Elchanan Frankenthal
U & I Services, Inc.
P.O. Box 636
Tallman, New York 10982

Dear Mr. Frankenthal:

In your letter dated July 29, 1985, you inquired about the dutiable status of an ultra-filtrated milk protein concentrate powder from Israal.

The Ultra-filtrated milk protein powder is produced wholly from pasteurized milk. The whole milk is separated through a centrifugal process which removes the fat, leaving only skim milk. The skim milk is put through an ultra-filtration process which results in a solution of water, soluble carbohydrates, soluble minerals and retentate. The retentate is spray dried with the end product being a rich protein concentrate powder containing 60 per cent complete milk protein. This product is designed for use in baked articles as a protein enriched additive.

The ultra-filtrated milk protein concentrate powder is classifiable under the provision for milk protein concentrate in item 118.4500, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 0.2 cents per pound.

Articles classifiable under item 118.4500, TSUSA, which are the products of Israel are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

814839

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 8 1985

REFER TO

CLA-2-01:S:COM:N2:228-1060
814944

Mr. Christopher J. Wilkinson
E. D. Smith & Sons, Ltd.
944 Highway #8
Winona, Ontario
Canada LOR 2LO

Dear Mr. Wilkinson:

In your letter dated August 1, 1985, you inquired about the dutiable status of various fruit pie fillings from Canada.

You submitted the product labels, the ingredient listings, and the promotional literature with your request for a ruling. In addition to being used as a pie filling, your products can be used for a range of purposes such as mixed with yogurt, poured over ice cream, parfaits, chicken sauce, souffles, or milk shake mixtures. The products will be sold in both small consumer and large institutional packs.

Classification would be as follows:

Product	TSUSA	Rate
Apple pie filling	146.1400	0.5 cent per lb.
Apple/Cherry pie filling	150.0200	7% ad valorem
Blueberry pie filling	146.7900	3.5% ad valorem
Cherry pie filling	146.9900	7 cents per lb. plus 10% ad valorem
Date pie filling	147.4800	35% ad valorem
Lemon pie filling	183.0520	10% ad valorem
Peach pie filling	148.7800	20% ad valorem
Pineapple pie filling	148.9820	0.38 cent per lb.
Pumpkin pie filling	141.9840	17.5% ad valorem
Raisin pie filling	147.7700	9.6% ad valorem
Raspberry pie filling	146.8400	7% ad valorem
Strawberry pie filling	146.8500	14% ad valorem
Rhubarb pie filling	150.0200	7% ad valorem

In your request for a ruling you stated your belief that these products are not subject to the sugar quota. We agree with your position that none of these pie filling products are subject to the sugar quota at this time.

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

814944

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

SEP 19 1985

REFER TO
CLA-2-04:S:COM:N2:239-1077
814983

Ms. Ellen DeCosmo
Rohm Tech Inc.
10 East 40th Street
New York, NY 10016

Dear Ms. DeCosmo:

In your letter of August 9, 1985, you asked for information about the tariff status of four chemicals from West Germany.

When produced from non-benzenoid sources 3,3,5 trimethylcyclohexyl acrylate and 3,3, 5 trimethylcyclohexyl methacrylate are classified under the provision for other esters of monohydric alcohols and organic or inorganic acids in item 428.7250, Tariff Schedules of the United States Annotated, (TSUSA). The rate of duty is 4 percent ad valorem. When produced from non-benzenoid sources maleic acid-mono-2-acryloyloxy ethylester is classified under the provision for other organic acids in item 425.9910, TSUSA. The rate of duty is 4.7 percent ad valorem.

When produced from benzenoid sources 3,3,5 trimethylcyclohexyl acrylate, 3,3, 5 trimethylcyclohexyl methacrylate and maleic acid mono-2-acryloyloxy ethylester are classified under the provision for other products derived form benzenoid sources in item 407.0600, TSUSA. The rate of duty is 13.5 percent ad valorem.

Benzyl methacrylate is classified under the provision for esters of a monocarboxylic acid other in item 404.3000, TSUSA. The rate of duty is 13.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Hartugg
Area Director
New York Seaport

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REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 20 1985

REFER TO

CLA-2-01:S:S:COM:N2:229-1084
815027

Mr. Nobuo Ibaraki
Central Management Corporation
2150 East Thomas Road
Phoenix, Arizona 85016

Dear Mr. Ibaraki:

In your letter dated August 9, 1985, you inquired about the dutiable status of a crab flavored fish cake from Japan.

The crab flavored fish cake is composed, by weight of the following ingredients:

Pollack	55.0	percent
Crab Meat	10.0	percent
Egg White	8.0	percent
Potato Starch	5.0	percent
Crab Extract	1.4	percent
Salt	1.5	percent
Monosodium Glutamate	0.9	percent
Color	0.001	percent
Water	18.2	percent

The crab flavored fish cake, which contains 10 percent actual crab meat, is marketed as a precooked ready to eat fish product. Suggested uses indicate that the fish cake sticks can be combined with yogurt, herbs and spices to make a party snack dip or with eggs and vegetables to complete a salad. The fish cake sticks can also be re-heated and served as the main course for a dinner.

The item will be sold, on the retail level, in 3½ ounce packages with 6 fish cake sticks in a package.

The crab flavored fish cake sticks are classifiable under the provision for other minced seafood edible preparations, not specially provided for (including prepared meals individually packaged) in item 183.0505, Tariff Schedules of the United States Annotated, (TSUSA), and dutiable at the rate of 10 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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DIRECT TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Nerteng
Area Director
New York Seaport

815027

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 1 0 1985

REFER TO

CLA-2-04:S:COM:N2:235-1098
815045

Mr. R. Potts
Shinteck Incorporated
5618 Highway 332 East,
Freeport, Texas 77541

Dear Mr. Potts:

In your letter dated August 12, 1985, you inquired about the dutiable status of a chemical mixture from Japan.

According to your inquiry the product is used to prevent polymer deposits on stainless steel and glass.

OM-101A, based on the list of chemicals provided in your inquiry, is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be methanol classifiable under item 427.97, Tariff Schedules of the United States, and dutiable at the rate of 18.4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

D12

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.

SEP 19 1985

REFER TO

CLA-2-04:S:COM:N2:239-1103
815056

Ms. Karen L. Sinda
Seltzer Chemicals, Inc.
4940 Carroll Canyon Road
San Diego, CA 92121

Dear Ms. Sinda:

In your letter of August 14, 1985, you requested a ruling on the classification on a product of West Germany called Loxidan TD-100.

Loxidan TD-100 is a mixture composed of 1,2-dihydro-6-ethoxy-2,2,4-trimethylquinoline, gallic acid propyl ester, 2,6 di-t-butyl cresol and inorganic material.

Loxidan TD-100 is classified under the provision for mixtures in whole or in part of any of the products provided for in Schedule 4, part 1, subpart B, Tariff Schedules of the United States Annotated (TSUSA) in item 407.1610. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. When the gallic acid propyl ester is made from synthetic sources it is classified under the provision for other esters of a carboxylic acid in item 404.4600, TSUSA, at the rate of 1.7 cents per pound plus 17.9 percent ad valorem and this rate would apply to this product. When the gallic acid propyl ester is made from natural sources the mixture rate of 1.7 cents per pound plus 13.6 percent ad valorem would apply.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Marrugo
Area Director
New York Seaport

D13

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.

SEP 1985

REFER TO

CLA-2-04:S:COM:N2:239-1106

815087

Mr. John Link
Almac Shipping Co., Inc.
Plaza Three Suite 803
The Harborside Financial Center
Jersey City, NJ 07302

Dear Mr. Link:

Your letter of August 7, 1985, written on behalf of your client, Krahn Chemie, requests the tariff status of eighteen chemical products. The products are from Switzerland, Spain and West Germany.

The following products are classified under the provision for benzenoid toners in item 410.2800, Tariff Schedules of the United States Annotated (TSUSA), and the rate of duty is 11.3 percent ad valorem:

Cromophtal yellow 3G	- Pigment Yellow 93
Cromophtal red BRN	- Pigment Red 144
Cromophtal yellow GR	- Pigment Yellow 95
Cromophtal orange 4R	- Pigment Orange 31
Cromophtal yellow 2RLTS	- Pigment Yellow 110

Chimassorb N-705 is [2,2'-thiobis (4-t-octylphenolato)]-n-butylamine Nickel. Cyasorb UV 1084 is [2,2'-thiobis (4-t-octylphenolato)]-N-butylamine Nickel (II). Both of these products are classified under the provision for other benzenoid products in item 406.6100, Tariff Schedules of the United States Annotated, (TSUSA). The rate of duty is 1.7 cents per pound plus 14.5 percent ad valorem.

Tinuvin 770 is di(2,2,6,6-tetramethyl-4-hydroxypiperidine)-sebacate. Tinuvin 770, when produced from benzenoid sources, is provided for in item 406.7300, TSUSA and the duty rate is 7.5 percent ad valorem. When produced from non-benzenoid sources it is classified under the provision for other nitrogenous compounds in item 425.5290, TSUSA at the rate of 7.9 percent ad valorem.

Cyasorb -UV531 is (2-hydroxy-4-n-octoxy benzophenone). It is classified under the provision for other ketone-phenols in item 403.9600, TSUSA. The rate of duty is 11.7 percent ad valorem.

Irganox 1010 is pentaerythrityl-tetrakis [3-(3,5-di-tert-butyl-4-hydroxyphenyl)-propionate]. Irganox 1076 is octadecyl 3-(3,5-di-tert-butyl-4-hydroxyphenyl)-propionate. Both of

D14

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these products are classified under the provision for other carboxylic acid derivatives in item 404.4600, TSUSA. The rate of duty is 1.7 cents per pound plus 17.9 percent ad valorem.

BHT/Ionol CP is 2,6-di-tert-butyl-p-cresol. It is classified under the provision for alkylcresols in item 403.1600, TSUSA, at the rate of 8.9 percent ad valorem.

Uvitex OB, an optical brightener, is classified under the provision for flourescent brighteners in item 409.9400, TSUSA. The rate of duty is 10.8 percent ad valorem.

With regard to the above products this is a ruling being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1 (a)(1)].

Your inquiry does not provide enough information for us to issue a tariff classification ruling for the balance of the products in your inquiry. Your request for a classification ruling for Irgazin yellow 3 RLTN and Irgazin red BPT should include the generic name and the Chemical Abstracts Service numbers. Your request concerning Tinuvin 144, Spinuvex A 36 and Irganox B 900 should include a complete chemical description of each product.

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Maringe
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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815087

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 06 1985

REFER TO

CLA-2-01:S:COM:N2:232-1132
815190

Mr. Leslie M. Weiss
Traffic Manager
Hyosung (America), Inc.
One Penn Plaza, Suite 1901
New York, NY 10119

Dear Mr. Weiss:

In your letter dated August 22, 1985, you inquired about the dutiable status of Ginseng Coffee from Korea.

The samples of the product submitted with your letter consist of a fine brown powder stated to have the following ingredients:

	by weight	by value
Ginseng extract	5 percent	57.37 percent
Soluble coffee	30 percent	34.43 percent
Lactose	50 percent	7.46 percent
Glucose	15 percent	0.74 percent

It is understood that this product will be used to prepare a beverage when combined with hot water.

Ginseng Coffee is classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem. Articles classifiable under this provision which are the products of Korea are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Since this product does not contain any cane or beet sugar it is not subject to the import restraints which were established by Presidential Proclamations 5294 and 5340 on similarly classifiable products which do contain cane or beet sugar. This product is also not considered to be subject to the requirements of the International Coffee Agreement. The questions you have posed regarding the requirements or restrictions under the regulations of the Food and Drug Administration should be made directly to:

Food and Drug Administration
200 C Street, N.W.
Washington, D.C. 20204

E2

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Hartuge
Area Director
New York Seaport

815190

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 26 1985

REFER TO

CLA-2-07:S:COM:N2:223-1148
815203

Mr. Bob Bonnen
Farash International
10850 Southwest 113 Place
Miami, FL 33176

Dear Mr. Bonnen:

In your letter of August 18, 1985, you requested the tariff classification of a golf wrist trainer from Hong Kong or Taiwan.

The submitted sample is suede leather on the outside with a vinyl lining. An oval hole is cut at one end for the golfer's thumb. The wrist trainer tapers to wrap entirely around the golfer's hand and is secured by a velcro closure. Between the suede outer layer and the vinyl lining, a piece of slightly bent metal is sewn into the portion of the trainer that covers the back of the hand. When practicing a swing, this metal piece produces a clicking sound as the wrist is bent. This clicking sound will alert the golfer as to whether or not the wrist is being bent in the proper portion of the swing. Since the wrist trainer aids in improving the golfer's playing of the game of golf, it is properly considered to be equipment for that sport.

Accordingly, the wrist trainer is classifiable under the provision for other golf equipment in item 734.7780, Tariff Schedules of the United States Annotated, and is dutiable at the rate of 5.6 percent ad valorem.

Articles classifiable under item 734.7780, TSUSA, which are the products of Hong Kong or Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roy K Durung Jr.

John J. Martuge
Area Director
New York Seaport

815203

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK N Y

OCT 3 1985

REFER TO

CLA-2-01:S:COM:N2:229-1145
815206

Mr. Marcel Nadeau
Stratton Power Equipment Co., Inc.
P.O. Box 356
Stratton, Maine 04982

Dear Mr. Nadeau:

In your letter dated August 29, 1985, you inquired about the dutiable status of an unripened cheddar cheese from Canada.

The unripened cheddar cheese is heavily salted. The salt content of this cheese makes it virtually impossible to cook with or to use it for any purpose other than as an hors d'oeuvre. The cheese is available in two forms. In one form the cheese will be imported in plastic bags. In the other form the cheese will be imported in a brine solution that is packed in a jar.

The cheddar cheese is classifiable under the provision for cheddar cheese: not processed otherwise than by division into pieces, in item 117.1520 as modified by item 950.08A and the provisions of headnote 3(a)(i) of part 3, appendix to the Tariff Schedules of the United States, and dutiable at the rate of 12 percent ad valorem.

Headnote 3(a) allocates the total quota quantity for Canadian cheddar cheese to cheese that has been certified by the Canadian government as having been made from unpasteurized milk and aged not less than 9 months. Consequently, Canadian cheddar cheese, as described in your letter, would not be permitted entry into the United States of America.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 16 1985

REFER TO

CLA-2-01:S:COM:N2:229-1154
815225

Mr. Richard C. Reynolds
Henningsen Foods, Inc.
2 Corporate Drive
White Plains, New York 10604

Dear Mr. Reynolds:

In your letter dated August 15, 1985, you inquired about the dutiable status of freeze dried chunk veal from Holland.

The freeze dried chunk veal is processed veal intended for use as an ingredient in prepared soups, packaged dinners and gravy mixes. The veal is valued at ten dollars per pound and is imported in ten kilogram size poly lined fiber boxes.

The freeze dried chunk veal is classifiable under the provision for other beef and veal, prepared or preserved (except sausages) in item 107.6300, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E7

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 11 1985

REFER TO

CLA-2-04:S:COM:N2:235-1179
815280

Mr. I. Thomas B.Sc., Technical Director
R & M Chemicals, Limited
15909-114 Avenue
Edmonton, Alberta, Canada T5M 2Z3

Dear Mr. Thomas:

In your letter dated September 3, 1985, you inquired about the dutiable status of various chemical deodorizers from Canada.

According to your letter none of the chemicals in the mixture are benzenoid derived.

Based on this information Non-Formaldehyde granule is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

Non-Formaldehyde liquid made with non benzenoid derived chemicals is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate is ethoxylated lauryl alcohol classifiable under item 465.05, (Tariff Schedules of the United States), if derived from coconut, palm kernel, or palm oil, and dutiable at the rate of 1 cent per pound plus 5.1 percent ad valorem. When derived from any other source ethoxylated lauryl alcohol is classified under item 465.10, Tariff Schedules of the United States, and dutiable at the rate of 1.2 cents per pound plus 5.3 percent ad valorem.

Formaldehyde liquid is classifiable under the provision for formaldehyde (including solutions) in item 427.48, Tariff Schedules of the United States, and dutiable at the rate of 0.43 cents per pound.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 25 1985

REFER TO

CLA-2-01:S:COM:N2:229-1180
815281

Mr. Douglas McEwen
Champlain Industries Limited
6535-21 Millcreek Drive
Mississauga Ontario
Canada L5N 2M2

Dear Mr. McEwen:

In your letter dated August 22, 1985, you inquired about the dutiable status of MNC - 129 Feed Concentrate from Canada.

MNC 129 Feed Concentrate is a reduced lactose whey that is supplemented with Riboflavin. This product is added to feed rations to raise the nutritional quality. A typical analysis of the product is as follows:

Moisture	7.0% max.
Protein	17.0± 1.0%
Ash	19.0± 2.0%
Riboflavin	1.0± 0.5%
Fat	2.0± 1.0%
Lactose	55.0± 3.0%
Acidity (lactic acid)	8.0% max.

MNC 129 Feed Concentrate is classifiable under the provision for for edible preparations not specially provided for: other, other: in item 183.0520, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be broght to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 11 1985

REFER TO

CLA-2-01:S:COM:N2:229-1181
815282

Mr. Fred E. Casino
Sidele Ltd.
3352 Marquette Crescent
Vancouver, B.C. Canada V5S 4K4

Dear Mr. Casino:

In your letter dated Setember 3, 1985, you inquired about the dutiable status of Nestle Cream from Canada.

Nestle Cream is a thick liquid cream product to be imported in tins. The butterfat content of the product is 25 percent. This product is to be marketed for specific ethnic groups, namely; Philipinos, Chinese and Vietnamese. It is an edible food product to be used as a dessert topping or as an additive for salads.

Nestle Cream, with a butterfat content of 25 percent is classifiable under the provision for fluid milk and cream, fresh or sour, containing over 5.5 percent but not over 45 percent of butterfat, in item 115.2000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 12 cents per gallon.

Products classifiable in item 115.2000, TSUSA, are subject to import quotas established under Section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) in item 949.80, Appendix to the Tariff Schedules. The total annual quota quantity of 1,500,000 gallons is allocated to New Zealand. As there is no current quota allocation for this class of merchandise from Canada, this product may not be imported from Canada.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

OCT 11 1985

REFER TO
CLA-2-04:S:COM:N2:235-1182
815283

Ms. L.A. Cavorti, Sales Coordinator
Centerchem, Incorporated
660 White Plains Road
Tarrytown, NY 10591

Dear Ms. Cavorti:

In your letter dated September 3, 1985, you inquired about the dutiable status of various collagen mixtures from Spain.

According to the information contained in your inquiry these products will be used as ingredients in cosmetics.

Hyaluronidase is classifiable under the provisions for enzymes and ferments in item 437.4950, Tariff Schedules of the United States Annotated, and dutiable at the rate of 5 percent ad valorem.

Elastin, Collagen "P" and Collagen "S" are classifiable under the provision for mixtures of two or more organic compounds, in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component material. The components with the highest rate are nitrogenous compounds, classifiable under item 425.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 22 1985

[illegible]

Mr. Brandy R. Shorser
Staff Assistant Customs
Sears
National Headquarters
Sears Tower, Department 733A
Chicago, Il. 60684

Dear Mr. Shorser:

In your letter dated September 5, 1985, you inquired about the dutiable status of various accessories for the Teddy Ruxpin Toy Bear from Taiwan, Hong Kong, Korea, Macao and the Peoples Republic of China.

This classification request concerns the following accessories:

1. Flying Outfit
2. Hiking Outfit
3. Rain Outfit
4. Sleeping Outfit
5. Workout Outfit
6. Storybook
7. Pre-recorded animation cassette

Samples were submitted for the Flying Outfit, storybook and the pre-recorded animation cassette, and they will be returned to you as requested.

The Teddy Ruxpin Toy Bear is a battery operated 14 inch plush toy figure. In its operation, a specially designed pre-programmed animation cassette tape activates an electro-mechanical element incorporated in the figure resulting in the controlled movement and positioning of the eyes, nose and mouth of the figure. The tape component does not retain its individual identity because it is a specially programmed tape cassette, having not only an audio track but a second track programmed to activate animation. Its only practical use is in combination with the bear and its identity is subordinate to that of the combination.

The specially programmed animation cassette, when imported separately from the toy bear, is classifiable under the provision for parts of toys, in item 737.95, Tariff Schedules of the United States, and dutiable at the rate of 9.6 percent ad valorem. Articles classifiable under item 737.95, TSUS, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. Hong Kong and Taiwan are excepted from GSP status.

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It is your contention that the story book is classifiable under the provision for toy books, including coloring books and books the only reading matter in which consists of letters, numerals, or descriptive words in item 737.52. The provision is limited to books which contain letters or descriptive words. The storybook submitted for classification contains written materials which consists of lullabies and songs. The storybook is classifiable under the provision for books not specially provided for, wholly or in part the work of an author who is a national or domiciliary of the United States, in item 270.2560, TSUSA, and is duty free.

The outfits are specifically designed to be used with the Teddy Ruxpin Toy figure. The Flying Outfit consists of a red vest, jumpsuit, hood and a white scarf. The jumpsuit has a flap with velcro attachments on the back, measuring 4½ inches by 6 inches, which covers an opening measuring 3½ inches by 5 inches. The opening is utilized for easy access to the control panel on the toy figure. The hood has two cutouts for the bear's ears. The Hiking Outfit has a green vest, overalls, shirt with flap, cap with cutouts and shoes. The Rain Outfit comes with a yellow quilted raincoat, cap with cutouts and boots. The Sleeping Outfit consists of a red robe, footed pajamas with flap and a nightcap. The Workout Outfit has blue shorts and shirt, headband and shoes. The shirt has a slit situated in the back for access to the volume control panel on the bear. The flaps, slits and cutouts limit the use of the outfits to the Teddy Ruxpin bear.

All the outfits, when imported separately, are classifiable under the provision for other toys, in item 737.95, TSUS, and dutiable at the rate of 9.6 percent ad valorem. Articles classifiable under item 737.95, TSUS, are entitled to duty free treatment under the Generalized System Preferences (GSP) upon compliance with all applicable regulations. Hong Kong and Taiwan are exempted from GSP status.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Hartung
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 1 0 1985

REFER TO

CLA-2-04:S:COM:N2:236-1184

815297

Mr. Peter Felix, Consul
Consulate General of Switzerland
444 Madison Avenue
New York, NY 10022

Dear Mr. Felix:

In your letter dated September 4, 1985, you inquired about the dutiable status of 16 Woly products from Switzerland.

The following products, all in immediate containers under 10 pounds each and used for cleaning and polishing are classifiable under the provision for blacking, powders, liquids, and creams for polishing and cleaning , all the foregoing in immediate containers holding not over 10 pounds each in item 493.1000 Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 2.6 percent ad valorem:

Woly Fresh (Spray for Suede)	Woly Lido (bottle/applicator)
Woly Multi Combi (Spray)	Woly Leather Cream (jars/tubes)
Woly Cleaner (Spray)	Woly Fashion (Tube)
Woly Mousse (Spray)	Woly Dubbin Cream (metallic tin)
Woly Propi (Spray)	Woly Wax-Color (tin applicator)
Woly Lanol (plastic bottle)	Woly Gum Velours

However, your inquiry does not provide enough information for us to give a classification ruling on Woly 3 x 3 activ (impregnating spray), Woly Lido White Spray, Woly Stretch (Spray), and the Woly sponge. Your request for a classification ruling should include the following information:

On the Woly sponge, please supply sample and advise type of synthetic material. For the balance of the above please advise composition of each chemical component, by volume, expressed in chemical abstract service terminology.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815297

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N Y
NOV 15 1985

REFER TO

CLA-2-01:S:COM:N2:232-1178
815302

Mr. P.C. Hereld
The Hereld Organization
401 Christopher Ave. - Suite 11
Gaithersburg, MD 20879

Dear Mr. Hereld:

In your letter of August 22, 1985, which was received in this office on September 11, 1985, you requested the tariff classification of coconut sugar from Thailand. The inquiry is being made on behalf of your client Vermont Maple Products of Wilmington, Vermont.

According to the information you have submitted, coconut sugar is produced in a manner similar to that employed for maple syrup or sugar. The coconut palm tree is tapped in order to obtain the sap or juice. The sap is then concentrated by boiling in open kettles until it achieves a near solid consistency. While you have stated that it is your client's intention to market this product as candy, the submitted sample is a formless mass consisting of a very thick paste which is not characteristic of candy or confectionery in the United States.

Accordingly, coconut sugar is classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem. Although composed of sucrose, the current sugar quotas would not apply since they only pertain to cane or beet sugar or products which contain cane or beet sugar.

Articles classifiable under item 183.0520, TSUS, which are the products of Thailand are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported.

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PUBLIC _____

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If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815302

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 01 1985

REFER TO

CLA-2-07:S:COM:N3H:354-1454
815320

Mr. Stephen M. Zelman
Siegel, Mandell & Davidson, P.C.
Counselors at Law
One Whitehall Street
New York, NY 10004

Dear Mr. Zelman:

Your letter of September 6, 1985, on behalf of New York Glove Co., Inc., requested a clarification of ruling 814377, dated August 22, 1985.

The subject gloves in ruling 814377 consisted of knit acrylic shells with vinyl palms and backs. The gloves were ornamented with decorative stitching.

In our ruling to you, we indicated that if the gloves were in chief value of vinyl, they were classifiable in item 705.8300, TSUSA. If in chief value of textile, they were classifiable in item 704.3240, TSUSA.

There are two issues that you would like clarified. The first one relates to whether the cost of the vinyl back is disregarded when determining chief value. The second issue raises the question as to whether the cost of the decorative stitching is attributed to the vinyl or the textile portions. Legal Determination 83.0024 is cited.

Schedule 3, Headnote 3(c), states that applique work, beads, bugles, spangles, bullions, and other forms of nontextile ornamentation applied to a textile fabric or other article of textile materials shall be disregarded in determining the component material of chief value of such fabric or other article.

The samples submitted in ruling 814377 did not contain nontextile applique work. Therefore, when determining the component material in chief value, the cost of the vinyl back is not disregarded.

With reference to the allocation costs of the decorative stitching, Customs has held that the cost of stitching the decoration onto the vinyl is attributed to the vinyl.

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In view of the above, the samples submitted in ruling 814377, when in chief value of vinyl, are classifiable in item 705.8300, Tariff Schedules of the United States Annotated (TSUSA). When in chief value of textile, they are classifiable in item 704.3240, TSUSA.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

815320

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F5

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.

OCT 1 t 1985

REFER TO

CLA-2-04:S:COM:N2:235-1186
815323

Mr. M. Govani
Rachna Enterprises
P.O. Box 5066
Parisippany, NJ 07054

Dear Mr. Govani:

In your letter of September 9, 1985, you requested the tariff classification of various chemicals from India.

None of the chemicals for which you have requested rulings are subject to countervailing duties. The tariff classification and duties applicable to these products are listed below.

Terbutaline sulfate	411.9800	8.3 percent ad valorem
Quinine sulfate	437.0820	Free
Quinine hydrochloride	437.0820	Free
Trimethoprin	411.90	8.2 percent ad valorem
*Sulfamethoxazol	411.82	14.9 percent ad valorem
Dimenhydrinate	411.55	12.7 percent ad valorem
Mebendazole	411.93	10.9 percent ad valorem
*Berberine hydrochloride	437.2080	4.0 percent ad valorem
*Ammonium chloride	417.2600	3.1 percent ad valorem
*Ammonium sulfate	417.3800	3.3 percent ad valorem
*Ammonium ferrous sulfate	417.4540	3.3 percent ad valorem
Ferrous sulfate (Courser than 325 mesh)	418.9200	Free
*Ferrous sulfate (325 mesh or finer)	473.8820	3.3 percent ad valorem
*Nickle nitrate	419.7600	4.0 percent ad valorem
Magnesium sulfate	419.3600	Free
*Sodium nitrate (98% pure)	421.6280	4.0 percent ad valorem
Sodium nitrate (less than 98% pure)	480.2500	Free
*Zinc chloride	422.7200	1.7 percent ad valorem
*Zinc nitrate	422.7800	4.0 percent ad valorem

All items identified with an asterisk, which are the products of India are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

F6

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roy H. Dewing

for John J. Martuge
Area Director
New York Seaport

815323

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F1

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
OCT 11 1985

REFER TO

CLA-2-04:S:COM:N2:235-1191
815333

Mr. M. Ornstein, Product Manager
Afrimet-Indussa, Incorporated
1212 Avenue of the Americas
New York, NY 10036

Dear Mr. Ornstein:

In your letter dated September 3, 1985, you inquired about the dutiable status of Antifume 1030 from Belgium.

According to your inquiry antifume 1030 has flame retarding properties.

Antifume 1030 is classifiable under the provision for mixtures of two or more inorganic compounds in item 423.96, Tariff Schedules of the United States, and dutiable at the rate of 1.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

F8

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N Y

OCT 22 1985

REFER TO

CLA-2-07:S:COM:N3G:346-1463
815338

Ian Sanderson
Marco Polo
10124 McDonald Park Road
Sidney, B.C. V8L 3X9
Canada

Dear Mr. Sanderson:

In your letter dated September 3, 1985, you inquired about the dutiable status of a molded rubber surf shoe from West Germany or Italy.

You state that you will purchase the shoe from a supplier in West Germany. However, the shoe is marked "Made in Italy".

The shoe is molded in a two step process. The dark blue outsole and sidewalls are molded in one step, and the turquoise upper and sock are molded in another step.

You state the Customs value of the shoe is under $3.

There are 4 holes in the upper which are 1/4 inch in diameter a little above where the foot rests.

Your sample, marked "Aqua Rapid", is classifiable under the provision for footwear; which is over 50% by weight of rubber; which has a rubber foxing-like band molded at the sole and overlapping the upper; and which is not protective against water, chemicals, or cold or inclement weather, in item 700.64, Tariff Schedules of the United States, and dutiable at the rate of 48 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge
John J. Martuge
Area Director
New York Seaport

F9

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 16 1985

REFER TO

CLA-2-04:S:CON:N2:238-1198
815344

Mr. John Pinna
Sales Manager
Roussel Corporation
155 East 44th Street
New York, NY 10017

Dear Mr. Pinna:

In your letter dated September 9, 1985, you inquired about the dutiable status of "Lunbeck's" bacitracin and zinc bacitracin from Denmark.

You stated that "Lunbecks" bactracin and zinc bacitracin are fermentation products that employ no benzenoid chemicals in their manufacture. It is your opinion that both products are natural antibiotics that are not artifically mixed and are classifiable in item 437.3000, Tariff Schedules of the United States Annotated (TSUSA). The flow chart and text submitted with your inquiry indicate that bacitracin is a natural antibiotic, not artificially mixed. The zinc bactitracin is made synthetically by reacting bacitracin with a zinc salt (typically zinc chloride).

"Lunbeck's" bacitracin is classifiable under the provision for non-benzenoid antibiotics, not artificially mixed in item 437.3000 (TSUSA), and dutiable at the rate of 1.9 percent ad valorem.

"Lunbeck's" zinc bacitracin is classifiable under the provision for non-benzenoid antibiotics, other in item 437.3250 (TSUSA), and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Products of this type may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

Sincerely,

John J. Hartuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 1 6 1985

REFER TO

CLA-2-03:S:COM:N3G:341-1466
815354

Mr. Robert J. Lipsitz
Kalimar, Inc.
622 Goddard Avenue
Chesterfield, Missouri 63017-1193

Dear Mr. Lipsitz:

Your letter of September 6, 1985 requested this office to rule upon the tariff classification of several photographic equipment bags from Korea.

You have provided five samples with your request. Two represent your series of Aires Custom bags, two your Aires Commander bags, and one is a bag for a disc camera. Each series consists of one styling which you plan to import in three colors of nylon oxford - silver, blue, and black - and in black polyurethane. The disc camera bag is said to be constructed of a linen material and will be imported in both blue and black. You have given individual style numbers to each color of the styling groups.

The Aires Custom and Aires Commander series are cushioned gadget bags used to carry cameras and other photographic equipment. The bags have one or more of the following features: exterior zippered pockets, adjustable shoulder straps, top zipper closures, and movable dividers within the main compartment to create storage sections according to size needs. Each of the disc camera bags has a top zipper closure, exterior pouch, and a swagger handle.

All of the nylon textile bags and the two linen disc camera bags have visibly braided coverings over extruded plastic pipings. The braid serves to clearly define side panels, end panels, and top flaps and, in our opinion, represents a significant use of braid.

The polyurethane bags identified as styles K-2125 and K-2132 are classifiable under the provision for luggage of other material, in item 706.6245, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 20 percent ad valorem.

The nylon textile bags identified as styles K-2121, K-2122, K-2124, K-2128, K-2129, and K-2131, as well as the linen bags identified as styles K-4000 and K-4001, when the linen is in chief value of textile materials other than cotton or abaca, are classifiable under the provision for luggage of textile materials, whether or not ornamented, wholly or in part of braid, in item 706.3420, TSUSA. The rate of duty is 11.6 percent ad valorem.

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An article classifiable in item 706.3420, TSUSA, falls within textile category designation 670. As a product of Korea, this merchandise is not currently subject to any visa or quota restraints based upon international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

With respect to the balance of the bags listed, your inquiry does not provide enough information for us to issue a tariff classification ruling. Your request should include representative samples of each style and component material value breakdowns in U.S. dollars.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Your samples are being returned as requested.

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

815354

F12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 17 1985

REFER TO

CLA-2-07:S:COM:N3G:344-1477
815380

Mr. Mario F. Vivado
Woodside Management Systems, Inc.
131 Tremont Street
Boston, MA 02111

Dear Mr. Vivado:

In your letter of September 10, 1985, you asked about the dutiable status of gold jewelry from Bolivia.

The articles to be imported are 18-karat gold bracelets, earrings and necklaces, hand-made in Bolivia. You state that the jewelry will be "unset"; that is, not set with precious or semiprecious stones.

The 18K gold bracelets, earrings and other 18K gold jewelry articles (other than necklaces and neck chains) are classifiable under the provision for jewelry and other objects of personal adornment, of precious metals, in item 740.14, Tariff Schedules of the United States (TSUS), and are dutiable at the rate of 7.9 percent ad valorem.

The 18K gold necklaces are classifiable under the provision for jewelry and other objects of personal adornment... of precious metals: necklaces and neck chains, almost wholly of gold, in item 740.11, 740.12 or 740.13, TSUS, depending on the type of link.

Rope necklaces and neck chains are classifiable in item 740.11.

Mixed link necklaces and neck chains are classifiable in item 740.12. The term "mixed link" refers to a chain composed of two or more styles or types of link.

Necklaces and neck chains made of other link construction -- for example, cobra, herringbone -- are classifiable in item 740.13.

The rate of duty for items 740.11, 740.12 and 740.13 is 7.9 percent ad valorem.

Articles classifiable under item 740.11, 740.12, 740.13 and 740.14, TSUS, which are the products of Bolivia are entitled to duty-free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

F13

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815380

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

F14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 16 1985

REFER TO
CLA-2-04:S:COM:N2:238-1217
815385

Dr. Simon M. Carroll
2193 Oakdale Road
Cleveland Heights, Ohio 44118

Dear Dr. Carroll:

In your letter dated September 11, 1985, you inquired about the dutiable status of biological materials from France.

The products are to be used in the manufacture of cheese and are described as follows: Penicillium Candidum spores in both lyophilized state and Hyptonic (R) support medium, together with P glaucum spores. You also inquired about Mesophilic Streptococcus SPP "starter" cultures in the lyophilized state.

The Penicillium candidum spores in both forms and the Mesophilic Streptococcus SPP starter cultures in a lyophilized state are classifiable under the provision for ferments, other in item 437.4980, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

These products are subject to the regulations of the Department of Agriculture, Animal, Plant, Health Inspection Service. You may contact them at the Federal Building, Hyattsville, Md. 20782, telephone number (301) 436-7633.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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REPLY TO AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 05 1985

REFER TO

CLA-2-04:S:COM:N2:236-1222
815407

Mr. Kenneth G. Flynn
KVK USA, Inc.
19A Home News Row
New Brunswick, New Jersey 08901

Dear Mr. Flynn:

In your letter dated September 10, 1985, you inquired about the dutiable status of Predisol TR-CAB 602 from Denmark.

A sample of Predisol TR-CAB, 602 lot 0560611 was tested by the United States Customs Laboratory. The sample was reported out as friable dark red flakes and powders, composed essentially of a non-benzenoid synthetic plastics material and synthetic-iron oxide. The importer has advised Customs that this material is used in coatings used for painting automobiles.

Predisol TR-CAB 602 is classifiable under the provision for synthetic iron oxides and iron hydroxides in item 473.3020, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
OCT 1 : 1985

REFER TO

CLA-2-04:S:COM:N2:235-1225
815448

Mrs. W.I. Belsey, Purchasing Agent
Air Products Limited
Hersham Place, Molesey Road
Walton-on-Thames, Surrey KT12 4RZ England

Dear Mrs. Belsey:

In your letter dated September 6, 1985, you inquired about the dutiable status of silane from England.

Silane is classifiable under the provision for inorganic compounds, other in item 423.00, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

63

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 08 1985

REFER TO

CLA-2-04:S:COM:N2:239-1235
815449

Kettlitz-Chemie GmbH & Co. KG
Postfach 80
D8859 Rennertshofen, West Germany

Dear Sirs:

In your letter dated September 3, 1985, you inquired about the dutiable status of five chemical products for the rubber industry from West Germany.

Dispergator FL containing calcium stearate, silica and fatty acid esters, is classifiable as a mixture not specially provided for in item 432.2500, Tariff Schedules of the Untied States Annotated (TSUSA), and is dutiable at the rate of 4 percent ad valorem but not less than the highest rate applicable to any component material. When the calcium stearate contained in Dispergator FL is derived from linseed oil it is classifiable in item 490.4400, TSUSA and is dutiable at the rate of 7.4 percent ad valorem. When the calcium stearate is derived from animal sources it is classifiable in item 490.3200, TSUSA, and is dutiable at the rate of 4.7 percent ad valorem. When the calcium stearate is derived from hempseed, kapok, perilla, rapeseed, sesame or sunflower oil it is classifiable in item 490.4600, TSUSA, and is dutiable at the rate of 4.4 percent ad valorem.

Dispergator KB is a mixture of hydrocarbons, silica, waxes and stearic acid. Dispergator OX is a mixture of hydrocarbons, fatty acids, silica and zinc stearate. Kezadol GR is a mixture of calcium oxide and hydrocarbons. These three products are classified under the provision for mixtures in whole or in part of any of the products provided for in Schedule 4, part 1, subpart B, TSUSA, in item 407.1610. The rate of duty is 1.7¢ per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. Based on the alkyl benzene content in the hydrocarbon portion of the mixtures the rate of duty would be 0.8 cent per pound plus 17.3 percent ad valorem from item 402.3600, TSUSA.

With regard to these four products, this is a ruling issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

With regard to the product called Mediaplast WH/P, your inquiry does not furnish enough information for us to give a classification ruling. Your request should include the correct Chemical Abstracts Service name and number for the resin component of that product.

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815449

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.

OCT 15 1985

REFER TO

CLA-2-04:S:COM:N2:235-1225
815450

Mr. W.J. Phelan
Donahue & Donahue, Counselors At Law
26 Broadway
New York, NY 10004

Dear Mr. Phelan:

In your letter dated September 17, 1985, you inquired on behalf of your client, Tenneco Paper Chemicals of Canada, about the dutiable status of Malros NL70 and Malros NL77 from Canada.

According to your inquiry there products will be used to size paper against liquid penetration.

Malros NL 70 and Malros NL 77 are classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate is unneutralized tall oil rosin classifiable under item 188.50, Tariff Schedules of the United States, and dutiable at the rate of 5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
OCT 15 1985

REFER TO
CLA-2-04:S:COM:N2:235-1227
815451

DI. Graef and Dr. Plank
SKW Trostberg Aktiengesellschaft
Postfach 1150/1160
D-8223 Trostberg, West Germany

Dear DI. Graef and Dr. Plank:

In your letter dated September 10, 1985, you inquired about the dutiable status of a thickening agent from West Germany.

According to your inquiry these products are chemically modified polysaccharides.

Guar gum 2 hydroxethyl ether, guar gum 2 hydroxypropyl ether or guar gum 2 hydroxyproply ether, depolymerized are classifiable under the provision for ethers of polyhydric alcohols, other in item 428.47, Tariff Schedules of the United States, and dutiable at the rate of 12.3 percent ad valorem.

Mixtures of any of these compounds would be classifiable under the provision for mixtures of two or more organic compounds in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate would be any of the above guar gum compounds which are classifiable under item 428.47, Tariff Schedules of the United States, and dutiable at the rate of 12.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 13 1985

REFER TO

CLA-2-04:S:COM:N2:240-1243
815470

Mr. G. T. Marsh
BASF Systems Corporation
Crosby Drive
Bedford, MA 01730-1471

Dear Mr. Marsh:

In your letter dated September 20, 1985, you inquired about the dutiable status of five chemical products, namely Robane, Uniwax, Duomeen TDO, Pioloform FN-50 and Zinc Stearate from West Germany.

Robane, a clear colorless liquid, is squalane, a non-benzenoid hydrocarbon derived from animal sources. It is classifiable under the provision for hydrocarbons other,in item 429.5620, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 4 percent ad valorem.

Uniwax, a white granular powder, is stearylamide, a fatty acid amide. This product is classifiable under the provision for fatty substances of animal or vegetable origin: not sulfonated or sulfated: fatty-acid amides, amines, and quaternary ammonium salts. When derived from coconut, palm-kernel or palm oil, it is classifiable in item 465.1500, TSUSA, dutiable at 1.1 cents per pound, plus 5.3 percent ad valorem. When derived from other sources, the Uniwax is classifiable in item 465.2020, TSUSA, dutiable at the rate of 1.2 cents per pound, plus 5.3 percent ad valorem.

Duomeen TDO, an amber grease, is a fatty amine, derived from animal sources. It is classifiable under the provision for fatty substances of animal or vegetable origin: not sulfonated or sulfated: fatty-acid amides, amines, and quaternary ammonium salts, other, in item 465.2020, TSUS, dutiable at the rate of 1.2 cents per pound, plus 5.3 percent ad valorem.

Pioloform FN-50, a tan granular solid, is not polyvinyl formal, as indicated in your correspondence. It is a terpolymer of vinyl formal, vinyl acetate and vinyl alcohol. It is classifiable under the provision for synthetic plastics material, vinyl resins, polyvinyl acetate and vinyl resins containing by weight 50 percent or more of derivatives of vinyl acetate, other, in item 445.4400, TSUSA. The rate of duty is 4 percent ad valorem.

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Zinc stearate, a white powder, is classifiable under the provision for fatty substances, not sulfonated or sulfated, and not specially provided for, salts, of animal origin, other, in item 490.3200, TSUSA, dutiable at the rate of 4.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815470

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

69

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 24 1985

REFER TO

CLA-2-07:E:CCM:N:123-117
819471

Mr. John Sveum
W.Y. Moberly, Inc.
Box 164
Sweetgrass, MT 59484

Dear Mr. Sveum:

In your letter dated September 11, 1985, on behalf of your client GPA International, you inquired about the dutiable status of an "Oil Patch Kids" package.

A sample was submitted with your inquiry. The "Oil Patch Kids" is a package consisting of a small stuffed doll, a stuffed oil drop, a well license and a plastic miniature oil drum. The doll and oil drop are manufactured in Hong Kong while the plastic oil drum is manufactured in Canada.

The doll, called the "Oil Patch Kids", measures approximately 10 inches in length and has a stuffed textile body, plastic head and black yarn hair. The doll is wearing yellow fabric overalls with a gold plastic hat. The stuffed oil drop, called the "Patch Pet", measuring 3 inches in length, is made of black velvet with yellow felt feet and plastic eyes. The plastic oil can, measuring 8 inches in height and 5 inches in diameter, is made of clear gray plastic and has a removable lid. The well license is a yellow piece of paper measuring 8¼ inches by 5¼ inches.

Your contention is that the package is correctly classified as an entirety in item 737.23, under the provision for stuffed dolls. We disagree, the articles are separately classifiable. It is a well established principle of Customs law that to constitute an entirety for tariff purposes a combination of two or more articles must be so joined together or merged that the whole creates a new and different article with a new name and use. The doll, oil drop and plastic container in issue are separate entities, individually identifiable. That they are sold as a unit and are obviously intended to be used together are not criteria for their tariff classification as an entity. The items in issue, when used together, retain their separate entities, and each performs its separate function without the loss of any its essential characteristics. However, the oil well license would not be considered a commercial entity, since the value of the sheet is incidental to the entire package.

The "Oil Patch Kids" doll and oil well license are classifiable under the provision for stuffed dolls in item 737.2300, Tariff Schedules of the United States Annotated, and dutiable at the the rate of 13.4 percent ad valorem. Articles classifiable under item 737.2300, TSUSA, are subject to the provisions of item 912.3000, TSUSA, under which the merchandise will be free of duty if entered on or before December 31, 1985.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

The "Patch Pet" oil drop is classifiable under the provision for other toys in item 737.9505, TSUSA, and dutiable at the rate of 9.2 percent ad valorem.

The plastic miniature oil drum is classifiable under the provision for household articles not specially provided for of rubber or plastics in item 772.1500, TSUSA, and dutiable at the rate of 4.7 percent ad valorem.

You also attached copyright documents and trademark applications. Your copyright documents are registered with the Copyright Office in Canada, however, in order to be afforded copyright protection in the U.S., they must be registered with the U.S. Customs Service.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for Roy K. Dewsnap

John J. Hartnett
Area Director
New York Seaport

615471

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

611

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 13 1985

REFER TO

CLA-2-01:S:COM:N2:232-1259
815493

Mr. Oded Amir
Steiner Representations, Inc.
3510 Biscayne Boulevard
Miami, Florida 33137

Dear Mr. Amir:

In your letter dated September 12, 1985, you inquired about the dutiable status of frozen orange juice concentrate from Brazil.

According to your submitted analysis the frozen orange juice concentrate has a Brix value of 65 degrees. The concentrate will be imported by your firm in drums and will be reconstituted and repacked by another firm in the United States.

Frozen concentrated orange juice is classifiable under the provision for fruit juices, concentrated, whether or not sweetened, not containing over 1.0 percent of ethyl alcohol by volume, orange, other, in item 165.2900, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 35 cents per gallon. According to Schedule 1, Part 12A, Headnote 3(a), TSUSA, the term gallon for duty purposes means a gallon of natural unconcentrated juice or gallon of reconstituted juice.

The final repacked product of orange juice containing foreign concentrate must be marked with the country of origin of the imported concentrate. In accordance with Customs Regulations (19 CFR 134.25), you are required to certify to Customs that the retail packages of orange juice will be properly marked and that you will notify the repacker of the marking requirements.

With respect to your request for further general information on the binding ruling procedures, we are enclosing a copy of the pertinent pages in the Customs Regulations (19 C.F.R. 177.1 and 177.2).

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

Enclosure

815493

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

613

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 13 1985

REFER TO

CLA-2-01:S:COM:N2:232-1264
815506

Mr. Martin Friedman
Beverly Hills Beverage Company
9440 Santa Monica Blvd, Suite 800
Beverly Hills, CA 90210

Dear Mr. Friedman:

In your letter dated August 14, 1985, which was received in our office on September 24, 1985, you inquired about the dutiable status of a beer drink from France.

In a telephone conversation with National Import Specialist Walter Springer, you explained that the beverage is produced by mixing ordinary beer with fruit juice. The drink will contain one percent alcohol by volume. It will be imported in bottles or cans.

The beer drink is classifiable under the provision for other fermented alcoholic beverages in item 167.5000, Tariff Schedules of the United States Annotated, and dutiable at the rate of 25 cents per gallon. In addition to the import duty, the beer drink is subject to a Federal Excise Tax (26 U.S.C. 5051) of $9 per barrel of 31 gallons, and at a like rate for any other quantity or for fractional parts of a barrel.

A Federal license is required in order to import this product. Licenses and information on labelling may be obtained from the Bureau of Alcohol, Tobacco, and Firearms, located at 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20226. In addition, the appropriate liquor authority in your state should be contacted for their requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
New York Seaport
Area Director

G14

THIS DOCUMENT MAY BE RELEASED TO ....
PUBLIC ——

OCT 5 1976

DRA-1-09-R:CD:D T
206455

206455

[redacted]

Re: [redacted]

Dear [redacted]

This is in further reference to the above-captioned company's application for a rate of drawback on butterfly wing assemblies (needles) manufactured under the provisions of title 19, United States Code, section 1313(b), with the use of cannula (needles), and correspondence relative thereto.

In your letter dated June 11, 1976, you have requested that drawback be allowed under the authorization requested on exportations made on and after August 1, 1973, although the application for drawback was not received by the Regional Commissioner of Customs, Chicago, Illinois, until January 21, 1975. Section 22.4(n) of the Customs Regulations provides:

> In no case shall drawback be allowed on articles which were exported before the date of receipt by the collector or deputy collector of the application which resulted in the preparation of the statement on which the rate or collector's letter of approval was based.

In view of the foregoing provisions of the regulations and of the fact that the application was not received by the Regional Commissioner at Chicago, Illinois, until January 21, 1975, the U.S. Customs Service must deny the manufacturer's request with respect to exportation of products before that date.

Sincerely yours,

[redacted]

(Signed) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

A3

PRECEDENT

APR 27 1977

DRA-1-R:CD:D JL
207606

207606

[redacted]

Reference: Request for ruling dated March 29, 1977, regarding effective date of exportation for drawback claimants

Dear [redacted]

You ask in the above referenced request for ruling whether the fact that a drawback claimant has an established rate of drawback would permit him to use the date of filing of his first application as the base date for exportation in all subsequently-issued rates of drawback. You ask this question in the context of the drawback committee's understanding that Headquarters, U. S. Customs Service, now prefers, whenever possible, to issue new rates of drawback rather than amendments to existing rates held by manufacturers.

Initially, we would like to point out that your understanding is correct in that Headquarters prefers to treat applications for amendment of existing drawback rates, when appropriate, separately from existing rates and, in fact, has for some time been requiring that a complete drawback statement be submitted before the rate is approved, rather than the abbreviated statement previously required. As you know, section 22.4(n), Customs Regulations, states that drawback shall not be allowed on articles which were exported before the date of receipt by the collector or deputy collector (now district director) of the application which resulted in the preparation of the statement on which the rate or collector's letter of approval was based. Section 22.4(o) provides that when a manufacturer in whose behalf a rate of drawback has been established desires to have his rate amended to cover additional factories, to permit the use of other kinds of imported duty paid merchandise or drawback products, to provide for a different basis for liquidation of drawback entries, or to cover different methods of identification or manufacture, or other changes, he shall file an application with Headquarters, the regional commissioner, district director, or port director of Customs, as may be appropriate. It is also provided therein that no drawback

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[redacted]

shall be allowed on articles exported before the date on which the application was received by the appropriate officer unless specifically authorized by Headquarters, or by the regional commissioner in cases within the provisions of section 22.6, or as set out in section 22.4(o).

As can be seen from the above, the effective dates of amendments to rates of drawback may under the authority of section 22.4(o), Customs Regulations, be made effective as of a date prior to the receipt of the application for amendment. For that reason, Headquarters has held for a number of years that when a rate could have been issued as an amendment to an existing rate of drawback, the effective dates of the new rate may antedate the receipt of the application when the company so requests, or when Headquarters concluded that it would be preferable to issue a new drawback rate based on the manufacturer's statement. A brief glance at Headquarters records indicates that this policy has been in effect for more than 18 years.

We find that in requiring the completion of a new drawback statement by manufacturers in those instances involving applications covering all but what would have been the most rudimentary request for an amendment such as change of factory, change of company name, etc., the cumbersome task of reciting and reaffirming all previously issued rates of drawback in the opening part of the drawback statement is eliminated. Further, the statement submitted is in conformance with the latest provisions of the Customs Regulations and the approved statement format regarding records to be kept, etc. As you are well aware, many companies have drawback rates in effect for many years involving numerous amendments, changes of company name, changes of processes, and so forth. Previously, it was necessary for the drawback liquidator to begin with the first rate issued to the company and follow all rates issued pertinent to the amendment in order to obtain a clear picture of the background necessary to liquidate claims under the most recent amendment. The same procedure would be necessary for the audit personnel performing claims verifications and for Headquarters attorneys handling drawback cases. This procedure of repeatedly amending existing rates also led to large and cumbersome case files in Headquarters and at the regional level. We find that the new procedure has greatly alleviated these problems.

To answer your question then, manufacturers or producers in whose behalf a rate of drawback is in existence may have the effective date of a new rate of drawback antedate the receipt of the application for an amendment, provided the rate could have been issued as an amendment under section 22.4(o), Customs Regulations.

Sincerely yours,

George C. Steuart

AS

[redacted]

J. F. Tebeau
Director
Carriers, Drawback and Bonds Division

CODE AND DATE						
SURNAME						
CODE AND DATE						
SURNAME						

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.
DEC 23 1985

REFER TO

CLA-2-01:S:COM:N1:232-1269
815520

Mr. N. M. Williams
Rimark Soft Drinks Ltd.
Denington Estate, Wellingborough
Northants, NN8 2QJ England

Dear Mr. Williams:

In your letter dated September 20, 1985, you inquired about the dutiable status of five concentrated fruit drink products from England.

According to samples submitted by you, the products consist of St. Clements Orange Squash, Lemon Squash, Lime Juice Cordial, Orange Barleywater and Lemon Barleywater. The first three products contain water, 37 percent juice, sugar, malic acid, preservatives and flavorings. The other products contain water, sugar, 22½ percent juice, barley flour, citric acid, flavorings, stabilizers and preservatives. All products must be diluted with water prior to being consumed as a beverage.

An analysis of the samples was made by the Customs Laboratory. Based on the results these products are determined not to be fruit juices or flavored syrups. In addition, these products are not fit for use as beverages in their condition as imported.

The St. Clements concentrated fruit drink products are classifiable under the provision for other edible preparations not specially provided for, in item 183.0520, Tariff Schedules of the United States Annotated, and dutiable at the rate of 10 percent ad valorem. This rate will remain the same in 1986. Products such as these are not currently subject to any import quotas or similar restrictions.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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REPLY TO AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 16 1985

REFER TO
CLA-2-04:S:COM:N2:238-1268
815521

Dr. Jan C. Meneley
Director
Microbial Resources
507 Lambeth Place
Newark, Delaware 19711

Dear Dr. Meneley:

In your letter dated September 16, 1985, you inquired about the dutiable status of "Biobit" and "Skeetal" from England.

"Biobit" and "Skeetal" are living bacterial formulations made by fermentation. They are natural toxins that function as pesticides and they will be imported in flowable concentrate form.

"Biobit" is composed of 15 percent Bacillus thuringiensis Berliner VAR. Kurastaki, primary powder fermentation product and 85 percent inert ingredients. "Biobit" is a stomach poison and has highly specific activity against lepidopterous caterpillars. "Skeetal" is composed of 15 percent Bacillus thuringiensis israelensis (H14) and 85 percent inert ingredients. "Skeetal" is a larvicide dependent upon the presence of a selective natural toxin which when eaten by the mosquito or blackfly breaks down in the insects gut causing paralysis and death within 4-8 hours.

"Biobit" and "Skeetal" are classifiable under the provision for toxins in item 437.7600, Tariff Schedules of the United States Annotated (TSUSA), are free of duty.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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These products may be subject to the regulations of the following government agencies.

The Department of Agriculture
A.P.H.I.S.
Federal Building
Hyattsville, Md. 20782
Telephone number(301) 436-7633

or

The Environmental Protection Agency
Office of Pesticides and Toxic Substances
401 M Street
Washington, D.C. 20460
Telephone number(800) 424-9085

Sincerely,

for John J. Martuge
Area Director
New York Seaport

A155521

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 24 1985

REFER TO

CLA-2-01:S:CON:N2:228-1273

815529

Mr. Svend A. Koch
Swen Baking Institute Ltd.
#2-1064 C Austin Avenue
Coquit Lane, B.C., Canada V3K 3P3

Dear Mr. Koch:

In your letter dated September 3, 1985, you inquired about the dutiable status of, Conditor Buttercream from Canada.

The product, Conditor Buttercream, a birthday cake icing, is composed, by weight, of the following ingredients:

Vegetable Oil	60 per cent
Sugar	23 per cent
Water	15.3 per cent
Milk Powder	1 per cent
Salt	0.5 per cent
Mono and Diglcerides	0.2 per cent
Flavor	0.01 per cent
Beta-Caroten	0.001 per cent

The birthday cake icing, intended for use by the commercial baking industry, will imported in cases containing two 5.5 kilogram size sticks. These sticks, with the consistency of margarine, are to be left at room temperature for 24 hours prior to use. The icing is to be whipped at high speed until the desired consistency is achieved. It is then ready for use and can either be applied to a baked product or stored at a refrigerated temperature for future use.

The birthday cake icing is classifiable under the provision for edible preparations, not specially provided for in item 183.0520, Tariff Schedules of the United States (Annotated) TSUSA, and dutiable at the rate of 10 percent ad valorem. Ordinarily, products classifiable under this provision, which contain cane or beet sugar and are not prepared for sale at retail in the condition as imported, are subject to import quotas under a variety of recently enacted tariff provisions. However, Presidential Proclamation 5340 of May 17, 1985 specifically exempted a number of specialty products from these restrictions including cake decorations and similar products to be used in the same condition as imported with any further processing other than the direct application to individual pastries or confections.

A9

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

Accordingly, this birthday cake icing is not subject to import quotas or restrictions at this time.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Loyk. Durung

John J. Martuge
Area Director
New York Seaport

815529

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 25 1985

REFER TO

CLA-2-07:S:COM:N3G:341-1537
815532

Mr. Danial Rainer
Director International Trade Affairs
Hasbro Industries, Inc.
41 Madison Avenue
New York, NY 10010

Dear Mr. Rainer:

In your letter dated September 23, 1985, you inquired about the dutiable status of item #4595, a quilted textile shoulder bag from Hong Kong.

The sample bag is described as being intended to be a doll's diaper bag. It is said to be made of a fabric which is of cotton and man-made fiber and probably in chief value of man-made fiber. The bag is a shoulder bag which measures 12 inches x 9 inches x 3 inches. Its exterior is quilted. The flap is closed by means of a velcro closure and it can be used as a changing pad. There is a "Real Baby" motif sewn to the flap.

Item 4595 is classifiable under the provision for handbags, of other textile materials, other, in item 706.4140, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 20 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

A11

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N Y

NOV 15 1985

REFER TO

CLA-2-04:S:COM:N2:240-1281
815553

Ms. L. Cavorti
Centerchem, Inc.
660 White Plains Rd.
Tarrytown, New York 10591

Dear Ms. Cavorti:

Your letter of July 8, 1985, received in this office September 30, 1985, concerns the dutiable status of Isopal, OH-Isostearyl and Surgrassante 22584 from Spain.

The analysis of Isopal by our laboratory indicates that it is isostearyl palmitate. Isopal is classifiable under the provision for fatty substances, not sulfonated or sulfated, and not specially provided for, esters. When derived from animal sources, it is classifiable in item 490.9000, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 4.2 percent ad valorem; when derived from coconut, palm-kernel, or palm oil, it is classifiable in item 490.9200, TSUSA, dutiable at 4 percent ad valorem, and when derived from other sources, it is classifiable in item 490.9400, TSUSA, other, with a rate of duty of 4 percent ad valorem.

Surgrassante 22584 is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be polypropylene glycol ether of lanolin alcohol classifiable under item 428.4780, TSUSA, and dutiable at the rate of 12.3 percent ad valorem.

OH-Isostearyl has been analyzed by our laboratory as isostearyl lactate, a non-benzenoid ester of a monohydric alcohol, other. If this product is pertroleum-derived, it is classifiable under the provision for esters of monohydric alcohols and organic or inorganic acids (except hydrogen sulfide and hydrogen halide acids), in item 428.7250, TSUSA, dutiable at the rate of 4 percent ad valorem.

When the OH-Isostearyl is derived from animal, vegetable or from other sources, it is classifiable under the provision for fatty substances, not sulfonated or sulfated, and not specially provided for, esters. When derived from animal, including marine animal, it is classifiable in item 490.9000, TSUSA, dutiable at 4.2 percent ad valorem.

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When the OH-Isostearyl is derived from coconut, palm-kernel or palm oil, it is classifiable in item 490.9200, TSUSA, at the rate of 4 percent ad valorem. And when derived from other sources, it is classifiable in item 490.9400, TSUS, dutiable at 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

A15553

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 15 1985

REFER TO

CLA-2-04:S:COM:N2:235-1282
815554

Ms. L. Cavorti, Traffic Department
Centerchem, Incorporated
660 White Plains Road
Tarrytown, NY 10591

Dear Ms. Cavorti:

In your letter dated July 8, 1985, received on September 30, 1985, you inquired about the dutiable status of various collagen products to be used in the manufacture of cosmetics from Spain.

According to your inquiry you submitted documentation and samples for four products. We have received only two, Elastovit and Nutroderm DL.

Based on our analysis Elastovit and Nutroderm DL are aqueous solutions of a mixture of polypeptides and are classifiable under the provision for mixtures of two or more organic compounds in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component compound. The highest rate applicable is for nitrogenous compounds classifiable under the provision for nitrogenous compounds, other in item 425.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem.

However, your inquiry does not provide enough information for us to give a classification ruling on NMF/Z1 and PCA Arginine. Your request for a classification ruling should include the chemical name of each product. If a mixture, give the chemical name of each compound in the mixture, the percentage and use in the product. When giving the chemical name please use the Chemical Abstract Service name for each chemical compound.

With respect to Elastovit and Nutroderm DL, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815554

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

B1

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 1 8 1985

REFER TO

CLA-2-04:S:COM:N2:235-1283
815556

Ms. L. Cavorti, Traffic Department
Centerchem, Incorporated
660 White Plains Road
Tarrytown, NY 10591

Dear Ms. Cavorti:

In your letter dated July 8, 1985 received on September 30, 1985, you inquired about the dutiable status of various chemicals from Spain to be used in the manufacture of cosmetics.

Evosine 1P07 R is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

Evosine SBS R is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be propylene glycol classifiable under item 428.30, Tariff Schedules of the United States, and dutiable at the rate of 11.5 percent ad valorem.

Biostat is classifiable under the provision for mixtures of two or more organic compounds in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component compound. The highest rate applicable is for diethylene glycol classifiable under the provision for diethylene glycol in item 428.47, Tariff Schedules of the United States, and dutiable at the rate of 12.3 percent ad valorem.

However, your inquiry does not provide enough information for us to give a classification ruling on Echinacine and Evosine NA2 R. Your request for a classification ruling should include the chemical name of each compound using the Chemcial Abstract Service terminology and if a mixture, the percentage and use in the mixture of each compound.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

With respect to Biostat, Evosine 1P07 R and Evosine SBS R, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815556

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 08 1985

REFER TO

CLA-2-04:S:COM:N2:240-1285
815557

Ms. L. Cavorti
Centerchem, Inc.
660 White Plains Road
Tarrytown, NY 10591

Dear Ms. Cavorti:

Your letter of July 8, 1985, received in this office September 30, 1985, concerns the dutiable status of four products named P.C.A. Lysine, Protean 50, Protean NC and Protean SH from Spain. Samples of Protean NC and Protean SH, and technical literature were submitted to this office.

The Protean NC and Protean SH samples, analyzed by our laboratory, are both aqueous solutions of a mixture of polypeptides which have been hydrolyzed. Accordingly, they are both classifiable under the provision for mixtures of two or more organic compounds, other, in item 430.2040, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate is the nitrogenous compound classifiable under item 425.5290, TSUSA, with duty at the rate of 7.9 percent ad valorem.

Since this office did not receive samples or technical literature with respect to the products trade-named P.C.A. Lysine and Protean 50, this office is unable to issue tariff classification rulings for these products. Requests for rulings must be submitted in accordance with Part 177 of the Customs Regulations.

Please submit a complete breakdown, including the chemical abstract name, the chemical formula, and use with respect to each product.

As provided for in part 177.3 of the Customs Regulations (19 C.F.R. 177.3), we will keep your request for tariff classification rulings regarding the P.C.A. Lysine and Protean 50 open for 30 days from the date of this letter. If you are unable to provide the requested information within that time, we will remove your request from active consideration.

We regard to the Protean NC and Protean SH, this is a ruling issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815557

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 10 1985

REFER TO

CLA-2-04:S:COM:N2:239-1294
815578

Mr. Edmund J. Corboy
Austin Chemical Company Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631

Dear Mr. Corboy:

Your letter of September 25, 1985 concerns the dutiable status of o-anisic acid from Japan.

O-anisic acid, a chemical intermediate also known as 2 methoxy benzoic acid, is classifiable under the provision for other oxygen function carboxylic acids in item 404.4700, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 13.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

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REPLY TO AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 17 1985

REFER TO

CLA-2-07:S:COM:N3G:341-1563
815595

Mr. Bradley H. Shorser
Staff Assistant - Customs
Sears Merchandise Group
Sears Tower - Department 733X
Chicago, Illinois 60684

Dear Mr. Shorser:

Your letter of September 30, 1985 requested this office to rule upon the tariff classification of a man-made textile stuff bag from Korea.

The sample submitted is a man-made textile material stuff bag which measures 20" high by 8 1/2" diameter. The bag is closed by means of a drawstring closure and has a self material shoulder strap sewn on one side. You have indicated that the bag will be imported with and without a nylon waterproof coverall. The classification of the coverall has not been requested.

A nylon stuff bag is not the usual type container ordinarily sold at retail with a coverall. In fact the stuff bag retains its identity even without the garment. Whether or not the stuff bag were imported with the completed garment, they would not be considered an entirety. Each item would be separately classified.

You have also indicated your opinion that the stuff bag is significantly braided. Similar merchandise has been the subject of prior Customs decision and have been found not to be classified within the braided provision.

The stuff bag is classifiable under the provision for luggage of textile materials, other in item 706.4152, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 20 percent ad valorem.

Tariff item number 706.4152 falls within textile category designation 670. As a product of Korea, this merchandise is subject to quota and visa requirements based upon international textile trade agreements.

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Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815595

B8

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 1 7 1985

REFER TO
CLA-2-07:S:COM:N3G:347-1565
815597

Mr. Bradley H. Shorser
Sears Merchandise Group
Department 733-X
Sears Tower
Chicago, IL 60684

Dear Mr. Shorser:

In your letter dated September 30, 1985, you inquired about the dutiable status of an incomplete men's leather shoe from Taiwan. A sample was submitted.

The item in question consists of an all-leather, four-eyelet tie upper with a padded tongue and collar and a leather lining. It is of tubular construction, that is, a single piece of U-shaped leather forms an insole and turns up to form a part of the upper. The bottom is fully closed, with the only processing to be performed in the United States being the attachment of a sole/heel unit by cementing.

In your letter you suggest classification of this item in item 791.28, TSUS, a provision for leather cut to shape, suitable for conversion into footwear. It is your view that classification as unfinished footwear is inappropriate due to the absence of the outsole at the time of importation. You point out that in its imported condition the item is not functional as footwear.

In Daisy-Heddon Div. Victor Comptometer Corp. v. United States, CAD 1228, the court specifically rejected the essential part test for unfinished merchandise and instead substituted a series of other criteria for use in classifying incomplete merchandise. These criteria clearly favor classification of the present article as unfinished footwear. There are more included parts than omitted parts. The time and effort in sewing and shaping the leather is relatively complex and time consuming. The cost of the imported portion of the shoe must exceed the cost of domestic materials used. While the significance of the omitted parts is undeniable, the trade custom test is not relevant because the unfinished versus component argument is a purely legal issue which has no basis in the commercial reality of the footwear trade.

In addition, classification of this merchandise is governed by TD 79-100, in which Customs set forth guidelines for classifying lasted leather footwear uppers. Under these guidelines it is also clear that this item is properly classifiable as unfinished footwear, rather than as a "part". Examination of the sample shows that it has the following characteristics:

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(1) It has an insole or midsole;
(2) It has been formed to fit the foot;
(3) It has been advanced beyond the stage of being forms and shapes suitable for conversion into footwear;
(4) The essence or fundamental characteristic of a shoe is readily apparent;
(5) It resembles a shoe; and
(6) It provides a layer or two of protection between the foot and flooring.

Based on the foregoing, this item is classifiable under the provision for other footwear, of leather, for men, youths, and boys, in item 700.35, Tariff Schedules of the United States, and dutiable at the rate of 8.5% ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815597

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 06 1986

REFER TO

CLA-2-04:S:COM:N2:238-1301
815610

Mr. Richard Poirier, Purchasing Agent
Iroquois Chemicals Corp.
Second Street West P.O. Box 399
Cornwall, Ontario K6H5T1 Canada

Dear Mr. Poirier:

In your letter dated September 19, 1985, you inquired about the dutiable status of twelve coating products from Canada.

692 - Line (groundcoat) and 200-000 Line (C Base) are classifiable under the provision for benzenoid paints in item 408.4800, Tariff Schedules of the United States Annotated (TSUSA) and dutiable at the rate of 7 percent ad valorem.

684-000 Line (Shader), 831 Line Spray Stain and 842-000 Line (Wiping stain) are classifiable under the provision for benzenoid polyester resins, unsaturated in item 409.1000, TSUSA and dutiable at the rate of 0.7 cent per pound plus 9 percent ad valorem.

801-001 (Thinner) when imported to be used as a fuel is classified under the provision for mixtures in item 432.1000, TSUSA and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component material. In this case no component has a higher rate. When imported to be used otherwise than as a fuel, the 801-001 (thinner) is also classifiable in item 432.1000, TSUSA. In this case the component with the highest rate is methanol which is classifiable in item 427.9700, TSUSA and dutiable at the rate of 18.4 percent ad valorem.

690-Line (Release Coat) is classifiable under the provision for Non-benzenoid paints containing titanium pigments in item 474.3500, TSUSA and dutiable at the rate of 5.6 percent ad valorem.

660-000 Line (Nitrocellulose Sealer) and 740-100 Line (Catalyzed Vinyl Sealer) are classifiable under the provision for varnishes, other in item 474.4600, TSUSA and dutiable at the rate of 1.3 percent ad valorem.

The part of your ruling request is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1].

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We are unable to provide you with a classification ruling for 649-600 Line (Catalyzed topcoat) and 770-Line (Catalyzed topcoat) since you submitted incorrect samples. In addition, we cannot provide a classification ruling for 820-200 Line (Spatter stain) since you have not identified the benzenoid color used in this product. When you have obtained the correct samples and information for these products you may resubmit your classification ruling request.

If you have any questions regarding these issues you may contact National Import Specialist Cornelius Reilly of this office at telephone number (212) 466-5770.

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C., 20460, telephone number (800) 424-9086.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 05 1985

REFER TO

CLA-2-04:S:COM:N2:240-1300
815612

Mr. C. B. Ganter, Jr.
Soltex Polymer Corporation
P.O. Box 27328
Houston, Texas 77227

Dear Mr. Ganter:

Your letter of September 25, 1985 concerns the dutiable status of Clarene from Italy. Technical literature relating to the material was submitted for our review.

Clarene is the trade-name for an ethylene-vinyl alcohol co-polymer. This product is classifiable under the provision for synthetic plastics material, vinyl resins, polyvinyl acetate and vinyl resins containing by weight 50 percent or more of derivatives of vinyl acetate, other, in item 445.4400, Tariff Schedules of the United States Annotated. The rate of duty is 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 15 1985

REFER TO
CLA-2-07:S:COM:N2:224-1316
815648

Mr. Ned H. Marshak
Sharretts, Paley, Carter & Blauvelt, P.C.
Eighty Broad Street
New York, NY 10004

Dear Mr. Marshak:

In your letter of October 3, 1985, on behalf of your client, Amtoy, you requested the tariff classification of a "Musical Birthday Pet" from Taiwan.

The sample submitted with your inquiry is a soft plush textile representation of a bear measuring approximately 10 inches high. The article has plastic eyes and nose and a textile yarn mouth. A stuffed woven fabric cap is sewn on the top of the animal's head. Embedded within the torso is a wind-up metal music movement. The figure is fully stuffed.

The "Musical Birthday Pet" is a fully distended, amusing depiction of an animal. It is classifiable under the provision for toy figures of animate objects (except dolls), having a spring mechanism, wholly or almost wholly of metal, in item 737.4200, Tariff Schedules of the United States Annotated, and dutiable at the rate of 7.4 percent ad valorem.

Articles classifiable under item 737.4200, TSUSA, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Your sample is being returned as you requested.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 05 1985

REFER TO

CLA-2-04:S:COM:N2:238-1332
815656

Mr. Ralph C. Meola
Corporate Transporation Manager
Rhone-Poulenc Inc.
P.O. Box 125-Black Horse Lane
Monmouth Junction, NJ 08852

Dear Mr. Meola:

In your letter dated October 3, 1985, you inquired abou the dutiable status of "Techster" from France.

"Techster" is a benzenoid polybutylene terephthalate thermoplastic saturated polyester resin. The product exhibits a unique combination of properties such as, high strength, rigidity and toughness and has many thermoplastic and thermoset applications. "Techster" is used in the manufacture of parts for the automotive, electrical/telecommunications, appliance and other industrial areas.

"Techster" is classifiable under the provision for benzenoid polyester saturated resins in item 408.6800, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 1.4 cents per pound plus 9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

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This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telephone number (800) 424-9086.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815656

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 01 1985

REFER TO

CLA-2-04:S:COM:N2:235-1323
815662

Mr. M. Veny, Vice President
Abe M. Knipper Inc.
80 Sheridan Blvd.
Inwood, New York 11696

Dear Mr. Veny:

In your letter dated October 4, 1985, you inquired on behalf of your client Harry D. Koenig & Company, about the dutiable status of a disposable chemical handwarmer from Japan.

According to your inquiry this product contains iron powder, carbon, silicone, salt and water.

Disposable chemical handwarmers of this type are classifiable under the provision for non-enumerated products in item 799.00, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 18 1985

REFER TO
CLA-2-04:S:COM:N2:235-1329
815671

Mr. Ivan Skala
Manager - Specialty Chemicals
Klockner Chemical, Inc.
666 Third Avenue
New York, NY 10017

Dear Mr. Skala:

In your letter dated September 26, 1985, you inquired about the dutiable status of crude calcium chloride and bulk rock salt from either West Germany or East Germany.

According to your inquiry the calcium chloride you intend to import is produced as a by-product of the solvay process. Your question is what quality of calcium chloride is crude.

Calcium chloride that does not meet United States Pharmacopeia (USP) standards is classifiable under the provision for calcium compounds in item 418.16, Tariff Schedules of the United States, and is free of duty.

In addition to the foregoing you have requested information concerning packaged rock salt.

Rock salt also known as sodium chloride in cartons, bags, drums and sacks containing up to 2000 pounds is classifiable under the provision for sodiium chloride, other in item 420.96, Tariff Schedules of the United States, and is free of duty if imported from West Germany and dutiable at the rate of 11 cents per hundred pounds if imported from East Germany.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 01 1985

CLA-2-01:S:COM:N2:228-1328 REFER TO
815672

Mr. Steven Tolliver
D International Inc.
220 West Mercer St. Queen Anne Square
Suite 507, Seattle, WA 98119

Dear Mr. Tolliver:

In your letter dated September 30, 1985, you inquired about the dutiable status of Shimprin from Japan.

Shrimprin is an edible food additive used to protect shrimp from flavor and color loss during storage and from weight loss during cooking. It is composed, by weight, of the following ingredients:

Sodium Polyphosphate	33.9 per cent
Disodium Dihyrogen Pyrophosphate	7.3 per cent
Potassium Phosphate Dibasic	7.3 per cent
Sodium Chloride	16.0 per cent
Sodium Sulfate Anhydride	28.0 per cent
Peptide	1.5 per cent
Extract of Shrimp	6.0 per cent

Shrimprin is designed to be added to either fresh or salt water, in 50 gram allotments, and mixed with 1 to 2 kilograms of shrimp. The shrimp is to be refrigerated for one hour and then prepared for cooking in any manner.

There is no indication that the components of shrimprin are not of food grade quality and thus the product is edible with prepared shrimp.

Shrimprin is classifiable under the provision for other edible preparations not specially provided for (including prepared meals individually packaged). in item 183.0520, Tariff Schedules of the United States (Annotated) TSUSA, and dutiable at the rate of 10 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported.

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If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

215672

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

NOV 07 1985

REFER TO

CLA-2-07:S:COM:N2:225-1325
815686

Mr. Rick Cooley
Ted L. Rausch Co. of Oregon
4980 N.E. 122nd Avenue
Portland, Oregon 97230

Dear Mr. Cooley:

In your letter dated October 7, 1985 on behalf of your client McDonald's Corp., you inquired about the dutiable status of a toy "Runaway Robot" from Hong Kong and China.

A sample of a "Runaway Robot" toy was submitted with your inquiry. The toy, measuring 1 3/4 inches in height, is made of white and gray plastic. The article is in the shape of a robot on wheels. A wind-up clock work spring mechanism is placed on the bottom of the robot.

The "Runaway Robot" is classifiable under the provision for toys with a spring mechanism in item 737.8000, Tariff Schedules of the United States Annotated, and dutiable at the rate of 12.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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REPLY TO: AREA DIRECTOR OF CUSTOMS NEW YORK SEAPORT NEW YORK NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 01 1985

REFER TO

CLA-2-07:S:COM:N3G:344-1601
815692

Mr. Cornell Clinkscales
Summit One Enterprise, Inc.
105 Catlin Circle
Greenville, South Carolina 29607

Dear Mr. Clinkscales:

In your letter of September 27, 1985, you asked about the tariff classification of an electronic message badge from Singapore.

A brochure submitted with your inquiry describes a battery-operated lighted-message badge, three inches in diameter, designed to be worn on a garment or around the neck as a pendant on a plastic neck cord.

The face of the badge has an incomplete message which is completed by a flash of light illuminating the missing parts of a slogan. For example, when the battery circuit is closed the #1 lights up to complete the message "Yes, we're #1, Summit 1 Enterprises."

The face of the badge is designed so that the message disc can be removed and an alternate message inserted, giving the user the opportunity to vary the badge as desired.

The electronic message badge is classifiable under the provision for jewelry and other objects of personal adornment, valued over 20 cents per dozen pieces or parts, in item 740.3800, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 15.1 percent ad valorem.

The battery used with the message badge is separately classifiable under the provision for primary cells and primary batteries in item 682.9500, TSUSA, and is dutiable at the rate of 6.1 percent ad valorem.

If the battery is made in the United States, it would be classifiable under the provision for products of the United States when returned after having been exported, without having been advanced in value or improved in condition... in item 800.0035, TSUSA, free of duty.

Articles classifiable under item 740.3800 and 682.9500, TSUSA, which are the products of Singapore, are entitled to duty-free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for

John J. Martuge
Area Director
New York Seaport

815692

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 24 1985

REFER TO
CLA-2-07:S:COM:N3G:347-1608
815713

Ms. Yvonne Williams
BBC International Ltd.
350 Fifth Avenue
New York, NY 10118

Dear Ms. Williams:

In your letter dated October 9, 1985, you inquired about the dutiable status of two styles of women's casual shoes from Taiwan. Samples were submitted.

The first item, pattern TEW 202-04, is a five-eyelet tie low-cut shoe with a plastic upper and a decorative lacing around the collar. We do not consider this lacing part of the exterior surface area of the upper since it is merely a loosely attached appurtenance. This shoe has a terry/sponge lining and a cemented-on rubber outsole with a serrated mockwelt edging.

The second item, pattern TEW 484-11, is a five-eyelet tie high top shoe with an all-plastic upper, a padded collar, a tricot/sponge lining and a canvas sockliner. It has a calendered rubber outsole as well as rubber heel and toe bumpers, all of which have been vulcanized to the upper. The toe and heel bumpers do not substantially encircle the shoe and are therefore not considered to be foxing-like. The main issue on this shoe is whether the rolled-soled construction constitutes a foxing-like band.

Although pattern TEW 484-11 is produced in a rolled-sole vulcanized process, it has been made using a standard cement lasting technique in which the upper has been lasted to a stiff cardboard insole prior to sole attachment. As a result, the roll up of the sole onto the upper is very slight, resulting in a visual effect of the outer edge of the sole being visible when the shoe is viewed from the side. In other types of rolled sole shoes the pushed up calendered surface of the sole is visible in a side view of the upper.

Based on both the visual effect, which in this case does not resemble foxing, and the construction technique, which is little more than a direct substitute for cementing, we do not consider pattern TEW 484-11 to have a foxing-like band. In other rolled sole constructions the vulcanization is essential to the integrity of the shoe. It literally holds the shoe together. In this case the upper is lasted to a cardboard insole and the process, while stronger than cementing, is not as critical as it is with other rolled sole shoes.

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PUBLIC _____

REPLY TO AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

These two shoes are classifiable under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics, and having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper), in item 700.5646, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 06 1985

REFER TO

CLA-2-01:S:COM:N1:229-1345
815724

Mr. Jean Paul Grasmuck
Fromark Inc.
P.O. Box 1439
Morristown, NJ 07960-1439

Dear Mr. Grasmuck:

In your letter dated October 2, 1985, you inquired about the dutiable status of "Cantella" cheese from France. The manufacturer is Unicopa of France.

Cantella is a type of Cantal cheese that is aged for a minimum of 90 days. It has a yellow rind and a pale yellow color. There are no mechanical openings in this smooth textured cheese. Cantella is made from pasteurized cow's milk. An analysis of this cheese by our laboratory indicates there is 52.06 percent moisture in the nonfatty matter and 38.51 percent butterfat on the dry basis.

Cantella cheese is classifiable under the provision for other cheeses, and substitutes for cheeses: other, in item 117.8855, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

Cheese classifiable in item 117.8855, TSUSA, is subject to quota restrictions listed in item 950.10D in Part 3, Appendix to the Tariff Schedules. Additionally, an import license, issued to the importer by the United States Department of Agriculture, would be required at the time of entry of such merchandise.

Questions regarding licensing procedures and application for license to import cheese subject to quota should be addressed to:

Head, Dairy and Import Group
Dairy, Livestock and Poultry Division
Foreign Agricultural Service
United States Department of Agriculture
Washington, D.C. 20250

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

C12

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 05 1985

REFER TO

CLA-2-01:S:COM:N2:228-1353
815752

Ms. Nancy Gillan
The R.T. French Co.
One Mustard Street, PO Box 23450
Rochester, N.Y. 14692

Dear Ms. Gillan:

In your letter dated October 2, 1985, you inquired about the dutiable status of Colman's Concentrated Gravy from England.

The product, Colman's Concentrated Gravy, is composed of starch, vegetable oil, hydrolized vegetable protein, animal fat, beef drippings, salt, color, onion powder, flavorings, beef extract, dextrose, emulsifier, pepper flavoring, yeast extract and an antioxidant. These ingredients have been processed into a paste-like concentrated gravy mixture. The product is packed in a 180 gram size container and is designed to be used by the retail consumer. Directions for use indicate that two or three tablespoons of the concentrated gravy are to be added to boiling water, stirred and simmmered for two minutes then served. Once reconstituted, with water, the item is a substantially finished gravy to be applied to various foodstuffs such as meats, vegetables and fish, for flavor enhancement.

Colman's Concentrated Gravy is classifiable under the provision for sauces, other than thin soy in item 182.4600, Tariff Schedules of the United States, and dutiable at the rate of 7.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

C14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 18 1985

REFER TO

CLA-2-04:S:COM:N2:235-1363
815774

Ms. C. Smith
Customs/Brokerage Specialist
American Hoechst Corp.
Route 202-206 North
Sommerville, N.J. 08876

Dear Ms. Smith:

In your letter dated October 3, 1985, you inquired about the dutiable status of Exolit 462 and Exolit 455 from West Germany.

According to your letter both of these products are flame retardant additives.

Based on this information Exolit 462 is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be melamine classifiable under item 445.35, Tariff Schedules of the United States, and dutiable at the rate of 8.6 percent ad valorem.

Exolit 455 is classifiable under the provision for mixtures, not specifically provided for in item 413.51, Tariff Schedules of the United States, and dutiable at the rate of 13.7 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

D1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 21 1985

REFER TO

CLA-2-01:S:COM:N2:228-1362
815788

Mr. Gordon E. Tonkin
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario, Canada K1A 0G2

Dear Mr. Tonkin:

In your letter dated October 9, 1985, you inquired about the dutiable status of Nocita-Hazelnut Spread and Smile-Peanut Spread from Canada.

The Nocita-Hazelnut spread is composed of the following ingredients:

Sugar	50 percent
Vegetable oil	16 percent
Hazelnuts	15 percent
Skim Milk Powder	5.5 percent
Concentrated Whey Protein	5 percent
Cocoa	5 percent
Wheat germ	2 percent
Vegetable oil shortening	1 percent
Mono and Diglycerides	0.23 percent
Lecithin	0.2 percent
Vanillin	0.6 percent

The Smile-Peanut spread is composed of the following ingredients:

Peanuts	38 percent
Sugar	32 percent
Vegetable oil	17.5 percent
Vegetable oil shortening	3 percent
Cocoa	2.4 percent
Skim Milk Powder	3.5 percent
Mono and Diglycerides	1 percent
Dextrose	1 percent
Artificial flavor	0.6 percent
BHA, BHT	0.001 percent

Samples of each spread were furnished and consisted of each being a 200 gram jar of a chocolate semi-viscous spread. The spreads are intended for consumption on bread, crackers or similar baked articles. These spreads are packaged in retail size jars and are intended for use in their immediate condition without further processing necessary.

D2

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The Nocita-Hazelnut spread and the Smile-Peanut spread are classifiable under the provision for other edible preparations not specially provided for in item 183.05, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

Presidential Proclamation 5340 amended Presidential Proclamation 5294 and exempted from quota articles not principally of crystalline structure or not in dry amorphous form that are prepared for marketing to the retail consumer in the identical form and package in which imported. Thus these two items would not be subject to the quota restriction for TSUS 183.05.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropr[illegible] Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815788

D3

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 22 1985

REFER TO

CLA-2-04:S:COM:N2:235-1368
815796

Mr. W. T. Reisen, Import Specialist
Stouffer Chemical Company
Westport, CT 06881

Dear Mr. Reisen:

In your letter of October 10, 1985, you requested the tariff classification of iso-amyl alcohol from Brazil.

Iso-amyl alcohol is classifiable under the provision for alcohols, monohydric, unsubstituted in item 427.72, Tariff Schedules of the United States, and dutiable at the rate of 8.6 percent ad valorem.

Articles classifiable under item 427.72, TSUS, which are the products of Brazil are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

Dt

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 26 1985

REFER TO

CLA-2-01:S:COM:N2:229-1378
815825

Mr. Raymond D. Besson
Raydor, Besson and Company, Inc.
15333 Drummet Blvd.
Houston, Texas 77032

Dear Mr. Besson:

In your letter dated September 13, 1985, you inquired about the dutiable status of Raclette and Vacherin cheeses from Switzerland. You are requesting a ruling on behalf of Orlait of Lausanne, Switzerland. Orlait is the manufacturer of the cheeses.

The Vacherin cheese (Les Chevreuils) is a cow's milk cheese that is a pale white color with white and red speckled mold on the exterior. There are small irregular openings in the cheese. Your specification sheet states this cheese has a maximum of 62 percent moisture in the nonfatty matter and a minimum of 48 percent butterfat on the dry basis. An analysis of your cheese by our laboratory indicates this cheese has 61.29 percent moisture in the nonfatty matter and 47.57 percent fat on the dry basis. The shipping specifications of this cheese are diameter 32.5 cm., height 7-8 cm., and weight 6 kg.

The Raclette cheese (Les Moulins) is a cow's milk cheese that is a pale yellow color with white and red speckled mold on the exterior. The specification sheet states this cheese has a maximum of 62 percent moisture in the nonfatty matter and a minimum of 47 percent butterfat on the dry basis. An analysis of this cheese by our laboratory indicates your cheese has 61.37 percent moisture in the nonfatty matter and 48.80 percent fat on the dry basis. The shipping specifications of this cheese are diameter 30 cm., height 6-7 cm., and weight 5 kg.

The Vacherin and Raclette cheeses are classifiable under the provision for other cheeses, and substitutes for cheeses: in item 117.8855, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

Cheeses that are classifiable in item 117.8855, TSUSA, are subject to quota restrictions listed in item 950.10D in Part 3, Appendix to the Tariff Schedules. Additionally, an import license, issued to the importer by the United States Department of Agriculture would be required at the time of entry of such merchandise.

DS

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

Questions regarding licensing procedures and application for license to import cheese subject to quota should be addressed to:

Head, Dairy and Import Group
Dairy, Livestock and Poultry Division
Foreign Agricultural Service
United States Department of Agriculture
Washington, D.C. 20250

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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D6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 25 1985

REFER TO
CLA-2-07:S:COM:N2:223-1381
815833

Mr. Sidney H. Kuflik
Lamb & Lerch
233 Broadway
New York, NY 10279

Dear Mr. Kuflik:

In your letter dated October 16, 1985, on behalf of Huffy Sporting Goods Division, P.O. Box 07493, Milwaukee, WI 53207, you inquired about the dutiable status of a body guard pole pad from Taiwan. Your submitted sample is being returned as you requested.

The body guard pole pad will be placed around basketball poles to prevent injury to players who either run into or are pushed against the pole. The body guard pole pad consists of a layer of high density 3½ inch foam. The bottom edge is to be positioned at knee level on the pole. The nylon cover is to be snapped in place over the foam to hold the foam in position. The snaps should be placed at the rear of the pole so that they themselves do not form a hazard to the player. The nylon cover also has drawstrings at both ends to further secure and protect the foam. This body guard pole pad shows special design for use in the sport of basketball. You believe that this pole pad is properly classifiable as sport equipment. We agree.

Accordingly, this body guard pole pad is properly classifiable under the provision for game, sport, gymnastic, athletic, or playground equipment, not specially provided for in item 735.2058, Tariff Schedules of the United States Annotated, (TSUSA) and is dutiable at the rate of 5.52 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

D1

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 29 1985

REFER TO

CLA-2-04:S:COM:N2:235-1397
815870

Mr. E. J. Corboy
Austin Chemical Company Inc.
8410 West Bryn Mawr Avenue
Chicago, Illinois 606331-3434

Dear Mr. Corboy:

In your letter dated October 18, 1985, you inquired about the dutiable status of dimethoxy acetyline dicarboxylate from England.

According to information contained in your inquiry this compound is derived from dibromo succinic acid de-hydrobrominated monopotassium salt.

When dimethoxy acetylene dicarboxylate is derived from dibromo succinic acid de-hydrobrominated monopotassium salt produced from non benzenoid sources, it is classifiable under the provision for esters of monohydric alcohols, other in item 428.72, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem.

When dimethoxy acetylene dicarboxylate is derived from dibromo succinic acid de-hydrobrominated monopotassium salt produced from benzenoid sources, it is classifiable in item 407.06, Tariff Schedules of the United States, and dutiable at the rate of 13.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

D8

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 06 1985

REFER TO

CLA-2-04:S:COM:N2:238-1406
815875

Mr. Sidney Goldman
PIC Corporation
23 S. Essex Avenue
Orange, N.J. 07050

Dear Mr. Goldman:

In your letter dated October 14, 1985, you inquired about the dutiable status of five pesticide formulations in aerosol cans from Canada.

Pic Automatic Indoor Room Fogger, Pic Wasp and Hornet Killer, Pic Wasp and Hornet Killer II and Pic Inside/Outside Bug Killer Extra Strong are classifiable under the provision for benzenoid pesticides, other, other in item 408.3800, Tariff Schedules of the United States Annotated, and dutiable at the rate of 0.8 cent per pound plus 9.7 percent ad valorem.

However, your inquiry does not provide enough information for us to give a classification ruling on Pic Roach, Ant and Spider Killer. The submitted literature indicates that the product contains d-trans-allethrin and n-octyl-bicycloheptene dicarboximide. The d-trans allethrin and the n-octyl-bicycloheptene dicarboximide are made from products (acetone and maleic anhydride respectively) that can be derived from a benzenoid source. Your request for a classification ruling should have included a flow chart from the manufacture(s) showing how the acetone and maleic anhydride were made.

Based upon the information you submitted, Pic Roach, Ant and Spider Killer would probably be classified under the provision for benzenoid pesticides, other, other in item 408.3800, Tariff Schedules of the United States Annotated, with duty at the rate of 0.8 cent per pound plus 9.7 percent ad valorem.

With respect to Pic Automatic Indoor Room Fogger, Pic Wasp and Hornet Killer, Pic Wasp and Hornet Killer II and Pic Inside/Outside Bug Killer Extra Strong, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

D9

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to

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the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C., 20460, telephone number (800) 424-9085.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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D10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 12 1985

REFER TO CLA-2-04:S:CON:N2:235-1413
815909

Ms. Christine Scott
Manager, Operations
Seltzer Chemicals, Inc.
4990 Carroll Canyon Road
San Diego, CA 92121

Dear Ms. Scott:

In your letter dated October 22, 1985, you inquired regarding the tariff classification of gamma oryzanol produced in Japan.

The literature which you submitted indicates that this product is used as an ingredient in cosmetics. This literature also includes a statement by the foreign manufacturer indicating that the gamma oryzanol which he produces is derived naturally by extraction from rice bran oil. Gamma oryzanol is a product which can be produced either from natural sources or from synthetic benzenoid sources. The information which you submitted implies that this product is not the synthetic benzenoid variety of gamma oryzanol. The literature submitted also includes a diagram of the chemical structure of this product.

Based on the chemical structure depicted in the literature which you submitted and based on the manufacturer's statement that his variety of gamma oryzanol is derived naturally from rice bran oil, this product is classifiable under the provision for esters of monohydric alcohols and organic or inorganic acids (except hydrogen sulfide and hydrogen halide acids): other in item 428.7250, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Hartuge
Area Director
New York Seaport

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D11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 20 1985

REFER TO

CLA-2-04:S:COM:N1:235-1424
815921

Mr. E. A. O'Neill, Vice President
Export Import & Trading Corporation
1050 17th Street N. W.
Washington, D.C. 20036

Dear Mr. O'Neill:

In your letter dated October 21, 1985, you inquired about the dutiable status of tri-(2-ethylhexyl) phosphate and polypropylene glycol sebecate from Great Britain, West Germany or Mexico.

According to your inquiry both chemical compounds are used as plasticizers.

Tri-(2-ethylhexyl) phosphate is classifiable under the provision for esters of monohydric alcohols, other, in item 428.7290 (TSUSA), Tariff Schedules of the United States Annotated, and dutiable at the rate of 4 percent ad valorem if imported prior to December 31, 1985. If imported on January 1, 1986 or later, the duty will be 3.9 percent ad valorem.

Polypropylene glycol sebecate when produced from non benzenoid sources is classifiable under the provision for esters of polyhydric alcohols, other, in item 428.4770 (TSUSA), Tariff Schedules of the United States Annotated, and dutiable at the rate of 12.3 percent ad valorem.

Polypropylene glycol sebecate when produced from benzenoid sources is classifiable under the provision for products chiefly used as plasticizers in item 409.3450 (TSUSA), Tariff Schedules of the United States Annotated, and dutiable at the rate of 0.5 cents per pound plus 17.7 percent ad valorem if imported prior to December 31, 1985. If imported on January 1, 1986 or later, the duty will be 0.3 cents per pound plus 17.7 percent ad valorem.

Articles classifiable under item 428.7290, 428.4770 or 409.3450, TSUS, which are the products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

D12

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 15 1985

REFER TO

CLA-2-01:S:COM:N3H:353-1704
815937

Mr. G. Gregory Threat
Kimko International, Inc.
13608 Midway Road Suite 130
Dallas, Texas 75244

Dear Mr. Threat:

In your letter of October 24, 1985, you requested the tariff classification of tanned leather from Taiwan.

The submitted sample (measuring approximately 3 inches by 3 inches) is a tanned split bovine leather which is coated with a plastic and embossed to resemble grain leather. The leather is considered fancy because of the embossing process.

The fancy leather is classifiable under the provision for leather in the rough, partly finished, or finished fancy, in item 121.6500, Tariff Schedules of the United States, and dutiable at the rate of 3.3 percent ad valorem.

Articles classifiable under item 121.6500, TSUS, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for J. Martuge

John J. Martuge
Area Director
New York Seaport

D14

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 06 1985

REFER TO

CLA-2-04:S:COM:N2:238-1431
815938

Mr. Lewis Stein
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7002

Dear Mr. Stein:

In your letter dated October 29, 1985, you inquired about the dutiable status of a collagen absorbable hemostat (unsterilized) from West Germany.

The collagen absorbable hemostat (unsterilized) is a lyophilized bovine dermal collagen. The material, prepared as a sponge like pad, is lightly cross-linked, non-sterile, non-pyrogenic and absorbable.

After importation the product will be packaged and sterilized in 1" x 2" and 3" x 4" sizes and sold as hemostats. When collagen comes into contact with blood, platelets aggregate on the collagen and release coagulation factors which, together with plasma factors result in the formation of fibrin, and finally in the formation of a clot. The material may be left in situ whenever necessary. However, the surgeon, at his discretion, should remove any excess collagen prior to wound closure as some adverse reactions may occur if left in an infected or contaminated space.

As the collagen absorabable hemostats (unsterilized) are intended to be repackaged and sterilized for sale as hemostats (sterile), they are classifiable under item 798.0000, Tariff Schedules of the United States Annotated (TSUSA), the provision for any article, not provided for elsewhere in the tariff, most resembling as to use a particular enumerated article absorbable surgical hemostats, which are sterile in item 495.1000, TSUSA and dutiable at the rate of 4.8 percent ad valorem.

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

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This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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E2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 18 1985

REFER TO

CLA-2-01:S:COM:N1:229-1426
815939

Mr. Marwan Lahham
Marco International
2450 Peralta Blvd.
Suite 115
Fremont, CA 94536

Dear Mr. Lahham:

In your letter dated October 17, 1985, you inquired about the dutiable status of pure "Ghee" from cow's milk from Holland.

A sample tin of this product, submitted with your inquiry, consists of a light brown, viscous paste. A laboratory analysis indicates that this "ghee" is made from milkfat. The sample label lists the ingredients as milkfat (minimum, 99.8 percent), moisture (maximum, 0.2 percent), and a flavoring agent (ethyl butyrate, 0.1 percent). "Ghee" is used as a cooking fat, primarily for frying.

This "ghee" is classifiable under the provision for "Other animal oils, fats, and greases: ...Other: ...Edible: ...Derived from milk" in item 177.6700, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

Articles classified in item 177.6700 are subject to quota import restrictions listed in item 950.06 in part 3, Appendix to the Tariff Schedules. The world-wide quota quantity permitted under item 950.06 is 1,200,000 pounds per calendar year.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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E3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 05 1985

REFER TO

CLA-2-04:S:COM:N2:239-1429
815951

Riedel-arom
Postfach 700
D-4600 Dortmund 1
Federal Republic of Germany

Gentlemen:

Your letter of October 25, 1985 requests the 1986 tariff status of two food colors, FD and C Yellow No. 5 and FD and C Yellow No.6 from Germany.

FD and C Yellow No.5 and FD and C Yellow No. 6 are classified under the provision for benzenoid acid dyes in item 409.6600, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty in effect for the calendar year 1986 will be 21.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

With regard to your questions concerning the valuation of these products as we have previously advised, the majority of imported products are appraised at Transaction Value. Transaction Value is the price actually paid (or payable) for imported merchandise exclusive of international freight, insurance and duty.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 26 1985

REFER TO
CLA-2-07:S:COM:N3G:346-1727
815988

Mr. Don Caplan
Imports International, Inc.
Suite 112
10420 Old Olive St. Road
St. Louis, Mo. 63141

Dear Mr. Caplan:

In your letter of October 2 received at our office on November 1, 1985, you requested a tariff classification on a child's vinyl athletic shoe which you indicate was imported from Hong Kong and produced in Mainland China.

Inspection of the sample submitted with your inquiry, your Pattern No. 12-1500-37A, indicates that this is a high cut all vinyl basketball shoe, 8 eyelet, with padded collar, perforated vamp, and a gray abraded plastic toe cap. This shoe also has a shell type unit molded sole, the sidewalls of which overlap the upper by approximately 1/4 inch. Customs T.D. 83-116 of May 23. 1983, specified that a vertical overlap of less than 1/4 inch would normally be presumed not to be a foxing-like band on unit molded footwear. However, since your sample is a U.S. child's size 9, the overlap could be less than 1/4 inch and we would still consider it a foxing-like band since the 1/4 inch standard is based on an adult size.

Therefore, your Pattern No. 12-1500-37A, is classifiable under the provision for footwear which is over 50% by weight of rubber and plastic; which is not protective against, water, oil, grease, or cold or inclement weather; which has a foxing-like band almost wholly of rubber or plastic applied or molded at the sole and overlapping the upper; and if valued for Customs purposes not over $3.00 per pair, in item 700.6400, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 48 percent ad valorem. If valued for Customs purposes over $3.00 but not over $6.50 per pair, classification would be in item 700.6700, TSUSA, dutiable at the rate of 37.5 percent ad valorem, plus 90 cents per pair.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 09 1985

REFER TO

CLA-2-04:S:COM:N1:235-1447
815990

Mr. B. W. Hackwell, Market Research Manager
Synthetic Chemicals Ltd.
Four Ashes, Near Wolverhampton
West Midlands WV10 7BP, England

Dear Mr. Hackwell:

In your letter dated October 25, 1985, you inquired about the dutiable status of thiophen from England.

Your letter states that the thiophen that you produce and export to the United States is produced using ethylene or ethanol to C4 aliphatics to thiophen. You request that we affirm that this method of production does not produce benzenoid derived thiophen.

We agree and confirm that thiophen produced in this manner is classifiable under the provision for sulfur compounds, including thiols, sulfides, sulfoxides and sulfones, other in item 429.60, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem.

We suggest that this letter be maintained in a safe place and a copy made and submitted when ever the question of derivation is raised.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E7

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

NOV 27 1985

REFER TO

CLA-2-06:S:COM:N1:118-1304
815996

Mr. Luther C. Riley
Assistant Purchasing Agent
Teledyne Mckay
850 Grantley Road
P.O. Box 1509
York, PA 17405-1509

Dear Mr. Riley:

In your letter dated October 28, 1985, you inquired about the dutiable status of stainless steel strip from Canada.

In your inquiry, you say that you are considering the purchase of type 304L stainless steel strip from Canada. You indicated in a telephone conversation with National Import Specialist Assistant Patrick Wholey that the actual dimensions of this so-called strip are different from that shown in your letter. The correct dimensions are .015" x .430". You further indicated that this product will be imported in coils, with a cold-rolled finish. This product meets the tariff definition of flat wire as expressed in headnote 3(i), Subpart B, Part 2, Schedule 6 of the Tariff Schedules of the United States.

Stainless steel flat wire is classifiable under the provision for flat wire, of alloy iron or steel, not coated or plated with metal, over 0.01 inch in thickness in item 609.3320, Tariff Schedules of the United States, and dutiable at the rate of 7.2 percent ad valorem plus additional duties as specified in items 606.00, 606.02, 606.04 and 606.06, TSUS, as appropriate (see attached).

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 06 1985

REFER TO

CLA-2-04:S:COM:N1:240-1451
816001

Ms. Beverely L. Pevsner
Beiley and Pevsner
7600 Southwest 57th Avenue
Suite 107
Miami, Florida 33143

Dear Ms. Pevsner:

In your letter dated October 29, 1985, you inquired on behalf of BEH Chemical Corporation, about the dutiable status of a product which you state is an animal glue from Brazil.

The product which your client intends to import is said to be comprised of 44 to 58 percent animal glue (granular), 41 to 55 percent sugar, and 1 percent defoamer and preservative. Except for the addition of water before actual use, the "animal glue" will be used as imported.

You are of the opinion that the product should be classified as an animal glue in items 455.40 or 455.42, Tariff Schedules of the United States.

This provision does not contemplate preparations (glues) based upon mixtures, including animal, vegetable, casein, or fish products. TSUS 455.40-42 embraces only glues based upon proteins of animal origin, but may also include such products as deodorants, preservatives, or substances which control viscosity.

The "animal glue" does meet the tariff definition of cement, namely a substance capable of holding materials together by surface attachment, and is classifiable under the provision for cements, not specially provided for, in item 494.6040, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 2.2 percent ad valorem. The rate of duty will not change effective January 1, 1986.

It should be noted that for this product to be considered a valid commercial identity in the trade and commerce of the United States, the "animal glue" must be used in its condition as imported, except for the addition of water.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

E9

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

E10

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 26 1985

REFER TO

CLA-2-06:S:COM:N1:117-1303
816003

Mr. Yasuo Watanabe
Kawasho International (U.S.A.) Inc.
299 Park Avenue
New York, N.Y. 10171

Dear Mr. Watanabe:

Your letter of October 30, 1985 concerns the dutiable status of scroll cut tinplate and scroll cut tin free steel from Japan.

Scroll cut tinplate, whether or not enameled, is classifiable under the provision for other articles of iron or steel, not coated or plated with precious metal, of tin plate in item 657.1500, Tariff Schedules of the United States. The rate of duty is 3.3 percent ad valorem.

Scroll cut tin free steel, whether or not enameled, is classifiable under the provision for other articles of iron or steel, not coated or plated with precious metal in item 657.2590, TSUS. The rate of duty is 6.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 16 1985

REFER TO

CLA-2-04:S:COM:N1:235-1460
816058

Mr. J. Reynolds, Vice President
John A. Steer Company
28 South 2nd Street
Philadelphia, PA 19106

Dear Mr. Reynolds:

In your letter dated October 28, 1985, on behalf of your client Amspec Specialty Chemicals, you inquired about the dutiable status of various chemicals from the Netherlands. According to your letter, all the compounds are lead stabilizers.

White lead is classifiable under the provision for white lead: basic carbonate in item 473.60, Tariff Schedules of the United States, and dutiable at the rate of 0.5 percent ad valorem.

Tribasic lead sulphate and dibasic lead phosphite are classifiable under the provision for lead compounds other in item 419.04, Tariff Schedules of the United States, and dutiable at the rate of 5.5 percent ad valorem.

Dibasic lead phthalate is classifiable under the provision for benzenoid compounds in item 404.3700, Tariff Schedules of the United States Annotated, and dutiable at the rate of 20.8 percent ad valorem.

Tribasic lead maleate if not benzenoid derived, is classifiable under the provision for lead salts of organic acids in item 426.44, Tariff Schedules of the United States, and dutiable at the rate of 5.6 percent ad valorem.

Tribasic lead maleate when benzenoid derived is classifiable in item 407.06, Tariff Schedules of the United States, and dutiable at the rate of 13.5 percent ad valorem.

Lead stearate and dibasic lead stearate are classifiable under the provision for salts of fatty acid in item 490.32, Tariff Schedules of the United States, and dutiable at the rate of 4.7 percent ad valorem.

Basic lead sulphate is classifiable under the provision for white lead: basic sulfate in item 473.62, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N Y

DEC 12 1985

REFER TO

CLA-2-04:S:COM:N2:239-1467
816062

Mr. David W. Besuden
Automotive International Inc.
11308 Tamarco Drive
Cincinnati, OH 45242

Dear Mr. Besuden:

In your letter of November 5, 1985, you inquired about the tariff status of a product of Switzerland identified as Waxoyl Professional Pink 120-4 or Master Shield Professional Pink FL 120-4.

The product, which is an anti-rust compound, is composed of dicyclohexylamine nitrite, paraffin wax and mineral spirits.

When the dicyclohexylamine nitrite is produced from benzenoid sources this product is classified under the provision for mixtures in whole or in part of any of the products provided for in Schedule 4, Part 1, Subpart B, Tariff Schedules of United States Annotated (TSUSA), in item 407.1610. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. Based on the dicyclohexylamine nitrite content the rate of duty would be 1.7 cents per pound plus 16.8 percent ad valorem from item 407.0500, TSUSA.

When the dicyclohexylamine nitrite is produced from non-benzenoid sources this product is classified under the provision for chemical mixtures not specially provided for in item 432.1000, TSUSA. The rate of duty is 5 percent ad valorem but not less than the highest rate applicable to any component material. Based on the dicyclohexylamine nitrite content the rate of duty would be 7.9 percent ad valorem from item 425.5290 TSUSA.

These applicable rates are not scheduled to be changed on January 1, 1986.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

E14

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816062

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 24 1985

CLA-2-07:S:COM:N3G:347-1771
816064

Mr. Jack Kudelka
Jamed Imports
291 Baird Court
Woodbury, NY 11797

Dear Mr. Kudelka:

In your letter dated October 25, 1985, you inquired about the dutiable status of a partially molded shoe from Switzerland. A sample was submitted.

The item in question, style Flash (592-6676T) is a five-inch high six-eyelet tie shoe with an injection-molded foot portion and contrasting color outsole. Sewn to the upper are eyelet rows, a tongue and a padded shaft which completes the upper. The interior is terry lined.

Although the upper of this item is partially of molded construction, the non-molded portion is substantial. Therefore, we consider the upper of this shoe to be of non-molded construction formed by sewing the parts together and having exposed on the outer surface a substantial portion of functional stitching.

Therefore, this item is classifiable under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with a least 10 percent by weight of rubber or plastics, having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper), in item 700.56, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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F2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 10 1985

REFER TO

CLA-2-04:S:COM:N1:235-1466
816075

Mr. W. E. Blazel
Nahe Texas, Incorporated
P. O. Box 1317
Pasadena, TX 77501-1317

Dear Mr. Blazel:

In your letter dated November 1, 1985, you inquired about the dutiable status of Redu 204 and Redu 205 from West Germany.

According to your inquiry, both products are hydrolized proteins made from either collagen or whey albumin.

Redu 204 and Redu 205 are classifiable under the provision for mixtures of two or more organic compounds in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component compound. The highest rate applicable is for nitrogenous compounds classifiable under the provision for nitrogenous compounds, in item 425.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F3

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, NY.
DEC 3 1985

REFER TO

CLA-2-01:S:COM:N2:228-1474
816092

Mr. Bruno Julien
Delegation of the Commission of the European Communities
2100 M Street, N.W.
Suite 707
Washington, D.C. 20037

Dear Mr. Julien:

In your letter dated August 7, 1985, received by us on November 8, 1985, you inquired about the dutiable status of radicchio rosso from European Community countries. You are requesting a ruling on behalf of the European Vegetable Exporters Association.

On August 5, 1985 we sent you an information letter (number 814237). We told you that radicchio rosso would probably be classified in item 137.97 TSUS. We infer from your second letter that you would like classification consideration under the provision for "Endive, including Witloof chicory", in item 136.1000, TSUS.

Although radicchio rosso belongs to a group of root chicories, it is not commercially designated nor commonly known as an endive or as Witloof chicory. Therefore radicchio rosso is not classified in item 136.1000, TSUS.

In your second letter you indicated that radicchio rosso was previously imported from Italy and entered in item 136.1000. A review of the import records on hand indicates one shipment of radicchio rosso was entered in item 136.1000, TSUS. However, when the Import Specialist at that port of entry reviewed this shipment she classified the radicchio rosso in item 137.9775, TSUS.

Radicchio rosso is classifiable under the provision for vegetables, fresh, chilled, or frozen (but not reduced in size, nor otherwise prepared or preserved): other, in item 137.9775, Tariff Schedules of the United States, and dutiable at the rate of 25 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F5

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 04 1985

REFER TO

CLA-2-07:S:COM:N2:223-1473
816098

Mr. Christopher J. Loose
Managing Director
W.M.S. (International) Limited
Agriculture House
31 Trull Road
Taunton
Somerset TA1 4QQ
United Kingdom

Dear Mr. Loose:

In your letter dated October 31, 1985, on behalf of Promotions Etcetera Ltd., 718 E. 24th Street, Suite B, Chester, PA 19013, you inquired about the dutiable status of two styles of horse riding gloves from the United Kingdom. A sample of each style was submitted.

One sample is a seamless knit glove which appears to be predominantly of cotton with leather reinforcement extending from the top of the second phalanx of the index finger to the top of the second phalanx of the thumb. Another piece of leather reinforcement extends from the second phalanx of the little finger to the second phalanx of the ring finger.

The second sample is a leather glove with a vent on the palm side of the wrist. A leather strap with a velcro closure tightens the glove around the wrist. This glove is reinforced with leather between the little and ring fingers along the same portion as the knit glove. Leather reinforcement on the index finger extends from the second phalanx to the base of the index finger where the first phalanx joins the metacarpal bone.

These reinforced areas are those where the reins are properly held in horse back riding. You believe that these gloves are properly classifiable as other sports gloves because they show design for use in the sport of horseback riding. We agree.

The submitted samples are properly classifiable under the provision for boxing gloves, and other gloves, not provided for in the foregoing provisions of this subpart, specially designed for use in sports in item 735.0700, Tariff Schedules of the United States Annotated (TSUSA), and are dutiable at the rate of 5.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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For your information the samples you submitted are not legally marked for the purposes of Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). One of each pair of gloves should be marked with a sewn in label showing the country of origin. In addition, the knit glove is subject to the marking requirements of the Textile Fiber Products Act of 1958, as amended (15 U.S.C. 70).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.
DEC 06 1985

REFER TO

CLA-2-04:S:COM:N1:236-1483
816114

Ms. Joyce E. Czaban
Admin. Asst.
Genetrex Inc.
P.O. Box 277
Grimsby, Ontario, Canada L3M 4G5

Dear Ms. Czaban:

In your letter dated November 1, 1985, you inquired about the dutiable status of Janex-Safety Toilet Bowl and Urinal Cleaner from Canada.

Janex-Safety Toilet Bowl and Urinal Cleaner is advertised as a stain remover, safe to use on stainless steel, ceramic sanitary fixtures, fibre glass, and plastics. The product will be imported and sold in quart and gallon size containers (under 10 pounds each).

Janex-Safety Toilet Bowl and Urinal Cleaner is classifiable under the provision for blackings, powders, liquids, and creams for polishing and cleaning, all the foregoing in immediate containers holding not over 10 pounds each in item 493.1000, Tariff Schedules of the United States, and dutiable at the rate of 2.6 percent ad valorem.

The rate of duty for 1986 remains at 2.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F8

REPLY TO AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 10 1985

REFER TO

CLA-2-:S:COM:N:240-1451
816122

Mr. Sidney Goldman
PIC Corporation
23 S. Essex Avenue
Orange, NJ 07050

Dear Mr. Goldman:

In your letter dated October 14, 1985, you inquired about the dutiable status of a Zap Mouse Trap from Canada. A sample was submitted for our review.

The mouse trap is a plastic tray, three inches by four inches and one half inch deep, which is filled with a sticky adhesive component. Once the rodent "steps" onto the adhesive, it is trapped.

Classification of this product is dependent upon its component material in chief value, which is the adhesive component. The Zap Mouse Trap is classifiable under the provision for other articles, not provided for elsewhere in the tariff schedules, in item 799.0000, Tariff Schedules of the United States Annotated. The rate of duty is 4 percent ad valorem. Effective January 1, 1986, the rate of duty will be 3.9 percent ad valorem.

This ruling is being issued under the provision of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 21 1985

REFER TO

CLA-2-06:S:COM:N1B:112-1346
816123

Mr. William J. Marston
U.S. Carriage International, Inc.
11938 Waveland
Franklin Park, Illinois 60131

Dear Mr. Marston:

In your letter of October 25, 1985, on behalf of Lowes International Ltd. you requested the tariff classification of Musical Modules and Musical Buttons, both battery operated from Hong Kong.

The two samples are battery operated Musical Modules and Musical Buttons. They both employ an integrated circuit which produces a pre-programmed musical tune. The Musical Module has a switch which, when depressed, will actuate the module, and the Musical Button depicts a figure on its face, described as a "Fighting Irishman". When the figure is depressed it plays the cheer song for the University of Notre Dame.

The Musical Modules are classifiable under the provision for electrical articles and electrical parts of articles not specially provided for: Electrical articles using pre-programmed digital integrated circuits to produce sound... in item 688.3400, Tariff Schedules of the United States, and dutiable at the rate of 4.3 percent ad valorem.

The batteries are classifiable under the provision for primary batteries, and parts thereof... in item 682.9500, Tariff Schedules of the United States, and dutiable at the rate of 6.1 percent ad valorem.

The Musical Buttons are classifiable under the provision for other objects of personal adornment, and parts thereof: Other... in item 740.38, Tariff Schedules of the United States, and dutiable at the rate of 15.1 percent ad valorem.

Articles classifiable under items 682.95 and 688.34, TSUS, which are the products of Hong Kong are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 13 1985

REFER TO

CLA-2-05:S:COM:N1:235-1488
816130

Mr. J.D. Collins
Imperial Oil Limited
111 St. Clair Avenue West
Toronto, Ontario, Canada M5W 1K3

Dear Mr. Collins:

In your letter dated November 4, 1985, you inquired about the dutiable status of a spent caustic solution from Canada.

According to your inquiry this product is produced as the result of using sodium hydroxide in a gas cracking process. In a latter telephone conversation with your broker, C.J. Towers & Sons, is was disclosed that the spent caustic is composed of 7-8 percent sodium hydroxide, 2½ percent sodium sulphide, 1-½ percent sodium carbonate and less than ½ percent methyl mercaptide in solution. In this instance we believe that the amount of methyl mercaptide should be considered di minimus.

Therefore the spent caustic you describe in your inquiry is classifiable under the provision for mixtures of two or more inorganic chemicals in item 423.96, Tariff Schedules of the United States, and dutiable at the rate of 1.2 percent ad valorem if imported on or before December 31, 1985. If imported after December 31, 1985 the duty will be 0.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 16 1985

REFER TO

CLA-2-04:S:COM:N1:235-1497
816146

Mr. J. Sveum
Authorized Agent
W.Y. Moberly Inc.
P.O. Box 164
Sweetgrass, Montana 59484

Dear Mr. Sveum:

In your letter dated November 8, 1985, on behalf of your client Pressure Guard, you inquired about the dutiable status of a tire sealant from Canada.

A tire sealant, containig the chemical compounds described in your inquiry, is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem but not less than the highest rate applicable to any component material. The component with the highest rate appears to be ethylene glycol classifiable under item 428.34, Tariff Schedules of the United States, and dutiable at the rate of 12.4 percent ad valorem. The 1986 rate for item 432.25, TSUS, is 3.9 percent ad valorem and for item 428.34, TSUS, the rate is 12.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 3 1985

REFER TO

CLA-2-06:S:COM:N1:106-1347
816151

Mr. S. J. Fair
Deutz-Allis Corporation
P.O. Box 933
Milwaukee, Wi. 53201

Dear Mr. Fair:

In your letter dated September 16, 1985, received in this office on November 12, 1985, you inquired about the dutiable status of Deutz-Allis Model 6200 Tractors from West Germany. Your inquiry is in response to letter 814866 dated August 22, 1985, in which you were asked to provide additional data concerning the imported tractors. You have enclosed descriptive brochures.

The Deutz-Allis Models 6240, 6250 and 6260 are wheeled tractors designed for farm applications. These tractors feature Deutz direct air-cooled diesel engines, independent parking brakes, hydrostatic power steering, dual range transmission with 8 forward and 4 reverse gears, and a 3-point hitch. Both two and four wheel-drive models are available. The operators cab has full instrumentation and can be topped with a fiberglass canopy.

Specifications are as follows:

		6240	6250	6260
Horsepower PTO		43	51	57
Bare Wt. (ROPS)	2WD	5776 lbs.	6018 lbs.	6018 lbs.
	4WD	6173 lbs.	6459 lbs.	6459 lbs.
Width		82.3 ins.	82.3 ins.	82.3 ins.
Height		88.5 ins.	91.2 ins.	92.5 ins.

The Deutz-Allis Models 6240, 6250 and 6260 are classifiable under the provision for tractors suitable for agricultural use in item 692.34, Tariff Schedules of the United States, and are free of duty.

Regarding the Models 6240, 6250 and 6260, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

As soon as available, please forward descriptive brochures for the Models 6265 and 6275. Based upon the information you submitted, these models would also be classified in item 692.34, TSUS, and are free of duty.

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Regarding the Models 6265 and 6275, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Roy L. Dewing

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 24 1985

REFER TO
CLA-2-04:S:COM:N1:235-1505
816173

Mr. S.L. Sarniak
Mobay Chemical Corporation
Mobay Road
Pittsburgh, PA 15205-9741

Dear Mr. Sarniak:

In your letter dated November 1, 1985, you inquired about the dutiable status of Baylube TP FE 3017 from West Germany.

According to your inquiry, you are of the belief that the chemical compound you have requested a ruling on is classifiable as a tetrol in item 428.44. We agree that the compound is a tetrol, but it is also an ether of a polyhydric alcohol. It is our opinion that compounds which are triols and tetrols only are classifiable in that provision.

Therefore, Baylube TP FE 3017 is classifiable under the provision for ethers of a polyhydric alcohol, other:other in item 428.47, Tariff Schedules of the United States, and dutiable at the rate of 12.3 percent ad valorem. There is no change in the rate in 1986.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martugo
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

G2

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 13 1985

REFER TO
CLA-2-04:S:COM:N1:238-1510
816178

Mr. Robert S. Anthony
George Uhe Co., Inc.
76 Ninth Avenue
New York, NY 10011

Dear Mr. Anthony:

In your letter dated November 11, 1985, you inquired about the dutiable status of hyaluronic acid, sodium salt from Japan.

Hyaluronic acid, sodium salt, a polysaccharide, is a physiological substance that is widely distributed in the extracellular matrix of connective tissues in both animals and man, or it may be produced by fermentation. Technical literature indicates that it may be used for the control of electrolytes and water in extracellular fluids, wound healing, protection against infection, lubrication, maintenance of stable transparent fluid in the eye and as a moisturizing and thickening agent in new cosmetics.

Hyaluronic acid, sodium salt is classifiable under the provision for analogous biological products in item 437.7600, Tariff Schedules of the United States Annotated (TSUSA), and is free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

DOCUMENT MAY BE RELEASED TO THE PUBLIC

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

63

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 06 1985

REFER TO

CLA-2-04:S:COM:N1:240-1530
816225

Mr. Charles Mayer
Rose Investment Corporation
822 NE 125th Street
Suite 103
North Miami, Florida 33161

Dear Mr. Mayer:

In your letter dated November 7, 1985, you inquired about the dutiable status of a product trade-named Polylub G.M.S. from Columbia. A sample was submitted.

The analysis by our laboratory indicates that Polylub G.M.S., a white powder, is a fatty acid ester of a polyhydric alcohol, not sulfonated or sulfated. Polylub G.M.S. is classifiable under the provision for fatty substances of animal or vegetable origin: not sulfonated or sulfated: fatty-acid esters, ethers, and ether-esters of polyhydric alcohols: other, in item 465.1000, Tariff Schedules of the United States Annotated. The rate of duty is 1.2 cents per pound, plus 5.3 percent ad valorem. Effective January 1, 1986, the rate of duty will be 1.1 cents per pound, plus 4.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs office handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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REPLY TO AREA DIRECTOR, NEW YORK SEAPORT U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 18 1985

REFER TO

CLA-2-04:S:COM:N1:236-1527
816226

Mr. Charles Mayer
Rose Investment Corp.
822 N.E. 125th Street
Suite 103
North Miami, Florida 33161

Dear Mr. Mayer:

In your letter dated November 7, 1985, you inquired about the dutiable status of Polylub 70 from Columbia.

The prospective import, called Polylub 70 has been tested and reported out by the United States Customs Laboratory as an artificial mixture of petroleum and mineral waxes. You requested classification under the provision for paraffin and other petroleum waxes in item 494.2200, Tariff Schedules of the United States Annotated (TSUSA). This provision embraces only paraffin and other petroleum waxes but does not include artificial mixtures of two or more waxes.

Polylub 70 is classifiable under the provision for artificial mixtures of two or more of the foregoing waxes in item 494.3000, (TSUSA), and is free of duty.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 18 1985

REFER TO
CLA-2-04:S:COM:N1:238-1526
816227

Mr. Daniel Szymanski
Manager, Export and Distribution Planning
Searle Laboratories
1100 Kirk Street
Elk Grove, IL 60007

Dear Mr. Szymanski:

In your letter dated November 12, 1985, you inquired about the dutiable status of Chlorthalidone from France.

Chlorthalidone, a fine white powder, is a benzenoid diuretic drug.

Chlorthalidone is classifiable under the provision for benzenoid drugs, other in item 412.6900, Tariff Schedules of the United States Annotated, and dutiable at the rate of 8.6 percent ad valorem. The rate will be 7.8 percent in 1986.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 343-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

66

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 20 1985

REFER TO

CLA-2-04:S:COM:N1:238-1544
816257

Mr. Daniel Szymanski
Manager, Export and Distribution Planning
Searle Laboratories
1100 Kirk Street
Elk Grove, IL 60007

Dear Mr. Szymanski:

In your letter dated November 12, 1985, you inquired about the dutiable status of "Progabide" from France.

"Progabide", a yellow solid, is a benzenoid anticonvulsant drug.

"Progabide" is classifiable under the provision for benzenoid anticonvulsants in item 412.2600, Tariff Schedules of the United States Annotated, and dutiable at the rate of 8.6 percent ad valorem. The rate will be 7.8 percent in 1986.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

67

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 20 1985

REFER TO

CLA-2-01:S:COM:N1:229-1556
816335

Mr. Philippe Martin
Cancoillotte Poitrey
3251 Prospect Street
Washington, D.C. 20007

Dear Mr. Martin:

In your letter dated November 22, 1985, you inquired about the dutiable status of Cancoillotte Super Beure Spread from France.

Cancoillotte Super Beure Spread is a processed cheese food spread. The product is made from fresh cheese curds, produced by the slow, natural acidification of skim milk. After acidification, the curd is pressed, then held in heated tanks up to seven days to allow for further fermentation of the curd. The fermentation process is finally halted by cooling, at which point the curd is ready for cutting and mixing, under heat, with water, butter, salt, and emulsifier to form a smooth, cream colored, viscous paste, which is the finished product. A sample of the spread, packaged in a plastic retail tub of 250 grams (about 8.82 ounces), was found, on analysis, to contain 6.2 percent fat on an "as-is" basis (22.61 percent fat in the dry matter), 72.7 percent moisture on an "as-is" basis, and 1.4 percent salt.

Cancoillotte Super Beure Spread is classifiable under the provision for other cheeses, and substitutes for cheese in Part 4C of Schedule 1, Tariff Schedules of the United States Annotated (TSUSA). If valued not over 25 cents per pound, this product is classifiable in item 117.7555, TSUSA, and dutiable at the rate of 5 cents per pound. If valued over 25 cents per pound, Cancoillotte Super Beure Spread is classifiable in item 117.8855, TSUSA, and dutiable at the rate of 10 percent ad valorem.

Articles classified in item 117.7555 or in item 117.8855, TSUSA, are subject to quota quantity restrictions listed in item 950.10D in part 3, Appendix to the Tariff Schedules. Additionally, an import license, issued to the importer by the United States Department of Agriculture, would be required at the time of entry of such merchandise.

Questions regarding licensing procedures and application for license to import cheese subject to quota should be addressed to:

Head, Dairy and Import Group
Dairy, Livestock and Poultry Division
Foreign Agricultural Service
United States Department of Agriculture
Washington, D.C. 20250

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 27 1985

REFER TO

CLA-2-04:S:COM:N1:235-1559
816339

Mr. F. A. Milo, President
Firecat Technology, Inc.
707 Continental Circle
Mt. View, CA 94040

Dear Mr. Milo:

In your letter dated November 20, 1985, you inquired about the dutiable status of Skin Shield from Ireland.

According to your letter, this product is designed to be used as a hand cream, applied to the hands prior to working with cyanoacrylate adhesives.

Based on the chemical compounds contained in the product stated in your letter, Skin Shield is classifiable under the provision for mixtures, not specifically provided for, in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be bis hydroxyethyl aminoethane sulfonic acid classifiable under item 425.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem. For importations after December 31, 1985, the rate of duty for item 432.25, TSUS, will be 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 24 1985

REFER TO

CLA-2-03:S:COM:N3G:345-1901
816341

Ms. Denise Loquercio
Elkay Industries Inc.
1333 Broadway
New York, NY 10018

Dear Ms. Loquercio:

In your letter dated November 25, 1985, you inquired about the dutiable status of a Jac-Pac from Korea.

The sample is a combination Jacket and backpack of 100 percent nylon. The "Jac Pac" is formed by sewing a full featured teardrop backpack to the back of a jacket. If the two components were separated each would retain its identity and be functional. It can be worn as a backpack with the jacket concealed in a zippered compartment or as a jacket with the backpack located on the back of the jacket. The jacket is sewn onto the first of three zippered compartments of the backpack.

The backpack measures approximately 13 inches by 11 inches and has the following features: two padded shoulder straps, a nylon carry handle, and adjustable strap at the lower rear, and three zippered compartments. The inner compartment is designed to hold the jacket, the center compartment is able to carry large items, and the outer compartments may be used to carry papers or other small articles.

The jacket has the following features: a full-front opening with a zipper closure, a drawstring hood and drawstring waist; two front pockets with flap velcro closures. A printed logo appears on the jacket and the backpack.

The article is designed to be used as a jacket and backpack. It is a combination article having two coequal functions neither of which is subordinate of the other. It is "more than" wearing apparel or luggage.

Accordingly the article is classifiable under the provision for articles not specially provided for, of textile materials, not ornamented, of man-made fibers, other in item 389.6270, Tariff Schedules of the United States, and dutiable at the rate of 8 cents per pound plus 11 percent ad valorem. The rate in 1986 will be 4 cents per pound plus 10 per cent ad valorem. There are presently no quota restraints or visa requirements for this type merchandise from Korea.

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 23 1985

REFER TO

CLA-2-04:S:COM:N1:235-1678
816415

Mr. M. Suzuki
Manager, Traffic Administration
Sumitomo Corporation of America
345 Park Avenue
New York, NY 10154

Dear Mr. Suzuki:

In your letter dated December 2, 1985, you inquired about the dutiable status of Demnum from Japan.

According to your inquiry Demnum is a perfluoropolyether oil used as a lubricating oil and is not petroleum derived.

Demnum is classifiable under the provision for substituted derivitives of a polyhydric alcohol in item 428.47, Tariff Schedule of the United States, and dutiable at the rate of 12.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.
DEC 24 1985

REFER TO

CLA-2-04:S:COM:N1:238-1681
816444

Mr. Allan J. Spilner
Manager, Trade Issues Government Relations
Rohm and Haas Company
Independence Mall West
Philadelphia, PA 19105

Dear Mr. Spilner:

In your letter dated November 18, 1985, you inquired about the dutiable status of "Duolite AP-143" from France.

"Duolite AP-143" (cholestyramine resin USP) is finely ground polyvinylbenzyltrimethyl-ammonium chloride, a synthetic (benzenoid) anion exchange resin consisting of a copolymer of styrene and divinylbenzene with quaternary groups attached. The chief use, and currently the only known use, for the "Duolite AP-143" is as a drug. The product is effective as an antihyperlipoproteinemic in binding bile salts such as cholesterol.

It is noted that many ion-exchange resins have been classified as parts of filtering or purifying equipment. However, "Duolite AP-143" is not used as a part of any equipment but rather it is used directly as a drug.

"Duolite AP-143" is classifiable under the provision for benzenoid drugs, other in item 412.7000, Tariff Schedules of the United States Annotated, and dutiable at the rate of 6.9 percent ad valorem. The rate remains the same in 1986.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

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RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OFFICE OF REGULATIONS AND RU

DATE 05/01/86

LEGAL RULINGS AND DECISIONS MICROFICHE INDI

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0054637 054619	370E10
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006519	369A03
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007008	403C04
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007079	104E13
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051506	441C10	051635	441E14
051507	122B04	051637	105D14
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053005	370C09
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053008	164D07
053011	299G07
053012	443C05
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053293	2A12	053539	451B09
053294	2A13	053546	283C05
053295	17F04	053549	411C09
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053306	273D04	053552	508C04
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053323	250F11	053558	101G08
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053327	17F09	053563	186D13
053329	411C05	053570	2B04
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053362	42E03	053580	443F12
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053461	114C11	053592	2B05
053468	443E08	053595	370D03
053472	283C03	053597	273D09
053473	273D07	053600	17G05
053474	2B01	053603	119E05
053476	300A03	053611	17G06
053477	164E03	053613	17G07
053479	57C13	053616	487A07
053482	411C07	053618	2B07
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053486	443E12	053635	451B10
053492	116D13	053637	164E07
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053681	164E02
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053845	321A12
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053848	186E04
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053852	18A06
053863	508D01
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053876	119F01
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053892	158B14
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053935	321B04	054042	321B14
053936	186F01	054045	2C09
053937	2C06	054046	63E05
053938	208C14	054048	444A04
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053950	2C07	054053	300B06
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053952	370D11	054055	208D03
053953	321B06	054057	508D03
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053968	164E13	054080	273E05
053969	159D03	054081	61C08
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053978	228A10	054097	208D04
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053997	427B07	054127	228A12
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054004	370D14	054137	116B09
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054006	411C13	054140	53B04
054010	18B01	054141	228A14
054014	564A10	054148	300B09
054015	300B03	054150	208D07
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054025	164F03	054154	208D09
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054181	53E12	054279	186G02
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054183	159D04	054285	451C06
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054199	370E03	054298	508D10
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054211	159D05	054329	577B14
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054218	159D07	054332	186G05
054220	564A11	054333	135F09
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054235	508D07	054339	208E01
054238	321C04	054346	155C06
054238	393C08	054347	411D03
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054247	508D09	054352	411D05
054248	427B09	054353	321C06
054253	300B13	054355	250G09
054255	59B03	054356	427B12
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054395	131A13
054396	151C03
054409	60C04
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054411	300C01
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054431	164G03
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054452	273E08
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054463	393C13
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054537	273E10
054540	262B02
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054555	148D11
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054559	283C14
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054561	283D08
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054585	2E02
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054615	393D01
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054619	370E10
054623	262B03
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054734	251A03
054735	2F08
054737	18E01
054738	18F02
054745	187A05
054748	18F05
054751	49F01
054753	300C09
054756	109G13
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054763	2F12
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054773	553A05
054776	147D14
054777	451C14
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054786	586A13
054788	262B04
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054789	164G09
054790	228B10
054792	158C02
054792	187A07
054793	36F01
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054836	246B02
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054839	411E07
054843	300D02
054845	508E04
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054846	119E09
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054853	2G09
054854	147E05
054855	147E07
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054864	44A06
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054877	152B14
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054933	3B04
054941	3B06
054947	508E07
054948	3B08
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054952	187A14
054954	102C02
054954	151G02
054956	3B10
054958	164G11
054959	321D05
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054987	246B06
054988	19B07
054988	187B05
054989	3C05
054990	3C09
054991	19B10
054992	3C12
054993	3C14
054994	19B12
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055029	3E01
055030	19C09
055032	3E03
055033	19C12
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055038	122A09
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055049	187B12
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055053	19D01
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055055	158C03
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055056	321D06
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055063	273F02
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055065	187C02
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055107	19E02
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055119	19E04
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055122	273F05
055124	46F13
055125	3F13
055126	19E09
055127	3G01
055128	3G03
055130	19E11
055131	19E13
055132	19F05
055133	187C08
055134	3G05
055135	19F08
055140	19F10
055147	19F12
055150	19G02
055151	19G05
055152	3G07
055153	3G09
055162	3G11
055164	3G12
055166	19G07
055166	121D03
055167	19G11
055168	147E09
055169	19G13
055172	72E12
055174	4A03
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055179	370F03
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055193	164G13
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055211	20B10
055213	411F05
055223	321D08
055229	20B13
055231	20C01
055232	20C04
055233	40B07
055234	20C08
055235	37C10
055236	20C12
055237	20D01
055238	187C13
055241	165A03
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055248	20D04
055250	478A13
055252	536A03
055254	20D09
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055258	83A13
055258	85A03
055259	20D12
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055260	20E02
055263	451D05
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055281	20E13
055281	187D09
055282	44B06
055289	74G06
055290	63E10
055291	451D06
055292	85G06
055293	20F02
055294	487B02
055295	39B05
055296	109A05
055299	20F06
055301	20F08
055302	109E02
055305	78F07
055306	20F11
055307	20F14
055308	39B01
055311	137C02
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057187	148E02
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057222	23B01
057224	110C09
057227	23B02
057228	39C12
057229	451F03
057230	23B04
057236	86B07
057237	39D04
057239	23B05
057240	23B06
057242	46A05
057244	451F04
057245	451F05
057251	262C04
057252	300E12
057254	23B07
057255	39D07
057255	105D08
057256	23B08
057259	81C05
057261	165D12
057262	23B13
057263	23B14
057266	545C04
057270	85A08
057270	85B12
057272	23C01
057273	23C04
057274	508F10
057277	23C05
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057280	563G02
057281	23C06
057282	23C07
057283	23C08
057284	39D09
057287	23C09
057288	188B03
057289	23C10
057292	23C11
057293	50F11
057294	23C12
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057296	43A08
057297	262C05
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057298	105D06
057299	83B04
057300	23C14
057303	39D10
057303	188B04
057304	43A11
057306	39D12
057307	56D07
057310	40D01
057311	46C05
057316	23D02
057317	23D03
057318	23D04
057319	451F07
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057322	23D07
057323	39D13
057325	23D08
057326	188B06
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057329	48A11
057333	39D14
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057337	23D10
057340	23D11
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057362	39E06	057452	39F07
057368	23E01	057453	39F08
057369	23E02	057453	165E02
057372	158C13	057461	39F09
057373	23E04	057464	39F10
057374	78E03	057466	39F11
057375	63E06	057467	84C10
057376	44D12	057468	55F04
057376	188B09	057474	39F14
057377	53A08	057478	83E12
057378	321F04	057479	165E03
057382	39E08	057480	586B09
057383	23E05	057483	107E08
057385	155C12	057483	188B12
057386	44D13	057485	53A03
057389	55D08	057487	451F08
057391	23E06	057488	39G01
057392	39E12	057489	39G02
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057398	88D12	057494	55D04
057399	39E13	057495	106D12
057400	23E07	057498	48C06
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057403	23E09	057503	39G07
057404	39E14	057503	101A03
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057426	64A05	057516	188B14
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057427	44E02	057518	50F06
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057430	23E11	057522	165E05
057430	188B11	057527	44E04
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057433	39F04	057528	165E07
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057559	188C03
057560	52D05
057562	188C05
057564	56D03
057565	64D10
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057693	48B03
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057698	63G07
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057706	50F03
057707	55E11
057710	63G06
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057724	64D08
057732	147F11
057733	46A09
057737	46A04
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057763	89C03
057773	74B07
057777	82G09
057779	451F11
057781	188C13
057792	159E03
057795	89E08
057796	125D09
057796	188D02
057798	87E11
057803	451F12
057806	165F02
057807	87B14
057811	82G10
057812	86G13
057813	75D09
057814	52G14
057817	86D06
057820	78C14
057821	221F12
057829	508F12
057830	412B06
057832	188D09
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057842	451F13
057844	393E11
057845	86D03
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057859	393E13
057860	83C05
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057868	451F14
057873	61G04
057874	47E08
057875	50E13
057876	84D03
057878	75D08
057878	109G06
057883	300F01
057884	129B02
057887	300F02
057890	451G02
057895	80A05
057897	283E09
057904	74G04
057905	427D04
057906	85A12
057907	101C03
057909	46A12
057912	451G03
057916	46D14
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057924	79D12
057925	50C10
057931	273G07
057932	79C06
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057979	165D06
057983	188D13
057986	74E01
057991	208G07
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058005	208G09
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058020	393F03
058023	228D04
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058030	91D02
058031	270F09
058033	508F13
058036	321F08
058037	91D05
058037	91E07
058038	300F04
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058042	508G01
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058105	529B08
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058148	137C11
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058151	209A03
058156	228D08
058157	209A06
058159	135F13
058163	165F06
058167	321F10
058167	412C05
058168	104E04
058171	251D06
058172	283E13
058173	165D10
058175	76B10
058177	545C05
058182	188E03
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058187	321F12
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058218	9B10
058219	136B01
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058234	251D10
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058238	120A06
058239	9C01
058241	32E12
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058247	9C02
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058279	509A03
058281	393F14
058283	412C11
058285	412C12
058286	427D08
058287	496B12
058288	209A13
058289	105B10
058290	274A10
058292	251D11
058295	104D10
058297	209B01
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058299	154B08
058301	228D09
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058314	9C13
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058346	209B04
058347	91E05
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058354	148E04
058355	136B04
058355	188E09
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058359	165F08
058361	371B03
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058365	509A08
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058369	151B04
058371	371B05
058373	151G14
058375	393G04
058376	103F14
058376	188E13
058386	209B06
058387	53B08
058389	228D10
058392	9D12
058393	9D13
058396	105C11
058397	60D05
058401	128F02
058402	188F02
058406	9D14
058411	209B07
058414	300G03
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058424	111F11
058427	9E02
058433	427D09
058434	188F06
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058436	43B01
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058461	427D11
058465	509A10
058466	251D13
058467	23F03
058468	154B05
058470	251E01
058473	509A11
058478	23F05
058484	9E04
058485	251E03
058489	451G07
058491	228D13
058493	288E01
058494	135C02
058496	23F07
058497	112B08
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058503	62D07
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058505	270G04
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058520	80D13
058522	371B07
058523	545C07
058530	496C01
058531	317D13
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058534	23G07
058536	23G08
058540	451G09
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058542	43B04
058543	487C04
058547	23G12
058549	76B13
058550	24A03
058551	24A05
058554	135G01
058559	209B08
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058565	228E06
058567	24A07
058569	371B09
058570	83C03
058571	24A09
058572	509A13
058574	24A11
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058599	105F05
058602	251E05
058604	412C13
058605	509A14
058606	317E01
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058625	24B09	058697	393G12
058627	24B10	058698	451G10
058632	43B08	058699	553A09
058634	40D10	058700	62F02
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058635	64D06	058703/058685	545C09
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058639	40D12	058712	209B14
058640	24B12	058715	119D03
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058644	43B10	058732	300G10
058645	44E10	058740	509B05
058646	393G09	058741	509B06
058648	412D03	058744	56B11
058651	165F10	058746	65B07
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058656	54D03	058771	188G02
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058662	228E10	058779	40E07
058664	43B14	058780	274A14
058665	509B01	058788	509B07
058666	40E03	058790	64D02
058667	262D01	058791	141B14
058669	43C01	058791	151G11
058670	61D09	058794	85D13
058671	262D03	058795	188G06
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058844	85E12
058844	371B12
058845	61D13
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058849	62E12
058853	120C09
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058863	62E10
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058902	545C11
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058907	509C02
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058921	65B06
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058930	53E02
058932	103G08
058934	114G11
058939	509C04
058940	394A06
058941	147F13
058942	321G12
058944	121G12
058945	317E03
058950	105F12
058953	61E12
058955	56C10
058958	47B13
058959	529C04
058960	47B11
058962	80B06
058963	84D09
058965	86G04
058968	509C07
058970	321G13
058975	61D12
058976	300G12
058978	451G11
058984	48D04
058989	283F04
058992	188G08
058996	274B05
059001	371C02
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059045	188G10
059046	32F01
059047	371C05
059048	24D09
059054	32F02
059058	496C03
059060	101D08
059063	59B07
059069	24D10
059077	251E10
059080	128E04
059085	24D11
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059088	577C06
059089	79E03
059091	32F04
059099	451G14
059103	371C07
059108	32F06
059109	121F12
059114	394A10
059116	32F08
059117	300G13
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059125	32F12
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059160	209C03
059161	412C03
059164	394A11
059165	24E09
059166	32E09
059171	32G07
059172	24E11
059175	209C05
059176	209C06
059178	24E14
059180	188G11
059182	32G09
059183	32G11
059184	86G02
059187	24F03
059189	188A03
059190	251E13
059191	251F01
059192	496C06
059195	33A03
059196	412D09
059199	24F05
059208	24F09
059212	24F10
059213	106D08
059216	33A05
059221	37F04
059222	165G02
059223	24F12
059225	33A07
059227	24F13
059228	24G01
059229	33A08
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059250	24G06	059370	25B05
059252	322A07	059371	37G02
059255	24G09	059374	25B06
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066308	195F12
066309	394F10
066311	195F13
066312	322G10
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066318	232A12
066322	171C08
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066324	394F11
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066330	214B03
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066345	214B09
066346	171C10
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066369	171C12
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066451	196A05	066575	196C10
066454	171C13	066580	232C04
066458	263A04	066581	214E03
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066464	577G04	066583	214E06
066469	372D01	066590	214E07
066470	196A08	066591	246C09
066474	232B04	066594	232C06
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066493	232B05	066622	232C10
066495	254A11	066623	254B02
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066498	196A12	066629	232D02
066501	196A13	066636	394F13
066506	510B13	066647	284C12
066508	196B01	066650	214E13
066509	246C07	066651	214F04
066516	246C08	066652	214F09
066525	196B02	066653	214G02
066526	214D10	066654	302A03
066529	196B05	066655	232D06
066531	196B08	066657	214G04
066532	196B10	066659	214G06
066533	196B13	066660	284D02
066535	214D13	066662	214G08
066536	232B08	066664	215A03
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066906	232G05
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067105	372D10	067263	536C09
067111	536B14	067267	274F01
067113	413B01	067277	510C14
067115	510C03	067278	487D12
067122	302A12	067281	545E13
067123	274E12	067290	302A14
067123	536C02	067293	478C07
067125	553C03	067295	510D01
067129	452E13	067296	323A06
067132	322G13	067299	302B03
067139	233A11	067303	323A07
067141	510C05	067304	323A09
067146	233A13	067305	478C09
067147	225D01	067306	372E01
067147	233B03	067310	413C04
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067387	395A05	067523	413D14
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067409	413D01	067561	413E03
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067414	302B08	067569	510E13
067419	274F02	067572	428A07
067422	529E14	067573	545F02
067425	452G02	067584	529F04
067426	323A13	067590	302B13
067426	372E10	067593	413E07
067427	413D05	067599	487E03
067433	586C06	067599	487E03
067439	395A08	067619	323C05
067442	510D14	067619	372F06
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067757	428B03
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067949	510G11
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067988	510G13
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068072	246D12	068225	274F14
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068156	263B09	068289	254E09
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068173	263B12	068315	215E06
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068182	254D04	068322	323C13
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068363	234A06	068487	234C09
068364	487F02	068488	263F11
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068434	254G07	068545	234D14
068436	234B10	068547	284F05
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068438	263F09	068551	263G11
068440	511A07	068552	234E01
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068453	254G10	068567	395C01
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068643	264B01
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068655	264B07
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068932	255E08	069036	302G01
068933	255E12	069037	265C02
068935	264F12	069038	373B12
068938	264F13	069056	453E03
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068944	302E12	069061	428D09
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068954	275D01	069069	323G05
068955	264G03	069070	285C14
068956	373A11	069073	428D10
068956	395C05	069075	265C06
068959	264G05	069076	275E08
068960	264G08	069077	373C01
068961	265A10	069077	459G02
068962	578A13	069078	285D02
068963	264G10	069080	302G03
068968	275D05	069087	275E10
068978	264G13	069088	413G01
068980	255E13	069089	265C11
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069107	323G06	069197	323G13
069108	511A11	069200	275G04
069109	265C12	069203	428D13
069110	275F02	069224	303B11
069113	373C08	069225	395C13
069114	578B02	069228	285G03
069115	373C12	069229	303B13
069121	413G02	069230	285G04
069122	303A03	069231	275G05
069124	285D07	069234	578B03
069125	537D08	069235	285G06
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069126	285D12	069237	286A03
069127	285D14	069239	275G07
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069129	303A09	069245	453E11
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069160	265D04	069263	303C01
069161	275F04	069267	276A03
069163	453E08	069269	276A07
069164	373D01	069269	453E13
069167	323G08	069270	286B01
069168	303B02	069271	276A10
069169	564C02	069276	511B02
069170	303B05	069278	275F12
069171	303B09	069279	372G13
069172	285E06	069281	276A12
069173	285E10	069285	324A03
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069176	275F09	069291	303C03
069180	511B01	069292	324A05
069183	285F03	069293	286B03
069186	428D12	069294	276B04
069187	275F12	069297	286B05
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802876	385G07	803017	386B06
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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OF REGULATIONS AND RULINGS

AL RULINGS AND DECISIONS MICROFICHE INDEX

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m7.

002055

[redacted]

[redacted] MFG 422.4 o
June 23, 1970
002055

[redacted]

Dear [redacted]

In your letter of January 23, 1970, you asked whether the ruling of the Bureau dated July 7, 1969, concerning the classification of certain rolled steel plate applies to products which are beveled.

The products in question are not plates within the purview of Headnote 3(g), Schedule 6, Part 2B, Tariff Schedules of the United States (TSUS), because they have been rolled into a curvature and are no longer flat merchandise as required. They are angles, shapes, and sections which are defined in Headnote 3(j). The superior heading for these basic shapes and forms, by appropriate statutory language, not present in other provisions for primary merchandise, is made applicable to angles, shapes, and sections whether or not drilled, punched, or otherwise advanced. Nothwithstanding this language, certain operations or processes may remove angles, shapes, and sections from those provisions if the advancement results in the production of manufactured articles.

An example of this situation is found in a decision concerning the classification of pre-form flanges and dish tank heads for storage vessels which were made of steel plates cladded with stainless steel cut into circles and pressed so as to form hemespheres with edges fabricated to set specifications. Such merchandise for tariff purposes is treated as a completely manufactured article, classifiable under item 657.20.

In order to decide the question raised, we must determine whether beveling is an operation which requires a ruling holding that angles, shapes, and sections so processed are no longer basic shapes or forms. In their unbeveled state, use as sections in the forming of the sides of tanks is feasible. They can be bolted into place. Beveling permits an assembly by welding in lieu of bolting. Although beveling is performed after completion of rolling, it is not an operation resulting in

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____ [redacted]

A3

advancement which produces a manufactured article. In defining advancement in this context, we consider beveled and unbeveled products in a similar condition since beveling relates only to assembly by welding.

Notwithstanding this conclusion, beveled angles, shapes, and sections cannot be classified under the same provision as the merchandise, the subject of our prior ruling. They are advanced as that word is used in the applicable superior heading. Therefore, classification under item 609.80 or 609.82, TSUS, is precluded. The proper provision is item 609.84 or 609.86, TSUS. The prescribed duty is 6.5 or 9.5 percent ad valorem plus appropriate additional duties.

This decision is being circulated to all customs officers in order that the merchandise may be uniformly so classified at each port at which it may be entered.

Sincerely yours,

(Signed) Arthur P. Schifflin

Acting Director
Division of
Tariff Classification Rulings

- - - - - - - - - - -

Paul Kesper
Acting Director

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

002055

A4

BIS

JAN 23 1973

SP 431.1 SC
023709

023709

[redacted]

Dear [redacted]

In your letter of October 17, 1972, you inquire as to the tariff status of a rechargeable "power failure light" produced in Japan.

You state that the primary use of this product is as an emergency light that goes on automatically when power fails in the home or office. It also serves as a night light when plugged into the outlet and when unplugged can be carried about as a portable hand light. The device is housed in a plastic case measuring approximately 3-1/4 by 2½ by 1-1/4 inches and in construction resembles a conventional rechargeable flashlight.

It is the opinion of the Bureau that the subject rechargeable light is classifiable as a flashlight under item 683.70, Tariff Schedules of the United States, with duty at the rate of 35 percent ad valorem.

Sincerely yours,

for the (Signed) R. X. ARNOLD
Director
Classification and Value
Division

[redacted]

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AS

	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
CODE							
SUR-NAME	[redacted]						
DATE	[redacted]						

70
29

032756

685.90

JUL 17 1974

CLA-2:R:CV:MA
434 PP
032756

Dear [redacted]

In your letter of March 21, 1974, you requested information concerning the tariff classification of the control panel of a plate glass tempering furnace system entered April 7, 1973.

In your letter of March 4, 1974, you stated your belief that the Customs Service had indicated that the article was classifiable under item 683.95, Tariff Schedules of the United States (TSUS), but we have no record of any previous correspondence on this subject.

A report from our field office in New York shows that the subject merchandise was entered under item 683.95 at a rate of 5 percent ad valorem but liquidated under item 685.90 at a rate of 8-1/2 percent ad valorem.

The change in classification was necessary under General Headnote 10(ij) of the tariff schedules, which states that a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such a part. Item 685.90, TSUS, is a specific provision for control panels and therefore constitutes a more appropriate classification for the tempering furnace control panel than item 683.95, TSUS, which covers electrical furnaces and parts.

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Sincerely yours,

(signed) R. X. Arnold

for Salvatore E. Caramegno
Director
Classification and Value Division

[redacted]

AL

670.12 711.98
711.88 711.00
712.99 712.49

JAN 11 1978

049401

CLA-2:R:CV:MSP
049401 SC

[redacted]

Dear [redacted]

In your letters of January 13 and 19, 1977, you ask for information about the tariff status of various electrical devices used in the yarn industry. The merchandise in question is produced in Japan. Brochures and photographs have been submitted for our examination.

You refer to the following in your letters:

1. The Fray Counter Model DT-104.

2. The Twist Monitor, Model TM-501.

3. The Fiber Torsional Rigidity Analyzer.

4. The Yarn Sampling Unit, Model AYS-531.

5. The Yarn Quality Analyzer, Model FYL-500.

Descriptive literature indicates that the Fray Counter is an electrical device using a photoelectric converter to count the number of frays of a filament yarn or a spun yarn. It consists of: the F type detector for on-line detection of the frays of a filament yarn; the S type detector for detection of the frays of a spun yarn according to their length; and the counting unit connective with either of the two detectors. The determination of the number of frays in a yarn is indispensable when setting the quality of a particular yarn. The quality control is essential because frays tend to cause yarn cuts in the knitting or weaving process as well as having an effect on the appearance of the finished product.

A7

Descriptive literature indicates that the Twist Monitor is an electrical instrument designed to count the number of twist in yarn. The monitor is used for controlling the twisting process of yarns in a mill and also for research and development in a laboratory. Incorporated in the unit are two tachometers, a controller, a D.C. motor for the rotating measuring disks, an indicator for visual readings, and a recorder output. It appears that the main features of the instrument in question are that it is an analogue output for continuous readings.

According to the brochure the Fiber Torsional Rigidity Analyzer measures the torsional rigidity, torsional hysteresis, and residual torque of a fiber. The sample is gripped between the upper and lower clamps. The upper clamp is connected to the constant-speed motor which rotates the sample and gives it the twist. The lower clamp is connected to a solid cylinder suspended freely in a viscous liquid. The plastic container holding the liquid is placed coaxially to the solid cylinder and is rotated in direction opposite to the sample rotation by a variable speed motor. The control system consists of a photoelectric detector which measures the angular position of the lower clamp and a controller which regulates the speed of the variable speed motor, according to the signal from the detector. The mirror between the lower clamp and the solid cylinder is designed so that the area, of reflection is proportional to its angular position. The light projected on the mirror is reflected to the photo-cell which generates the angular signal. A twist torque diagram of the sample can be obtained automatically by this control system.

You indicate that while you do not have a brochure for the Yarn Sampling Unit, Model AYS-531, you are enclosing a brochure for an earlier model, the Automatic Yarn Supplier, which should give us an idea of what the Yarn Sampling Unit is. However, you indicate that the automatic yarn sampling Unit Model 531, picks a yarn end from several packages on a creel stand and that after knotting these yarn ends, they are wound into a package. This package of various yarns can then be tested through the various units in the system on a runthrough basis.

Schedule 7, Part 2, Subpart D, Headnote 2, Tariff Schedules of the United States (TSUS), provides in part:

> 2. For the purposes of this subpart, the provisions herein (items 712.00 to 712.99, inclusive) *** apply only to the following articles.

049401

N8

[redacted]

(a) Appliances, instruments, apparatus, or machines of kinds described in subpart C of this part or in the provisions of this subpart (subpart D) covered by items 711.00 to 711.88, inclusive,***

Accordingly, it is our opinion that the Fray Counter, Model DT-104 and the Twist Monitor, Model TM-501 described are classifiable under the provision for production or similar counters in item 711.98, TSUS, dutiable at the rate of 5 percent ad valorem.

The Fiber Torsional Rigidity Analyzer described is classifiable under the provision for electrical measuring, checking, analyzing or automatically-controlling instruments and apparatus in item 712.49, TSUS, dutiable at the rate of 10 percent ad valorem.

The Yarn Sampling unit, Model 531, described is classifiable under the provision for textile reeling or winding machines in item 670.12, TSUS, dutiable at the rate of 7 percent ad valorem.

Sincerely yours,

(Signed) R. X. ARNOLD

Salvatore E. Caramagno
Director
for the Classification and Value Division

[redacted]

049401

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SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

351.80

23 AUG 1978

052073

CLA-2:R:CV:MC
052073 PR

[redacted]

Dear [redacted]

This is in reply to your letter of May 10, 1977, concerning the tariff status of two samples of curtain fabric manufactured by [redacted] in Canada. We regret the delay in this response, however, your inquiry was inadvertantly misfiled.

Two lengths of fabric were submitted. You state that the fabric is 90 percent polyester and 10 percent acetate, and is made on a Raschel machine. Both samples are openwork fabrics with preconceived inwrought designs and constitute lace.

Fabric as represented by the submitted samples is classifiable, if imported in material lengths, under the provision for lace, in the piece or in motifs, whether or not ornamented, made on a machine other than a Leavers (including go-through) machine, a bobbinet-jacquard machine, a nottingham lace-curtain machine, in item 351.80, Tariff Schedules of the United States (TSUS), with duty at the rate of 40 percent ad valorem.

Sincerely yours,

(Signed) James W. O'Neil

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

A10

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SURNAM[redacted]							
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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

544.16
544.18
JAN 4 1978

052436

CLA-2:R:CV:MSP
052436 TL

[redacted]

Dear [redacted]

In your June 16, 1977 letter, you requested tariff information as to the proper classification of articles described as glass photomasks.

These photomasks consist of 4-inch squares of flat glass approximately 0.06 inch thick. These are produced by coating the glass with a metal layer and etching away the metal layer to leave lines and dots. You have stated that the sample photomask submitted is used to form the contacts to integrated circuits. You also state that these photomasks are made of either rolled or drawn glass and the surfaces are polished.

Glass which does not measure over 15/32 inch in thickness, including rolled or drawn or blown glass, subjected to etching is properly classified under item 544.18, Tariff Schedules of the United States (TSUS), if it is not drawn or blown, or is either surface ground or polished.

Glass which does not measure over 15/32 inch in thickness, including rolled, drawn, or blown glass, subjected to etching is properly classified under item 544.16, TSUS, if it is drawn or blown and is not surface ground or polished.

If as you indicate, they are drawn and polished, or rolled and polished, we are of the opinion that these glass photomasks are properly classified under item 544.18, TSUS, dutiable at 7.5 percent ad valorem. If they are drawn or blown and are not surface ground or polished, they are properly classified under item 544.16, TSUS, dutiable at 15 percent ad valorem.

Sincerely yours,

[redacted]

(Signed) R. X. ARNOLD

for the Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-1973)

JAN 31 1978

351.80

CLA-2:R:CV:MC
054373 PR

054373

[redacted]

Dear [redacted]

This is in reply to your letter of November 14, 1977, concerning the tariff status of certain fabric manufactured in Turkey.

Two sample pieces of cloth were submitted. You indicate that the fabric is wholly polyester, woven, and will be used as curtains, napkins, and tablecloths. Our examination of the submitted samples reveals that they are knit man-made fiber fabrics with inwrought preconceived designs. The sample fabrics are lace.

Merchandise as represented by the submitted samples is classifiable, if imported in material lengths and if made on a machine other than a Leavers (including go-through) machine, a bobbinet-jacquard machine, or a Nottingham lace-curtain machine, in item 351.80, Tariff Schedules of the United States, with duty at the rate of 40 percent ad valorem.

If the merchandise is not being imported in material lengths or has been made on one of the above named machines, please advise us and we will rule accordingly.

The merchandise described above may be subject to international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

Sincerely yours,

(Signed) JAMES W. O'NEIL

for Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

A12

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

054786

3-15-78

CLA-2:R:CV:MA c
054786

The Honorable
Charles H. Percy
United States Senator
Room 117
600 E. Monroe Street
Springfield, Illinois 62701

Dear Senator Percy:

With your letter dated January 9, 1978, you enclosed correspondence from [redacted] addressed to [redacted], concerning duties assessed on luggage nets manufactured in West Germany.

The luggage nets involved consist of "U" shaped pieces of metal measuring approximately 8 inches long. The arms of the "U" portions extend 5 inches upward and netting of man-made fibers is stretched across the metal frames forming pouches which are open at the top. Plastic clips or holders are used to attach the metal frames to the backs of automobile seats. These luggage nets are in chief value of man-made fibers.

[redacted] claims that the luggage nets are classifiable under the provision for other parts of motor vehicles, in item 692.27, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 4 percent ad valorem.

The District Director at the Port of Chicago classified this merchandise under the provision for other net articles, not specially provided for, of textile materials, in item 386.08, TSUS, with duty at the rate of 25 percent ad valorem. The rationale for this classification was that the luggage nets are accessories rather than parts of automobiles.

It is a fundamental principle of Customs law that an article is an accessory if its use is casual, auxiliary or optional. See Herbert G. Schwartz, DBA Ski Imports v. United States, 57 C.C.P.A. 19, C.A.D. 971 (1969), copy enclosed. It is our view that the use of these luggage nets in automobiles is optional and therefore they were properly classified at the Port of Chicago.

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

[redacted] may contest the district director's decision in this matter by filing a protest with the appropriate Customs officer at the port of entry in accordance with the enclosed copies of 19 U.S.C. 1514, and part 174, Customs Regulations.

If we can be of any further assistance, please do not hesitate to call on us.

Sincerely yours,

R E Chasen

Commissioner of Customs

Enclosures

[redacted]

[redacted]

054786

A14

	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73) (Previous editions may be used)

JAN 28 1981

CLA-2:CO:R:CV:G
055902 EM

District Director of Customs
U.S. Customs Service
P.O. Box 9516
El Paso, Texas 79985

Dear Sir:

This concerns your request under the internal advice procedure (No. 181/80), on behalf of the importer, [redacted] and its agent, Customs Consultant Mr. Adolfo Loera, concerning the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain metal cans and covers exported to Mexico for use in the assembly of electronic noise filters.

055902

ISSUE:

Assuming that item 807.00, TSUS, remains applicable on the merits of assembling other components making up the described filters, the only issue for determination herein is whether the punching of holes in the cans for eyelets and screws, and the trimming of covers for certain model cans are operations considered incidental to the assembly process.

FACTS:

As stated by the importer in its request for a ruling on the drilling of holes in different locations on the metal cans, the following operations are listed as part of the assembly operation:

1) Can punched and eyeletted, insulated wire fed thru the holes.

2) Can punched and screws inserted through the holes for screw terminals.

3) Can punched and terminals eyeletted to the can.

In addition to the described hole-drilling operations, the importer also claims the trimming of metal covers used in certain

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filter models to be incidental to the main assembly process. In the request for internal advice, it is stated that the assembly descriptions previously filed by the importer showed that prior to 1975, holes were punched in the cans before exportation.

CONTENTIONS:

The importer claims that the holes cannot be punched in the cans before exportation but must be punched abroad as an incident to assembly. It is claimed in the request for internal advice that the holes must be punched before exportation since making holes in the cans amounts to a substantial change not considered incidental to the assembly.

LAW AND ANALYSIS:

It has previously been the practice to preclude tariff treatment under item 807.00, TSUS, whenever holes were made in exported components. However, in Rudolph Miles v. United States, C.A.D. 1202, it was held that burning slots and drilling holes in steel Z-beams to permit proper alignment for assembly did not produce such a substantial change in the beams as to constitute further fabrication. The foreign processing of the beams was held to be a part of the assembly under item 807.00, TSUS. In view of this precedent, we are now of the opinion that similar holes made in components to facilitate assembly may also be regarded as assembly operations. In this respect, since the holes are drilled in the metal cans at the time of assembly in order to determine the location of the holes, as claimed by the importer, this drilling of holes should also be regarded as not so substantial as to constitute a fabrication.

055902

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B2

Accordingly, since the holes in question are made solely to accommodate eyelets and screws essential to the assembly of the components, punching holes will not preclude tariff treatment of the cans under item 807.00, TSUS. Slight trimming of the metal covers, of course, is also considered a step incidental to the assembly process and eligible for item 807.00 tariff relief.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

055902

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CODE AND DATE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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SURNAME	[redacted]						

DEPARTMENT OF THE TREASURY—U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

056113

CLA-2:R:CV:MA
056113 JB

[redacted]

Dear [redacted]

Your letter of December 13, 1977, requests a reconsideration of our tariff classification ruling of November 28, 1977, control No. 053812 JB, in which flat steel plate with beveled edges was held classifiable as articles of iron or steel, not coated or plated with precious metal, under item 657.20, Tariff Schedules of the United States (TSUS), dutiable at the rate of 9.5 percent ad valorem.

You state that beveled plate is still in its basic shape and form i.e., it is still a plate, rectangular in shape. You also state that item 608.84, TSUS, recognizes that plates from a steel mill must be cut to a specified rectangular size. In cutting, a mill may cut a square or beveled edge. The beveling does not, in your opinion advance the plate material past the plate description permitted under Headnote 1, Schedule 6, Part 2, TSUS, or from the description under item 608.84, TSUS.

However, item 608.84, TSUS, does not recognize that plates from a steel mill must be cut. That item deals with plates and sheets which are not cut to non-rectangular shape. Nowhere is it said that the plate itself must be cut.

Schedule 6, Part 2, TSUS, applies to base metals, their alloys and basic shapes and forms by whatever process made and whether or not such products have been subjected to treatment, to improve the properties or appearance of the metals or to protect them against rusting, corrosion or other deterioration. Beveling permits the sheet to be used in welding and is therefore considered to be an advancement. It is a process which does more than improve the properties or appearance of the metal. Beveling is therefore not a permitted operation under Headnote 1,

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[redacted]

Schedule 6, Part 2, TSUS, and any classification under that Part would be precluded. Beveled plate would be classifiable as articles of iron or steel, not coated or plated with precious metal, under item 657.20, TSUS, dutiable at the rate of 9.5 percent ad valorem.

Sincerely yours,

(signed) L. P. SCHLEYER

Salvatore E. Caramagno
Director
Classification and Value Division

056113

[redacted]

CODE AND DATE	[redacted]						
SURNAME	[redacted]					BS	
CODE AND DATE	[redacted]						
SURNAME							

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11 15 72)

MAR 08 1978

056247

CLA-2:R:CV:MA
056247 JB

[redacted]

[redacted]

Dear [redacted]

Your inquiry of February 6, 1978, on the behalf of [redacted], requested the tariff classification of an "Ayrbug" wheeled conversion kit for snowmobiles. The conversion kit is manufactured in Canada.

The kit is designed to convert a conventional snowmobile to an all-terrain type vehicle by removing the skis and track and replacing them with four wheels. The "Ayrbug" is shipped as a complete kit.

The conversion kit would be classifiable as parts of motor vehicles: other, under item 692.27, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4 percent ad valorem. If the conversion kit is a Canadian article and original motor vehicle equipment as defined in Headnote 2, Schedule 6, Part 6, Subpart B, then it would be classifiable under item 692.28, TSUS, and be entitled to entry free of duty.

Sincerely yours,

(Signed) A. P. Scutchfield

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
CODE AND DATE	[redacted]						
SURNAME						B6	
CODE AND DATE		(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

[redacted]

[redacted]

MAR 16 1978

CLA-2:R:CV:MA
056266 JB

056266

[redacted]

Dear [redacted]

Your inquiry of February 10, 1978, requested that we again reconsider our prior rulings of November 28, 1977, Control No. 053812 JB, and January 24, 1978, Control No. 056113 JB, in which we held flat plate steel with beveled edges to be classifiable as articles of iron or steel, not coated or plated with precious metal, under item 657.20, Tariff Schedules of the United States (TSUS), dutiable at the rate of 9.5 percent ad valorem.

We have again reconsidered our position and conclude that beveling is an advancement that removes steel plate from the classification as a basic shape or form. It is a process that does more than improve the properties or appearance of the metal. Therefore it is Customs' view that beveling is not a permitted operation under Headnote 1, Schedule 6, Part 2, TSUS. Therefore beveled plate would remain classifiable under item 657.20, TSUS.

Sincerely yours,

For (Signed Arthur P. Schifflin

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

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CODE AND DATE	[redacted]						
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CODE AND DATE	[redacted]						
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

Classification: Model Coach;
item 737.15, TSUS

LEGAL DETERMINATION 3611-239

MAR 02 1978

REFER-TO
CLA-2:R:CV:MA
056319 LXL

Dear

In your letter February 17, 1978, you inquire as to the tariff status of a model coach produced in England.

According to the submitted literature the "The Jubilee Coach" is modelled on the Queen's State Coach which was originally built in 1762. The coach is approximately 3 inches long by 1 1/2 inches high by 1 1/2 inches wide, and made of 0.925 silver and gold plated. You state that the coach is made to a scale of 1 to 95, but no evidence on the size or appearance of the actual coach was submitted.

You suggest that the coach is classifiable as a model of a highway vehicle under item 737.07, Tariff Schedules of the United States (TSUS). The Customs Court in Associated Hobby Manufacturers, Inc. v. United States C.D. 4103 (1970), defined 'highway vehicles' as limited to those vehicles whose main purpose is highway transportation -- i.e, transporting people and material over a highway from one location to another The case dealt with models of construction vehicles that could travel on highway under their own power to enable them to get to construction sites. From the foregoing case it is apparent that the "highway vehicle" must be of the type usually used on the highway for transporting people or material and the use contemplated is not a fugitive use or an unusual use.

The actual coach here under consideration is used only on festive occasions and is not currently a normal mode of transportation. It is not the type of 'highway vehicle' contemplated within the provisions of item 737.07, TSUS, which is limited specifically to the items named in the provision.

The coach is a model and as such, it is classifiable under the provision for other model articles in item 737.15, TSUS, and is dutiable at the rate of 17.5 percent ad valorem.

Sincerely yours,
(Signed) A. P. SCHIFFLER
for Salvatore E. Caramagno
Director
Classification and Value Division

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REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

B8

★U.S. GOVERNMENT PRINTING OFFICE: 1978—261-691:427

JUN 19 1979

CLA-2:R:CV:MA
057480 LXL

057480

[redacted]

Dear [redacted]

In your letter of October 24, 1978, you inquired as to the tariff status of beveled steel plate. Please note and in the future comply with the requirements listed in the enclosed sheet entitled, "Customs Duty Rulings on Prospective Imports," and also Part 177 of the Customs Regulations of which, pertinent portions are enclosed.

Furthermore, on November 2, 1978, we were assured by you via telephone that a more detailed description of the product and its use would be submitted. In absence of all of the foregoing, we will not offer definite advice.

However, in this case, the bevelling appears to fill a commercial need and constitutes an advancement. In the past, we have held that similar beveled steel plate is classifiable under the provision for articles of iron or steel, not coated or plated with precious metal, in item 657.25, Tariff Schedules of the United States (TSUS) and is dutiable at the rate of 9.5 percent ad valorem.

Sincerely,

(Signed Arthur P. Schifflin
Salvatore E. Caramagno
Director
Classification and Value Division

Enclosure [redacted]

CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER		(7) REVIEWER
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

Classification: Miniat...s of
Victorian Furniture; item 737.15, TSUS

LEGAL DETERMINATION 3611-273

REFER TO
CLA-2:R:CV:MA
058142 LXL

April 5, 1978

Dear

In your letter you requested information as to the proper classification of miniatures of Victorian furniture which are used in doll houses. Your letter indicates that they are made by A.

In your letter and brief, you contend that these miniatures are properly classified under either 765.15, Tariff Schedules of the United States (TSUS), or item 765.25, TSUS, Alternatively you contend that they are properly classified under item 207.00, TSUS.

For an article to be classified under item 765.15, TSUS, it must be an original, made by a professional, and be a sculpture, or one of the first nine castings, replicas, or reproductions made from the sculptor's original work or model. For an article to be properly classified under item 765.25, TSUS, it must be an original made by a professional, rather than a skilled craftsman. Additionally, the article must be of such high quality and artistic merit as to be recognized as an example of the free fine arts by recognized art authorities.

A standard used to determine whether the creator of a work is a professional sculptor rather than a skilled craftsman is (1) that he be a graduate of a course in sculpture at a recognized school of art (free fine art, not industrial art), or (2) that he be recognized in art circles as a professional sculptor by the acceptance of his works in public exhibitions limited to the free fine arts. See C.I.E. 160/56,

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While A's letter and the sample indicate the painstaking attention to detail that is needed to make these miniatures, there is no evidence to indicate that he is a professional. Moreover, the articles do not appear to be examples of the free fine arts. Thus, we are of the opinion that they are not properly classified under items 765.15 or 765.25, TSUS.

We cannot agree to your alternative contention that the articles are classifiable as manufactures of wood in item 207.00, TSUS, inasmuch as the articles are provided for specifically elsewhere in the tariff schedules.

Models are defined as replicas of existing objects. We take notice that the articles are replicas manufactured on a scale of 1 to 12 of actual articles in existence. We note for example, that the piano, article No. 101 in the catalog, is a copy of the Babcock styled piano in the John Paul Jones house in Portsmouth, New Hampshire (circa 1820) and that the Lincoln rocker is a duplicate in miniature of the chair Lincoln sat in the night of his assassination. The articles meet the definition of models.

We invite your attention to headnote 1, Subpart E, Part 5, Schedule 7, of TSUS, which states, "The articles described in the provisions of this subpart (except parts) shall be classified in such provisions, whether or not such articles are more specifically provided for elsewhere in the tariff schedules, ...". Models are described in item 737.15, TSUS, which is in the aforementioned subpart. For this reason we must conclude that the replicas are classifiable under the provision for other models in item 737.15, TSUS, and are dutiable at the rate of 17.5 percent ad valorem.

Sincerely yours,

(Signed) L. F. SCHWARZ

for Salvatore E. Cafamagno
Director
Classification and Value Division

Enclosure

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

058142

B11

22 AUG 1979

CLA-2:R:CV:MC
060572 CM

060572

This ruling is in regard to the classification of crabmeat from Mexico.

ISSUE:

The tariff classification of crabmeat.

FACTS:

The merchandise is described as crabmeat which is made from live crabs exported from Brownsville, Texas, to Mexico where they are processed into crabmeat. The yield for this industry is on the basis of 15 pounds per 100 pounds of live crab. The recognized percentage of production is as follows:

Jumbo lump	25%	3.6 lbs.
Regular lump	9%	1.35 lbs.
Special	51%	7.65 lbs.
Claw Meat	9%	1.35 lbs.
Cocktail Claw	7%	1.05 lbs.

If the cocktail claw is not produced, the claw meat is increased to 16 percent. The various yields may fluctuate slightly; but, as indicated, the reported yield is substantially reliable.

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060572

LAW AND ANALYSIS:

The merchandise is processed into a new and different article of commerce and therefore not eligible for the provisions of item 806.20, Tariff Schedules of the United States (TSUS). Further, item 806.20, TSUS, does not pertain to food items processed in a foreign country. The merchandise under consideration is crabmeat which is specifically provided for in the tariff schedules.

HOLDING:

Crabmeat, fresh, chilled, or frozen, is classifiable under item 114.15, TSUS, dutiable at the rate of 7.5 percent ad valorem. If prepared but not in airtight containers it is dutiable at the rate of 7.5 percent ad valorem under item 114.25, TSUS. If prepared or preserved and in airtight containers it is classifiable under item 114.20, TSUS, dutiable at the rate of 11 percent ad valorem.

(signed) R. X. Arnold

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

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SURNAME							
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

18901

682.60

063105

JUN 19 1979

CLA-2:R:CV:MSP
063105 HDB

[redacted]

Dear [redacted]

We have your letter of June 4, 1979, in which you have resubmitted your request for the tariff status of certain plastic housings. The letter contains the statement required by Section 177.2(B)(5), Customs Regulations.

The housing in question is in two parts; the larger top portion is wholly of plastic while the bottom plastic plate has either two or four metal terminal screws.

If the item is of a type chiefly used to house either a transformer or rectifying apparatus, it is classifiable under the provision for parts of transformers, rectifiers and rectifying apparatus, in item 682.60, Tariff Schedules of the United States, dutiable at the rate of 7½ percent ad valorem.

Sincerely,

(Signed) R. X. ARNOLD

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

PUBLIC

[redacted]

CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

807.00
692.27

SEP 2 5 1979

CLA-2:R:CV:MSP
063314 FJD

063314

[redacted]

Dear [redacted]

In your letter of August 9, 1979, you inquire as to the tariff status of a subassembly of an automotive restraint system assembled in Mexico with the use of American made components, and the applicability of item 807.00, Tariff Schedules of the United States (TSUS).

In an abstract of a Treasury decision published as T.D. 67-199(14), it was held that seat belts of the type currently required by law, designed to hold a rider in place by means of a buckled strap fastened over the lap or across the chest and lap, generally anchored to the floor or chassis of the vehicle and, in some instances, at a third point located on the upper portion of the door post, were classifiable under the provision for parts of motor vehicles, in item 692.27, TSUS. Following the principle of this decision the subject buckle half of a lap belt would be classifiable under item 692.27, TSUS, and dutiable at the rate of 4 percent ad valorem.

Item 807.00, TSUS, provides for a partial exemption from duty for articles assembled abroad in whole or in part of fabricated components of United States origin which were exported in a condition ready to be assembled without further fabrication, have not lost their physical identity in such articles by change in form, shape, or otherwise, and which have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process, such as cleaning, lubricating, or painting. Under this provision there would be a duty upon the full value of the imported article, less the cost or value of such components.

You state that the off line operation for the buckle assembly requires four steps, namely:

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063314

1. sticking decal to button with machine;
2. place spring, pawl and base in buckle by hand;
3. push decal and button assembly into base slots; and
4. snap buckle cover into position.

Also, the webbing is cut either with an automatic cutter or by hand to the proper lengths.

A label is printed with necessary information and cut to proper size.

A carton is sealed with tape.

The line operation involves seven steps:

1. thread swivel on one end of cut web;
2. thread buckle on the other end of cut web;
3. position buckle and swivel;
4. fold webbing over on both ends and sew using universal pattern;
5. sew label on the swivel end;
6. inspect, fold, put belt in plastic bag; and
7. pack carton, seal box and label.

We are of the opinion that the exported articles are designed to be fitted or joined with other components in an assembly process. The printing of a label, as indicated in the off line operation, is incidental to assembly, concomitant with and closely related to the assembly process, and is of such a minor nature as to leave no doubt that it is merely incidental to the main assembly. Also, the cutting to length of such component materials as webbing and thread is regarded as an operation incidental to the assembly. Therefore, allowance may be made for the exported domestic components under item 807.00, TSUS, upon compliance with the Customs Regulations.

Sincerely,

(Signed) R. X. ARNOLD

for the Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

CODE AND [redacted]							
SURNAME						C2	
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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

CLA-2:RRUCSC
063601 EM

APR 1 8 1980

063601

[redacted]

Dear [redacted]

In your letter of February 19, 1980, on behalf of [redacted], you asked about the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to hot steel bands that would be exported to the Republic of Korea for processing and returned to the United States for sale and further processing into steel sheet for final use and application in the automotive and appliance industries.

You explained that hot steel bands would be exported and processed into cold rolled steel coils by means of annealing, stretching, smoothing, and cold rolling. Thus, the exported hot band steel will be converted into cold rolled steel bands or coils, a semi-finished product. Upon importation into the United States, the cold rolled steel will be sold to industrial users for further processing into steel sheets by slitting, cutting, or shearing. This sheet steel will be further processed into parts for use in automobiles, table tops, toasters, etc.

In conjunction with the cold rolling process performed abroad, a certain portion of lesser quality ~~of~~ steel will be produced in the form of steel pipe which will also be returned to the United States for use in such applications as welding, threading, cutting, or coupling, etc.

With respect to exported metals, item 806.30, TSUS, provides that any article of metal (except precious metal) manufactured in the United States, if exported for further processing outside the United States, is returned to the United States for further processing, may be entered with duty on the cost or value of the processing abroad upon compliance with Customs regulations.

C3

In order to meet the requirements of "further processing," some operations must be applied to the metal articles that will change their shape or form or impart new and different characteristics, which become an integral part of the metal itself. In this respect, the foreign processing of the exported hot band steel into cold rolled coils would appear to qualify the cold rolled steel with the foreign segment of item 806.30, TSUS. Also, the decribed operations of cuttng or shearing the cold rolled steel as a preparation for final fabrication and use, might also appear to constitute a sufficient compliance with the requirements of the tariff provision.

In this repect, in the absence of further defining the processing performed on the imported steel pipe, other than the sketchy description of stating that it would be used in such applications as welding, threading, etc., we are unable to state definitely whether such operations comply with the term "further processing," as required by the statute.

Further, with respect to the final processing being carried out after sale to customers, the district or area director of Customs must determine whether the requisite intent existed as the time of exportation, namely, that the metal would be returned to the United States for further processing in the manner and for the uses described. The mere expectation that the exported metal would be further processed by a customer in the undetermined future leaves open the speculation that such further processing might never take place in the United States.

As an insurance against this and to comply with the statute, it is suggested that before the hot steel band is exported from the United States, the exporter communicate with Customs officers at the port where the merchandise will be exported from or entered into, for the procedures to follow and the proof they will require.

Sincerely,

(Signed) R. X. ARNOLD

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Russell Arnold
Chief
Special Classification Branch

[redacted]

CODE AND DATE	(a) INITIATOR	(b) REVIEWER	(c) REVIEWER	(d) REVIEWER	(e) REVIEWER	(f) REVIEWER	(g) REVIEWER
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SURNAM[redacted]							

DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-13-73)

063601

[redacted]

1 MAY 1980

CLA-2:FRUCGC
064464 PB

[redacted]

Dear [redacted]

This is in response to your letter of February 11, 1980, requesting a binding ruling on the tariff classification of American made truck bodies mounted on Canadian made chassis.

General Headnote 3(e)(ii), Tariff Schedules of the United States (TSUS), defines the term "Canadian article" for tariff purposes. The described body/chassis assemblies would fall within the scope of that definition, assuming that materials that are of other than Canadian or United States origin used in manufacturing the chassis do not account for more than 50 percent of the appraised value of body/chassis assembly.

Your inquiry gives no value breakdown for these assemblies, but assuming that they are valued in excess of $1,000, they would be classifiable under the provision for automobile trucks valued at $1,000 or more, Canadian articles, in item 692.03, TSUS, enterable free of duty.

As to the entry documentation required, we refer you to the District Director's letter of January 31, 1980.

Sincerely,

(Signed) A. P. SCHIFFLIN

Arthur P. Schifflin
Chief
Classification and Value Division

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[redacted]

CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

APR 15 1982

CLA-2:CO:R:CV:S
067433 SC

Dear Sir:

This ruling concerns your request for Internal Advice No. 80/81 on the tariff classification of certain remote control transmitters for television receivers.

FACTS:

One model remote control transmitter operates by ultrasonic transmission and the other by infra-red transmission. Both transmitters, battery-operated, are used to control television receivers from a remote position. Essentially, in operation, the ultrasonic transmitter uses piezo electric crystal components to transmit coded signals at various ultrasonic levels for the purpose of on/off, volume, and channel selection control. The signals are transmitted to a specially matched receiver in the television set. In turn this receiver is connected to the television power supply for on/off, the variable resistor for volume, and the tuner for channel selection control. The infra-red transmitter operates on the same principle but uses light transmission instead of sound transmission.

The importer urges that the subject merchandise should be classifiable as parts of television receivers under item 685.18, Tariff Schedules of the United States (TSUS), claiming that an established and uniform practice exists.

ISSUE:

Whether the merchandise in question is classifiable as parts of television receivers or apparatus under items 685.18, or 685.19, TSUS, or as a control panel under item 685.90, TSUS, or under some other provision of the tariff schedules.

067433

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LAW AND ANALYSIS:

Item 685.18, TSUS, provides for parts of television receivers, whereas item 685.19, TSUS, provides for other television apparatus and parts thereof.

Item 685.90, TSUS, provides in part for electrical switches, * * * and other electrical apparatus for making or breaking electrical circuits, * * * and control panels.

The transmitters in question allow one the convenience of by-passing the manual controls of a television receiver thereby causing it to operate from a distant position. The absence of the transmitters does not mean that the television receivers are incomplete. No information before this office suggests that the television receivers will not function for their intended purpose without the remote control transmitters.

In a letter 033226, dated May 8, 1974, we concluded that a non-battery-operated remote control device using mechanical energy for controlling television receivers was classifiable under the provision for television apparatus in item 685.20, TSUS. The remote control transmitters in the instant case are similar except that they either operate by infra-red or ultrasonic transmission and require the use of batteries.

Information before this office indicates that the merchandise in question is designed for and used exclusively with television sets, and that it has no other use. While the subject transmitters may have a number of buttons on their faces with each button controlling a different function, they are not commonly or commercially known as control panels. Nor do we have any evidence that the merchandise is ever bought and sold as such.

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Accordingly, it is our opinion that the remote control transmitters described are classifiable under the provision for television apparatus in item 685.19, TSUS, dutiable at the current column one rate of 4.5 percent ad valorem.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

067433

[redacted]

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CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 07 1983

REFER TO
CLA-2:CO:R:CV:S
071201 EM

Dear [redacted]

In your letter of February 16, 1983, you asked for information about the tariff status of natural whole shelled almonds that would be exported to Mexico for certain defined operations to be performed thereon and returned to the United States.

In the first of two situations, you explained that shelled almonds mixed with shells, and broken and split almonds, would all be exported in bulk to Mexico where they would be sorted and repacked in American containers and returned to the United States without change in the natural condition of the almonds.

With respect to this described product, item 800.00, Tariff Schedules of the United States (TSUS), allows products of the United States when returned after having been exported without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, to be entered free of duty. The test specified in item 800.00 cases is whether the merchandise of American origin has itself been the object of an advance in value or improvement in condition while abroad, or, absent some alteration or change in the articles themselves, the mere sorting and packing of goods are not sufficient to preclude the merchandise from being classified as American good returned under item 800.00, TSUS.

071201

In this view, since the product exported to Mexico is merely sorted and repacked for return shipment, it may be entitled to free entry as American goods returned under item 800.00, TSUS, upon compliance with the regulations.

In the second situation described, whole shelled almonds, mixed with shells, and broken and split almonds, will be exported in bulk. In Mexico, the product will be sorted, fried, roast flavored, sugar coated, and packaged in American containers for return to the United States. However, the cumulative processes performed in Mexico of sorting, frying, roast flavoring, and sugar coating, would clearly advance the exported almonds in value or condition and preclude their free entry under item 800.00, TSUS.

Further, in the absence of any other exemption or partial exemption that might apply in the given circumstances, the returned almonds that are fried, roast flavored, and sugar coated abroad, would be subject to duty on total value and quantity under the appropriate provisions of the tariff schedules.

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With respect to classification under the tariff schedules, shelled almonds are classifiable under item 145.40, TSUS, with duty at the rate of 16.5 cents per pound. However, shelled almonds that are blanched or otherwise prepared or preserved are classifiable under item 145.41, TSUS, with duty at the rate of 18.5 cents per pound.

Sincerely,

Russell Arnold

Russell Arnold
Chief, Special
Classification Branch

[redacted]

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DEC 27 1985

REFER TO
CLA-2 CO:R:CV:V
071264 KP

Ms. Angela DeGaetano
Chief, Customs Information Exchange
U.S. Customs Service
New York Region
6 World Trade Center
New York, New York 10048

Dear Ms. DeGaetano:

This is with reference to your memorandum dated June 24, 1982, wherein you advised us of a difference of opinion concerning the classification of metal oxide varistors manufactured by Ecco Ltd. in Ireland which were entered in the Buffalo District on Entry No. 110219, dated November 15, 1978. This difference is listed on page 2 of CIE N-89/79, Supplement No. 43, dated August 1985.

ISSUE:

Are zinc oxide varistors properly classifiable in the 1978 Tariff Schedules of the United States (TSUS) under the provision for other electrical apparatus for the protection of electrical circuits in item 685.90, under the provision for fixed or variable resistors in item 686.10, or under the provision for transistors and other related electronic crystal components, other, in item 687.60?

FACTS:

The subject articles are identified by the importer as zinc oxide varistors. A varistor is an electrical device that has been characterized by various technical authorities as follows:

(1) A two-electrode semiconductor device having a voltage-dependent, nonlinear resistance. Van Nostrand's Scientific Encyclopedia 1932 (4th ed. 1968).

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(2) Any variable resistor whose resistance depends upon voltage, current, or polarity. All semiconducting diodes are varistors. 14 McGraw-Hill Encyclopedia of Science and Technology 312 (4th ed. 1977).

(3) A semiconductor...[having] a resistance that goes down, or is inversely proportional, with voltage. Electronics One-Seven 4-27 (H. Mileaf ed. 1967).

(4) The term varistor has been used to denote the entire class of variable or nonlinear resistors composed of semiconducting materials. The Encyclopedia of Electronics 911 (C. Susskind ed. 1962).

Although these descriptions vary somewhat, they all agree that varistors are devices which provide a resistance, and that at least some, if not all, varistors are composed of semiconductor materials.

The subject varistors are composed of the semiconductor material zinc oxide, a substance whose structure is polycrystalline in nature. Polycrystalline materials consist of many tiny single crystals, or grains, separated by grain boundaries, which are described as "[r]egions of intersection of two perfect but orientationally mismatched crystallites. In this region, the atomic arrangements deviate from a perfect periodic lattice." McGraw-Hill Encyclopedia of Electronics and Computers 381 (S. Parker ed. 1984). These grain boundaries "largely control the electronic properties of polycrystalline materials...." Id.

Many references indicate that varistors are used for transient protection in electrical circuits. The importer indicates that varistors are also used as voltage regulators, electrical noise filters, and switching devices.

LAW AND ANALYSIS:

Three provisions of the 1978 TSUS have been suggested as the proper classification for the zinc oxide varistors. They read as follows:

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685.90 Electrical switches, relays, fuses, lightning arresters, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes and other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits; switchboards (except telephone switchboards) and control panels; all the foregoing and parts thereof.....

* * *

686.10 Resistors, fixed or variable (including potentiometers, but not including heating elements), and parts thereof .....

* * *

Electronic tubes (except X-ray tubes); photocells; transistors and other related electronic crystal components; mounted piezo-electric crystals; all the foregoing and parts thereof:

* * *

687.60 Other.....

The importer claims that the varistors should be classified under the provision for transistors and other related electronic crystal components, other, in item 687.60. Noting that transistors and the zinc oxide varistors are both considered semiconductors, the importer points out a number of attributes that the devices consequently share, and concludes that these similarities are sufficient to bring the varistors within the meaning of the proposed tariff provision.

We disagree with this analysis. Had there been an intent to include all semiconductors within item 687.60, we believe the term "semiconductor" would have been written into the statute as it was when the current provision for parts of semiconductors in item 687.85, TSUS, was added to the schedules pursuant to Presidential Proclamation 4889, dated December 29, 1981. The continued coexistence of those two provisions in the current

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TSUS implies that the phrases "transistors and other related electronic crystal components" and "semiconductors" refer to nonidentical classes of merchandise for tariff purposes.

As noted above, the zinc oxide varistors are composed of polycrystalline material, which consists of many crystals separated by grain boundaries that greatly control the electronic properties of the material. In fact, it is the grain boundaries that give varistors their voltage-dependent resistance. McGraw-Hill Encyclopedia of Electronics and Computers, supra at 383. However, item 687.60 provides for transistors and other related electronic crystal components, and in science and technology, the term "crystal" usually denotes a single crystal. 3 McGraw-Hill Encyclopedia of Science and Technology 632 (4th ed. 1977).

In contrast to the subject varistors, transistors are generally composed of monocrystalline (single crystal) material which, by definition, cannot contain grain boundaries. Indeed, it is the very presence of grain boundaries in polycrystalline material which makes it unsuitable for use in transistors. As explained in McGraw-Hill Encyclopedia of Electronics and Computers, supra at 382-383:

> The accumulation of majority carriers at semiconductor grain boundaries has been verified in a variety of materials, including silicon (Si), germanium (Ge), gallium arsenide (GaAs), cadmium sulfide (CdS), lead sulfide (PbS), and zinc oxide (ZnO). This charging effect has a profound influence on the electrical properties of polycrystalline semiconductors. In order for current to flow across such charged boundaries, the carriers must have an energy considerably in excess of their normal thermal energy (0.025 eV at room temperature). The number of electrons having this extra energy at any time is small, and hence the conductance such a pontential barrier has when current flows across it is low and strongly temperature-dependent. The temperature dependence frequently seen is an exponential function of inverse absolute temperature — much like the leakage current across a pn junction device. Because of the small magnitude of this grain boundary

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> conductance, polycrystalline aggregates frequently offer conductance to current flow which is many decades lower than that of single crystals of similar purity.
>
> . . . .
>
> Minority carriers are also strongly influenced by the presence of grain boundaries. An example is the photovoltaic cell, in which light-generated minority carriers must diffuse substantial distances to a collecting junction for current to be generated; here the presence of grain boundaries is quite harmful. The same grain boundary potential barrier which repels majority carriers attracts minority carriers and traps them until they recombine. This results in a short minority carrier lifetime, a property which has traditionally made polycrystalline semiconductors less than ideal for a variety of semiconductor devices such as transistors and photovoltaic cells.

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The importer contends that Customs cannot use a monocrystalline-vs.-polycrystalline test to determine if an electronic component is related to a transistor for tariff purposes because some transistors are composed of polycrystalline materials. Furthermore, the importer asserts that some polycrystalline transistors such as the Metal Oxide Semiconductor Field-Effect Transistor (MOSFET) and the thin-film transistor, which are two types of field-effect transistors, existed when the Tariff Schedules were enacted in 1962; therefore, it cannot be said that Congress was only referring to monocrystalline devices in its provision for transistors and other related electronic crystal components. However, according to Integrated Circuits: Design Principles and Fabrication (R. Warner & J. Fordemwalt ed. 1965), the field-effect transistor "existed as a laboratory curiosity for approximately its first decade, or from 1952 until 1962." Id. at 208. For commercial purposes, the state of the art in transistor technology in 1962 was summarized as follows in a technical reference produced by none other than the importer itself:

> At the start of the manufacturing process modern and reliable transistors require as near perfect single crystal material as possible. That is,

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> crystal that exhibits an orderly arrangement of equally spaced atoms, free from structural irregularities such as grains and grain boundaries as found in polycrystalline structures. Polycrystals do not readily allow charge carriers to freely flow and are impractical to reproduce with any regularity. Furthermore, surface structure varies considerably from crystal to crystal and makes reproduction of transistors to definite specifications difficult.

GE Transistor Manual (6th ed. 1962) at 5 (emphasis in original).

Although there are polycrystalline transistors commercially available today, the polycrystalline materials of which they are composed differ significantly from the polycrystalline material in the zinc oxide varistors. In making a polycrystalline transistor, the idea is to fuse several crystals together into one large crystal through a heating process, thereby eliminating the grain boundaries between the original crystals. While not all of the grain boundaries may disappear, the resulting substance may be acceptable for a given application. Thus, the goal of this technique is to produce, in effect, a monocrystalline material without having to go through the costly, time-consuming crystal growth process. In contrast, the zinc oxide varistor polycrystalline material is specifically intended to have grains and grain boundaries, for it is these structural irregularities which give the varistors the very properties for which they are bought and sold.

Based on this fundamental difference in the physical structures of transistors and zinc oxide varistors which is necessitated by the physics of the device operation, we conclude that the subject varistors fall outside the scope of the tariff provision for transistors and other related electronic crystal components. This interpretation is consistent with the positions taken in Customs Rulings CEA-2 R:CV:MSP 058000 AB, dated March 9,

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1978, and CLA-2 R:CV:MSP 042656 SC, dated May 22, 1978. Varistors are not among those electronic components made from large, high-quality, single crystals of semiconductors, the development of growth processes for which is largely responsible for the rapid growth of the electronics industry during the past quarter century, see McGraw-Hill Encyclopedia of Electronics and Computers, supra at 381, nor do they operate in the same manner as those electronic components.

The importer also argues that its zinc oxide varistors are classifiable under item 687.60 because varistors are diodes, and the current Tariff Schedules specifically list diodes in item 687.72 under a superior heading for transistors and other related electronic crystal components. However, in interpreting the provisions of the TSUS, a superior heading cannot be enlarged by inferior headings indented under it. General Headnote 10(c)(i), TSUS. If we were to follow the importer's line of reasoning, then two-electrode electron tubes, which are another kind of diode, would also be classifiable under a heading for transistors and other related electronic crystal components. Yet, electron tubes are not electronic crystal components related to transistors, and neither, in our view, are zinc oxide varistors. Therefore, those articles are not classifiable in item 687.60.

It appears from the catalog of a nationwide electronics retailer that the electronics industry also does not consider metal oxide varistors to be electronic crystal components related to transistors. On pages 118-121 of the Radio Shack 1986 Catalog, that company lists a number of transistors, diodes, rectifiers, and integrated circuits under headings for "ICs and Semiconductors," "Digital ICs, Diodes," and "Transistors." However,

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metal oxide varistors are listed on page 131 of the catalog under a heading for "Transient Protectors," and on the same page with fuses, circuit breakers, and other items to protect circuits and equipment. Since Congress is presumed to know the language of commerce, and the object of the tariff act is to classify substances according to the general usage and denominations of trade, Nylos Trading Co. v. United States, 37 CCPA 71, 73, C.A.D. 422 (1949), this categorization of metal oxide varistors by a well-known electronics retailer supports their classification for tariff purposes not as electronic crystal components related to transistors in item 687.60, but as electrical apparatus for the protection of electrical circuits in item 685.90.

We have evidence that the chief use of the subject varistors is for the protection of electrical circuits. For tariff purposes, the "chief use" of an article is defined as "the use which exceeds all other uses (if any) combined," and it is this use which controls tariff classifications governed by use other than actual use, such as item 685.90. General Headnote 10(e)(i), TSUS. Technical experts who are familiar with varistors have advised us that the "chief use" of varistors, in the tariff context, is for the protection of electrical circuits. In addition, we have encountered a number of publications, including the retail electronics catalog referenced earlier, which discuss varistors, from a functional standpoint, only in terms of transient protection. One of these publications, a newsletter published by the importer which promotes the importer's products, contains several articles on its metal oxide varistors. See 1:3 Power Electronics, October 1984, at 1-2. The articles thoroughly discuss the varistors' use for transient protection, but mention no other uses for the products. This indicates that the importer both

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designs and markets its varistors as circuit protective devices, and we regard this unsolicited representation as highly persuasive evidence of the varistors' chief use.

The importer claims that the zinc oxide varistors are not within the scope of item 685.90, TSUS, because they are designed to protect components within electrical circuits, not the circuits themselves. We do not believe this distinction removes the varistors from the language of item 685.90, TSUS. Certainly, components within electrical circuits are parts of those circuits themselves; therefore, protection of a circuit component is tantamount to protection of the circuit, for if a circuit component fails, the circuit of which it is an integral part becomes inoperative. Furthermore, item 685.90 specifically provides for fuses, and there are many fuses designed and used to protect semiconductors, diodes, and other circuit components rather than entire circuits.

The importer also maintains that item 685.90 does not adequately describe the varistors because those devices perform functions other than transient protection, such as switching, voltage regulation, and noise filtering. However, it appears that a varistor performs these other functions only to the extent that it is used in its chief capacity as a protective device against transients. In other words, the varistor acts as a switch, a voltage regulator, and a noise filtering device insofar as when it absorbs a transient voltage, the varistor effectually switches off the component it is protecting, regulates voltage in the sense that it does not permit an overvoltage to be transmitted to the protected device, and filters out the electrical noise which would have been produced by the absorbed transient. Furthermore, even if the varistor can otherwise be used to switch, regulate voltage, or filter out electrical noise, classification under item 685.90 is still proper if that tariff provision describes

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the article's chief use, and the evidence indicates that such is the case here. Finally, with regard to the switching function which the importer claims the zinc oxide varistor performs, we note that articles which perform switching functions are also classifiable under item 685.90, TSUS, in any event.

Lastly, the importer contends that the zinc oxide varistors cannot be classified under item 685.90 because they do not meet the definition of "apparatus." Maintaining that the courts have previously construed that term in accordance with standard lexicons, the importer submits the following language from the Institute of Electrical and Electronics Engineers Standard Dictionary of Electrical and Electronics Terms to define the term "apparatus":

> [T]he "[t]erms appliance and device generally refer to small items of electric equipment, usually located at or near the point of utilization.... The term apparatus then designates the large items of electrical equipment, such as generators, motors, transformers or circuit breakers."

Letter from importer dated December 11, 1984, at 17. In further support of its contention, the importer cites the following remark from ITT Thompson Industries, Inc. v. United States, 3 CIT 36, 537 F. Supp. 1272, aff'd, No. 82-22 (Fed. Cir. Dec. 23, 1982):

> Basically, these lexicons are in agreement that the term apparatus is collective in the sense that it is intended to encompass a group of devices or a collection or set of materials, instruments or appliances to be used for a particular purpose or a given end.

Id. at 44, 537 F. Supp. at 1277-1278 (footnote omitted).

The courts have not, however, so restricted their construction of the term "apparatus" in the context of item 685.90, TSUS. In J. E. Bernard & Co., Inc. v. United States, 59 Cust. Ct. 31, C.D. 3060 (1967), a question

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arose whether an article identified at the trial as exhibit 13 and described first as a socket and later as a pin, which was used for making a connection between a wire and a printed circuit board and could also be used as a connector to be inserted into a female receptacle for completing a circuit, could be considered "apparatus" within the meaning of item 685.90, TSUS. In deciding that the article could be so considered, the court stated:

> We are aware that the word "apparatus" ordinarily connotes a complexity of materials, instruments, or machinery, and that exhibit 13 is of rather simple design.... Nevertheless, item 685.90 names as "electrical apparatus" merchandise equally uncomplex in design, ... and it would appear that this provision has not been limited by Congress to the complex.

Id. at 36. Accordingly, we do not agree that the use of the term "apparatus" in item 685.90 precludes classification of the zinc oxide varistors under that provision.

In further support of the notion that varistors meet the provisions of item 685.90, TSUS, we note Judge Nies's dissenting opinion in United States v. Siemens America, Inc., 68 CCPA 62, C.A.D. 1266, 653 F.2d 471 (1981). Discussing the lower court's conclusion in that case that former item 687.60, TSUS, is more specific than item 685.90, TSUS, the Judge said that he saw no error in the reasoning of the court below that it is more difficult to satisfy the requirements of a single kind of device than it is to satisfy the requirements of any one of many different kinds of devices, and he specifically mentioned varistors as one of those many different kinds of devices described by the langauge of item 685.90, TSUS. Id. at 71, 653 F.2d at 478-479. Thus, we conclude that the zinc oxide varistors fall within the provisions of item 685.90, TSUS.

In view of technical references to varistors either expressly as resistors or as articles identified by their resistive property, we believe

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that an argument could be made for classifying the varistors under the provision for fixed or variable resistors in item 686.10, TSUS. However, in accordance with "the general rule of construction that, in the absence of legislative intent to the contrary, a product described by both a use provision and an eo nomine provision is generally more specifically provided for under the use provision," Siemens America, 68 CCPA at 70, 653 F.2d at 478, we believe that even on the assumption that varistors are described by the provisions of item 686.10, TSUS, they would nevertheless be classified under item 685.90, TSUS, as the more specific of the two tariff provisions.

HOLDING:

The subject zinc oxide varistors are classifiable under the provision for electrical apparatus for the protection of electrical circuits in item 685.90, at the 1978 column 1 duty rate of 8.5 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

10 JUL 1984

REFER TO
CLA-2 CO:R:CV:V
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071481

[redacted]

Dear [redacted]

Further reference is made to your letter of March 3, 1983, relative, in part, to the tariff classification of your [redacted] Coating Weight Measurement and Control System for the metals Industry. The classification of the other systems involved was the subject of a previous letter from our New York office (805659).

The [redacted] System is used to measure and control the weight of coatings on metal products. It permits a line operator a rapid readout of measured coating weight so it can be kept within acceptable limits and corrective action can be taken immediately. The system consists of a precision sensor scanner, a process control module, a computer operator station, and a printer.

The precision scanner and sensor control module constitute a measuring system which is classifiable as electrical measuring apparatus under item 712.49, Tariff Schedules of the United States (TSUS), whether or not imported with the rest of the system. The process control module is a general purpose process interface classifiable under item 688.43, TSUS, as electrical articles, not specially provided for. The computer operator station is classifiable as a control panel under item 685.90, TSUS. The printer, if a free standing line type for making hard copies, is classifiable as an office machine, not specially provided for, under item 676.30, TSUS.

Sincerely,

Arthur P. Schifflin
Chief,
General Classification Branch

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APR 30 1984

CLA-2 CO:R:CV:G
073030 JCH

Area Director of Customs
U.S. Customs Service
John F. Kennedy Airport
Seaboard World Airlines Building No. 178
Jamaica, New York 11430

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-2-013174

The above-captioned protest and Application for Further Review were filed against the tariff classification of merchandise which was the subject of entry No. 81-54903-1 filed in 1981. The merchandise is a product of Sweden. Our decision follows:

ISSUE:

The merchandise was classified by Customs officers under the provision for models in item 737.15, Tariff Schedules of the United States (TSUS). The 1981 column 1 rate of duty required under that provision was 15.1 percent ad valorem. It is claimed the merchandise is classifiable under the provision for "Models of inventions and of other improvements in the arts, to be used exclusively as models," in item 737.05, which is a free-rate provision.

FACTS:

The merchandise is described as a nonmagnetic box and plastic dummy stand to be used for exhibition purposes.

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LAW AND ANALYSIS:

In order to qualify as a model classifiable under item 737.05, two conditions must be met. The merchandise must be a model of an invention or an improvement in the arts and it must be used exclusively as a model. As to whether the first condition is met, little has been provided in connection with this protest. It is not sufficient that an article be an invention if it was previously invented. John V. Carr & Son, Inc. v. United States, 65 Cust. Ct. 311, C.D. 4094 (1970). However, assuming arguendo that the instant merchandise does meet the first condition, it is not shown to meet the second condition because it is conceded that it is for exhibition use. Therefore, it does not qualify as a free-rate model in accordance with the rule in United States v. American Brown Boveri Electric Corporation, 17 CCPA 329, T.D. 43776 (1929), which states that use exclusively as a model means use for making or building something.

Counsel for the protestant seeks to avoid this rule by stressing four major points. The first is that the Brown Boveri decision, supra, represents obsolete authority interpreting statutory language which was subsequently amended and that the decision was based on a rationale which took into account a legislative purpose which no longer is reflected in current national trade policy.

The tariff description now contained in the TSUS and interpreted by the Brown Boveri court included models used exclusively as models "and incapable of any other use." In the Act of September 14, 1959, Pub. L. 86-262, §2(a), 73 Stat. 549, the quoted phrase was dropped in connection with an amendment which expanded the scope of paragraph 1720 of the Tariff Act of 1930. In our opinion, this deletion was incidental to the major thrust of the amendment. While changes in statutory language are presumed

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to involve a change in meaning, that presumption does not hold for changes which are not significant, and previous court interpretations will not be considered abrogated when such changes in language are made. Japan Food Corporation v. United States, 67 Cust. Ct. 424, C.D. 4310 (1971). Therefore, the Brown Boveri rule continues to be applicable even though, as counsel has pointed out, it has not been specifically followed since Ely & Frye v. United States, 7 Cust. Ct. 37, C.D. 529 (1941).

With respect to the point that the Brown Boveri court cited trade policy considerations in arriving at its conclusion, the decision was based on other reasons as well. Further, even if a court does look to the broader picture in its reasoning, that, by itself, would not warrant disregarding the decision merely because there have been subsequent shifts in national trade policy.

Counsel's second point is that the Congress in reenacting the language in question was probably never aware of the Brown Boveri limitation, and that if it was the legislative intent to perpetuate the rule, the Congress would have provided amendatory language clarifying the point. The fact that a court decision is not brought to the attention of legislators and becomes automatically ratified with reenactment of a statutory provision does not mean the decision is not a correct interpretation of the language.

Counsel's third point is that the Brown Boveri decision has been overruled by Pistorino & Co. v. United States, 66 CCPA 95, C.A.D. 1227 (1979). That decision, however, dealt with the meaning of the term "model" as used eo nomine. That decision is not precedent for the model provision in question which does not have the broad scope ordinarily attributable to the term "model" because of a specific use limitation. The further

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contention that this use limitation is only meant to distinguish the use of models as toys from other uses is not supported by the legislative history, and counsel's citations to such materials are not persuasive of this point. The fourth major point is that use limitations in items 864.10 and 864.15, TSUS, could not, as a practical matter, be considered amenable to the type of limitation imposed by the Brown Boveri decision. The provision for wearing apparel models used as models by manufacturers in their establishments in item 864.10, suggests a manufacturing use entirely compatible with the Brown Boveri concept. With respect to models used by photographers in item 864.15, while the models may not be reproduced in a manufacturing process, the models are used for making photographs, and that use is not an exhibition use.

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HOLDING:

For the foregoing reasons, classification of the instant merchandise under the provision for models in item 737.15, TSUS, is not shown to be incorrect. Therefore, you are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

[redacted]

Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: JAN 10 1985

FILE: CLA-2 CO:R:CV:G
073962 JGB

TO : District Director of Customs
Baltimore, Maryland 21202

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice No. 144/83--Survival Suits for Rescue Work in Aircraft Fires in or over Cold Water

This is in response to your request for internal advice as to the tariff classification of aviator survival suits imported from Canada to be used in rescue, evacuation and fire-fighting in burning aircraft, especially over water.

FACTS:

The merchandise is a one-piece coverall-type suit made of Nomex III Aramid (man-made fiber) non-woven fabric. Its use and function are primarily as follows: (1) it provides occupational protection to aviators in search and rescue missions over cold water; (2) it is worn in high performance helicopters in police-type activities over water where a substantial risk of fire or explosion exists due to hostile attack; (3) it is used in cold water as a wet suit to protect the wearer against hypothermia, and (4) it is used by safety workers on off-shore oil rigs for firefighting or where explosion, fire, or ditching may occur.

This product, the Mustang Aviation Coverall (known and sold as the "MAC-20"), is the combination in one article of a wet suit designed to protect against cold water and resultant hypothermia, along with a radiant heat and flame resistant firefighting suit of special construction.

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The suit superficially resembles a conventional jumpsuit with a front zipper opening from the neck to below the waist. It has slash breast pockets, one pocket at the left upper leg, a pocket at the left side of the lower leg, a right hip pocket and a hood stowage pocket measuring about 5 inches by 9 inches at the right lower leg. All the pockets zipper closed. The zippers are constructed of brass covered with Aramid material so that they will not conduct radiant heat or melt closed like ordinary plastic zippers. Straps at the ankles, wrists, and neck may be adjusted for snugness.

The outer shell also has a place for safely storing a survival knife. The outer shell is flame-resistant Nomex III Aramid sewn with spun Kevlar thread for fabric integrity and is said to meet the Department of Defense specification for flammability. This importation is in connection with potential procurement by the U.S. Coast Guard.

The wet suit inner portion has closed cell foam insulation and a thermally protective hood kept in a storage pocket for use in extended immersion situations. The enclosed foam insulation provides approximately 17.5 lbs. of boyancy. The hypothermia protection is described as meeting the requirement of a maximum body core cooling rate of not more than 1 degree Centigrade per hour in choppy seas at a temperature of 4.5 degree Centigrade (40 degrees Fahrenheit).

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Counsel for the importer has provided copies of aviation protocols from the U.S. Coast Guard showing under which flight conditions the MAC 20 suit or similar outfit is mandatory and when it is optional. This information demonstrates that the MAC 20 is authorized for non-transport helicopter crew use and that it need not be worn when water temperatures are above 70 degrees Fahrenheit. It must, however, be carried in the cabin accessible to the crew.

Counsel for the importer urges classification of this merchandise in item 389.62, Tariff Schedules of the United States (TSUS), bearing a rate of duty of 16 cents per pound plus 13 percent ad valorem. This item provides for "Articles not specially provided for, of man-made fiber: other."

The import specialist has examined a pier sample of the MAC 20 and concluded that the suit is properly classified as wearing apparel in item 379.96, TSUS, bearing a rate of duty of 16 cents per pound plus 24 percent ad valorem. This item provides for "Other men's or boy's wearing apparel, not ornamented: Of man-made fiber: Not knit: Other."

ISSUE:

Whether by operation of judicial decisions and administrative rulings, this merchandise is defined as wearing apparel.

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LAW AND ANALYSIS:

The basic definition of wearing apparel applied by the Customs Service is restated in Antonio Pompeo v. United States, 40 Cust. Ct. 362, C.D. 2006 (1958). Pompeo states that wearing apparel includes articles worn by human beings for "decency, comfort, or adornment" and does not include articles worn for "protection against the hazards of game, sport, or occupation, or the prevention of injury."

The distinction between providing protection against hazards, as opposed to providing decency and comfort, has been maintained by both the courts and Customs rulings since Pompeo, supra. The court has, however, observed in Admiral Craft Equipment Corp. v. United States, 82 Cust. Ct. 162, 163, C.D. 4796 (1979) that "[a]n important, if not primary, purpose of wearing apparel is protection against the environment", and in so doing, specifically distinguished Pompeo on its facts. Also, more recently, the Court of Appeals for the Federal Circuit in reversing the Court of International Trade noted that "[v]irtually all wearing apparel is to a degree (often a high degree) designed and worn to provide comfort and protection, often for very specific situations." Daw Industries, Inc. v. United States, Appeal No. 83-833, decided August 9, 1983. Therefore, an article need not be eliminated from consideration as wearing apparel simply becuse it provides some protection from hazards or the

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elements. The court has refrained from establishing an immutable test for deciding what is included in wearing apparel. Instead, it appears to have recognized a continuum with merchandise providing adornment, comfort, or decency at the wearing apparel end and purely protective gear at the other.

This office has ruled on protective clothing used by fire fighters. Headquarters Ruling Letter (HRL) 068879 PR, issued October 22, 1981. This ruling, concerning "Turnout Clothing" in the form of a coat and pants, noted that the articles were composed of a Nomex III outer shell with Kevlar needle punched thermal insulation innerlining. The Nomex III is said to be fire, acid, and chemical resistant. The garment was classified as articles, n.s.p.f., instead of as wearing apparel.

Our ruling, HRL 060939 BB, issued December 11, 1979, published as C.S.D. 80-169, noted the protective qualities of a "Hypothermia Emergency Lifesaving Protector" in classifying a wool blanket-like article as an article, n.s.p.f., of textile materials, not as a blanket. Likewise, HRL 046332 FF, issued November 30, 1976, classfied an MK II Bomb-suit as articles, n.s.p.f., of textile material, as opposed to wearing apparel. The protective properties of the garment were also noted, but not determinative in a ruling on an emergency survival garment, HRL 049482 PR, issued August 23, 1978.

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This ruling classified a hooded poncho with separate leg portions as wearing apparel. While it was noted that the garment did provide some protection, this office concluded that "the real reason the article is worn is for the wearer to achieve a maximum degree of comfort under adverse weather conditions."

Past headquarters rulings create some distinctions between clothing that provides protection from bad weather, as opposed to clothing that protects the wearer against specific injury or extremes of heat or cold created by unplanned, abnormal or unwelcome events. Thus heavy-duty ski jackets intended to be worn in cold and snow for many hours are always wearing apparel, while the inflatable life vest, for example, worn following the sinking of a ship is considered articles, n.s.p.f., according to component material of chief value. HRL 042792 PR, issued May 17, 1976, recognized life saving characteristics of a vest for children who could not swim. The vest parts were classified as articles, n.s.p.f., of textile material. Also, our ruling issued as ORR 73-139, dated March 16, 1973, concerned a coated nylon boating flotation jacket classified as articles and not wearing apparel. Likewise, our ruling TC 474.5 v, dated August 14, 1969, also classified life saving vests as articles and not wearing apparel.

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We note that the portion of the instant merchandise that provides thermal insulation and protection from hypothermia could qualify for exclusion from the wearing apparel classification. Falling or having to jump into a cold body of water is undeniably life-threatening because, in the absence of hypothermia protection, even strong swimmers quickly become disoriented and unable to save themselves. In these circumstances, the presence of a thermally protective garment is not a matter of comfort, but rather a condition of survival. However, these features are added features to flight coveralls usually worn on military aircraft. They would provide protection should there be an accident, but this is distinguishable from clothing worn by firefighters occupied in fighting an existing hazard. This type of clothing is removed soon after the fire is put out. The occupation of flying a helicopter is not so hazardous that the protective features are required; although they may be desirable. Compare this to the firefighter or the person who cleans up after nuclear accidents, where the failure to wear the protective garment would result in almost certain harm. The garments under consideration would not be given to a person to fight an existing hazard which would be determinative in deciding whether a garment is "protective" for tariff classification purposes and not specialized clothing.

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HOLDING:

The instant merchandise is classifiable in item 379.96, TSUS, as wearing apparel.

Arthur N. Sheffler
for Harvey B. Fox

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 27 FEB 1985

FILE: CLA-2 CO:R:CV:G
074648 JCH

TO : Area Director of Customs
JFK Airport
Jamaica, New York 11430

FROM : Director, Classification and Value Division

SUBJECT : Request for Internal Advice No. 92/83 Concerning the Tariff Classification of a Laser Diode Optical Head (Your Undated Memorandum CLA-2-K:C:D1/2 RS K:C: 0098)

The subject internal advice request was initiated by counsel for the importer in a letter dated May 10, 1983. The merchandise is a product of Japan. Our decision follows:

ISSUE:

The merchandise was entered under the provision for television apparatus and parts in item 685.19, Tariff Schedules of the United States (TSUS). The column 1 rate required under that provision in 1983 was 4.4 percent ad valorem. In a notice of proposed rate advancement, it was indicated the merchandise was properly classifiable under the provision for optical instruments and appliances, not specially provided for (n.s.p.f.), in item 708.89, TSUS, for which the 1983 column 1 rate of duty was 15.8 percent ad valorem. It is now claimed that the merchandise is classifiable under either the provision for

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office machines, n.s.p.f., in item 676.30, TSUS, for which the 1983 column 1 rate of duty was 4.4 percent ad valorem, or under the provision for parts of office machines in item 676.52, TSUS, for which the 1983 column 1 rate of duty was 4.7 percent ad valorem.

FACTS:

The laser diode optical head in question functions in either a record or playback mode in a recording system in which data is recorded on discs. Similar technology is used to record sound or video signals on similar discs for home entertainment systems. In the record mode, the head focuses a laser beam on a sensitized disc where microscopic pits are formed that vary with modulations in the laser signal. In the playback mode, the laser beam picks up the recorded signal from the pits transferring the signals back to modulated electrical impulses. In both modes, the device is described as employing prisms, mirrors and lenses.

The heads which were the subject of the specific importations involved used separate lens systems for the recording and playback modes. Newer versions of the device use a single aperature for both modes. It is contended the articles are not used in home entertainment systems, but rather are chiefly used in data processing equipment. In one of the exhibits submitted to explain the type of equipment the heads are used in, the larger instruments are

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described as "optical memory units" which boost computer storage. Samples of the merchandise were also shown, and they were small devices lacking housings and had the appearance of a part of another article.

LAW AND ANALYSIS:

At the outset, classification as office machines in item 676.30 must be ruled out because it has been our consistent position that merchandise lacking a housing and included within the housing of a larger article which it is used as a part of does not meet the definition for an office machine in Headnote 2(a), Subpart G, Part 4, Schedule 6, TSUS. See, for example, our decision of November 5, 1981, file No. 068986. Accordingly, the next issues for consideration are whether the merchandise is, in fact, described by item 708.89, and if so, whether that is a more specific provision than the provision for office machine parts in item 676.52.

Any argument that articles such as the instant merchandise, which are used as parts of larger articles, do not qualify as "instruments and appliances" within the meaning of item 708.89 cannot prevail in view of Norman G. Jensen, Inc. v. United States, 77 Cust. Ct. 9, C.D. 4668 (1976), in which parts of articles were classified under that item. While counsel has cited Wild Heerbrugg Instruments, Inc. v. United States, 81 Cust. Ct. 66, C.D. 4767 (1978), for a contrary view, the

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court in that matter did not exclude the merchandise in liti-litigation from item 708.89 because it was a part, but because as a part, it was more specifically described by item 708.80, TSUS.

Nor can item 676.52 prevail on the basis of General Headnote 10(ij), TSUS, and the n.s.p.f. phrase in item 708.89. In spite of that phrase, item 708.89, unlike other n.s.p.f. provisions, is treated as a specific provision for relative specificity purposes because it is further limited by both its own terms and controlling headnotes. Norman G. Jensen, Inc. v. United States, supra. See also the comments in United States v. Porter, 68 CCPA 15, 18, C.A.D. 1259 (1981), with respect to Parts Manufacturing Associates, Inc. v. United States, 73 Cust. Ct. 42, C.D. 4552 (1974). While it is noted the court in Wild Heerbrugg, supra, at 70, stated item 708.89 was "at best residual," that was in reference to the competition in litigation which was restricted to Schedule 7, TSUS, provisions.

This matter then is one essentially involving the broader question of the extent articles which incorporate both electrical or electronic features and optical features may be classified as optical instruments. The dutiable status of such merchandise was previously in doubt under the primary-or-dominant standard mainly associated with United States v. American Machine & Metals, Inc., 29 CCPA 137, C.A.D. 183 (1941), since it could always be argued the electrical feature

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and the optical feature were at best co-equal. That standard, therefore, was abandoned by Headnote 3, Part 2, Schedule 7, defining "optical instruments." Under that headnote the standard is rather whether the optical feature is subsidiary or not subsidiary. Corning Glass Works v. United States, 82 Cust. Ct. 249, C.D. 4807 (1979); Librascope v. United States, 76 Cust. Ct. 197, C.D. 4656 (1976). See also United States v. Ataka America, Inc., 64 CCPA 60, C.A.D. 1184 (1977), in which the court stated, in effect, that it was a contradiction for an article to be regarded as more than optical and other than optical or nonoptical at the same time. While the issue of the tariff classification of articles which combine electrical and optical features may appear to be most pertinent to Subparts B and D, Part 2, Schedule 7, they are equally pertinent to item 708.89 and other Subpart A, Part 2, provisions. Note, for example, that items 708.61 and 708.78 in that part also clearly presuppose such combination instruments.

While counsel has cited several Customs decisions which postdate the Ataka decision, supra, which was the first appellate court statement under the TSUS dealing with articles which combined electrical and optical features, those decisions, for the most part, still reflected application of a philospophy of classification in which the primary-or-dominant standard still played a significant role, along with the other criteria

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for the classification of optical goods mainly associated with Engis Equipment Company v. United States, 62 Cust Ct. 29, C.D. 3670 (1969). However, the administrative decisions relied on by counsel predate our decision of June 9, 1982, IA 124/81, file No. 067495, in which we stated in dealing with the tariff classification of merchandise incorporating a laser optical feature that to strictly require compliance with all of the Engis criteria in order for merchandise to qualify as optical goods "would virtually eliminate further classification of considerable merchandise" under the applicable optical goods provisions. We further noted in that decision, "Previous decisions * * * at variance with this position are no longer followed." Against this background, and considering the new technology which the instant merchandise represents, we believe its classification must be reviewed independently of previous administrative decisions, the current precedential status of which is now in question.

Accordingly, the main issue in this matter, and the one upon which counsel has focused attention, is whether the instant merchandise in spite of its clearly optical designation, the optical designation given merchandise it is used as a part of, and its employment of complex optical phenomena through the incorporation of not just one optical element, which is all that is necessary to meet the definition for an optical instrument in Headnote 3, Part 2, Schedule 7, but of

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several optical elements, an optical instruments classification can be avoided because it does not directly or indirectly aid vision. Except for technical applications which the instant merchandise represents in which sound is recorded and reproduced, the recording and reproduction of signals which are first sensed by a camera, as in the case of video signals, or which in their original form comprise data in alphanumeric form readable by the human eye, in the case of the recording of data, and in which the playback is an image on a CRT, the basis for claiming the instant apparatus does not indirectly aid vision is not completely convincing.

While counsel has cited Ataka, supra, at 66, for the proposition that optical instruments must "permit or enhance" vision, we stated in our decision of February 21, 1984, IA 48/83, file No. 071436, that the "creation of a picture or image is not the sine qua non of an optical instrument or apparatus," and the enhancement of vision is accomplished if electronic apparatus "replaces or goes beyond a function previously performed with the human eye." The reading and conversion of data in alphanumeric form, the conversion of it to digital form whether involving electronic or optical phenomena, and the reconversion of it to alphanumeric form for reproduction on a CRT, etc., certainly is the replacement of a function performed by the human eye. We even stated in IA 124/81, supra, that human vision is aided even if an image

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on a CRT is not produced, but data in printout form is what is provided. Cf. Corning Glass Works v. United States, supra.

But assuming arguendo, as counsel contends, that the instant article does not directly permit or enhance human vision, as referred to by the Ataka court, that still would not be a basis for avoiding an optical instruments classification. In the material quoted from the Ataka decision, the court was only speaking "broadly" or generally and prefaced its remarks, Ataka, supra, also at 66, with the statement that "[n]one of the foregoing [Engis] criteria is determinative in every case" for determining what is or what is not an optical instrument. In other words, under the Ataka decision the Engis criteria are to be regarded as disjunctive rather than conjunctive. For the foregoing reasons, the current views of the Customs Service are that the definition for optical instruments in Headnote 3, Part 2, Schedule 7, is specific authorization for including under the optical goods provisions articles which combine electrical features without recourse to various applications of the "more than" rule which is what the primary-or-dominant classification criterion was in actuality another version of.

HOLDING:

Therefore, the instant laser diode optical heads are properly

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classifiable under the provision for optical instruments and appliances in item 708.89, TSUS. A copy of this decision may be made available to the internal advice applicant.

Arthur P. Schaffner
for Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

26 MAR 1985

REFER TO

CLA-2:CO:R:CV:G
074913 JLJ
810081

William E. Melahn, Esquire
Doherty & Melahn
P.O. Box 363
One Devonshire Place
Boston, Massachusetts 02101-0363

Dear Mr. Melahn:

Recently you inquired about the tariff status of an article known as a "Lullabear" for your client Playskool, Inc., a division of Milton Bradley Company. You submitted a sample of the article along with your letter.

The sample "Lullabear" is described as an infant's musical textile article made of fleece polyester. Its measurements are approximately 15 inches by 22 inches. The upper half resembles a bear lying in bed under a cover. The lower half of this article is a napped woven fabric, while the upper part is a printed woven fabric sewn to a knit back. The bear feature (face and hands) is made of a pile fabric. A textile lace trim is sewn across the cover. Underneath the bear's chin is stitched a piece of satin man-made fiber fabric ribbon measuring 15 inches in length by 1.5 inches in width which has been tied into a bow. A heart-shaped electronic musical module with an open hook at the top is inserted into the bow under the bear's chin. The sound is produced by touching a battery. The open hook allows the musical part to be slipped on or off the article. It is intended for infants.

You believe that there are 4 possible classifications for this item:

(1) as a toy in item 737.95, Tariff Schedules of the United States (TSUS),
(2) as bedding in item 363.25, TSUS,
(3) as an article not specially provided for, of textile materials, ornamented, of man-made fibers, in item 386.13, TSUS, or
(4) as an electrical article, not specially provided for, in item 688.34, TSUS.

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You think that the item is classifiable in item 688.34, TSUS, because the electric article gives it a unique feature.

Headnote 2 of Schedule 7, Part 5, TSUS, provides that "For the purposes of the tariff schedules a 'toy' is any article chiefly used for the amusement of children or adults." In our opinion, the article lacks the amusing features, appearance and play value normally associated with toy playthings. It is not a toy for tariff purposes.

The small dimensions of the article would not permit it to be used as a cover or as a source of warmth, therefore it cannot be considered a blanket or a coverlet for tariff purposes.

Next we must consider whether the musical component and the textile cover are to be regarded as an entirety or whether they are separately classifiable. As the Customs Court observed in J.C. Penny Purchasing Corporation v. United States, 77 Cust. Ct. 48, C.D. 4671 (1976), "In general, an article is regarded as an entirety when the joined components form a new article which possesses a character or use different from that of any of its parts, or when one of the elements of the component is predominant, the other parts being merely incidental to the predominant part." The Customs Court also observed, in Donald Ltd. v. United States, 32 Cust. Ct. 310, C.D. 1619 (1954), that "If what is imported as a unit is actually and commercially two or more individual entities which even though imported joined or assembled together, nonetheless, retain their individual identities and are not subordinate to the identity of the combination, duties will be imposed upon the individual entities in the combination as though they had been imported separately."

In the case of the instant merchandise, the individual parts do not lose their individual identities; each may be used separately. The musical module may be removed and used by itself. The cover retains its identity and can be used without the musical module.

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074913/810081

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Accordingly, the battery operated musical module is classifiable under the provision for electrical articles not specially provided for, using pre-programmed digital integrated circuits to produce sound, in item 688.34, TSUS, dutiable at the 1985 Column 1 rate of 4.3 percent ad valorem. If replaceable, the battery is classified separately, under the provision for primary batteries in item 682.95, TSUS, dutiable at the 1985 Column 1 rate of 6.1 percent ad valorem. The cover is classifiable under the provision for articles not specially provided for, of textile materials, ornamented, other, of man-made fibers, in item 386.13, TSUS, dutiable at the 1985 Column 1 rate of 15 percent ad valorem. Items 688.34, 682.95 and 386.13, TSUS, are all duty free under the Generalized System of Preferences if the imported articles are manufactured in Taiwan.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

180018/079913

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

27 FEB 1985

REFER TO
CLA-2 CO:R:CV:G
074958 jlj
810378

Mr. Robert H. Gerrity
Collector Auto Service Co.
28048 13th Avenue South
Kent, Washington 98032

Dear Mr. Gerrity:

Recently you asked our New York office to furnish a tariff classification covering wooden automobile models produced in Taiwan. Your letter, a descriptive brochure, and a sample car were forwarded to this office for reply.

The descriptive literature indicates that the items in question are all wooden cars representing various antique models. The wooden cars measure 15 inches in length. They may have movable wheels and compartments which open.

A sample of a 1907 Rolls Royce Silver Ghost was submitted. It has functional wheels and a removable drawer (located at the rear of the car) which measures 5 inches in length by 3 inches in width by 1 inch in depth.

You stated that the wooden cars may be imported in the following conditions:

(1) with functional wheels and a compartment which opens,
(2) with static wheels and a compartment which opens,
(3) with functional wheels and no compartment, or
(4) with static wheels and no compartment.

Headnote 2 of Schedule 7, Subpart 5E of the Tariff Schedules of the United States (TSUS), defines a toy as "any article chiefly used for the amusement of children or adults." The Customs Court has stated that articles which are essentially passive, uncomical and non-manipulative are not classifiable as toys. In the present situation, an examination of the sample reveals that it is not manipulative because it is of a rather fragile construction. It is essentially passive. It is not comical in design nor in appearance. The wooden automobile models do not qualify as toys for tariff purposes.

The sample 1907 Rolls Royce Silver Ghost represents a specific car from a specific era; it is identifiable as a model of a Rolls Royce Silver Ghost from approximately 1907. The descriptive brochure distinguishes all the models in terms of type of vehicle and the year involved. The sample and the models pictured in the descriptive brochure are not crude models, although they are not scale models.

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We find that the wooden automobile models without compartments which open are classifiable under the tariff provision for non-scale models in item 737.15, TSUS, dutiable at the 1985 Column 1 rate of 10.2 percent ad valorem. Articles which are classifiable under item 737.15, TSUS, which are produced in Taiwan are entitled to duty-free treatment under the Generalized System of Preference.

The wooden automobile models with compartments which open, however, are a different matter. They are more than models inasmuch as the drawers could serve a utilitarian function by holding matches, cuff links, tie clasps, packs of gum or other small items. We find that the wooden automobile models with compartments which open are classifiable under the provision for household articles of wood in item 206.98, TSUS, dutiable at the 1985 Column 1 rate of 5.1 percent ad valorem.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

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074958/810378

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

21 MAR 1985

REFER TO
CLA-2:CO:R:CV:G
075179 JLJ
810952

Ms. Judy L. Cook, Manager
Import Department
Pagoda Trading Company, Inc.
44 Kimler Drive
St. Louis, Missouri 63043

Dear Ms. Cook:

Recently you submitted an inquiry concerning the tariff classification of your Style 92180, a pearl coated nylon upper hi-jack boot of cement construction. You submitted a sample of Style 92180 and swatches of material both coated and uncoated along with your letter.

The issue in this case is a plastic coating on a fabric upper for footwear. The central question presented is whether the plastic coating on the fabric visibly and significantly affects the surface thereof within the purview of Headndote 3, Schedule 7, Subpart 1A, Tariff Schedules of the United States (TSUS). Headnote 3, supra, provides that "For the purposes of items 700.51 through 700.56, the rubber or plastics forming the exterior surface area specified, if supported by fabric or other material must coat or fill the supporting material with a quantity of rubber or plastics sufficient to visibly and significantly affect the surface otherwise than by a change in color, whether or not the color has been changed thereby."

Headnote 2(a), Schedule 3, Subpart 4C, TSUS, provides that "For the purposes of the tariff schedules, the term 'coated or filled,' as used with reference to textile fabrics and other textile articles, means that any such fabric or other article has been coated or filled (whether or not impregnated) with gums, starches, pastes, clays, plastics materials, rubber, flock, or other substances, so as to visibly and significantly affect the surface or surfaces thereof otherwise than by a change in color, whether or not the color has been changed thereby."

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The United States Customs Service issued a notice (published as T.D. 81-219) which interpreted the case of H. Rosenthal Co. v. United States, 81 Cust. Ct. 77, C.D. 4769 (1978). The Rosenthal court held that certain fabric was coated or filled for the purposes of Headnote 2(a), Schedule 3, Subpart 4C, TSUS, supra. T.D. 81-219 provided in part that "Considering the holding in Rosenthal and the stated basis for that holding, Customs will consider the surface of a fabric to be visibly affected by a coating or filling if, (1) the coating or filling material can be separately distinguished from the fabric by the naked eye; (2) the coating or filling material imparts a shine, luster or glossy appearance, or a dull appearance, that is noticeable by a casual examination; or (3) the coating or filling material has caused the fabric to have a pronounced (obvious) appearance of stiffness. With regard to the appearance of stiffness, the fabric should appear significantly more rigid than that fabric would be if not coated or filled."

In Customs Headquarters Ruling Letter (HRL) 069067, dated November 4, 1981, we indicated that since the language of the cited headnotes, supra, is so similar, the interpretation of the Rosenthal case set forth in T.D. 81-219 is applicable to footwear.

Your two sample swatches of nylon upper material were forwarded to us along with a sample shoe of Style 92180. Swatch A, the plastic coated material, weighs 7.25 grams per square foot. Swatch B, the uncoated nylon material, weigh 5.25 grams per square foot. The coated fabric appears similar to but distinguishable from the swatch in the Rosenthal case. Swatch A does not meet any of the requirements, set forth in T.D. 81-219, which constitute a plastic coated surface.

In accordance with the information noted above, we find that Style 92180 contains a fabric upper and is classifiable under the provision for footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics in item 700.61, TSUS, dutiable at the 1985 rate of 37.5 percent ad valorem, assuming that the value of a pair of Style 92180 is not over $6.50. The sole does not overlap the upper except at the toe.

075179/810952

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This letter applies solely to the instant coating on the instant fabric. Inasmuch as identical coatings might have different result on different fabrics, we will rule on each such combination on a case by case basis.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

075179/810952

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

19 MAR 1985

REFER TO

CLA:2:CO:R:CV:G
075253 JLJ
810307

Mr. Eric Reynolds, Vice President
Marmot Mountain Works
331 South 13th Street
Grand Junction
Colorado 81501

Dear Mr. Reynolds:

Your inquiry concerning the tariff classification of a sleeping bag stuff sack and a sleeping bag storage sack was forwarded to this office by our New York office. Your two samples were forwarded to us along with your inquiry.

Both samples are made of textile materials. The nylon stuff sack measures approximately 15 inches in height, 12 inches in width and has a circular bottom panel 7 inches in diameter. A spring action cord lock on a braided cord drawstring closes and secures the bag at its top. The cotton storage sack measures approximately 38 inches in height and 23 inches in width. A braided cord drawstring and cord lock also close and secure the storage sack.

You state that both sacks are accessories necessary for the proper care of down sleeping bags. You say that the water-proof nylon stuff sack is used in the field to make a sleeping bag compact and able to fit into a backpack. The cotton storage sack is used to protect the down bag while not in use at home, thereby allowing the down to aerate and to remain fully expanded while not in storage.

You intend to import sleeping bag shells with stuff sacks and storage sacks included. You also intend to import stuff sacks and/or storage sacks separately. You ask whether the sacks are classifiable under the provision for articles not specially provided for, of feathers, in item 748.55, Tariff Schedules of the United States (TSUS),

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inasmuch as the value of the sacks would be included in the cost of the sleeping bag shells.

We believe that, even if the sacks were imported with completed sleeping bags, they would not be considered an entirety with the bags inasmuch as they perform no function in the actual use of the sleeping bags but are merely optional equipment for storing or transporting the sleeping bags. Therefore these sacks would not be classifiable in item 748.55, TSUS, even if imported with sleeping bags classifiable in that number.

The term "luggage" is defined in Headnote 2(a)(i), Schedule 7, Subpart 1D, TSUS to include "(i) travel goods such as trunks,...knapsacks, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel.

In United States v. Standard Surplus Sales Inc., 69 CCPA 34, Appeal No. 81-13 (1981), the Court of Customs and Patent Appeals reversed the lower court's decision and held that backpacks which are chiefly used in the sport of backpacking are luggage and not sport equipment. We believe that Surplus Sales, supra, governs the classification of the stuff sacks.

The second sample is a storage sack used for storing down sleeping bags when not in use. Such storage sacks are usually made of breathable cotton which allows the sleeping bags to aerate. Storage sacks are different from the substantially constructed stuff sacks in that they are neither designed nor intended for use during travel. The storage sacks are used before and after the sleeping bag has been transported in the stuff sack. We believe that the instant storage sack does not meet the definition of luggage in Headnote 2(a), supra. Accordingly

075253/810307

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luggage in Headnote 2(a), supra. Accordingly it is precluded from classification in the luggage provisions.

The cotton storage sack is classifiable under the provision for articles not specially provided for, of textile material, not ornamented, of cotton, in item 386.50, TSUS, dutiable at the 1985 rate of 9.3 percent ad valorem.

It is our opinion that the nylon stuff bag is classifiable under the provision for luggage of other textile materials in item 706.4152 and dutiable at the rate of 20 percent ad valorem, regardless of whether the stuff bag is imported separately or with the sleeping bag shells. (See Customs Headquarters Ruling Letter (HRL) 075318, dated February 28, 1985, in which a backpack with a braided drawstring closure was found not to be wholly nor in part of braid). The textile quota number applicable to item 706.4152, TSUS, is 670. Luggage produced in South Korea or in Taiwan and classifiable in item 706.4152 is currently subject to textile quota restraints.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

075253/810307

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

12 FEB 1986

REFER TO
CLA-2:CO:R:CV:G
075402 JLF

075402

District Director of Customs
40 South Gay Street
Baltimore, Maryland 21202

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1303-2-000010

The above-captioned protest and application for further review were filed against your classification of Halloween horns which were the subject of entry No. 81-163248-9 filed at the port of Baltimore in 1981. This merchandise is a product of Hong Kong. Our decision follows:

ISSUE:

The merchandise was found dutiable under the provision for toys, not specially provided for (n.s.p.f.), in item 737.95, Tariff Schedules of the United States (TSUS). An exemption from duty under the Generalized System of Preferences (GSP) was not available under that item for products of Hong Kong and the applicable column 1 rate in 1981 was 14.9 percent ad valorem. It is contended in the protest that the merchandise is properly classifiable under the provision for "confetti, paper spirals or streamers, party favors, and noisemakers" in item 737.70, TSUS, a classification which would permit the GSP exemption. The main issues, therefore, are whether the latter provision is a more specific description for the merchandise, as claimed, or whether its language does not encompass the merchandise at all.

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FACTS:

The merchandise consists of plastic horns 10 inches long with bulbs at the ends depicting a skull or other Halloween theme. A copy of an advertisement has been submitted from an unidentified retailer describing the merchandise as a "skull or cat horn * * * for the kids to scare off goblins." Other items in the advertisement include other Halloween novelty articles and candy bars.

LAW AND ANALYSIS:

We, in effect, have previously held that merchandise is not included in item 737.70 if it has play value in addition to any noise making capabilities. Counsel contends that that position is in error, and, if not, the only play value of the instant merchandise is its noise making capability. While that may be true, tariff terms still do not necessarily include everything literally within their meaning. See, for example, General Methods Corporation v. United States, 59 CCPA 109, C.A.D. 1049 (1972). Constraints against such broad interpretations may be required under such doctrines as noscitur a sociis which we find is applicable here.

Under that doctrine, the meaning of a tariff description may be ascertained by reference to the meaning of other terms associated with it. In our opinion, all of the exemplars listed with noisemakers involve articles used at parties or

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other celebrations, and noisemakers contemplated have the same uses. While counsel contends that the instant articles are used at Halloween parties, other activities aside from parties, as in the case of New Years Eve parties and birthday parties are associated with Halloween. Accordingly, any claim of chief use of the instant articles at parties is not substantiated.

Of course, there are also other factors pertinent to chief use, such as channels of trade and other circumstances in which merchandise is bought and sold. While the identity of the retailer whose advertisement has been submitted has not been disclosed, the retailer is probably similar to those of small department stores, chain drugstores, etc. We take administrative notice of the fact that those types of outlets ordinarily do not deal in party favors and related articles, and such articles are only generally available in more specialized retail operations. We further note that the advertisement in question says nothing about use for parties and otherwise deals in toys, lipstick, make-up, flashlights, candy, etc.

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HOLDING:

For the foregoing reasons, we find that the merchandise is properly classifiable under the provision for toys, n.s.p.f., in item 737.95, TSUS. Accordingly, you are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Acton.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

10 FEB 1986

CLA-2:CO:R:CV:G
075405 JCH

075405

District Director of Customs
U.S. Customs Service
101 E. Main Street
Norfolk, Virginia 23510

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 14043000022

The above-captioned protest and application for further review were filed against the tariff classification of merchandise which was the subject of entry Nos. 401149, 401433, and 401761 filed at the port of Richmond in 1983. The merchandise is a product of the Peoples Republic of China. Our decision follows:

ISSUE:

Duty was liquidated for all the articles in question under the provision for corduroy furnishings in item 366.63, Tariff Schedules of the United States (TSUS), which required in 1983 a column 1 rate of 32.3 percent ad valorem. The claimed alternative classifications are the provision for stuffed cotton pillows and cushions in item 727.82, TSUS, which required a 1983 column 1 rate of 9 percent ad valorem, and the provision for furniture, and parts thereof, not specially provided for (n.s.p.f.), in item 727.70, TSUS, formerly item 727.55 which required a 1983 column 1 rate of 7 percent ad valorem. The main issues thereby raised are whether item 727.82 includes articles which are unfinished in the sense that they are not stuffed or filled or do not have springs, and if not, whether

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item 366.63 is a less specific basket provision for the merchandise requiring classification under the item 727.70 basket provision.

FACTS:

The merchandise is variously invoiced as pillow covers and cases in style Nos. 21, 23A, 23B, 24, 52, 5662 and 5665. Also included were seat cushion style Nos. 5669 and 5671 and back cushion style No. 5670. These articles are filled with a molded foam rubber insert after importation. The seat and back cushions are used on such furniture as Boston rocker-type chairs. Information has also been submitted purporting to show that the covers and cases in their condition as landed represent more than 50 percent of the value of the finished cushions.

Reference was also made in the brief filed in this matter to various types of bolster covers in style Nos. 5666, 5667 and 5668 for which classification under the provision for bolster cases in item 363.30, TSUS, is claimed, but there is no reference to any such articles in the copies of the entry documentation included in the protest file which has been forwarded to us.

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LAW AND ANALYSIS:

General Headnote 10(h), TSUS, states that a tariff provision includes articles "whether finished or not finished," but that provision does not apply if "the context requires otherwise." In our opinion, the specific enumeration in the superior heading for item 727.82 of pillows or cushions "fitted with springs, stuffed, or both, or of expanded, foamed, or sponge rubber or plastics" constitutes language requiring that the instant merchandise be regarded as otherwise than unfinished pillows or cushions.

Counsel seeks to avoid this conclusion by asserting that the prepositional phrase also in the superior heading governing item 727.82 classifications beginning with the words "whether or not" carries through to the above-quoted description thereby requiring it to be read "whether or not * * * fitted [etc.]," that, contrary to our conclusion, the opposite is the case, and that the superior heading clearly contemplates pillows and cushions which in their condition as imported are unstuffed. However, between "whether or not" and "fitted" is another prepositional phrase starting with "with or without" which rather clearly shows the end of the whether-or-not phrase and the beginning of a new prepositional phrase. If the whether-or-not phrase were

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deemed to continue beyond that point, then the word "without" would be redundant. However, tariff descriptions are to be interpreted insofar as possible by attaching meaning to all of their terms. Tuscany Fabrics, Inc. v. United States, 65 Cust. Ct. 182, C.D. 4076 (1970).

We, therefore, do not agree that the whether-or-not phrase somehow picks up again after the with-or-without phrase and are aware of no rule of grammar or syntax which would require that conclusion. Nor do we agree with the necessary corollary to counsel's proposition, that the wording of the superior heading in question is intended as an exception to the rule which limits General Headnote 10(h) and excludes an article from being regarded as unfinished if in its condition as imported it lacks the part which imparts to it its essential characteristics. See, for example, Daisy-Heddon v. United States, 66 CCPA 97, C.A.D. 1228 (1979).

Accordingly, we read the superior heading in question as providing for "pillows, cushions * * * stuffed." Read in this manner, the provision poses no ambiguities, and the authorities cited in the protest for the proposition that ambiguities must be resolved in favor of the importer are shown to be inapposite here.

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Because the articles are not the type of furnishing contemplated by item 727.82 does not make them classifiable as furniture parts in item 727.70. We note the stalwart authority cited regarding the principles applicable to placements in or exclusions from parts provisions. We also note counsel's observation that item 366.63 may be a basket provision no more specific than the basket provision in item 727.70 by virtue of the n.s.p.f. clause in Headnote 1, Subpart G, Part 5, Schedule 3, TSUS. However, those references are also inapposite. What is controlling here is Headnote 1(vi), Part 4, Schedule 7, TSUS, which excludes from that part, where item 727.70 appears, any merchandise also described in Part 5, Schedule 3. With respect to any underlying contention that the merchandise is not described in that part, we note that in Brentwood Originals v. United States, 73 Cust. Ct. 185, C.D. 4572 (1974), cited by counsel, the court excluded bolster covers from item 366.63 not because they were not described by that item, but because they were more specifically provided for by another provision in which they were parenthetically referred to by name. Against the background of that decision, any further argument that pillow and cushion covers are excluded from Headnote 1, Subpart C, Part 5, Schedule 3, by the application of ejusdem generis or under any other theory is not convincing.

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Nor can the fact that the covers cost more than their inserts be the bootstrap to get them in item 727.70.

HOLDING:

For the foregoing reasons, we find that the corduroy pillow and seat cushion covers which are the subject of the entries involved in this protest are properly classifiable under the provision for corduroy funishings in item 366.63, TSUS. Therefore, you are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

31 JAN 1986

REFER TO
CLA-2:CO:R:CV:G
075518 JCH

075518

District Director of Customs
610 South Canal Street
Chicago, Illinois 60607

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 39014000410

The above-captioned protest and application for further review were filed against the tariff classification of merchandise which was the subject of entry No. 741998 filed at the port of Chicago in 1983. The merchandise is a product of England. Our decision follows:

ISSUE:

Duty was liquidated at the 1983 column 1 rate of 4.4 percent ad valorem under the provision for parts of apparatus based on the use of radiations from radioactive substances in item 709.66, Tariff Schedules of the United States (TSUS). It is contended the correct rate of duty is 2.3 percent ad valorem required in 1983 under column 1 for parts of X-ray apparatus in item 709.63, TSUS. The main issue is whether apparatus which employs X-rays only in a detection sense and which contains no vacuum tubes or other electrical X-ray generating components may be regarded as X-ray apparatus.

FACTS:

The merchandise consists of encapsulated cadmium 109 which is used together with iron 55 as the radioisotopic excitation energy source in a system using the X-ray fluorescence phenomenon. The apparatus, consisting of a

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probe and, among others, a part described in the submitted literature as an "X-ray detector", can perform such functions as determining the type of alloy used in a pipe weld by a nondestructive analyzing method.

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LAW AND ANALYSIS:

Counsel for the protestant contends that item 709.63 describes the merchandise at issue, and that that provision is more specific than item 709.66. If this matter did involve the issue of the relative specificity of these two items, we doubt that the enumeration of three specific types of radiation in the latter provision, viz., alpha, beta and gamma rays, would make it more specific than the former provision only naming X-rays. X-rays still may involve a broader spectrum of energy levels and for that reason could be regarded as constituting a less specific energy designation. In fact, it is the principle of the varying levels of X-ray energy on which the instant apparatus operates.

But if relative specificity were the issue, counsel would not have to show item 709.63 was the more specific provision. It would be sufficient merely to show it is an equally specific provision. Since both of the competing provisions carry the same statutory rate and the provision for X-ray apparatus appears in the TSUS ahead of item 709.66, the former would have to prevail under the rule in General Headnote 10(d), TSUS. But it has been our position that item 709.63 only contemplates apparatus in which X-rays are

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generated by vacuum tubes or other electrical means. See our decision of July 10, 1972, ORR 72-281, a copy of which has been furnished to counsel. Our decision of November 18, 1977, file no longer available, which counsel has cited for an opposite conclusion is not shown to involve X-ray apparatus lacking vacuum tubes or other electrical generating means.

Our position is supported by background information in the Explanatory Notes to the Brussels Nomenclature (1966 ed.), Vol 3, pp. 1591 - 1593. Counsel believes our reliance on that reference is misplaced because the plain meaning of item 709.63 is otherwise and, in such circumstances, extraneous aids may not be resorted to.

It is well established that the cited explanatory materials for the Brussels Nomenclature (now the Customs Cooperation Council Nomenclature) constitute legislative history where the Brussels and TSUS provisions are similar. Carrington Co. v. United States, 70 Cust. Ct. 105, C.D. 4415 (1973), and authorities cited therein. While counsel has cited authority for rigid rules concerning the use of extraneous aids and limiting them only to instances of statutory ambiguity, any extensive reading of customs legal decisions would show that legislative history is regularly given consideration more freely. A more realistic statement of the rule would be that legislative history may be resorted to to resolve the doubt created by any bona fide legal dispute created by a challenge to a Customs classification.

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HOLDING:

For the foregoing reasons, we find that the encapsulated isotope in question was properly classified under the provision for parts of apparatus based on the use of radioactive substances in item 709.66, TSUS. Therefore, you are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

7 MAR 1985

REFER TO

CLA-2 CO:R:CV:G
075533 jlj

Mr. Howard Wellman
Wellman Wearables, Inc.
7410 Worthington-Galena Road
Worthington, Ohio 43085

Dear Mr. Wellman:

In your letter of October 29, 1984, you asked for a tariff ruling concerning certain flock transfers. You submitted samples along with your inquiry.

The samples were consumed in laboratory analysis, but the New York Customs Laboratory advises us as follows:

> The sample is a rayon flock which has been applied to an adhesive paper substrate. The flock has been applied to the paper without the use of a printing process. The decorative portion of the flock, which can be transferred by heat and pressure onto a fabric, has been formed using a typographic adhesive printing process similar to gold leafing. In our opinion, the sample is neither a decalcomania nor a ceramic color.

It is our opinion that your samples are classifiable under the provision for other articles of flocked paper in item 256.87, TSUS, dutiable at the 1985 column 1 rate of 5.6 percent ad valorem.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

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614

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 26 MAR 1986

FILE: CLA-2 CO:R:CV:G
075538 JGB

075538

TO : Area Director of Customs
Newark, New Jersey 07114

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 121/84, Classification Continuous Cast Gold Rod (Your memorandum of November 1, 1984, File: ENT-1 N:C:D HH)

This request for internal advice was initiated on behalf of the importer by counsel in a letter dated September 27, 1984. Our decision follows:

ISSUE:

Whether the gold rod is "bullion" as provided in item 605.20, Tariff Schedules of the United States (TSUS), a duty-free provision, or whether it is "Gold, *** unwrought *** or semimanufactured: Other," as provided in item 605.28, TSUS, and dutiable at 12.6 percent ad valorem for entries made in 1983.

FACTS:

The importer buys refined gold from its related company in West Germany. In its condition as imported the gold is in the form of rod made by the continuous casting method. Rod made this way is distinguishable from ordinary drawn or extruded wire by rings or bands. These represent fluctuations as the gold rod goes through a circular die. The importer

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states that this process is relatively new, but that continuous casting in some form is becoming the predominant method of forming gold for commercial or industrial use because of lower costs.

LAW and ANALYSIS:

Counsel relies primarily on Jarrell-Ash Co. v. United States, 60 Cust. Ct. 65, C.D. 3261 (1968). The point made is that the instant rod is only a material having no particular value beyond the value of the gold itself. It is claimed that the form of this rod does not impart value to the mass.

Counsel also argues that the gold rods regarded as bullion in Jarrell-Ash, decided under paragraph 1638 of the Tariff Act of 1930, are sufficiently similar to the instant gold rod to require classification in item 605.20, since the meaning of bullion in paragraph 1638 is the same for item 605.20. To support this claim, counsel refers to page 133, of Schedule 6, Tariff Classification Study (1960), which it is contended shows an intention to continue the same dutiable status for bullion in the TSUS as existed under the repealed tariff paragraphs. However, this reference antedates Jarrell-Ash by several years and it is clear that under TSUS headnotes, rod of the type considered by the Jarrell-Ash court could not be considered as bullion under the TSUS.

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In interpreting the TSUS, we must look at the actual language of the provisions along with their accompanying headnotes. Therefore in comparing the competing provisions, items 605.20 and 605.28, we note that the superior heading to the latter includes semimanufactured products. If the instant rod is semimanufactured, this would require its exclusion from the bullion provision, a result mandated by the headnotes. "Semimanufactured" is defined by Headnote 2(b), Subpart A, Part 2, Schedule 6, TSUS, as referring to a "wrought" product including any in the form of bars, "rods", and sections. (Emphasis ours.) Judging from the descriptions provided, the goods being considered here are in the form of rods and nothing else. It is noted that the diameter of the rod may vary, but the overall form is not substantially less than a rod. Moreover, we would not regard the rod as unwrought, because Headnote 3(a), Part 2, Schedule 6, excludes extruded products.

In a supplemental letter dated February 26, 1986, as well as during the conference at Headquarters, counsel has argued vigorously that the product of continuous casting is not an extrusion within the meaning of the applicable headnotes, but instead results in a cast product. Counsel notes that the copper subpart (Subpart C, Part 2, Schedule 6) is governed by a headnote specifically requiring that continuous cast products of copper be classified as wrought products when

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substantially comparable to and suitable for the same general purposes as wrought products. It is argued that the purpose of the headnote was to counter a general principle that products of continuous casting are unwrought. We disagree.

To the extent this argument constitutes an application of the expressio unius rule, such negative inferences are not to be drawn from headnote inclusions. See the Tariff Classification Study, Explanatory Materials, C.I.E. 1/64, Vol. 1, p. 18. In our opinion the copper headnote is simply a reflection of a lack of commercial significance for continuous casting methods for precious metals and other metals besides copper. It would have been unreasonable to include a headnote to cover a process that did not for practical purposes exist when the TSUS was drafted. In this connection, the comparatively recent development of continuous casting methods for gold is emphasized in counsel's submissions. In fact, we rather regard the copper headnote as supportive of the view that the treatment of any continuous cast product which is used as a semimanufactured product and not as an unwrought product would be a misconstruction of the TSUS.

Continuous casting does not create an unwrought product because the process is not true casting. The movement of the molten material through a die is more than a casting

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and certainly uncharacteristic of casting. In our opinion, the continuous casting extrusion qualifies the instant merchandise as a wrought product for the purpose of the headnote definition of "semimanufactured."

Counsel has made a final claim in his supplemental letter that there has been a continued reliance by Customs on the Bureau of the Mint definition of bullion and that to change that definition would require a change of practice. Further, it is argued "that a uniform practice existed prior to 1984 to classify bars, rods and plates of precious metal as bullion" and that published notice would be required to make any change in that practice.

The cited abstract, T.D. 66-169(9), does not constitute a publication the reliance on which could create a practice that may not be changed except through the change of practice procedures. 19 CFR 177.10(b). Accord, Borneo Sumatra Trading Co. v. United States, 56 Cust. Ct. 166, C.D. 2624 (1966). As for the Bureau of the Mint definition of bullion, the reliance on it in an unpublished ruling which concerned gold bar stock would not apply to the instant merchandise. Moreover, its use by counsel here would be inappropriate because interpretation under other laws are not controlling for tariff purposes. See, for example, United States v. Mercantil Distribuidora, S.A., 43 CCPA 111, C.A.D. 617 (1956).

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HOLDING:

It is not shown the Customs Service consistently classified any extruded gold product as bullion in violation of TSUS headnote requirements and thereby created a practice. The instant merchandise is classified in item 605.28, TSUS, as other semimanufactured gold. A copy of this decision should be sent to counsel for the importer.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR - 4 1986

REFER TO
CLA-2 CO:R:CV:G
075555 JGB

075555

District Director of Customs
6th Floor, Plaza Nine Building
55 Erieview Plaza
Cleveland, Ohio 44114

Dear Sir:

Re: Decision on Protest and Application for Further Review of Protest No. 4101-4-000033, dated November 14, 1984.

This protest was taken against your decision on the liquidation on August 24, 1984, of entry no. 84-433226, dated April 13, 1984. The protest concerns the classification of 1, 4 dithiothreitol, also known as DTT.

ISSUE:

The importer claims that DTT is properly classified in item 428.4400, Tariff Schedules of the United States Annotated (TSUSA), the provision for "Other: Triols and Tetrols", bearing a rate of duty of 4.2 percent ad valorem (1984).

You have classified the merchandise in item 428.4780, TSUSA, the provision for "Other: Other [than Triols and Tetrols]", bearing a rate of duty of 12.3 percent ad valorem. The superior heading for both provisions is "Alcohols, polyhydric (including glycols, polyglycols, diols, and polyols), and esters, ethers, and ether-esters and substituted derivatives of any of the foregoing."

The issue as framed by the importer is whether substituted derivatives of triols and tetrols are classified under the triols and tetrols provision.

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FACTS:

The protestant claims that both by chemical structure and activity and by use and price, the instant merchandise does not fit into the included group of organic compounds under the "Other" heading of item 428.47. Therefore, it is argued, your classification is incorrect. It is noted, for example, that the instant merchandise is valued at over 400 times the value of the ether-type ethylene glycols (suffixes 10 through 40).

The second part of the argument is that the tetrol and triol classification is correct because the instant merchandise is derived from erythritol which, in turn, is a tetrol. The importer's argument in sum is that DTT does not belong in item 428.47, where you classified it, and that it does belong in item 428.44 with tetrols.

LAW and ANALYSIS:

The first part of the argument is only partially valid. The importer is apparently correct in noting the differences in cost of organic chemical compounds classifiable in item 428.47, statistical suffixes 10-40, compared to DTT, which you classify in suffix 80, the "other" provision. There is also, in view of the difference in cost, a different use, according to the importer.

The importer is employing a "use" analysis as well as a hybrid in pari materia analysis to make his first argument.

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Neither method of analysis is appropriate here because the superior heading quoted supra relies wholly on chemical structure for its boundaries, not upon use or upon "like chemicals." Suffix 70 of item 428.47 is a use description, for example, which is not relevant here, but the "Other" which describes the entire provision is not dependant on use. Also, there is no requirement in interpretation of the tariff schedules that all things grouped together be of similar price or value unless they are exemplars designed to give meaning or definition to such phrases as "or similar goods" or "of like kinds." No such tariff construction is involved here. In fact, the "other" provision found here allows the classification of polyhydric alcohols not provided for in the other provisions beneath this superior heading.

The second argument, that DTT as a derivative of a tetrol should be classified with tetrols, may be disposed of by an analysis of the superior heading, noting that the "substituted derivatives" language applies to "any of the foregoing" and not to "any of the following." This means that while substituted derivatives of polyhydric alcohols are included thereunder by name, such as triols and tetrols, is does not mean that within the item providing for tetrols, there may be classified a further derivative. Therefore, the instant merchandise may not be classified in item 428.44 as a derivative of a triol or tetrol because derivatives do

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not belong with the named chemical structure. Instead, a di-substituted derivative of a tetrol must be classified as an "other" when not otherwise provided for.

HOLDING:

The product 1,4-Dithiothreitol, also known as DTT, is classified in item 428.4780, TSUSA. You should deny the protest. A copy of this decision should be attached to the Form 19 to be returned to the protestant.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

075555

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

075728

12 FEB 1986

REFER TO

CLA-2:CO:R:CV:G
075728 JLV
(074651 JLV)

M. Barry Levy, Esq.
Sharretts, Paley, Carter & Blauvelt, P.C.
Eighty Broad Street
New York, New York 10004

Dear Mr. Levy:

In your letter of February 15, 1985, you request reconsideration of our ruling of December 27, 1984 (file 074651). You agree that the article in question, a small electric motor and a series of speed-reducing gears enclosed in a special housing with 5 octagonal projections for connection to other components, is more than a motor. However, you state that the decision did not address classification of the article as a toy building block or shape in item 737.55, Tariff Schedules of the United States (TSUS). It is your opinion that there is a longstanding practice of classifying similarly constructed components of building systems in item 737.55, TSUS.

The component in issue is designed for use in Robotix™ motorized modular building systems. The octagonal projections are the points at which other building components are connected. The modular building systems are designed so that they permit the construction of many objects, limited only by a user's imagination. These objects include vehicles, cranes, robot-like beasts, combination articles, or even structures. The drive mechanism, however, [illegible] the only component under consideration.

You cite numerous administrative rulings in which we have ruled that motorized building kits, consisting of interlocking wheels, motors, brackets, blocks, rings, squares, battery, nuts, bolts, and various other shapes, are classifiable as toy building blocks, bricks, and shapes. However, these rulings address the classification of kits consisting of interlocking building blocks and related components, such as motors, wheels, and other "shapes" which, to the casual observer, do not appear to be within the tariff description for "building blocks, bricks, and shapes." However, in 1-2 Kangaroo, Inc. v. United States, 66 Cust. Ct. 474, C.D. 4236 (1971), the

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court held that interlocking squares, one-eighth of an inch thick, and hollow cylinders, two and one-quarter inches in diameter, were toy building blocks. In dictum, the court stated that if the squares and cylinders were not blocks, they would at least fall within the broader term "shapes." The operative language, in the court's opinion, was the fact that the types of articles to be considered in item 737.55 were "building" units. Therefore, if building blocks or shapes are not dedicated or subordinate to any use other than the building of objects, then such myriad shapes are properly classified in item 737.55, TSUS.

The Robotix™ kits are classifiable in item 737.55, TSUS. The narrow issues are whether the motorized shapes are "more than" building shapes and whether they are parts of building shapes. If the conclusion is "yes" to either question, then the motorized units would be precluded from classification in 737.55, TSUS. An article that is "more than" a named article is, very simply, not includable within the provision for the named article. Secondly, item 737.55 does not contain a parts provision.

The motorized units are identifiable building components that are utilized not for a given structural design, but as intermediate connectors that support a motor which provides driving power to another component. Nevertheless, they are specialized shapes used in building various objects. In this respect, their specialized function in the system is not relevant for tariff purposes. Therefore, the motorized units are not more than building shapes within the meaning of item 737.55, TSUS.

The remaining question is whether or not the motorized units are only "parts" of building kits. If the articles provided for in item 737.55 were described as "building blocks in kits," or "building kits," then this question would be relevant. The use of the plural terms "blocks" and "shapes" is not sufficient for us to conclude that the intent was to provide for kits. Therefore, a single building block or shape would be classifiable in item 737.55. Specialized shapes designed for use as building components are not different, for classification purposes, from basic bricks or blocks. The motorized units, which are specialized connectors for Robotix™

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building kits, are building shapes within the meaning of 737.55, TSUS, and, even though they are never used without other special shapes, they are not precluded from classification as building shapes solely because they could otherwise be characterized as "parts" of a kit.

Upon reconsideration of the ruling of December 27, 1984 (file 074651), we amend that decision in light of the conclusions in this letter. Therefore, the motorized units for the Robotix™ kits are classified as building shapes in item 737.55, TSUS.

Sincerely,

Arthur J. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

075728

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 19 1986

REFER TO
CLA-2 CO:R:CV:G
075793 JGH

075793

District Director of Customs
Minneapolis, Minnesota 55401

Dear Sir:

Re: Decision on Application for Further Review of Protest 3501-4-000015, on the Classification of Perfluorooctanoil Fluoride

"Perfluorooctanoil fluoride, FMZ-4049" is described as the waste resulting from the production of perfluorinated octanoic acid. "FMZ 4049" is said to be a flourinated ether alicyclic halogene derivative. The petitioner claims the imported material would have to go through a number of purification processes before it could be used to manufacture other fluorinated products.

The issue is whether the imported product is a waste in item 793.00, TSUS, or an ether of a monohydric alcohol in item 428.96, TSUS. The answer to whether it is waste will be determined by whether it is fit only for remanufacture or whether it is a useful by-product. Subsequent to importation the product must be processed before it can be used in the production of other chemicals. It is stated that to make a usable product it would have to go through a number of processes including boiling/distillation to remove impurities. It is claimed that only then could it be used in the manufacture of other fluorinated products. Such processing, it is stated, includes distilling to remove residual substances and to separate the lot into portions each having a narrow enough boiling range for uniform treatment. Fractions are then stabilized at elevated temperatures under pressure with a strong base, either molten or in solution, depending on the requirements of the intended product. Next the product is azeotropically distilled from the reactor and fractionally distilled into portions meeting the volatility specifications of the final product. The fractions are then further purified by treatment under heat and pressure with soluble oxidizing agents, filtered, washed with solvent and water, then decanted.

The stabilized material is passed through a chromatographic column to remove remaining polar contaminants and blended into a commercial product.

The processing undergone by the imported "FMZ 4049" shows that the original product, perfluorinated octanoic acid, is not recovered. The elaborate processing which the imported material undergoes involves a sequence of chemical reactions, separations and blending, which indicates that the imported material is used as a raw material to produce various organic fluorine compounds, or remanufactured to recover a variety of chemicals used in the synthesis of other chemicals.

B2

Therefore, as the imported material was not used for its original purposes but for remanufacture into totally different products, it is a waste for tariff purposes and classifiable in item 793.00, TSUS.

You are directed to allow the protest in full. A copy of this decision should be included with your Form 19 Notice of Action.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

015798

B3

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 4 MAR 1986

FILE: CLA-2 CO:R:CV:G
075796 JGB
810122

075796

TO : Area Director, New York Seaport

FROM : Director, Classification and Value Division

SUBJECT: Your Request to Modify New York Ruling 810122

Your memorandum of March 4, 1985, requests Headquarters to consider modifying your ruling no. 810122, dated November 8, 1984. The ruling provided tariff classifications and textile category designations for six girls' and infants' coats for Hong Kong.

Upon review of the sample, we concur in your conclusion that part of ruling no. 810122, pertaining to style 5271, is wrong and that ruling no. 810122 should be modified. Therefore, we have modified the ruling to show the correct classification and textile category designations and have attached a copy for your reference.

Harvey B. Fox

Attachment

PUBLIC ____ MAY BE RELEASED TO THE

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

4 MAR 1986

REFER TO

CLA-2 CO:R:CV:G
075796 JGB
810122

Mr. Duncan A. Nixon
Sharretts, Paley, Carter &
Blauvelt, P.C.
80 Broad Street
New York, New York 10004

075796

Dear Mr. Nixon:

You requested a ruling on behalf of Paramount Apparel in your letter dated July 12, 1984, to the Regional Commissioner of Customs in New York. That letter was answered in a ruling issued November 8, 1984, bearing New York ruling number 810122. The ruling covered six styles of girls' or infants' coats expected to be imported from Hong Kong.

It has been brought to our attention that the determination of proper tariff item and rate of duty for one style number is incorrect in that ruling. Therefore, in accordance with the provisions of 19 CFR §177.9(d), this letter modifies that ruling with respect to style 5271.

Style 5271 was classified in item 383.3446, Tariff Schedules of the United States Annotated (TSUSA), if in chief value of cotton and in item 383.9041, TSUSA, if in chief value of man-made fibers, as other girls' or infants' wearing apparel, not ornamented. A sample of the coat was submitted.

A feature of the coat is a flange that extends about 1-1/2 inches over the shoulders. The flange has contrasting piping less than 1/4-inch at the edge. The flange has six rows of parallel stitching along the length of the flange, visible from both sides of the flange.

An examination and removal of this stitching discloses that the parallel stitching is quilting stitching designed to hold fill in place. An examination of the construction of the flange, itself, shows that apparently it was constructed of material that was sewn together to form a single piece and then folded and sewn down in place along the resulting seams. In such construction a tuck is created.

MAY BE RELEASED TO THE PUBLIC

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This office has repeatedly noted that this sort of tucking is included in the examples of ornamentation in Headnote 3 to Schedule 3 of the TSUSA. This principle is evident and controlling in our recent rulings: 075951 EMS, dated June 19, 1985, and 076622 EMS, dated August 6, 1985. It is also noted in 069967 PR, dated February 18, 1983, and 065137 PR, dated December 12, 1980.

In the application of the foregoing, if in chief value of cotton, style 5271 is currently classified in item 384.0509, TSUSA, with a rate of duty of 19.6 percent ad valorem. If in chief value of man-made fibers, it is classified in item 384.2318, TSUSA, with a rate of duty of 32.1 percent ad valorem. The textile category designations 335 and 635 remain unchanged.

This ruling modification is effective as of the date of this letter, except that import specialists may accept entries of this style at the correct duty rate for not ornamented, if it be shown by written documentation that the merchandise being entered was on order before the date of this ruling modification.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

075796

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: [illegible]

FILE: CLA-2:CO:R:CV:G
075814 JCH

075814

TO : Assistant Area Director of Customs
Commercial Operations
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Tariff Classification of Modems (Your Memorandum of March 7, 1985, CLA-2-06:S:COM:NI-109-198)

In your memorandum you refer to our difference decision of July 18, 1983, file No. 067986, in which we classified modems under the provision for parts of office machines in item 676.52, TSUS. Since that position appears inconsistent with our usual treatment of remote computer terminal equipment, you indicate a distinction is being made on the basis of the distance the data is transmitted.

The identified previous decision was based on the belief that the modem in that matter was similar to the transmission apparatus which we classified under item 676.52 in our decision of January 27, 1975, file No. 035416. While the file for that earlier matter is no longer available, it is obvious from the description of the merchandise in the copy of the decision you provided that it was not a modem, but rather transmitted data in digital form over comparatively short distances not using public telephone or similar analog data transmission carriers.

Accordingly, modems generally will continue to be regarded as classifiable under the provision for parts of terminal apparatus in item 684.66, TSUS, without reference to specific transmission distance capabilities. Transmission equipment which as a class or kind handles data in digital form without modulation, usually within a single building or complex and not to remote locations, will not be regarded as telegraph apparatus.

Arthur P. Scheffler
for Harvey B. Fox

[illegible] MAY BE RELEASED TO THE

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: FEB 28 1986

FILE: CLA-2 CO:R:CV:G
075831 c

075831

TO : District Director of Customs
U.S. Customs Service
1 E. Bay Street
Savannah, Georgia 31401

FROM : Chief, General Classification Branch

SUBJECT: Request for Internal Advice 123/84 Concerning the Determination of Component Material in Chief Value Where Adhesives are Used (Your Memorandum of October 31, 1984, File: MAN-1-C&V WDW)

The subject IA request was initiated by the importer in a letter dated September 28, 1984. In this matter, the IA applicant requests information as to whether overhead and other expenses beyond direct labor costs may be subtracted from the value of a plastics/rubber component of footwear supplied to the final assembler by a separate manufacturer. Under the rule in Turner & Co. v. United States, 12 Ct. Cust. Appls. 48, T.D. 39997 (1924), the price actually paid to a manufacturer of a component by a final assembler must be taken as the value for cost comparison purposes even though the compared in-house incurred material costs may include fewer cost factors.

Another question has arisen as to whether the costs of adhesives may be subtracted from the component manufacturer's price for the rubber/plastics subassembly. It is our position that the cost of the adhesive may be subtracted from the rubber/plastics cost based on a ruling from this office which held in effect that cost of cement whose principal constituent element was rubber/plastics could not be allocated to rubber/plastics cost in a component material determination but was a separate component material in itself. See Vandergrift Forwarding Co. v. United States, 37 Cust. Ct. 18, C.D. 1793 (1956).

Arthur P. Schaffner
For Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 21 1986

REFER TO
CLA-2 CO:R:CV:G
075835 JGH

075835

District Director of Customs
Chicago, Illinois 60603

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3901-4-000843, on the Classification of Certain Reagent Chemicals

FACTS:

Quicklyser-HB, Placheck-100, Quicklyser, Histan, and Cellkit, products of Japan, are described as certain chemical reagents and diluents used with hematologic analyzing machines.

Cellkit-CD is described as a diluent, composed of sodium compounds with buffer.

Quicklyser is said to contain the benzenoid compound polyethylene glycol mono-p-iso-octyphenyl ether in the amount of 3.5 percent. The function of the Quicklyser is to lyse red blood cells. The benzenoid compound is to act as a white cell stabilizer after the lyzing has occurred. Placheck 100 is referred to as a reference material for platelet counts. It is described as having latex particles which enable the user of an automated hematologic analyzer to evaluate the instrumentation with respect to the parameters for platelet counts. The active ingredients are said to be latex particles plus a phosphate buffer. It is also said to contain a benzenoid compound, polyoxyethylene octylphenyl ether, in the amount of 0.1 percent as a dispersant.

Histan #HS10 is described as a chemical product used for evaluating hematologic analyzing equipment. The active ingredients are said to be potassium cyanide compounds used to form cyanmethemoglobin, as well as a

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phosphate buffer. It is said to contain a benzenoid ingredient to the extent of 2.5 percent, which acts as a supplemental agent for the antiseptic and as a builder for bovine hemoglobin.

ISSUE:

While Customs classified these products as benzenoid mixtures in item 413.51, TSUS, it is contended in behalf of the importer that most are chemical mixtures in item 432.25, TSUS. Cellkit CD, it is alleged, is a sodium compound in item 420.96, TSUS.

LAW AND ANALYSIS:

In determining the applicability of the de minimis rule in regard to benzenoid mixtures, it is not only the minute quantity involved but also the function of the benzenoid ingredient which is considered. If the benzenoid is present in a minute amount and does not play a part in the principal function, consideration would be given to the de minimis concept. Under this test, these products are classified as follows:

(1) Cellkit CD contains sodium chloride, hydrated sodium hydrogen phosphate, potassium dihydrogen phosphate, polyvinyl alcohol, dipotassium salt of ethylenediaminetetraacetic acid, and 8-hydroxyquinoline, a benzenoid compound constituting 0.02 percent of the reagent. It acts as antiseptic. In view of the small amount of this benzenoid and that it does not aid in the principal function of the reagent (a blood diluent), the benzenoid component is de minimis and Cellkit CD is classifiable as a mixture in item 432.25, TSUS.

(2) Quicklyser HB #QL22 and QL20 are reagents used in hemoglobin estimation and, in addition to stabilizing white cells, they lyse (disintegrate) red blood cells. They contain 3.5 percent polyethylene

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B10

glycol mono-p-isooctylphenyl ether, a nonionic benzenoid surface active agent. The benzenoid surface active agent plays an essential and continuous role in the primary function of the reagents, hemoglobin estimation. The white blood cells appear to require stabilization for accurate hemoglobin estimation and without the stabilizer the reliability of the test would be questionable at best. These reagents are classifiable as a benzenoid mixture in item 413.51, TSUS.

(3) Placheck 100 is used in calibrating automated hematologic analyzers. The benzenoid component is present in the amount of 0.1 percent. It is a dispersant that keeps the latex particles in suspension so that the instrument may be accurately calibrated. Since the primary function of the Placheck 100 is calibration, and the calibration requires suspended latex particles, the benzenoid dispersant is essential to the primary function of the reagent. Therefore, Placheck 100 is classifiable as a benzenoid mixture in item 413.51, TSUS.

(4) Histan #HS10, is variously described as a "builder for bovine hemoglobin," a hemoglobin reference control, and as a chemical for evaluating hematologic analyzing equipment. It is a mixture which contains two benzenoid compounds, beta-phenethyl alcohol and polyoxyethylene alkylphenyl ether, constituting 0.225 and 2.0 percent of the product, respectively. Beta-phenethyl alcohol is an antiseptic and plays no part in the primary function of the product, so that it is considered de minimis. However, the other benzenoid is a dispersant which is essential to the principal function of the reagent, which is to act as a reference standard. Histan, too, is classifiable in item 413.51, TSUS.

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075435

HOLDING:

You are directed to deny the protest in full. The protest as to the product Cellkit CD is denied as to item 420.96, TSUS; it is classifiable in item 432.25.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

075835

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

FEB 24 1986

REFER TO
CLA-2 CO:R:CV:G
075836 JLV

075836

District Director of Customs
477 Michigan Avenue
Detroit, Michigan 48226

Re: Decision on Protest and Application for Further Review of Protest No. 3801-4-000805, Dated May 8, 1984

Dear Sir:

The above protest and application for further review were timely filed against your action in which you assessed duty on sodium dichromate dihydrate in aqueous solution under the column 2 rate as a product of the U.S.S.R. The merchandise was entered at Detroit on entries numbered 83-463483-3, dated June 23, 1983, and 84-446699-4, dated November 21, 1983, which were liquidated on March 2, 1984, and February 8, 1984, respectively. This ruling is our decision on the issue.

FACTS:

The imported product is sodium dichromate dihydrate in aqueous solution. This product is the result of various processing operations performed in Canada on anyhydrous sodium dichromate produced in the U.S.S.R.

The processing in Canada consists of the following: screening the dry, solid chemical to increase its hydroscopic [sic] character; mixing with water and agitating to insure complete liquification; and filtering to separate foreign material and unliquified sodium dichromate from the sodium dichromate dihydrate.

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The sodium dichromate dihydrate may be in solid form or in aqueous solution. The anhydrous chemical is always in solid form. The products are identified as follows:

$Na_2Cr_2O_7$	Anhydrous Sodium Dichromate (solid)
$Na_2Cr_2O_7 \cdot 2H_2O$	Sodium Dichromate Dihydrate (solid)
$Na_2Cr_2O_7 \cdot 2H_2O$	Sodium Dichromate Dihydrate (in solution)

Protestant states that the changes from the anhydrous form to the dihydrate form in solution are both chemical and physical, and that they constitute a substantial transformation. The two solid forms are said to be unusable in those forms by manufacturers who use the chemical.

ISSUE:

The sole issue is whether or not the processing operations performed in Canada effect a substantial transformation of the anhydrous sodium dichromate into a new and different article which, for purposes of assessment of duty, is a product for Canada.

LAW AND ANALYSIS:

In a recent judicial opinion, the court held that the physical removal by evaporation of a percentage of one chemical compound from a mixture of compounds resulted in a substantially transformed residual substance. The Upjohn Company v. United States, ___ CIT ___ (Slip Op. 85-123,

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November 27, 1985). In relying on the decision in Shell Oil Co. of Canada, Ltd. v. United States, 27 CCPA 94, C.A.D. 68 (1939), the court noted that the residual substance resulted from the processing of the basic material in order to separate the pure form of one of the chemical compounds in the mixture. The intended "pure" chemical compound and the resulting "residual" mixture of compounds were both held to be new and different articles and, therefore, products of the country in which the processing took place.

Substantial transformation issues involving chemicals have always presented difficulties because minimal processing may often result in a product that has distinctive characteristics, uses, or, especially, different names. In The Upjohn Co., supra, the chemical products were known as crude 390 HOP, from which crude BLD (the residual product in issue) and pure MDI were processed. The physical process of evaporation resulted, in pertinent part, in crude BLD which differed from crude 390 HOP in isocyanate equivalents, percentages of pure MDI, triisocyanate and higher molecular weight structures. This "change in condition" was material to the court's decision.

In this case, counsel for the protestant has cited numerous administrative decisions, published and unpublished, as authority that the mixing of a concentrated or commercially distinct product with water does result

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in a substantial transformation: CSD 79-339; CSD 79-349; CSD 79-92; T.D. 77-273; ruling letters of May 4, 1977 (file 707084); August 17, 1979 (file 710823); June 16, 1980 (file 711553); November 12, 1980 (file 714319); and June 16, 1978 (file 055562). There are decisions, however, that arrive at contrary conclusions: ruling letters of November 5, 1979 (file 711651); February 23, 1977 (file 048940). These decisions lead to the well-recognized principle that each substantial transformation issue must be determined on its own set of facts. Uniroyal, Inc. v. United States, 3 CIT 220, at 224 (1982). Prior decisions are instructive, but are not necessarily conclusive.

Concerning the merchandise in issue, counsel states that the processing performed in Canada is a manufacture or production resulting in a chemical and physical conversion from an anhydrous solid to a hydrated chemical in solution which has a higher molecular weight. Users of sodium dichromate dihydrate (in solution) cannot process or substitute anhydrous sodium dichromate. This difference in appearance, chemical structure, and use is, in the opinion of protestant's counsel, sufficient for a finding of a substantial transformation. For the reasons discussed herein, we disagree.

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The language of the court in Uniroyal, supra, is relevant. At issue was whether or not imported shoe uppers were substantially transformed by the addition of a sole for purposes of country of origin marking requirements. In its opinion, the court stated the following:

> . . . On the other hand, if the manufacturing or combining process is merely a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. . . . (page 224)

Although the processing operations were set forth in detail, essentially they consist of a screening, mixing with water, and filtering to form sodium dichromate dihydrate in an aqueous solution. The essential nature of the chemical, sodium dichromate, remains intact. Technical information on the anhyrdrous and dihydrate forms does not identify any significant differences between the forms, and, therefore, supports a conclusion that there is no difference in the fundamental identity of the chemical.

Not every processing operation which changes a "producer's" article to a "consumer's" article is a substantial transformation. Uniroyal, Inc., supra; National Juice Products Association, et al. v. United States, __CIT__ (Slip Op. 86-13, January 30, 1986). Hydration does involve chemical bonding forces. However, the hydration processing has not been demonstrated to be a substantial processing

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operation. It is a basic mixing operation that, as indicated earlier in this decision, does not result in a chemical product that is fundamentally different in name or character.

Assuming that protestant's counsel is correct in stating that the users of sodium dichromate are unable to utilize the solid form, whether anhydrous or dihydrous, we do not consider this to be controlling. This reflects a change in use based on characterization as a "producer's good" and a "consumer's good." However, as noted in Uniroyal and National Juice, this kind of change in "use" is not determinative of a substantial transformation issue. The relevant fact in this case is that the essential chemical nature of sodium dichromate remains the same. The decision in The Upjohn Company, supra, is distinguishable on the basis that the court considered that the change in condition of the residual product was material and, therefore, precluded consideration as U.S. goods returned under item 800.00, TSUS.

HOLDING:

The processing of anhydrous sodium dichromate to sodium dichromate dihydrate in solution is not a substantial transformation. Therefore, the country of origin remains

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that of the anhydrous sodium dichromate. The protest should be denied in full. A copy of this decision should be given to the protestant at the time notice of action is given on Customs Form 19.

Enclosed is the original Customs Form 19, which was submitted to this office with the request for further review.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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075826

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

31 JAN 1986

REFER TO

CLA-2 CO:R:CV:G
075871 JGH

075871

District Director of Customs
Detriot, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3801-5-000054, on the Classification of Product 11003-12 White

The product, 11003-12 White, consists of 47.5 percent titanium dioxide, 20.0 percent calcium carbonate and 32.5 percent linear low density polyethylene. The product was entered under the provision for other pigments, not specially provided for, not containing lead, in item 473.88, TSUS. You classified the product under the provision for pigments containing titanium in item 473.70, TSUS.

Protestant asserts that classification should be under the provision for other pigments in item 473.88, TSUS, but offers no reasons for this classification. It is assumed protestant reasons that the presence of calcium carbonate causes the requested classification.

Headnote 1, Part 9(B), Schedule 4, TSUS, states that the term "pigments" includes fine solid particles or powder, in dry form, in pulp, or ground in or mixed with oil, water, or other vehicle, commonly known as pigments and suitable for use in imparting color. The product meets this definition. Inasmuch as it contains titanium dioxide it is classifiable in item 473.70, TSUS. Calcium carbonate is listed as a commonly used filler and extender for plastics, and is a common pigment extender which enhances the action of white pigments such as titanium dioxide. Thus, its presence in the imported product does not require classification elsewhere than as a titanium pigment.

You are directed to deny the classification issue in full.

As to the value question concerning the deduction of Canadian freight, a deduction of Canadian inland freight is allowed when separately identified and when occuring after the merchandise has been sold for export to the United States and placed with the carrier for through shipment to the United States.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB - 6 1986

REFER TO

CLA-2 CO:R:CV:G
075872 JGH

075872

District Director of Customs
Chicago, Illinois 60607

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3901-4-000227, Classification of Dicopac Testing Kit, Produced in England

Dicopac, a diagnostic testing kit, consists of a capsule of cyanocobalamin Co-58, a capsule of cyanocobalamin Co-57 bound to human gastric juice (intrinsic factor), two vials of cobalt 57 standard and cobalt 58, plus an ampoule of unlabelled cyanocobalamin in an isotonic saline solution for muscular injection. The kit is said to be used solely for in vivo diagnosis of Addisonian (pernicious) anemia and also as a diagnostic adjunct in detecting defects of intestinal absorption. The kit is designed to test the malabsorption of vitamin B_{12} in the body. Each kit contains multiple sets of components sufficient to perform a specific number of tests.

Both capsules (cyanocobalamin Co-57 and cyanocobalamin Co-58) are administered orally to the fasting patient. Two hours after the radioactive capsules have been administered, an injection of nonradioactive vitamin B_{12} is given. Over a 24 hour period urine is collected and analysed, with the resulting data being used to calculate the percentage excretion of each radionuclide and the ratio of each to the other. The purpose of the kit is to detect those deficiencies within the human body which prevent the absorption of vitamin B_{12}.

It is conceded that the kit is an entirety within the meaning of the term, as the function, use, and design of the kits show that the various components are subordinated to the commercial identity and purpose of the kit itself. Donalds Ltd. v. United States, C.D. 1619 (1954).

In behalf of the importer it is contended that it is classifiable under the provision for "viruses, therapeutic serums, vaccines, toxins, antitoxins and analogous biological products, human blood and fractions thereof, human skin and bone grafts, and other anatomical parts of the human body prepared for diagnostic or therapeutic purposes," in item 437.76, TSUS. The port believes the kit is classifiable under item 799.00, TSUS, as a nonenumerated article. Customs has held in similar cases that the legislative history shows that item 437.76 does not require a product to consist wholly of a biological substance to be classifiable therein. Such a conclusion was believed consistent with Certified Blood Donor Services, Inc. v. United States, C.A.D. 1147 (1975).

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The component of the kits which is clearly of biological origin is the human gastric juice (intrinsic factor) to which cyanocobalamin Co-57 is bound. Since the purpose of the kit is diagnostic: used to detect pernicious anemia and as an adjunct in determining other intestinal absorption defects, it is considered an analogous biologic product, following Certified Blood Donor Services.

The product is therefore classifiable in item 437.76, TSUS.

You are directed to allow the protest in full.

A copy of this decision should be included with the Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

20 MAR 1986

CLA-2 CO:R:CV:G
075887 JGH

075887

District Director of Customs
Baltimore, Maryland 21202

Dear Sir:

Re: Decision on Application for Further Review of Protest 1303-4-000107, on the Classification of Diethyl-M-Toluamide, a Product of West Germany

The imported product, N,N-Diethyl-M-Toluamide (Deet) was entered under the provision for other (benzenoid) cyclic organic chemicals in item 405.34, TSUS. Customs changed the classification to the provision for products provided for in the chemical appendix to the tariff schedules (CAS), item 405.33, TSUS.

The chemical appendix to the tariff schedules is the list which contains the chemical abstract service numbers (CAS) for chemicals and products determined to have been imported into the United States before January 1, 1978, or produced in the United States before May 1, 1978. The chemical appendix lists a CAS registry number for N,N-diethyltoluamide (26545-51-7) but not the one in issue, the meta form (134-62-3). It is the port's position that even though the CAS number listed in the appendix is not the one for the imported product, it is the only one listed in the appendix, so that if that number does not apply to the imported product none will, as the meta form is the only commercial form of the product.

The only CAS number listed in the appendix for this chemical is 26545-51-7. The Chemical Abstracts Service, however, lists in addition to N,N-diethyl-toluamide (26545-51-7), N,N-diethyl-M-toluamide (134-62-3), N,N-diethyl-P-toluamide (2728-05-4), and N,N-diethyl-O-toluamide (2728-04-3). The N,N-diethyl toluamide which is listed in the appendix to the tariff is described as a structure which is only partially defined.

Therefore, the argument for listing the meta form under the registry number appearing in the chemical appendix is that since the latter is only partially defined, any form of the chemical may be said to be intended to be covered by using that number.

In the introduction to the 2-volume "Chemicals and Products Provided for in the Chemical Appendix to the Tariff Schedules" (USITC Publication 1073), it is noted that any single chemical frequently moves in commerce under a number of different names including trade names, so that by identifying the chemical by a CAS registry number, the specific chemical

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gains an identity which has world wide acceptance and use. In another explanation by the American Chemical Society, it is pointed out that each definable chemical entity is assigned a verified registry number, and that each CAS registry number designates a single substance.

In a letter from an official of the Chemical Abstracts Service, it is stated that the CAS registry number (134-62-3) is the correct form to use for the specific isomer (N,N-diethyl-M-toluamide); and that the registry number (26545-51-7) is the correct one for the non specific isomer (N,N diethyl toluamide). Furthermore, it is noted that this number should be used only if (a) the identity of the specific isomer is unknown or (b) the material is indeed a mixture of the isomer. The letter concludes that the CAS registry number (26545-51-7) is incorrectly used for the specific isomer N,N-diethyl-M-toluamide.

In the explanation to the Chemical Abstracts published by the American Chemical Society, it is pointed out that each chemical entity is assigned a permanent computer-generated and verified number. The example given is D-Aspartic acid, L-Aspartic acid and DL-Aspartic acid, each of which has a specific registry number, along with aspartic acid of unspecified stereo chemistry which also has its own registry number.

In view of the express language of Headnote 1 to the chemical appendix to the tariff schedules to follow the CAS registry number system and the fact that each of the isomers - ortho, para as well as meta - has its own number, it is concluded that the form of the chemical listed in the appendix is intended to cover non specific isomers or mixtures of the isomers, and not the meta form.

Therefore, N,N-diethyl-M-toluamide is classifiable in item 405.34, TSUS.

You are directed to allow the protest in full.

A copy of this decision should accompany your Form 19 Notice of Action furnished to the importer.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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075887

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR 11 1986

REFER TO
CLA-2 CO:R:CV:G
075947 JLV

075947

Curtis D. Spencer
The Houston Foreign Trade
Zone Corporation
1717 East Loop, Suite 120
Houston, Texas 77029

Dear Mr. Spencer:

In your letter of March 26, 1985, you requested a ruling on whether or not certain processing operations on pipe would result in a substantial transformation. It is your position that the processing does not substantially transform the pipe.

The processing, as described in a letter attached to your request, consists of upsetting and heat treating specialty tubing and drill pipe. The pipe, at the time of importation into the FTZ, will be plain-end green tubes described as C-75 tubing and G-105 drill pipe. C-75 is a corrosion-resistant grade; the G-105 has higher strength but is more susceptible to corrosion.

Upsetting of the pipe and tube does not result in a substantial transformation. The principles in our ruling of March 15, 1985 (file 075174), copy enclosed, apply. In a subsequent ruling letter of November 21, 1985 (file 553739), copy enclosed, we held that upsetting, threading, and heat treatment by quenching and tempering substantially transformed green tubes for purposes of the Caribbean Basin Initiative. We note that the heat treatment was an essential processing operation that distinquished multifunctional green tubes from the oil country tubular goods that had a critical high yield strength and tensile strength required by A.P.I. specifications. Therefore, if the heat treatment (normalizing and tempering) to be performed in your case results in the same change from a multifunctional green tube, then the processing of upsetting and heat treatment would be a substantial transformation.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

11 MAR 1986

CLA-2 CO:R:CV:G
075949 JGB
812168

075949

Mr. Harold I. Loring
Grunfeld, Desiderio, Lebowitz
& Silverman
Suite 2238
2 World Trade Center
New York, New York 10048-0654

Dear Mr. Loring:

This letter is in response to your memorandum of law dated September 12, 1985, supplementing a request for a ruling from your client, Mamiye Brothers, Inc., pertaining to children's two-piece garments that are physically attached.

The practical issue is whether the two-piece garments your client expects to import are dutiable separately or whether they are classified in a single tariff item to qualify for a single quota category. The legal issue presented is whether the enactment of Headnote 3, Part 6, Schedule 3 of the Tariff Schedules of the United States Annotated (TSUSA) bears on the classification of children's two-piece garments known as playsuits, and if not, whether the instant merchandise, claimed to be playsuits, are classified as an entirety.

The Congress enacted the new headnote described as part of the Trade and Tariff Act of 1984, Pub. L. 98-573. We have noted that the general effect of this new law was the elimination of most commercial tests for the existence of an entirety in wearing apparel. HRL 075048.

Excepted from the reach of this new headnote in paragraph (b) were "(i) suits, (ii) pajamas and other nightwear, (iii) playsuits, washsuits, and similar apparel, (iv) judo, karate, and other oriental martial arts uniforms, (v) swimwear, and (vi) infants' sets designed for children who are not over 2 years of age." Of pertinence in the instant inquiry is sub-paragraph (iii): "playsuits, washsuits, and similar apparel." This exception makes the classification principles applicable to playsuits, washsuits and similar apparel remain as they were before the enactment of the new headnote. The standards for determining whether two garments were classified together under the tariff include reference to Customs Textile Category Guidelines (CIE 36/79), the way the garment(s) are known and marketed, their use, the construction design and composition of the garments, and the way they may be worn together. In short, the "old" entireties rules for wearing apparel still apply when Customs evaluates two garments claimed to be a playsuit. These rules have always required an evaluation of several factors before they yield a result, so they do not consist of a formula to be applied mechanically.

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You aptly set forth in your memorandum an explanation of the factors that have traditionally been considered in making a determination on an entirety. An examination of the samples submitted against these standards will determine whether they fall into the playsuit exception.

The sample provided with your client's letter of January 30, 1985, (N.Y. file 812168) is a shortall and short sleeve shirt set. The set has no style number. The shortall is composed of all cotton woven twill fabric and has self-fabric suspenders permanently sewn to the back of the elasticized waistband. The suspenders button to the bib front of the shortall. The shortall has a printed nursery rhyme motif on the bib which is repeated on the sleeves of the shirt.

The short sleeve shirt is 60 percent cotton and 40 percent polyester knit fabric. The shirt has capping at the neck and sleeve edges, a snap closure on one shoulder and a hemmed bottom. A fabric loop is inserted in both shoulder seams. The two garments are intended to be worn together with the suspenders of the shortall threaded through the shoulder loops on the shirt.

The importer indicates that the shortall and shirt will be imported together in toddler sizes 2-4T and in infants sizes 3-9 months and 12-24 months.

This combination meets the traditional standards for playsuit and entirety. The parts are imported as a unit and are said to be bought and sold as a unit. The parts are coordinated in design and when worn are physically attached by means of the suspender being threaded through the loops on the shirt. The design features are functional in that the suspenders support the bib front, while the shirt, in turn, keeps the suspenders from falling over the shoulders. The shortall may certainly be worn alone, but that is not its intended use. Moreover, when worn with the shirt, the combination of the two parts of the playsuit with its coordinated colors and pictorial motif become a new article of commerce. In that respect it is more than just the combination of two separate garments.

This playsuit in toddler sizes 2-4T is classified as "other women's, girls', or infants' wearing apparel, not ornamented: Of cotton: Not knit: Other (including coveralls, jumpsuits, and similar apparel) [;] Coveralls, overalls, jumpsuits and similar apparel; other playsuits, washsuits, sunsuits and similar apparel: Other: Other: Infants'" in item 384.5233, TSUSA. This provision takes quota category number 337 and bears a rate of duty of 9.4 percent ad valorem (1986). The infant sizes (3-9 month and 12-24 months) are classified in the same provision and take the same quota category and rate of duty.

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Due to the changeable nature of international agreements, you are advised to contact your local Customs office prior to importation to determine the current status of any import restraints or requirements.

A copy of this ruling should be attached to the entry document filed at the time this merchandise is imported.

Your client's sample is being retained at Headquarters for reference for 1 year from the date of this letter. If you wish the sample returned at that time, please write us, enclosing a copy of this letter or a clear reference to it and we will re-examine whether the sample should be retained further.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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075949

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

31 JAN 1986

CLA-2 CO:R:CV:G
075964 JLV

075964

District Director of Customs
477 Michigan Avenue
Detroit, Michigan 48226-2568

Re: Decision on Protest and Application for Further Review of Protest No. 3801-5-000210, Dated October 24, 1984

Dear Sir:

The above protest and application for further review were timely filed against your action in classifying certain fasteners as screws in item 646.60 and 646.63, Tariff Schedules of the United States (TSUS), depending on the size of each fastener. The merchandise was entered at Detroit on Entry No. 84-623857, dated October 11, 1983, liquidated on August 10, 1984. This ruling is our decision on the classification issue.

FACTS:

The fasteners consist of threaded fasteners that were manufactured to meet National Aerospace Standards numbered NAS 6303 to 6320, NAS 6203 to 6220, and NAS 5000 to 5006. NAS 1103 to 1120 is also indicated, but is similar to or was replaced in design by NAS 6203 to 6220. Samples were submitted. The submissions by you and by the protestant do not address the specific configurations and sizes of such fasteners. You address the salient facts: (1) the NAS standards determined the construction, and (2) the imported fasteners do not have any of the special optional features (cotter pin hole; locking element; lockwire hole in head).

A fastener for standard NAS 6303 (through 6320) is described in the specification as "Bolt, Hex Head, Close Tolerance, A-286, Self-Locking and Nonlocking"; for Standard NAS 6203 (through 6220), it is described as "Bolt Hex Head, Close Tolerance, Alloy Steel, Self-Locking and Nonlocking"; and for Standard NAS 5000 (through 5006), it is described as "Bolt, Pan Head,

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Close Tolerance, Short Thread, Tri-Wing® Recess, Alloy Steel, Self-Locking and Nonlocking." All of the fasteners have washer faces.

The protestant claims that the imported fasteners, identified by the above standards, are classifiable as bolts regardless of whether or not they are manufactured with one or more of the optional locking characteristics. It is your position that, absent an optional locking feature, these threaded fasteners with washer faces are screws because they are designed to be torqued from the head.

ISSUE:

Whether threaded fasteners, if designed so that they can be used in a pretapped hole and can be tightened by torquing the head, are classifiable as screws even if they can also be used with a nut?

LAW AND ANALYSIS:

The tariff classification of a threaded fastener is determined primarily by its design characteristics and not necessarily by the chief service application or the trade name given by a manufacturer or seller. A threaded fastener, designed to be tightened by torquing the head, has been considered a screw both for tariff purposes and for commercial purposes. Unless an additional feature, such as a lockwire hole in the head or a cotter pin hole in the threaded end, has been added to dedicate a fastener for use with a nut, it would be classifiable as a screw.

We see no compelling reason to change the criteria for the tariff classification of threaded fasteners as screws or bolts. In this case, the fasteners are capable of being tightened by torquing the head, they have a washer face, and they lack any special design feature that would dedicate them for use with nuts. Our ruling of January 7, 1965 (file TC 424.411 AS), abstracted as T.D. 56535(42), is not contrary to this position because

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the background information to that decision indicated that the threaded fasteners were in fact drilled at the threaded end for use with a cotter pin to prevent a nut from loosening.

HOLDING:

The threaded fasteners, designed so that they can be tightened by torquing the heads and lacking any optional feature which would dedicate them for use with nuts, are classified as screws in items 646.60 and 646.63, TSUS, depending on the size of the shanks or threads. The protest should be denied in full. A copy of this decision should be given to the protestant at the time notice of action is given.

Sincerely,

Arthur P Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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076964

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
076004 PR

076004

03 FEB 1986

Michael S. O'Rourke, Esq.
Rode & Qualey
295 Madison Avenue
New York, New York 10017

Dear Mr. O'Rourke:

This is in reply to your letter of April 11, 1985, on behalf of Pacific Trail Sportswear Inc., concerning the tariff status of a certain jacket with a down liner. Our ruling on the matter is enclosed.

Sincerely,

John T. Rath

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
076004 PR

076004

This ruling concerns the tariff classification of a certain jacket with a down liner.

ISSUE:

The issue presented by the submitted sample is whether the down liner is classifiable as an entirety with the jacket it accompanies or whether the jacket and liner are separately classifiable.

FACTS:

The submitted sample consists of a lightweight man's lined jacket with a down-filled liner that is attached by means of a zipper. The outer jacket has a zippered full front opening, a standup buttoned collar, knit cuffs and waistband, and a large patch pocket on the inside of the garment with a Velcro-type fabric closure. Each front quarter panel has a horizontal opening chest area pocket with a zipper closure and a lower slash pocket with a buttoned flap closure. The outer shell is of a woven fabric, labeled to be cotton cambric, and the lining is a lightweight woven man-made fiber fabric. The sleeves and front quarter panels have been pieced together in such a manner that there are seams that extend almost the entire width of those panels near their bottom portions and then curve upward the length of the panels. Inserted in these seams is fabric piping, the visible portion of which is less than 1/4 inch wide, which is made of the same fabric as the outer shell. There is a heavy inner flap that runs just below the zipper for the front opening. At the top of this flap is a small rectangular-shaped label that gives the brand name of the jacket and the word "DOWN." The zipper for attaching the liner to the coat is located beneath this inner flap. At the rear center of the neck opening, attached

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to the collar seam are a small button and a metal chain hanger loop. The button is designed to be attached to a small loop on the liner. Inserted on an inside seam in the garment is a care label which gives washing and cleaning instructions for both the outside jacket and the inside shell and liner, as well as the fabric content of each.

The liner is a quilted long sleeve garment which is labeled to be filled with 80 percent down and 20 percent water fowl feathers. It has a knit collar band, and an elasticized waist. The end of each sleeve and the top center back portion near the collar have small elasticized loops that are designed to be attached to buttons in the outer jacket. The inside and outside shells of the liner are man-made woven fabrics. The sleeve ends are rough and finished only with an overcast stitching. Both the inside and outside surfaces, near the center just below the collar, contain large rectangular-shaped labels securely stitched in place. One side has a label with the manufacturer's name and logo and the other side has a label with fabric content and washing and cleaning instructions. It is noted that the fabric content portion of the label differs with the fabric content on the label of the outer garment. If the liner were worn by itself, in the same manner as it is attached to the outer garment, the exterior would have the shoulder seams, the armhole seams, one side seam, and one sleeve seam with unfinished quarter inch projections which have their ends enclosed with overcast stitching. In addition, the full front zippered opening would be extremely inconvenient to utilize since the metal pull portion would be on the inside of the garment. However, when the garment is reversed, the zipper works quite easily. In this reverse position, one side seam and one sleeve seam are unfinished in a similar manner to the unfinished seams on the opposite side.

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LAW AND ANALYSIS:

Headnote 3, Part 6, Schedule 3, Tariff Schedules of the United States Annotated (TSUSA), requires the separate classification of garments that are imported together, except for certain named garment combinations, none of which are applicable to the submitted sample. We believe that for Headnote 3 to be applicable to a jacket and liner, each portion must be suitable for use separately. If the liner would not reasonably be worn without the accompanying jacket, that liner is actually a part of the jacket and classifiable as such.

Here, in view of the unfinished seams on both sides of the liner and the unfinished sleeve ends, it appears that, under these facts, the liner and jacket are a single article and the liner is not intended to, nor would it reasonably, be worn without the outer jacket. Wearing the liner by itself would be a fugitive use. However, if the sleeve ends or the unfinished seams on one side of the inner portion of the liner were finished in a manner which would render it likely to be worn without the jacket, our decision might be different. In addition, if the liner is finished after importation, but prior to sale to the ultimate consumer, it is possible that it would change our decision.

HOLDING:

The submitted garment, consisting of an outer jacket and inner down-filled liner, is classifiable as a single coat. In the absence of a component material cost breakdown, we cannot determine the specific classification and quota category applicable to that garment.

Sincerely,

John T. Rath

For Harvey B. Fox
Director, Classification
and Value Division

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076960

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

076036

DATE: JAN 29 1986

FILE: CLA-2:CO:R:CV:G
076036 JCH

TO : Chief, Customs Information Exchange
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Difference of Opinion on Customs Form 6431

In your memorandum of April 8, 1985, you transferred the difference of opinion on Customs Form 6431 dated August 20, 1984, concerning the tariff classification of a digital blood pressure monitor made in Japan. This matter is listed as the ninth difference on page 2 of CIE N-89/79, Suppl. No. 44, December 13, 1985. Our decision follows:

ISSUE:

The sending port contends the merchandise is properly classifiable under the provision for electrical measuring, checking, analyzing or automatically-controlling instruments and apparatus in item 712.49, Tariff Schedules of the United States (TSUS). The current column 1 rate of duty required under that provision is 5.5 percent ad valorem. The national import specialists are of the view that the correct classification is under the provision for electro-medical apparatus in item 709.17, TSUS. The current column 1 rate required under that provision is 4.4 percent ad valorem.

FACTS:

The merchandise is digital blood pressure measuring apparatus for home use.

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LAW AND ANALYSIS:

In decisions issued on August 1, 1985, file Nos. 075813 and 075819, we held that certain health testing devices were not classifiable under the otherwise applicable provisions in Subpart B, Part 2, Schedule 7, TSUS, covering medical and surgical instruments and appliances because they were used by athletes in connection with exercise regimens and not by physicians. However, while the credentials of the user remain the major factor in determining chief use, that rule should not be carried to unwarranted extremes. In some circumstances, the bottom line will not be who the user is, but whether the use is for the diagnosis or treatment of disease.

Further, there are different levels of medical practice as well as different schools of medicine. In a sense, even a mother giving an aspirin to her child for a headache is part of the overall concept of the practice of medicine. We are unaware of any interest in blood pressure by whatever type of apparatus ascertained which could be completely dissociated from an interest in circulatory system pathology as opposed to sports.

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HOLDING:

For the foregoing reasons, we find that the apparatus in question is properly classifiable under item 709.17, TSUS.

Arthur P. Scheffler
for Harvey B. Fox

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

3 APR 1986

CLA-2 CO:R:CV:G
076037 JGB
812702 (N.Y.)

076037

Ms. Stephanie Raia
Skyline Manufacturing Co., Inc.
1333 Broadway
New York, New York 10018

Dear Ms. Raia:

Your letter of February 27, 1985, requests a ruling on the tariff classification and textile quota category designation of a trouser and short sleeve shirt set marked Style LK-001/2/3 and LK-004. The sample sent to Headquarters is LK-004. It consists of a knit shirt and woven trousers. We understand that you have informed the National Import Specialist responsible for this merchandise that both the shirt and trousers are composed of 65 percent cotton and 35 percent polyester fibers. We will classify these garments under the assumption that the component material in chief value is cotton. The label on the trousers sample states "100% cotton," which we understand to be in error. We also understand from the conversation with you that you are considering importing girls' sizes 2-4 and 4-6X and boys' sizes 4-7 and large boys' sizes 8-20. The garments are to be made in Hong Kong.

A new headnote 3(b), to Part 6, Schedule 3, Tariff Schedules of the United States (TSUS), became law in 1984, requiring the separate classification of garments imported and sold together as a unit. The general effect of this new law was the elimination of most commercial tests for the existence of an entirety in wearing apparel. Headquarters Ruling Letter (HRL), 075048. Excepted from this general rule, among other things, were garments known as playsuits.

Our recent ruling, HRL 075949, dated March 11, 1986, confirms that the "old" standards for what constituted an entirety would apply to playsuits and implies that not all combinations of garments claimed to be playsuits would be classified under a single tariff item. That ruling states that the standards used for determining whether two garments were classified together under the TSUS include reference to Customs' Textile Category Guidelines (CIE 36/79), the way the garments are known and marketed, their use, the construction, design and composition of the garments, and

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the way that they may be worn together. We also noted that several factors must be evaluated before they yield a classification result, so they do not consist of a formula to be applied mechanically.

This sample includes trousers with self-fabric straps or suspenders permanently sewn to the back waistband. The fabric straps are threaded through a single fabric loop inserted at the center of the rear yoke of the knit shirt and then buttoned to the front waistband of the trousers. Less than 50 percent of the rear waistband is elasticized. Neither the trousers nor shirt is ornamented for tariff purposes.

The Textile Category Guidelines, C.I.E. 36/79, which provide general identity standards for broad types of wearing apparel, include in playsuits, p. 22, "[t]wo-piece physically connected entireties, such as shirts and shorts having matching shoulder loops with suspender straps designed to join the two pieces, which are so manufactured that the use of one without the other is not practicable." The category guidelines state also that, "excluded from this [children's coveralls and overalls] provision, are trouser-type garments which have no fabric bib to cover the upper part of the body."

The instant garments do not meet the standards for entirety within the playsuit category. The single loop in the middle of the back of the shirt through which the trouser suspenders are to be threaded serves only a minor function in keeping the suspenders in place in the back. It is not, however, a feature that ties the two garments together for tariff purposes, making the two pieces when joined a new and different article of commerce. The garments themselves may readily be worn in combination with other garments, the trousers with a different shirt, the shirt with different trousers or shorts. Therefore, the use of one garment without the other is entirely practicable. When the shirt is worn in combination with different trousers, the shirt's back loop does not outwardly identify the garment as missing some essential part of a combination, in that it is very similar to a hanger loop commonly found on woven oxford cloth shirts.

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The shirt is classified as follows:

For girls' sizes 2-4 and 4-6X, item 384.2980, Tariff Schedules of the United States Annotated (TSUSA), the provision for "Other...infants' wearing apparel, not ornamented: Of cotton: Knit: Shirts, Other: Infants': Other," dutiable at 21 percent ad valorem. This classification requires textile category designation 339.

For boys' sizes 4-7, item 384.2970, TSUSA, the provision for "Other...infants' wearing apparel, not ornamented: Of cotton: Knit: Shirts, Other: Infants': Boys' over 24 months of age," dutiable at 21 percent ad valorem. This classification requires textile category 339.

For boys' sizes 8-20, item 381.4130, TSUSA, the provision for "Other...boys' wearing apparel, not ornamented: Of cotton: Knit: Other: Shirts and sweaters: Other, Shirts: Other," dutiable at 21 percent ad valorem. This classification requires textile category 338.

The trousers are classified as follows:

For girls' sizes 2-4 and 4-6X, in item 384.4775, TSUSA, the provision for "Other...infants' wearing apparel, not ornamented: Of cotton: Not knit: Other: Other: Other...trousers and slacks...: Trousers and slacks: Other: Other," dutiable at 16.5 percent ad valorem. This classification requires textile category designation 348.

For boys' sizes 4-7, in item 384.4770, TSUSA, the provision for "Other...infants' wearing apparel, not ornamented: Of cotton: Not knit: Other: Other: Other...trousers and slacks...: Trousers and slacks: Other: Infant boys' over 24 months of age," dutiable at 16.5 percent ad valorem. This classification requires textile category designation 348.

For boys' sizes 8-20, item 381.6270, TSUSA, the provision for "Other men's or boys' wearing apparel, not ornamented: Of cotton: Not knit: Other: Other: Suits, trousers, slacks, and shorts, Trousers and slacks: Boys': Other," dutiable at 16.5 percent ad valorem. This classification requires textile category designation 347.

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Due to changeable nature of international agreements, you are advised to contact your local Customs office prior to importation of the merchandise to determine the current status of any import restraints or requirements.

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 18 1986

REFER TO

CLA-2 CO:R:CV:G
076047 JAS

076047

Michael F. Butler, Esq.
Andrews & Kurth
Attorneys at Law
1730 Pennsylvania Avenue, N.W.
Suite 700
Washington, D.C. 20006

Dear Mr. Butler:

In your letter of April 10, 1985, on behalf of Kelly Manufacturing Company, you request information as to the proper classification and rate of duty on certain designated imported merchandise believed to be of that class or kind manufactured by your client. Your request is pursuant to 19 U.S.C. 1516, and section 175.1, Customs Regulations (19 CFR 175.1).

Your client is a domestic manufacturer of wheelbarrows, hand carts, hand trucks and garden carts. Such imported articles, you state, are normally classifiable under the tariff provision for vehicles (including trailers), not self-propelled, not specially provided for, and parts thereof, in item 692.60, Tariff Schedules of the United States (TSUS). However, you state that inasmuch as such articles from Taiwan classifiable in item 692.60 are no longer eligible for free entry under the Generalized System of Preferences, you now have reason to believe that the described articles are being entered at various Customs ports under the duty-free tariff provision for agricultural or horticultural tools, and parts thereof, in item 648.55, TSUS, or under the provision for farm wagons and carts, or agricultural or horticultural implements not specially provided for, in item 666.00, TSUS, also duty-free provisions.

Initially, there is nothing in your submission which would permit us to establish any similarity between the class or kind of domestic merchandise your client produces and the designated imported merchandise about which you inquire. However, wheelbarrows are normally small, usually single-wheeled vehicles with bins designed to carry small loads. They are fitted with handles at the rear by which the load may be pushed and guided manually. Both industrial quality types and those used around the home are classified in item 692.60, TSUS, dutiable in 1985 at the rate of 4.4 (now 3.8) percent ad valorem.

Hand carts are normally of metal, fiberglass or plastic construction, and are designed to rest on four wheels or casters and to be pushed or pulled. They normally have one or more shelves or trays and are similar to those used in the garment trade, in department stores, the food service business etc. These articles are likewise classified by Customs in item 692.60, TSUS.

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Hand trucks or dollies are normally of tubular steel construction, rest on two wheels, and have two handles to permit them to be pushed and guided from the rear. They are of types normally used by furniture movers, baggage handlers, and in other industrial or manufacturing environments. Such hand trucks or dollies have similarly been classified by Customs in item 692.60, TSUS. So-called garden carts are believed to be polyethylene types with lawn mower sized wheels and a single steel handle. They are of a kind used to move garden implements, tools, plants etc., over short distances. They are also used to transport snow, debris, and even groceries from place to place. These carts are also classified by Customs in item 692.60, TSUS.

With respect to your concern about possible misclassification of any of these articles under the duty-free provision for farm wagons and carts, in item 666.00, TSUS, it is unlikely that these articles would be classified under this provision at any port. However, we would be willing to consider any information in this regard and take corrective action, if appropriate. With respect to your concern about possible misclassification of any or all of these articles under item 648.55, TSUS, a provision for agricultural or horticultural tools, and parts thereof, it would be difficult to perceive of these articles as "tools" in a tariff sense.

The concerned Customs officer in New York has informally surveyed local import specialists at the ports of Houston, Jacksonville and New Orleans, where our records indicate the largest volume of similar articles are being imported, and has found that no improperly classified entries have been identified. However, a copy of this letter is being sent to each concerned port to insure that the described wheelbarrows, hand trucks, and hand and garden carts are and will continue to be properly classified.

If you wish to challenge the classification and rate of duty of any of those articles you have reason to believe are being misclassified, you may file a petition setting forth a description of the designated imported merchandise, the classification or rate of duty believed to be proper, and the reasons for this belief, pursuant to 19 U.S.C. 1516 and section 175.11, Customs Regulations.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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076047

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO
CLA-2 CO:R:CV:G
076066 JLV

076066

District Director of Customs
101 East Main Street
Norfolk, Virginia 23510

Re: Decision Protest and Application for Further Review, No. 1404-4-000022, Dated August 21, 1984

Dear Sir:

This protest and application for further review were timely filed against your action in classifying certain sliding heater kits as parts of machines for wrapping cigarette packages in item 662.10, Tariff Schedules of the United States (TSUS). The merchandise was entered at Norfolk on Entry No. 84-404140-3, dated February 7, 1984, liquidated on June 22, 1984. This ruling is our decision on the classification issue.

FACTS:

The merchandise consists of 50 kits for the 4350 Pack-S sliding heaters. Each kit consists of a sliding exit heater, a narrow type edge heater, a repositioning group for the end heater, thermostats with static-type elements, and an end-heater drive cam. The heater unit is used to seal the top and bottom of the cellophane wrapper on a cigarette package, and is mounted in the wrapper section of the cigarette package wrapping machine.

The protestant claims that the heater unit is classifiable under the provision for dielectric heating equipment in item 683.95, TSUS. It has been suggested by another Customs officer that classification is under the provision for other industrial machinery for the treatment of materials by a process involving a change of temperature, such as heating, in item 661.68, TSUS.

E3

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ISSUE:

Whether the heater kits are more specifically described in items 683.95 or 661.68, TSUS, rather than in item 662.10, TSUS?

LAW AND ANALYSIS:

The heaters, in this case, are resistance heaters by which heat, generated by current passing through resistors, is transferred by contact to the cellophane and thereby causes a seal to be made. Dielectric heat is not transferred by contact, but is created directly in the process material by frequent alternation of a current passing through it. Therefore, classification in item 683.95 is not applicable because the heater units are not described by the terms of that provision.

Although the term "materials" is a broad term which could include a cellophane wrapper, there is no evidence offered in this case which would indicate that its use in the superior heading to item 661.68 is broad enough to include selective heat treatment (sealing) of a made-up article. However, more to the point, the heater kit is a part of a machine. It is not a complete piece of machinery in its condition as imported. Rather, it must be assembled with a supporting frame, an activating air-piston, and other equipment. Classification in item 661.68 would be as a "part" of the named industrial machinery.

The machinery of which the heater units are parts is wrapping machinery specifically described in item 662.10, TSUS. The heat sealing function is secondary to the wrapping function and, therefore, is not sufficient for classification of the wrapping machinery in item 661.68, TSUS. Headnote 2, Part 4, Schedule 6, TSUS.

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HOLDING:

The sliding heater kits are parts of machines for wrapping cigarette packages and are classified in item 662.10, TSUS. You should deny the protest in full. A copy of this decision should be given to the protestant at the time notice of action is given on Customs Form 19.

Enclosed and returned for appropriate action is the Customs Form 19 with attachments.

Sincerely,

Arthur P Scheffler

By Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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076066

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 21 1986

REFER TO

CLA-2:CO:R:CV:G
076075 JH

076075

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3801-5-000092, classification of Liquid Kit Wax Bulk (Car Wax) - Canada

Liquid kit car wax and cleaner is designed to protect automobile surfaces through the application of a protective coating of wax. It is a product of Canada, entered in June 1984 and liquidated in July 1984.

The port classified the product under the provision for benzenoid mixtures in item 413.51, TSUS. The importer's claim is that it is classifiable under the provision for artificial mixtures of two or more animal, vegetable or mineral waxes in item 494.30, TSUS, or the provision for surface active agents in item 465.95, TSUS. If the benzenoid content is found to be more than de-minimis, an alternative is made for classification under the provision for benzenoid surface active agents in item 409.30, TSUS.

Liquid kit wax consists of, among other ingredients, 5 percent wax (paraffin & carnauba); 5 percent silicone fluid; and about 1 percent coloring agents, scent, preservatives, and emulsifiers. The emulsifiers are Triton x 45 - (4-5 (ethylene oxide) ethoxylated octyl phenol - .300), and Triton x 165 - (16 (ethylene oxide) ethoxylated octyl phenol - .49). The product is used to clean & wax automobiles.

Since the product contains only about 5 percent wax, it can not be considered a wax for tariff purposes. Therefore, item 494.30 is not controlling. Item 465.95, TSUS, applies to surface active agents. Since the product is more than a surfactant, it is not classifiable in item 465.95, TSUS. Inasmuch as we find the benzenoid content to be de-minimis, protestant's alternate claim will not be considered.

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The dyes, scent and emulsifiers are benzenoid compounds. The dyes, preservatives and scent are present in less than a 1 percent total, and the emulsifier is about 1 percent in quantity. The issue, therefore, is whether the presence of the benzenoid emulsifiers to the extent of not more than 1 percent controls the classification.

The port maintains that the silicone fluids may be of benzenoid origin and that they, and the ethylene oxide, referred to as a benzenoid surface active agent, are both essential to the function of the product. The silicones, it is argued, are utilized as protective coatings and water repellants, while the ethylene oxide serves as a surface active agent. However, there is no evidence they are of benzenoid origin.

While ethylene oxide is used in the manufacture of surface active agents, it is not a surface active agent; nor is it a benzenoid compound. Furthermore, it is not present in the product.

The test, as stated by the court, for determining whether or not benzenoid ingredient in an otherwise non-benzenoid product was to be considered de minimis was (1) whether it was present in a minute amount, and (2) whether it played a role in the principal function of the product as a whole, or exhausted its usefulness prior to the performance of the principal function. United States v. Aceto Chemical Co., C.A.D. 1186.

In this instance, the dyes, scent, and preservative are less than 1 percent of the product and serve no useful purpose in the products' principal function. Therefore, they are considered de minimis. The emulsifiers account for less than 1 percent of the formulation of the product. The only way for this minute amount to control the classification would have to be based on its playing a role in the principal function of the product. In view of the minute amount of the benzenoid emulsifiers present, it is concluded that their only function is to maintain a uniform mixture of the ingredients prior to application. The emulsifiers neither aid in the cleaning nor in the washing functions of the product.

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The merchandise is classifiable under the provision for mixtures in item 432.25. The 1984 rate is 4.2 percent ad valorem.

The protest is denied except to the extent that reclassification as indicated above will result in a partial allowance.

A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur V Schaffler

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

31 JAN 1986

REFER TO

CLA-2 CO:R:CV:G
076091 JCH

076091

District Director of Customs
U.S. Customs Service
610 S. Canal Street
Chicago, Illinois 60607

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3901-4-000666

The above-captioned protest and application for further review were filed against the tariff classification of optical inspection apparatus which was the subject of entry No. 702794 filed at the port of Chicago in 1984. This merchandise is a product of the United Kingdom. Our decision follows:

ISSUE:

The merchandise was entered under the provision for electrical measuring, checking or analyzing instruments and apparatus in item 712.49, Tariff Schedules of the United States (TSUS). The 1984 column 1 rate of duty required under that provision was 6.8 prcent ad valorem. This protest objects to the advancement to the 1984 column 1 rate of duty of 15.6 percent required for optical measuring, checking, etc., apparatus in item 712.05, TSUS. The focus among the several subordinate issues to be taken into consideration in resolving the above competition is on whether the merchandise does not qualify for an optical goods classification because it does not aid or enhance vision.

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FACTS:

The merchandise at issue is the Ames Fluorostat which is a fluorometer specially designed to conduct therapeutic drug assays. In this type of analysis, light from an arc lamp is used as excitation energy which causes substances usually in weak solution and usually after they have been combined with a fluorescing agent, referred to here as a reagent, to fluoresce. The intensity of fluorescence is proportional to the quantity of the material, and the fluorescence wavelength is shorter than the wavelength of the excitation beam and characteristic of the fluorescing material.

The apparatus contains a complex optical system consisting of the light source, collimators, lenses, filters, beam splitting mirrors, and photomultipliers.

LAW AND ANALYSIS:

Counsel for the protestant has argued this matter in the context of the four criteria in Engis Equipment Company v. United States, 62 Cust. Ct. 29, C.D. 3670 (1969). The first of these dealing with the necessity for the optical feature of merchandise to be primary or dominant in order for it to qualify as optical goods can no longer be regarded as current law in view of the various decisions making it clear that the test now is whether the optical feature is subsidiary

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or not subsidiary. United States v. Ataka America, Inc., 64 CCPA 60, C.A.D. 1184 (1977); Norman G. Jensen, Inc. v. United States, 77 Cust. Ct. 9, C.D. 4668 (1976); Librascope v. United States, 76 Cust. Ct. 197, C.D. 4656 (1976); Corning Glass Works v. United States, 82 Cust. Ct. 249, C.D. 4807 (1979). But no serious claim is made in this matter that the optical feature of the merchandise in question is not more than subsidiary.

Nor is any serious claim made that the merchandise does not qualify as optical goods because of failure to meet the second and third Engis criteria dealing with the necessity for essentiality of the optics and for the routing and other manipulation of light in accordance with the principles of optics. Therefore, the principal claim made here is that the merchandise cannot be regarded as optical goods because it does not meet the fourth Engis criterion dealing with the necessity to aid or enhance vision.

Numerous precedents have been cited for the view that the fourth criterion remains an indispensible and viable factor in the tariff classification of optical goods. Of these, it should be noted that G.A.F. Corp. v. United States, 67 Cust. Ct. 167, C.D. 4269 (1971), has been virtually overrulled by Schott Optical Glass, Inc. v. United States, Slip Op. 84-9 (Ct. Int'l Trade, decided February 2, 1984,). With respect to the Ataka decision, which counsel also cites in support of this premise,

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we have previously viewed that decision as authority for an opposite conclusion, particularly with reference to the court's statement, supra, at 66, "None of the foregoing [Engis] criteria is determinative in every case * * *." Finally, counsel suggests, in effect, that any further discussion on this point is moot in view of the definitive statement by the court supportive of counsel's position in EAC Engineering v. United States, Slip Op. 85-111 (Ct. Int'l Trade, decided October 24, 1985).

In that matter, the court's pertinent comments sustaining avoidance of an optical goods classification were an alternative to another basis for the decision, viz., the court's conclusion the optical feature of the merchandise in litigation was not more than subsidiary. In that connection, the optics consisted only of a filter for a photoelectric sensor which is to be distinguished from the complex optical system in the instant merchandise. Further, the Government conceded in that matter that vision was not aided while in our previous decisions we have held that vision is aided and the fourth Engis criterion satisfied if vision is aided only indirectly. In this connection, see United States v. J. Bliss, & Co., 29 Treas. Dec. 717, 724, T.D. 35980 (1915), where the court specifically provided for satisfaction of requirements for an optical goods tariff classification if vision is "indirectly" aided. It has

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been our view that vision is indirectly aided by apparatus which produces data in coordinate or other mathematical form, or which produces results by means which are a substitution for former analytical methods employing direct optical visualizations. In this connection, we note that electron microscopes are specifically provided for as optical goods in item 708.78, TSUS, even though phenomena for which images are produced are totally invisible through any direct optical viewing means.

At any rate, aside from any basis for distinguishing the EAC Bearings merchandise from the instant merchandise, the decision in that matter was interlocutory, and in view of the content of a later court order, a final decision and Government acquiescence or an appeal will not occur for several months hence. That decision, therefore, cannot serve as a precedent in the instant matter at this time. See also 19 CFR 152.16 for further information with respect to the official policy concerning the effect of judicial decisions on Customs classifications.

HOLDING:

For the foregoing reasons, we find that the merchandise is properly classifiable under the provision for optical electrical measuring, checking, or analyzing instruments and apparatus in item 712.05, TSUS. Accordingly, you are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classifiation
& Value Division

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E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

31 JAN 1986

REFER TO

CLA-2 CO:R:CV:G
076171 SM

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Re: Request for Further Review of Protest No. 3802-4-000289 of December 3, 1984

Dear Sir:

This protest concerns the tariff classification of rubber truck bed mats. The merchandise was classified as film, strips, sheets, plates, slabs, blocks, filaments, rods, seamless tubing and other profile shapes, all the foregoing wholly or almost wholly of rubber or plastics; not of cellulosic plastics materials; flexible; other, in item 771.41. The protestant claims that it is properly classified under item 692.32, as parts of motor vehicles.

Our file on this case does not include a copy of the Form 19 or of the descriptive literature and blueprints referred to by the import specialists. Nevertheless, the following is our position on the matter.

We agree with the Port Huron import specialist that the merchandise cannot be classified as parts of motor vehicles. While an accessory can be classified as a part, and while a provision for parts is more specific than one for "articles NSPF" and will prevail over a general or basket provision, the controlling principle here is that to be classifiable as a part, the merchandise must serve a useful function in relation to the main article so that in some way it contributes to the safe or efficient operation of that article. In this case, the pickup truck can be operated with complete safety and quite efficiently without the rubber mat in the back.

We understand that the mats have cut-outs and corners to fit particular truck models. Headnote 2(iv)(A) of Part 12B, Schedule 7, precludes the classification of plastic cut to non-rectangular shapes in item 771.41. If in chief value of natural rubber, they are classified in item 774.25; if in chief value synthetic rubber, they are classified in item 774.55.

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076171

Accordingly, you should deny this protest in full. A copy of this decision should be sent to the protestant along with your Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffler

For Harvey B. Fox
Director, Classification
and Value Division

076171

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 11 1986

REFER TO
CLA-2 CO:R:CV:G
076201 JLV

076201

E.F. Gordon
Tooltech, Inc.
3145 Columbia Ave., NW.
Minneapolis, MN 55418

Dear Mr. Gordon:

In your letter of May 1, 1985, you request a ruling on whether or not certain processing operations on imported plain end pipe result in a substantial transformation.

The imported pipe would consist of pipe rolled to A.P.I. 5A, 5AX, or 5AC dimensional specifications for drill pipe, having a particular chemistry that the heat treatment, after upsetting, would result in the tensile and other metallurgical properties required by A.P.I. specifications for drill pipe. The specific processing, as described by you, is as follows:

> These manufacturing processes are upsetting, full length heat treating, and tool jointing. The upsetting operation is one in which the end of the pipe is heated to hot forging temperature and then upset in a horizontal forging machine to thicken the ends according to API specifications. The effect of this upset involves approximately six inches of each end of the pipe. The full length heat treating, again as specified by API, involves heating the pipe to the austenitizing (normalizing) temperature and allowing the pipe to cool in air to yield grade E drill pipe physical properties. For high strength drill pipe grades the pipe is severely quenched after reaching the austenitizing temperature and then is tempered to yield the specified physical properties for the desired high strength grade. These tempering temperatures are approximately 1000° F.
>
> Tool joints, the threaded connectors to be welded to each end of the upset and heat treated pipe, are manufactured from alloy steel. The material is machined to the specified OD and ID dimensions. These parts are then heat treated by application of an oil quench and temper process. Following this, final machining and threading are performed. Each set of tool joints consists of one externally threaded part (called the "box").

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The tool joints are applied to each end of the upset and heat treated pipe by the inertia welding practice. In this operation the tool joint member is secured in a spindle fitted with a fly wheel mass. The spindle and fly wheel are driven to a preset RPM. At the preset RPM the system is declutched and the tool joint member is thrust against the end of the pipe which is held securely in a clamping fixture. The energy in the fly wheel mass, being an inertial system, is converted to heat energy from friction at the interface of the contacting parts (pipe and tool joint), which raises the interface temperature sufficiently high to accomplish a forged weld by the thrust load applied. Immediately after this welding process, a post weld heat treating practice is employed, utilizing an electric induction coil, to properly heat treat the heat affected zone of the weld area. This heat affected zone is very narrow, being roughly one inch wide. After post weld heat treating, the extruded weld flash on both the inside and outside diameters in the weld area are removed by machining and grinding. At this point the pipe is complete as finished drill pipe to API specifications. Several nondestructive tests may be conducted and the pipe is prepared for reexport.

In a ruling letter of November 21, 1985 (file 553739), copy enclosed, a similar series of processing operations was held to be a substantial transformation of multifunctional green pipe and tubing. The nature of the processing to be performed by you is also such that it substantially transforms the imported tubing so that the final product, drill pipe, is a product of the United States.

You cite our ruling of March 15, 1985 (file 075174), copy enclosed, as controlling. We do not agree, and we distinguish on the basis that the plain end tubular products were not multifunctional green tubes, but satisfied A.P.I. dimensions and strength requirements prior to upsetting and threading. Furthermore, the addition of a coupling was not, as in our case, by welding which permanently attaches the joint.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076201

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR 31 1986

REFER TO

CLA-2:CO:R:CV:G
076341 JCH

076341

District Director of Customs
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 30044000052

The above-captioned protest and application for further review were filed against your classification and appraisement of merchandise which was the subject of several entries filed at the port of Blaine in 1983 and 1984. The merchandise consists of disc doublers manufactured in Canada. Our decision follows:

ISSUE:

The merchandise was classified by Customs officers under the provision for articles of aluminum, not specially provided for (n.s.p.f), in item 657.40, Tariff Schedules of the United States (TSUS). The 1983 and 1984 column 1 rates of duty required under that provision were 7.6 percent and 7.1 percent ad valorem. It is claimed that the merchandise is rather classifiable under the provision for machines, n.s.p.f., in item 678.50, TSUS. The 1983 and 1984 column 1 rates under that provision were 4.4 percent and 4.2 percent ad valorem.

FACTS:

The merchandise is a device which requires two hands to operate. The device is placed on a fixed surface, and while a floppy disc is held in position with one hand, the other operates a lever which notches the flip side of the disc.

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This allows the flip side to be usable in certain equipment in certain circumstances.

LAW AND ANALYSIS:

For a discussion of many cases concerning what constitutes a machine for tariff classification purposes, reference is made to United States v. IDL Mfg. & Sales Corp., 48 CCPA 17, C.A.D. 756 (1960). In that discussion, it is shown that tools such as braces and pliers are not machines for tariff classification purposes because they do not "rise to the dignity of a machine." Id. at 19. However, the comparatively simple devices which were regarded as machines in that matter were so classified because it was found they contained return springs making them more than simple machines and they were commercially known as machines.

The instant tools are not shown to have return springs or to be commercially regarded as machines.

HOLDING:

For the foregoing reasons, we find that the tariff classification of the instant devices under the provision for articles of aluminum, n.s.p.f., in item 657.40, TSUS, was correct. Therefore, you are instructed to deny the protest except to the extent any concession with respect to the valuation issue may result in a partial allowance. A copy of

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this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Scheffler
For Harvey B. Fox
Director, Classification
and Value Division

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076341

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 11 MAR 1986

FILE: CLA-2 CO:R:CV:G
076380 JGB

076380

TO : Area Director of Customs
Airport International Plaza
Newark, New Jersey 07114

FROM : Director, Classification and Value Division

SUBJECT: Request for Reconsideration of Internal Advice Request No. 34/84--Classification of Infants' Tank Top and Bottoms

This is in response to a request by Mr. Duncan Nixon of Sharretts, Paley, Carter & Blauvelt, P.C. on behalf of H. Bailey International Ltd., dated May 28, 1985. The decision being reconsidered bears our file no. 074273 and is dated February 21, 1985.

SUMMARY:

The decision being reconsidered held that infants' (boys') cotton twill short pants were properly classified as shorts in item 383.0620, Tariff Schedules of the United States (TSUS), taking textile category 348. The importer still claims that the garments are really swimwear and should therefore be classified in item 383.0895, TSUS, taking textile category 359.

CLAIMS:

(1) This office did not invite him for a conference prior to the issuance of the decision, despite his request;

(2) The merchandise is not sold in a clear plastic bag, which fact would lead to a different result;

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(3) The importer's arguments are misstated and misinterpreted in the decision, especially with respect to whether the liner in the instant merchandise falls within the guidelines;

(4) The importers were not accorded "prospective application" of the decision as they requested;

(5) Customs placed "undue emphasis" on the "wick effect," because the wick effect is not evidence of the garment being used as shorts, but merely corresponds to the "latest fashion trends in swimwear;"

(6) Boys in sizes 2-4 (age range 1-1/2 to 2-1/2) wear the garments over diapers which means the garments' getting wet is irrelevant.

ANALYSIS and RESPONSE:

1. Our failure to grant the importer's request for a conference was inadvertent. Such a conference was granted in connection with the reconsideration request, however, and occurred on February 4, 1986.

Counsel and the importer explained how the all-cotton content of the shorts was more or less accidental, brought about because the manufacturer in Hong Kong could not secure

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fabric of a cotton-polyester blend to meet shipment requirements. Consequently, a small portion of the total order turned out to be all cotton and was the subject of the Internal Advice request.

The importer argued in particular that the marketing of the garments was in the boys and infants swimwear department, as opposed to the sportswear or shorts department.

Since that discussion provided no new legal information requiring an additional submission under 19 CFR §177.4(d), no additional comments addressing matters raised at the conference are included here.

2. The importer now claims not to import the shorts in the clear plastic bag. Two statements from large customers are included to support this claim.

Whether the importer presently uses this bag with the printing on it is irrelevant to the outcome of the initial decision, because the bag was nonetheless made for the importer by the manufacturer and contained all the information necessary for retail sale, including country of origin marking, size, and suffocation safety warning. The bag was never considered to be determinative of the identity of the merchandise, but just one element to consider along with the design and composition of the garment.

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3. Counsel essentially argued that the instant merchandise contained a sufficient liner to meet the swimwear guidelines. Our point remains that a complete liner is worth considering as an identity element for swimwear, not whatever kind of liner the importer claims is sufficient. The point of the statement quoted by counsel as Customs' main position is itself misinterpreted. The point is that under our guidelines, Customs will examine and interpret what constitutes a real, commercially acceptable liner.

Counsel further argues that if the existence of a liner is not the sine qua non of swimtrunks, then the existence of a partial liner in their garment should not reduce the identity of the garment as swimwear. The argument is bolstered by the claim that little boys do not require the brief type of liner that adult men would.

We have examined the sample and remain convinced that the instant type of liner does not meet the standards for swimwear, however measured. The garment, which fails to present sufficient characteristics of swimwear, must be classified as shorts.

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4. Counsel for the importers made a request for prospective application of what they consider to be the appropriate quota category. The matter was not addressed in our response because in circumstances such as this, Customs does not have the authority to direct prospective application of proper quota categories. The importers claim to have presented, through their broker, a garment to the import specialist at JFK Airport and to have received a nonbinding tariff classification ruling to the effect that the proper category was 659. The garment presented was of different fiber composition.

If the importer's broker had submitted a sample of the garment to be imported and Customs had sent a binding ruling to the importer, then prospective, or at least nonretroactive, application of the swimwear standards might be in order. Those facts are not present here. Customs appreciates the importer's predicament, but is not in a position to exercise any authority, in effect, to hold the importers harmless for the instant entries.

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5. The wick effect was only one factor taken into consideration in our decision to classify the instant merchandise as shorts and not swimwear. We stand by our statements in the decision, as well as the general statements about the general inappropriateness of heavy cotton twill for swim trunks. We would not dispute that styles, by definition, continue to change and that 100 percent cotton swimwear may come in and out of fashion. This argument is, however, irrelevant to the present case.

6. Counsel's comments about infants and diapers appear irrelevant or misplaced. When Customs says, in general, that heavy cotton fabric is not typically used in garments worn for swimming, counsel for the importer counters with the claim that the garment's getting wet and drying is irrelevant, because in the 1-1/2 to 2-1/2 year age range, the children wear diapers under the garment. The claim is unsupported and has no bearing on our classification of the merchandise. If counsel means that infants are not sent into the water wearing diapers, then that fact alone would fall on the side of the garment being considered shorts and not swimwear. Simply because our ruling 073387 creates a narrow

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exception for "small boys" swimtrunks of real swimtrunk design, when the swimtrunks are of "medium weight cotton blended twill woven fabric," it does not mean that something not used as swimwear is to be classified as swimwear.

HOLDING:

We adhere to our holding in IA 34/84, 074273, issued February 21, 1985.

Harvey B. Fox

076380

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAR 6 1986

FILE: CLA-2 CO:R:CV:G
076470 SM

076470

TO : District Director of Customs
Philadelphia, Pennsylvania 19106

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 52/85 Concerning Classification of Heavy-Duty Leaf Springs of Base Metal, Used on Semitrailers (Your Memorandum of May 23, 1985, MAN-1-DD:CV:MAM)

Your position is that the leaf springs in question here should be classified under item 652.88, TSUS, as other springs. The importer claims that the proper classification is under item 652.84, TSUS, as springs suitable for motor vehicle suspension. We are in agreement with your position.

Semitrailers are not motor vehicles. A truck tractor imported with its trailer is classified, together with the trailer, as a motor vehicle, under item 692.02, according to Headnote 1 to Part 6B of Schedule 6. By the same headnote, the tractor and the trailer, if imported separately, are classified as "parts of the foregoing motor vehicles," under item 692.29 and item 692.32, respectively. However, the designation of the tractor and trailer as a motor vehicle, and of the trailer alone as a part of a motor vehicle, applies only for purposes of Subpart B of Part 6. Springs are classified under Subpart F of Part 3, which is not governed by this headnote.

You should therefore advise the importer that the springs, used on semitrailers, are properly classified under item 652.88, TSUS, as other springs.

Arthur P. Schaffner
for Harvey B. Fox

F14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

076474

APR - 3 1986

REFER TO

CLA-2 CO:R:CV:G
076474 JGH

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-018034, Classification of a Petroleum Product

The product from Mexico was entered as an unfinished naphtha in item 475.35, TSUS.

On the protest, it was contended in behalf of the importer that the product could not be classified as naphtha, since it contained lead, but inasmuch as it contained significant amounts of dutiable benzenoids, the entry should be classified as a benzenoid mixture in item 407.16, TSUS.

The port originally classified the product as naphtha, but after receiving test results changed the classification to that for chemical mixtures in item 432.10, TSUS, with the applicable rate of duty for tetraethyl lead in item 429.70, TSUS.

The imported petroleum product was apparently not sampled and analyzed by Customs. However, the importer did submit an analysis of the product. As the analysis shows that the imported product contains lead, it is not classifiable as naphtha in item 475.35, TSUS. Furthermore, as it does not meet the standards for automotive gasoline, in either T.D. 66-23(13) or ASTM D439, it is not classifiable as a motor fuel in item 475.25, TSUS.

As to item 407.16, no test results were submitted for the dutiable benzenoid content, so that it cannot be concluded that the import is classifiable as a benzenoid mixture in item 407.16, TSUS. In view of the presence of lead, the product is classifiable as a mixture in item 432.10, TSUS, dutiable at the rate for lead in item 429.70.

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You are directed to deny the protest in full.

A copy of this decision should be forwarded with your Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

CLA-2:CO:R:CV:G
076480 JCH

076480

District Director of Customs
Second and Chestnut Streets
Philadelphia, Pennsylvania 19106

Dear Sir:

Re: Decision on Application for Further Review of
Protest No. 11014000197

The above-captioned protest and application for further review were filed against the tariff classification of certain miniature articles which were the subject of entry No. 84-248517-1 filed at the port of Philadelphia in 1984. The merchandise is a product of Taiwan. Our decision follows:

ISSUES:

The merchandise was entered under the provision for certain models in item 737.15, Tariff Schedules of the United States, (TSUS) which would provide a free rate under the Generalized System of Preferences (GSP). However, duty was advanced to the 1984 column 1 rate of 10.9 percent for toys, not specifially provided for (n.s.p.f.), in item 737.95, TSUS, which is not a GSP-eligible item for merchandise made in Taiwan. Therefore, the main issues to be resolved in this protest are whether the merchandise qualifies as models for tariff classification purposes under the applicable precedents, and, if not, whether it qualifies as toys under the applicable criteria.

FACTS:

The merchandise is invoiced as miniature coffee bins, tea bins, wooden counters and seed packet boxes. These articles are made for

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and imported by an American firm which otherwise specializes in precious metal collectible minted and similar commemorative articles which are offered to the public directly through media solicitations rather than through stores, and which are often purchased in installment shipments. The articles in question will be packed together with other miniature articles and will constitute the first shipment of one of the importer's several offerings of miniature settings designated the American Country Stor The submitted brochure shows that the complete setting will be mailed in 15 monthly shipments costing $29.50 each. It is further stated that the articles are made to a 1/12-inch scale, will be supplied with a certificate of authenticity, will "capture the interest and imagination of every member of your family," and provide "the fun of arranging and rearranging your stock."

It is our understanding that the theme and prototypes for this particular setting in miniature have their origins in Country Store, by Elmer L. Smith, which we were unable to find catalogued at the Library of Congress. Other books by Mr. Smith relating to Lancaster County, Pennsylvania, history, however, are catalogued.

LAW AND ANALYSIS:

At the outset, it should be stated that all miniaturized articles do not constitute models for tariff classification purposes. Whether or not an article constitutes a model, as

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we have indicated in our previous decisions relied on by the protestant and in previous correspondence in this matter, largely depends on the degree of faithfulness of the miniaturized depiction to specific prototypes. This will generally be determined by comparisons of the miniature with pictures of or other information concerning the prototype. But while we have afforded the opportunity for furnishing supplemental submissions for comparisons to be made, the protestant rather has focused attention on pertinent precedents, some of which have previously been called to our attention.

Most important among the cited precedents is Lohzin & Born, Inc. v. United States, 79 Cust. Ct. 34, C.D. 4710 (1977), in which it was held that a model does not have to be an exact replication. Further, we have held that only a degree of faithfulness will be required which is reasonable for the scale used. See, for example, our decision of October 9, 1980, file No. 065180. Nevertheless, a miniaturized article still must be "more than a crude form" of the prototype. Lohzin & Born, supra, at 41. In our opinion, the miniature seed packet holder and the tea and coffee bins merely represent approximations of prototype articles illustrated in copies of pages of the Country Store which have been submitted and, therefore, cannot be regarded as models.

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The miniature seed packet holders lack the proportions of prototypes in which seed envelopes were displayed standing up. In the miniatures, the envelopes lie flat. The tea and coffee bins have writing and borders on them which give the appearance of having been scrawled on without any guidelines. The bins and the seed packet holder also are made of materials which if multiplied to actual size would produce materials considerably thicker than the materials of which prototypes were made. While the high cost of the complete country store setting and of the installment of which the instant articles are a part would suggest higher quality merchandise, the articles are part of a multiplicity of articles which individually are not in an excessively high-cost category.

While the miniature counter may be less crude, we find that it is not a model because it only represents a general class of article. While Lohzin & Born is also cited for the view that a model does not have to represent a specific article, but can represent a class or kind, the class or kind represented by the merchandise in that matter was Spanish Armada sailing vessels. In our view, country store counters do not represent a class or kind of article of similar historical significance or of similar uniform features for general recognition. The instant article would only be regarded as a replication of a country

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store counter because it is designated as such, and it otherwise has no features that we can identify which would disqualify it for use as a miniature counter for other settings.

Since it is our position that the articles at issue cannot be regarded as models for tariff classification purposes, the next question is whether they are toys. The high total price of the complete setting and sale through channels outside of those normally associated with the distribution of toys, of course, militate against considering the articles as toys even though the cost of individual items may not be excessive. However, while the protestant normally caters to numismatists or other collectors who purchase their merchandise for display purposes, more than display is contemplated for the instant merchandise. Manipulation of the articles for fun in the same manner that doll house furniture is manipulated is clearly contemplated. While this use may not have amusement value in the same sense as novelty articles, practical jokes, etc., that is not necessarily the essence of the amusement associated with toys. In a sense, any article which permits simulation of a real-life activity on a reduced scale would constitute the essence of the amusement value of toys. The instant articles permit the simulation of the proprietorship of a country store in the same manner that other toys permit other real-life activity simulations. It is to be further noted that the fact that adults more than children may be involved in

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the imagination excursions engendered by the instant articles does not prevent their being regarded as toys, since Headnote 2, Subpart E, Part 5, Schedule 7, TSUS, has extended the concept of a toy from articles just for the amusement of children to articles for the amusement of adults as well.

HOLDING:

For the foregoing reasons, we find that the miniature seed packet holders, tea and coffee bins and counter are toys classifiable under 737.95, TSUS. Accordingly, you are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

MAR - 4 1986

REFER TO
CLA-2:CO:R:CV:G
076486 TLL

076486

Walter J. Spak, Esq.
Willkie, Farr & Gallagher
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Spak:

This is in reply to your letter dated June 17, 1985, submitted on behalf of your client, Cargill Citro America I orporated, regarding the country of origin of concentrated apple juice.

Concentrated apple juice is prepared for export to the United States by the firm of Gebr. Braun GmbH & Co. KG of the Federal Republic of Germany (FRG). Some of this juice is prepared from fresh apples in their West German plant. Braun also imports significant quantities of concentrate from the Polish People's Republic (PPR) and the German Democratic Republic (GDR). The Eastern European juice is subjected to processing in West Germany, combined with the juice produced there, and eventually exported to the United States. The central issue involved here is the country of origin of the final product for the purposes of duty assessment, column one versus column two.

You argue that the Eastern European juice undergoes a substantial transformation in West Germany and becomes a product thereof. The PPR and GDR juice is imported into the Federal Republic in the form of concentrate. You state that Braun considers this juice to be unacceptable for mixing with their juice in the condition as imported into West Germany. Braun dilutes the eastern juice back to single strength and mixes it together with fresh squeezed West German apple juice. This mixture is considered too cloudy at this stage for Braun's purposes so the entire mixture is submitted to a number of clarifying agents and then filtered. The mixture is then concentrated under a vacuum evaporation process and an unspecified amount of apple flavoring essence is added prior to being packed in drums for export.

RETURNED TO THE

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Item 165.15, Tariff Schedules of the United States provides for the classification of apple juice, duty-free, if entitled to column one treatment and 5 cents per gallon if subject to column two treatment. General Headnote 3(d), TSUS.

The classification of commingled and processed apple juice was considered in Headquarters Ruling Letter (HRL) 038830 AB, dated May 14, 1975, copy enclosed. We have reviewed the file and conclude that that decision should continue to be followed.

Furthermore, all of the above processes were discussed in HRL 728557, dated September 4, 1985, which dealt with the country of origin marking of orange juice. While it was argued that these processes would significantly improve the quality of the fruit juice in question, it was held that they did not fundamentally change the fruit juice into another article of commerce. Since concentrated orange juice from Brazil does not lose its identity when reconstituted, pasteurized, purified, blended with domestic juice and packed for retail sale, neither would East German and Polish apple juice subjected to like processing lose its identity or be substantially transformed. Accordingly, we consider this product subject in its entirety to the column 2 rate set forth under item 165.15, TSUS.

In reviewing HRL 038830, General Headnote 7, TSUS, and the applicable case law, we can find no legal authority for applying General Headnote 7 in those situations where at the time of entry the Customs Service was not provided with information necessary to determine that the imported product was, in fact, commingled. Consequently, any duties tendered for past shipments (footnote 3 of your letter) should be made with the assumption that the entire shipment is subject to column 2 rates of duty.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 17 1986

REFER TO
CLA-2 CO:R:CV:G
076539 JGB
813782

076539

Mr. A. Elenewski
DeFrogger Industries, Inc.
Rt. 2, 2270 15th Lane
Friendship, Wisconsin 53934

Dear Mr. Elenewski:

In your May 16, 1985 letter, you request a ruling on the tariff classification of a product known as the DeFrogger.

The device is designed to defrost the face mask worn by a snowmobile or motorcycle rider as needed in cold weather. You describe the unit as being powered by the exciter coil of a snowmobile or motorcycle or by a 12-volt battery. The device operates by resistance heat tape applied on the transparent face shield. A cord extends from the mask to a control panel where a three-position switch is located. The panel incorporates an indicator light. A cord runs from the panel to the jack which in turn plugs into the power source.

The article is electrical and is not specifically described in the tariff schedules. Therefore, it is classified in item 688.42 of the Tariff Schedules of the United States, the provision for electrical articles not specially provided for, other, dutiable at 4.1 percent ad valorem for products of Taiwan.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

20 MAR 1986

CIA-2 CO:R:CV:G
076557 JGH

076557

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-016358, Concerning Entry Numbers 84-101416-1, 84-101466-6, and 84-101415-8, on the Classification of Petroleum Products from Romania

The petroleum products were entered and classified under the provision for motor fuel in item 475.25, TSUS. In behalf of the importer it is claimed that the products are classifiable as benzenoid mixtures in item 407.16, TSUS, because of the benzenoid content, and further, that they are not chiefly used as motor fuel and do not meet the specifications for the current standards for motor fuels. A sample of the entries, however, was analyzed and was found to meet the standards for motor fuel in item 475.25, TSUS.

Since the petroleum products were originally entered as motor fuel, and a sample disclosed that one of the entries met motor fuel standards, and, further, no evidence was submitted on the dutiable benzenoid content of any of the products in issue, they are classifiable as entered in item 475.25, TSUS.

You are directed to deny the protest in full. A copy of this decision should be attached to the Customs Form 19 notice of denial.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

[redacted] G12

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 21 1986

REFER TO

CLA-2 CO:R:CV:G
076558 JGH

076558

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1007-4-017787, Classification of Unleaded Feed Stock

The petroleum product was entered as unleaded feed stock. It was classified as motor fuel in item 475.25, TSUS. The claim by the importer is that it is a benzenoid mixture is item 407.16, TSUS.

The laboratory tests indicate that the imported product meets both the ASTM D439 and T.D. 66-23(13) specifications for motor fuel. The claim in behalf of the importer is that the product has a significant amount of benzenoids, and, therefore, should be classifiable as a benzenoid mixture in item 407.16, TSUS. However, no evidence was submitted showing the benzenoid content to back up this claim.

The product conforms to the standards for motor fuel and the provision for motor fuel is the more specific provision. Furthermore, there is no convincing evidence that the imported product would not be commercially acceptable as motor fuel. Finally, no evidence was furnished on the dutiable benzenoid content.

For the above reasons you are directed to deny the protest in full. A copy of this decision should be made available to the protestant by attaching it to the Customs Form 19 notice of denial.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 19 1986

REFER TO

CLA-2 CO:R:CV:G
076562 TLL

076562

Margaret M. Broere
Executive Assistant
Daystar International Incorporated
2001 Marcus Avenue
Lake Success, New York 11042

Dear Ms. Broere:

This is in reply to your letter dated July 2, 1985, further in regard to a requested amendment of 19 CFR 151.91 to change the Brix value of slipskin grapes.

As a result of your most recent inquiry, we have obtained additional information from the United States Department of Agriculture. This information discloses that slipskin grapes are produced commercially in 13 states, including New York. Since we are charged by Headnote 3, Part 12A, Schedule 1, Tariff Schedules of the United States (TSUS), with ascertaining "the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States," we are unable to conclude that our statutory responsibility will have been satisfied by the information which you have furnished, that is, information from Cornell University and corroboration by Taylor Wine Company, Hammondsport, New York. Accordingly, we are unable to accede to your request.

If you wish to pursue this matter further, we suggest that you obtain corroboration of the average Brix value in the trade and commerce of the United States of unconcentrated grape juice from slipskin grapes from the applicable agricultural boards (departments) of the top slipskin grape producing states, including California, New York, Michigan and Washington.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

06 FEB 1986 CLA-2 CO:R:CV:G
076583 jlj

District Director of Customs
511 N.W. Broadway, Fed. Bldg.
Room 198
Portland, Oregon 97209

076583

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 2904-5-000090

This protest was filed against your decision in the liquidation on December 7, 1984, of entry No. 435052 dated February 10, 1984, covering a shipment of Tektronix brand coated paper for an ink jet color image printer, produced in Japan.

This ruling concerns the correct tariff classification of the Tektronix brand paper, imported in rolls and in sheets.

FACTS:

The merchandise at issue is Tektronix brand coated paper for an ink jet color printer, imported in rolls and in sheets. The rolls were over 6 inches wide. The sheets were both cut to size or shape (not over 15 inches by 15 inches) and over 15 inches by 15 inches.

The merchandise was liquidated under the provision for coated or impregnated paper, writing paper weighing over 18 pounds per ream, not lithographically printed, in item 254.56, Tariff Schedules of the United States (TSUS), for sheets over 15 inches by 15 inches and for rolls of paper over 6 inches wide and under the provision for other paper, cut to size or shape, writing paper, weighing over 18 pounds per ream, in item 256.20, TSUS, for sheets cut to size or shape, not over 15 inches by 15 inches.

The protestant claims that the merchandise should be classified under the provision for coated or impregnated paper, other paper, not specially provided for, not lithographically printed, not gummed, impregnated, coated

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or both, but not otherwise treated, in item 254.80, TSUS, if in rolls or in sheets over 15 inches by 15 inches, and under the provision for other paper, cut to size or shape, other, not specially provided for, in item 256.30, TSUS, if in sheets not over 15 inches by 15 inches.

ISSUE:

Is the Tektronix coated paper for an ink jet color printer classifiable as writing paper in items 254.56, TSUS, and 256.20, TSUS, or as other paper, not specially provided for, in items 254.80, TSUS, and 256.30, TSUS?

LAW AND ANALYSIS:

Headnote 2(d) of Part 4, Schedule 2, TSUS, defines "writing paper" as follows:

> the term "writing paper" includes, but is not limited to, papers such as ledger, letter, manifold, mimeograph, note, onionskin, tablet, and typewriter paper.

In addition to the papers enumerated above, writing papers have been defined, for tariff purposes, as paper "for the recordation of data by pen, pencil, typewriter or similar device as a means of communication by one or a limited number of copies to one or a limited number of receivers." See Customs Headquarters Ruling Letter (HRL) 074447 of August 7, 1984, and Treasury Decision 72-207 (1972). Customs has held that paper chiefly used in or with such machines, for such purposes, is writing paper. See HRL 065371 of October 30, 1980, HRL 074564 of November 26, 1984, and HRL 074447, cited above.

The protestant distinguishes the instant merchandise and claims that it is "other coated paper" classifiable in item 254.80, TSUS, when in rolls, and in item 256.30, TSUS, when cut to shape or size. He claims that ink jet paper is neither writing paper nor printing paper as defined in the tariff schedules for the following reasons:

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1. The imported paper is unique. It is specifically developed for use with high technology color imaging equipment and is sold for use with color ink jet copiers.

2. The paper is not and cannot be used as writing paper. The paper is primarily used to produce clear color images, not the written word. Writing paper is usually used with equipment designed to produce characters or words. The paper costs eight times as much as standard computer paper. Pencils cannot write on this paper, and even some ink pens do not write satisfactorily on this paper.

3. Ink jet paper does not have the same characteristics as writing paper. The specifications for the instant paper call for impregnation or off-machine coating which make the paper capable of receiving jet sprayed ink droplets without bleeding through or running. It does not meet Joint Committee on Printing (JCP) paper specifications for certain writing paper purchased by the United States government. The manufacturer states that the fiber in the paper is wood fiber rather than bleached kraft or linen.

Two of the protestant's claims have not previously been considered. The first is that images used to convey the information are "printed" by an ink jet process, and the second is that the machines are primarily used to copy pictorial matter rather than text.

"Writing" for tariff purposes includes the product of mechanical processes which are similar to printing -- e.g., typewriting and mimeographic reproduction. Typewriters have been replaced by word processors, i.e., computer terminals with so-called "printers" -- but the end product is a hard copy, just as it was with typewriters.

In a telephone conversation with a member of this office, Mr. Thomas Stanton of Tektronix stated that the jet ink color copier process is similar in some ways to the printers in word processors. He stated that the instant paper is used in an office environment by engineers who make designs or layouts (e.g., geographic or topographic). Mr. Stanton explained that first the computer terminal makes the designs (just as the word processor terminal does). Then the ink jet printer is used to print

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out designs on the paper as a hard copy. When finished, the engineers can look at the designs or layouts, discuss them and publish the results of what they have done.

The second claim, citing pictorial matter rather than text as a basis for not classifying the paper as writing paper, is somewhat vitiated by an article in the July 1983 issue of Tappi Journal. This article, which is written by three employees of Tektronix, describes the color jet ink spray process. The authors recapitulate their findings and describe the details of their experiments as follows:

> CONCLUSION -- Good writing performance in ink jet printing requires a very rapid absorption of the ink vehicle into the paper.... As ink jet technology is further developed, fast copy time will be increasingly desirable. Thus, writing speeds will be pushed higher and higher. (Emphasis added).
>
> EXPERIMENTAL DETAILS — The ink jet writing was done on a prototype version of a Tektronix 4691 color copier. The patterns used include substantial areas of solid fill and alpha numerics in a range of character sizes. (Emphasis added).

Based on the above-quoted article, it appears that the subject paper is used for textual copying as well as for graphic color images. Mr. Stanton's statements regarding the end use of the computer-generated Tektronix graphics indicate that the graphic images are informational rather than merely decorative. Whether the print-out information is textual or pictorial, the process still involves the use of the computer terminal and the "printer."

Regarding the protestant's other claims, the components of the paper and its coating or impregnation would not be sufficient to change its classification, inasmuch as writing paper is made of a variety of components and can be coated or impregnated. Furthermore, cost alone would not be enough to affect its classification, because writing paper differs greatly in cost, from inexpensive tablet papers to embossed stationery. In

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view of Headnote 2(d) of Part 4, Schedule 2, TSUS, T.D. 72-207 and HRL 065371, which establish that papers written on by devices similar to those enunciated in T.D. 72-207 are writing paper, whether or not pens and pencils can write easily on the instant paper is also not as relevant as protestant would have us believe. Finally, the JCP specifications deal with certain types of writing paper which are purchased for government use. Not only are the JCP standards cited not all-inclusive, but they are not at all comparable to tariff provisions nor to tariff terms.

After careful consideration of all the facts in the file before us, we find that the Tektronix color ink jet spray paper is writing paper for tariff purposes.

HOLDING:

The instant Tektronix coated paper is classified as writing paper for tariff purposes. The instant rolls and the sheets measuring over 15 inches by 15 inches are classified in item 254.56, TSUS. The sheets cut to size or shape (under 15 inches by 15 inches) are classified in item 256.20, TSUS. You should deny the protest in full. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

John T. Rath

For Harvey B. Fox
Director, Classification
and Value Division

076583

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

FEB - 6 1986

REFER TO
CLA-2:CO:R:CV:G
076585 JLF

076585

Area Director of Customs
Airport International Plaza
Room 210A
Newark, New Jersey 07114

Dear Sir:

This is in response to your memorandum dated April 2, 1985, requesting Internal Advice on the tariff classification of merchandise identified by the importer as Estasol. Your request was initiated by a letter dated March 13, 1985, from the attorneys for the importer.

The merchandise at issue is a product whose trade name is estasol and it was entered in 1984. It consists of a mixture of dimethyl adipate, dimethyl glutarate and dimethyl succinate. The importer claims that Estasol should be classified under the provision for dibasic-acid esters in item 465.90, TSUS.

Schedule 4, Part 1, Headnote 1, provides with specific exceptions, that all products described in Part 1 shall be classified there even if more specifically provided for elsewhere in Schedule 4. Item 407.06, TSUS, provides for other acyclic organic chemical products, which are obtained, derived, or manufactured in whole or in part from products having benzenoid structures. Each of the Estasol components named above was classified in former item 407.07, TSUS (currently item 407.06, TSUS) if produced from benzenoid structures. Customs has confirmed that the Estasol components are derived from benzenoid sources.

The information we have is that Estasol is a solvent containing approximately 60 percent by weight dimethyl glutarate which was provided for in former item 407.07, TSUS.

There is no exception in the benzenoid headnotes for exempting the benzenoid components in this product from classification in Part 1(b), Schedule 4, TSUS.

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Thus, since the product is a mixture of solvents which contain over 25 percent of a benzenoid provided for in Schedule 4, Part 1(b), it is classifiable in item 407.09, TSUS, with the rate of duty not less than the highest rate applicable to any component material. The rate is the 13.5 percent ad valorem in former item 407.07, TSUS.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

076585

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

FEB 19 1986

REFER TO
CLA-2:CO:R:CV:G
076586 TLL

District Director of Customs
101 E. Main Street
Norfolk, Virginia 23510

076586

Dear Sir:

Re: Application for Further Review of Protest No. 1401-3-000289

This application for further review was filed against your decision in the classification of certain feed supplements: Aminovite, Salkavite, Folactin Red, Feromel and Supplement C. This merchandise was classified under various item numbers set forth in Schedule 4, Tariff Schedules of the United States (TSUS). Protestant claims that the feed supplements should be classified under item 184.85, TSUS.

In considering the question of whether feed supplements are classifiable under item 184.85, Headnote 1(a), Subpart C, Part 15, Schedule 1, Tariff Schedules of the United States, is controlling. That headnote states:

> 1. For the purpose of this subpart -- (a) the term "animal feeds, and ingredients therefore" embraces products chiefly used as ingredients in such food, respectively, but such term does not include any product provided for in Schedule 4 (except part 2E thereof) or Schedule 5 (except part 1K thereof); xxx

The significance of this particular Headnote should not be minimized. In the case of Joseph F. Hendrix v. United States, 82 Cust. Ct. 264, C.D. 4809 (1979), the court emphasized this point in the following manner.

> In the absence of Headnote 1(a) of Schedule 1, Part 15, Subpart C of the Tariff Schedules of the United States, the marigold

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meal would fall within the provision as classified. However, said Headnote excludes products provided for in Schedule 5 (except Part 2E) or Schedule 5 (except Part 1K). Plaintiff's claim is under Schedule 4, Part 9; hence, if the claimed provision is applicable to the merchandise at bar, it would not be dutiable under the provision utilized for classification. The intent of Congress in enacting the modification of Headnote 1(a) of Schedule 1, Part 15, Subpart C, is referred to in Senate Report No. 530 (at pp. 11-12), and the Conference Report No. 979 (at p. 12). This exclusionary language was not initially in the Tariff Schedules of the United States, but was added by Public Law 89-241 (1965). The reports point out the amendment is designed to insure that articles described in the chemical and nonmetallic mineral schedules are not to be dutiable as animal feed. The sole judicial interpretation of said Headnote 1(a) insofar as research reveals is the case of Enrique Garza v. United States, 66 Cust. Ct. 212, C.D. 4192 (1971), which held that plaintiff's burden is limited to establishing that the imported merchandise comes within the scope of the provision claimed.

None of the products are subject to classification under 184.85, TSUS, for the following reasons:

Aminovite is an animal feed and is classified as an animal feed containing milk or milk derivatives in item 184.80/950.17 TSUS. In view of the fact that 33 percent of the product is skim milk powder, it is subject to quota restrictions which should be applied to future shipments. The quota aspect of this importation is not under consideration here.

Supplement C is classified under the provision for mixed feeds, and mixed feed ingredients in item 184.70, TSUS. The listed ingredients meet the requirements of Headnote 1(b), Part 15, Schedule 1, which defines the terms mixed feeds and mixed feed ingredients since there is over 6 percent grains (barley) included in the formula.

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The products described as Salkavite, Folactin Red and Feromel are drug products that are subject to classification in Schedule 4, TSUS. Noting the exclusionary language in Headnote 1(a) set forth above, they may not be classified in Part 15 of Schedule 1, TSUS.

Feromel is a non-benzenoid iron supplement with honey and glucose and is classifiable as a drug in item 439.50, TSUS. See ORR 270/67 which held reduced iron to be a drug in item 439.50.

Folactin Red and Salkavite are vitamin and mineral supplements containing benzenoid vitamins (riboflavin, folic acid, B12 and E). They are classifiable under the provision for other benzenoid drugs in item 412.70, TSUS. See C.I.E. 1180/65 which classified a vitamin supplement as a drug in items 407.85 (412.70) or 439.50, TSUS.

You are directed to deny this protest except to the extent that reclassification of the feed supplements as set forth above results in a partial allowance. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner
For Harvey B. Fox
Director, Classification
and Value Division

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076586

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 20 MAR 1986

FILE: CLA-2 CO:R:CV:G
076589 jlj

076589

TO : Area Director of Customs
New York Seaport
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 45/85 Concerning the Tariff Classification of Nunc Laboratory Plasticware Imported from Denmark

This request for Internal Advice was initiated by two letters from Mr. Rick St. Pierre, General Manager of Inter Lab, 187 East Wilbur Road, Suite 10, Thousand Oaks, California 91360. The importations were made in the name of Bear Medical Systems.

FACTS:

The instant merchandise is Nunc plasticware -- i.e., containers, flasks, dishes, plates and tubes imported from Denmark. The plasticware is used to transport biological specimens to clinical laboratories. The laboratories then let the specimens grow in the plasticware in order to diagnose and identify infectious organisms.

The inquirer claims that the merchandise is classifiable as containers of plastic, chiefly used for packing, transporting or marketing of merchandise, in item 772.20, Tariff Schedules of the United States (TSUS). The merchandise was liquidated under the provision for articles not specially provided for, of plastics, other, in item 774.55, TSUS, because it was considered to be more than containers.

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ISSUE:

Is the plastic disposable Nunc labware classifiable in item 772.20, TSUS, or in item 774.55, TSUS?

LAW AND ANALYSIS:

As noted in Customs Headquarters Ruling Letter (HRL) 073323 of June 26, 1984, classification of merchandise in item 772.20, TSUS, requires that the merchandise satisfy two requirements. The first requirement is that the items involved must be containers. The second requirement is that the items involved must be chiefly used for the packing, transporting or marketing of merchandise.

The Nunc plasticware is intended to function as a suitable environment for biological specimens. The plasticware and its contents also serve as an integral unit for analysis. The American Heritage Dictionary of the English Language defines "container" as "a thing in which material is held or carried; receptacle." The instant plasticware is more than a receptacle and more than a thing in which material is held or carried, therefore the Nunc plasticware is more than mere containers.

The inquirer claims that the chief use of the instant merchandise is to pack, transport or market merchandise. He states the following regarding the use of the Nunc labware:

> All Nunc plasticware is designed to transport liquids, cell cultures and suspensions, bacterial cultures and proteinasceous layers -- safely and conveniently, preserving the sterile integrity of the contained components....
>
> Basic research laboratories and industrial accounts use Nunc containers to store, grow, transport and market cells and liquids. Specific cell lines are generally sold this way.

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> Private companies catering to the clinical market will commonly use Nunc petri dishes which contain selective agars for bacterial identification (for example, V.D., strep., etc.) to market their products in.
>
> Treated Nunc containers (immunoplastics) are also widely utilized by industry in the transportation and marketing of immobilized proteins used in RIA and EIA diagnostic procedures. This allows clinical laboratories who receive this material to diagnose and characterize infectious organisms in human serum.
>
> Lastly, Nunc produces transport containers... specifically designed for the safe transport of glass ampoules...specifically designed to preserve the integrity of the enclosed materials.

Customs Headquarters Ruling Letter (HRL) 073083, dated December 30, 1983, states that "When merchandise is susceptible to uses other than those which may qualify it for classification under a provision governed by chief use, and where the chief use provision would result in the imposition of a more favorable rate of duty, it is incumbent upon the importer to support such claimed classification with convincing evidence." The inquirer has not provided any hard evidence that the chief use of the containers is to pack, transport or market merchandise. Indeed, the descriptive literature and the above-mentioned statements indicate that the merchandise is at least as likely to be used within institutions for maintenance and testing of biological specimens as for packing, transporting or marketing merchandise.

The inquirer cites T.D. 56048(12) in support of his claimed classification. T.D. 56048(12) classified merchandise in item 772.20, TSUS, based on the premise that the articles were chiefly used to pack, transport, or market merchandise. That premise seems unwarranted regarding the Nunc labware.

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Inasmuch as the Nunc labware is more than containers and inasmuch as it has not been proven to be chiefly used for the packing, transporting or marketing of merchandise, the Nunc plasticware is not eligible for classification in item 772.20, TSUS. Instead, we find that the Nunc plasticware is classifiable in item 774.55, TSUS.

HOLDING:

The Nunc laboratory plasticware is classifiable in item 774.55, TSUS. Please inform the inquirer of this decision.

Arthur P. Schaffner
for Harvey B. Fox

076589

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR - 6 1986

REFER TO
CLA-2 CO:R:CV:G
076600 c

076600

District Director of Customs
300 S. Ferry Street
Terminal Island, San Pedro 90731

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 2704-4-003248

This protest was filed against your decisions in the liquidation on June 1, 1984, of the following entries:

Entry No.	Date of Liquidation
83-672185	5-06-83
83-672183	5-04-83
83-672189	5-10-83
83-672190	5-11-83
83-672181	5-03-83

FACTS:

Certain footwear consisting of women's jogging shoes, stock Nos. 57111, 57116, and 57117 and youth's jogging shoes stock No. 56111, were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear involved is in chief value of leather and is properly classifiable as leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending or gender and value per pair.

ISSUE:

Do the cost breakdowns submitted by the inquirer show that the footwear is in chief value of leather?

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LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on the matter was that importer submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

Analysis of Cost Breakdown on Stock No. 57111

The cost breakdown indicates that 1.552 sq. ft. was purchased for each pair of shoes. It states that 0.866 sq. ft. is incorporated in the shoes with waste of 0.686 sq. ft. The breakdown indicates no salvageable waste. The laboratory report shows that just 0.726 sq. ft. is present in a pair of shoes. That figure would imply a gross waste of 53 percent or a net waste of 114 percent when compared against the declared 1.552 sq. ft. amount for total leather.

Analysis of Cost Breakdown on Stock No. 57117

The cost breakdown for No. 57117 is the same as for No. 57111. The importer states that the two models are the same style except for differences in color. We have no laboratory report for No. 57117, but we assume, based upon the importer's statement regarding the similarity of the shoes, that No. 57117 would yield approximately the same implied waste percentages as No. 57111. The cost breakdown for No. 57117 indicates a cost for rubber/plastics which exceeds that of leather. The leather cost is shown as $0.966 plus $0.001 for punch hole on eyelet stay for a total of $0.967. Rubber/plastics is shown as $0.849 plus $0.03 for roughing EVA and rubber piece and $0.10 for cement EVA and rubber piece and buffing, for a total of $0.979. Once the leather in the cost breakdown is recalculated in accordance with the instructions in the telex of October 15, 1984, to adjust for excessive waste, the cost of rubber/plastics is clearly greater than the cost of leather.

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Analysis of Cost Breakdown on Stock No. 56111

The cost breakdown for No. 56111 shows 1.149 square feet of purchased leather with waste of 0.546 sq. ft. As in No. 57111/No. 57117, it indicates that none of the waste is salvaged. Again, this information is inconsistent with laboratory findings. The laboratory report shows just 0.534 sq. ft. in the shoe with an implied gross waste of 54 percent and net waste of 115 percent.

Analysis of Cost Breakdown on Stage No. 57116

Comparing, in similar fashion, the laboratory report with the cost breakdown on No. 57116, the implied gross waste on No. 57116 is 56 percent and the implied net waste for the shoe is 126 percent. The cost breakdown for No. 57116, even with its excessive implied leather waste, shows rubber/plastics to be slightly more costly than the leather, assuming that the $0.13 for "Roughing Eva and Rubber Piece" and "Cement Eva to Rubber Piece and Buffing" should be included in the rubber/plastics totals. When the leather costs are adjusted downward for excessive waste, in accordance with Headquarters' instructions, the ascendancy of rubber/plastics is even more clear.

As with Nos. 57111 and 57117, the cost breakdowns for Nos. 56111 and and 57116, even with their excessive implied leather waste show rubber/plastics to be more costly than leather based on our attributing the $0.13 for "Roughing EVA and Rubber Pieces" and "Cement EVA to Rubber Piece and Buffing" to the rubber/plastics totals. When the leather costs are adjusted downward for excessive waste there is even a greater disparity between the leather costs and the rubber/plastics costs.

It is to be noted that all the waste figures shown are substantially in excess of the limits considered reasonable by our telex of October 15, 1984, which specified that 47 percent gross waste or 89 percent net waste to be the maximum waste factors allowable absent plausible explanations for the excessive waste.

The protestant has offered the following as a plausible explanation for the waste figures being in excess of the maximums set forth in our telex of October 15, 1984:

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(1) The sizes of the sample shoes subjected to a laboratory analysis by Customs may differ from the sizes listed on the detailed component breakdowns submitted by the manufacturer.

(2) The process of disassembling a completed shoe and then measuring each piece of leather, as apparently performed by the Customs laboratory does not provide a totally accurate measurement.

(3) Such disassembled pieces may have been subjected to shrinkage, trimming, forming and change in shape so that an accurate measurement of the size of the original leather piece as cut from a pattern may be impossible to obtain.

(4) Photocopies of such disassembled pieces which we understand to be the basis for Customs laboratory measurements may further distort calculations since the photocopy process may slightly modify the size.

While the method of measuring the amount of leather present in the subject footwear may not be completely accurate, we are not persuaded that it was so inaccurate as to bring the excessive waste figures within the acceptable minimum waste allowances set forth in our telex of October 15, 1984. Also, we do not agree that loss of leather due to shrinkage, trimming, forming or other change provides a plausible explanation of the excessive waste figures in this instance.

In conclusion, it should be noted that all the cost breakdowns submitted by the protestant show that the footwear is in chief value of rubber/plastics even without the leather costs being adjusted for excessive waste.

HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action be sent to the protestant.

Sincerely,

Arthur Scheiffler

For Harvey B. Fox
Director, Classification
and Value Division

B6

RELEASED TO THE

076600

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

23 JAN 1986

CLA-2:CO:R:CV:G
076627 PR

076627

Mr. Karl Spilhaus
President
Northern Textile Association
211 Congress Street
Boston, Massachusetts 02110

Dear Mr. Spilhaus:

This is in reply to your letter of July 18, 1985, concerning whether the processing of certain narrow elastic fabrics in this country will convert that merchandise into products of the United States and, thus, qualify it for treatment under item 807.00, Tariff Schedules of the United States (TSUS).

We understand that the merchandise is produced in Hong Kong, shipped to the United States for processing, and then sent abroad to be used in the manufacture of bras. The submitted sample, 1/2 inch elastic webbing No. HEI-101, is in the greige. Samples of the same material after processing and dyeing have also been submitted. It is stated that the greige material is not very clean -- oil still exists in the yarn, dirt and oil from the manufacturing process are still on the web, and the general overall appearance makes it unsuitable for sale due to being wrinkled and limp. Further, the greige fabric is stated to be unsuitable for the manufacture of bras because the stretch and the width of the fabric have not been stablized, the shrinkage has not been controlled, and the hand is too soft.

In the United States the merchandise is scoured in a chemical bath, rinsed, and dried prior to dyeing. The fabric is then run through another chemical bath containing fluorescent optical whiteners and/or dyestuff, and other chemical agents. It is squeezed to remove excess chemicals and liquids, and put through another chemical bath containing optical brightners. It is squeezed again and run through a closed steam chamber to prevent shrinkage. After rinsing it is again dried and subjected to a chemical bath containing a wetting agent and softeners, then dried again.

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It is the view of the Customs Service that the material, in the condition as originally imported into the United States from Hong Kong, is readily identifiable as bra strap material and would not reasonably be used for any other purpose. Accordingly, the subject material, having undergone the processing described above, has not been substantially transformed into a new and different article of commerce by means of substantial manufacturing or processing operations, in accordance with Section 12.130(b), Customs Regulations (19 CFR 12.130(b)). The manufacturing or processing operations performed in this country on that merchandise merely constitute an advancement of already dedicated material. As a result, the merchandise has not been converted into a product of the United States and is not eligible for classification under item 807.00, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

LC9960

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

JAN 27 1986

REFER TO

CIA-2 CO:R:CV:G
076632 JAS
813869

076632

Mr. Richard B. Platt
Specialty Auto Parts USA, Inc.
28314 Hayes Ave.
P.O. Box 306
Roseville, Michigan 48066

Dear Mr. Platt:

In your letter of May 22, 1985, you inquire as to the tariff classification of certain automotive parts from unspecified countries. Samples were submitted.

Sample 66038 SF is an internally threaded steel hex fastener approximately 1 1/4 inches long. It resembles a hex acorn nut but for the shank. Sample 66038 is identical except that it has a flat hex head and is slightly shorter. Sample 66021 is an aluminum fastener 4 5/16 inches long with one end hex shaped and the other end round. It is internally threaded at the round end.

Sample 66004 is a fastener, approximately 3 7/8 inches long and internally threaded at the round end. A 2 inch protrusion at the other end forms a handle. Sample 66036 is 3 5/16 inches long and identical to sample 66004, except that it has a detachable wing cap on one end. Sample 66006 is identical to sample 66036 except that it is 4 inches long.

The described samples are said to be used to attach valve covers to automobile engine blocks and are designed or intended for use with studs. We have considered the provision for nuts, of iron or steel, in item 646.56, Tariff Schedules of the United States (TSUS), as possibly applying. However, these articles do not come within the common meaning of the term "nut" for tariff purposes, nor is there any evidence that they are bought and sold or regarded as such in the trade.

The more specific tariff designation for these specially designed fasteners is under the provision for other fasteners or holders of base metal (except nuts) used with screws, bolts, or studs, in item 646.42, TSUS, dutiable at the rate of 6.2 percent ad valorem. The wing caps in samples 66036 and 66006 are classifiable, in accordance with a prior Headquarters ruling, under the provision for other parts of internal combustion engines, other than compression ignition engines, in item 660.67, TSUS, dutiable at the rate of 3.2 percent ad valorem. If from countries or territories listed on pp. 4 and 5 of the TSUS, such fasteners and wing caps would be free of duty under the Generalized System of Preferences (GSP), if otherwise found to be qualified. Copies of these pages, and the law and regulations relating to GSP, are enclosed.

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Samples 0395, 0365, 038SF and 0385, are slotted set screws. Despite their stated use in securing the valve covers, they are specifically provided for as iron or steel screws having shanks or threads not over 0.24 inch in diameter, in item 646.60, TSUS, dutiable at the rate of 6.8 percent ad valorem. Articles so classified are not subject to GSP.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

076632

B10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

20 MAR 1986

REFER TO
CLA-2 CO:R:CV:G
076666 JGH

076666

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Re: Internal Advice 38/85, Petroleum Derivative Product Used as Feedstock or Motor Fuel

The imported petroleum product from Romania was variously invoiced as unleaded gasoline, unfinished naphtha, or unleaded blendstock.

In behalf of the importer it is urged that the imported petroleum derivative is not classifiable as motor fuel in item 475.25, TSUS, because the octane is too low: below 87. It is contended that as federal regulations require a retail service station to sell at least one grade of unleaded gasoline of not less than 87 octane, the import could not be chiefly used as motor fuel. It is further contended that as the national average for different brands of gasoline approaches 87.5 octane, this product can not be used as motor fuel. It is also stated that none of the imported product has been used as motor fuel in its imported condition but is used as a blendstock.

Therefore, in behalf of the importer it is urged that the imported product be considered a naphtha - either under item 475.35, as a petroleum naphtha, or item 407.16, TSUS, as a benzenoid mixture.

In order for the product to be considered a benzenoid mixture in item 407.16, TSUS, it would have to be synthetically produced and possess a significant amount of dutiable benzenoids. There is no evidence that this petroleum product meets this test. Therefore, it is not classifiable in item 407.16, TSUS. As for classification in item 475.35, TSUS, petroleum naphtha, it cannot be classified in that provision if it meets the standards for motor fuel, item 475.25, TSUS.

The test reports on this imported petroleum product show that it meets the current standards published as ASTM D439 for automotive gasoline. Therefore, as this product meets these standards, it is classifiable in item 475.25, TSUS. You should advise the internal advice applicant of this decision.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

Arthur P. Scheffler

for Harvey B. Fox
Director, Classification
and Value Division

B11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO
CLA-2:CO:R:CV:G
19 FEB 1986 076693 JLF

076693

Mr. Robert T. Stack
Siegel, Mandel & Davidson, P.C.
One Whitehall Street
New York, New York 10004

Dear Mr. Stack:

This refers to your requests of August 1, 1985 and November 14, 1985, for reconsideration of two Customs Rulings, Nos. 813725 and 813727, both of May 31, 1985.

The merchandise under review consists of a man's jacket and vest, both chiefly of cotton. Both styles have a 3-inch wide textile placket made from the same fabric as the outer shell which is attached to the body of the garment by metal snaps and partially covers a full-front, zippered opening. The top part of the zipper is covered by a double collar construction which combines a rib knit collar and a second collar, which if worn in an up position will function as a storm collar, held in place with a textile tab and snap. The placket extends upward from the top of the waistband to about an inch below the neck tab closure.

Both garments were ruled to be classifiable under provisions for ornamented apparel because of the presence of the partial plackets. The plackets were held to be ornamentation because they do not extend the entire length of the zippers.

The test for determining what constitutes ornamentation is found in Blairmoor Knitwear Corp. v. United States, 60 Cust. Ct. 388, C.D. 3396 (1968). In applying the principles in that case to the present circumstances, it must be determined whether the placket primarily enhances or adorns the jacket or whether any decorative effect it may impart is merely incidental to its utilitarian function.

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You assert that the textile placket covering the zipper on each garment is functional for purposes of providing additional warmth and does not constitute ornamentation. You further state that the functionality of the placket would not be at issue if the placket had covered the entire length of the zipper.

Both the jacket and vest are designed for wear in cold weather. Warmth is a primary consideration. The placket over the zipper in each instance serves the very useful function of providing additional protection against the cold. Even though the textile placket itself does not cover the entire zipper, its contribution to each garment is substantial. Further, considering the overall appearance of the plackets on the garments, their decorative effect does not appear to be significant.

Therefore, the plackets in question on the man's jacket and vest primarily serve to create a double front closure in conjunction with the collar and functions to prevent heat loss through the entire length of the zipper.

Pursuant to Section 177.9(d), Customs Regulations (19 CFR 177.9(d)), the Customs Rulings in question are hereby modified to reflect that the garments, style nos. 3531 and 0057, which are the subjects of those rulings, are classifiable under the provisions for nonornamented wearing apparel.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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076693

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

076783

REFER TO

3 APR 1986

CLA-2:CO:R:CV:G
076783 PR

Leonard L. Rosenberg, Esq.
Sandler & Travis, P.A.
444 Brickell Avenue
Miami, Florida 33131

Dear Mr. Rosenberg:

This is in reply to your letter of August 7, 1985, on behalf of Penntex, Inc., requesting that Customs reconsider a decision by the District Director, San Juan, Puerto Rico, concerning the tariff status of certain cotton terry towelling material imported from Pakistan and manufactured into terry towels in a foreign trade zone in Mayaguez, Puerto Rico.

You state that the fabric concerned is one hundred percent cotton terry cloth, woven, in continous lengths, and in widths that may vary from 40 inches to 52 inches. The fabric is woven in a pattern that clearly identifies the terry towels to be made from that fabric. Nonterry (flat woven) strips separate the towel sections. The large terry sections alternate with three small terry strips that are approximately 1-3/4 inches 2-1/2 inches wide. In a conference, you indicated you did not know what those small sections would be used for. The pattern is repeated throughout the length of the material. You emphasized that the merchandise will be imported in either two towel or three towel widths.

You state that in most instances the fabric will be converted into towels in the foreign trade zone, but there is a possibility that a small amount will be used to make other products. A sample baby bib was submitted.

When viewing the submitted fabric sample, it is evident to Customs that the fabric as imported into the foreign trade zone has no real commercial value for the manufacture of any article other than towels. The cutting lines are clearly defined. The fabric is dedicated to the manufacture of towels when imported into the foreign trade zone and the mere cutting and hemming of towels from that fabric does not amount to a substantial transformation of that fabric.

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The merchandise, at the time of importation into the zone, is properly considered to be unfinished towels. United States v. Buss & Co., 5 Ct. Cust. Appls. 110, T.D. 34138 (1914); United States v. M.H. Rogers, Inc., 18 CCPA 271, T.D. 44448 (1930).

Your reliance on Belcrest Linens v. United States, Appeal No. 84-734 (Fed. Cir., decided August 21, 1984), is misplaced. In that case, the fabric was not only cut into pillow cases, but it was also stitched to form the article and the open edges were scalloped. Further, the court found that there existed a real commercial use of the fabric in the manufacture of articles other than the ultimate pillow cases. Clearly, that decision is not controlling on the instant set of facts.

Considering all the factors set out in Section 12.130, Customs Regulations (19 CFR 12.130), concerning the criteria for determining the country of origin of merchandise, it is our view that the mere cutting and hemming of towels in a foreign trade zone from fabric which enters that zone with pre-determined cutting lines woven into the fabric does not amount to a substantial transformation of that fabric in the zone, and the resulting towels leaving the zone are considered to be products of the country where the terry towelling material was woven.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
076792 c

076792

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3801-5-000759

This protest was filed against your decision in the liquidations on December 7, 1984, of entry No. 84340058 dated March 12, 1984, and entry No. 84340194 dated March 20, 1984, covering shipments of polystyrene plastic containers manufactured in Canada.

FACTS:

The merchandise involved designated as "Rolykit cosmetic case model 683" or "Amway Corp. #X7767" measures 8 3/4 inches by 5 inches when closed. It is made of non-transparent rigid plastic. The manufacturer is the owner of a unique patented system which allows the article to be folded up. This case can be carried by means of the flip down handle which is affixed thereto.

This cosmetic case was classified in liquidation under the provision for other luggage of other materials in item 706.62, Tariff Schedules of the United States (TSUS).

The protestant claims that the merchandise is properly classifiable under the provision for other household articles not specially provided for, of rubber or plastics in item 772.15, TSUS.

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ISSUE:

Is the cosmetic case designed to contain personal effects during travel?

LAW AND ANALYSIS:

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS, provides that "For the purposes of the tariff schedules - - (a) the term 'luggage' covers — (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel."

The advertising material for the instant cosmetic kit reads as follows:

> Gives you everything at your fingertips for a beautiful look and the flip-up mirror lets you see how lovely you are. Sleek polystyrene styling. Carry it anywhere with the flip-down handle. Five specially linked trays with movable partitions fulfill your cosmetic and jewelry storage needs. See them all at a glance, then roll it up into one sleek case.

Based on an examination of a sample of the merchandise in issue and the above-quoted advertising material, it is our view that the cosmetic case fits within the definition of luggage for tariff purposes. Specifically, the flip-down handle and the foldable nature of the case show that it was designed primarily to contain personal effects during travel.

HOLDING:

The cosmetic case was properly classified in liquidation under item 706.62, TSUS.

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The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

076792

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 10 1986

REFER TO
CLA-2 CO:R:CV:G
076852 JLF
814611

076852

Mr. Joel K. Simon
Serko, Simon & Abbey
1 World Trade Center
Suite 3371
New York, New York 10048

Dear Mr. Simon:

Your letter dated July 17, 1985, addressed to our New York office, regarding the classification of certain articles marketed as "Preserved Personalities," has been referred to our office for direct reply to you.

You assert that the merchandise should be classified under the provision for other textile articles, whether or not ornamented, of man-made fibers in item 386.1343, Tariff Schedules of the United States (TSUS), which allows duty-free treatment for such merchandise produced in Taiwan under the Generalized System of Preferences.

The issue presented by your request is whether this merchandise is chiefly used for the purpose of amusement and therefore classifiable as a toy under the provision for other toys not specially provided for in item 737.95, TSUS.

The court in United States v. Topps Chewing Gum Inc., 58 CCPA 157, C.A.D. 1022 (1971), considered what should be considered a toy for tariff classification purposes. The merchandise involved in that case was buttons with amusing savings written on them. The court stated that "if the purpose of an object is to give the same kind of amusement as playthings give, its purpose is amusement, whether the object is to be manually manipulated, used in a game, or as here, worn." The court considered that the "frivolous enjoyment" derived from the buttons is the same kind derived from objects commonly thought of as toys. This is a relevant consideration for the case at hand. The stuffed torso in a plastic dome container is given as a gift to an appropriately identified recipient for purposes of amusement in relation to that recipient's profession.

The marketing of "Preserved Personalities" in card and gift stores, rather than toy stores, is not a dispositive factor in determining their classification. That the torso of the article is passive and essentially nonmanipulative is not indicative of its potential for amusement. Neither of these factors discourage consideration of the "Preserved Personalities" as toys.

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Therefore, the merchandise subject to your inquiry, should be classified under the provision for other toys not specially provided for in item 737.95, TSUS, and dutiable at the 1985 rate of 9.6 percent ad valorem.

Our consideration of this matter does not extend the time limitations placed upon filing a protest nor does our consideration create a right to litigate this matter in connection with liquidations for which a timely protest has not been filed.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

076852

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 10 1986

REFER TO
CLA-2 CO:R:CV:G
076862 sm

076862

Mr. Bill Bickle
385 Linwell Road
St. Catharines, Ontario L2M 2P3
Canada

Dear Mr. Bickle:

You have requested a ruling on the tariff classification of trunks for Model A Fords that will be partially manufactured (without hardware) in Canada.

This article is classifiable under TSUS item 692.32 as other parts of motor vehicles. While it is true that the trunk is not strictly necessary to the safe and efficient operation of the automobile, it does serve a significant useful function in relation to it by making possible the carrying of tools, personal belongings, and other merchandise. Once attached, the trunk is not ordinarily removed from the vehicle, for which it is specifically designed. Furthermore, it lacks a handle and weighs too much to be carried. Thus, it is not considered to be luggage.

The 1986 column 1 rate of duty for item 692.32, TSUS, 3.2 percent, is scheduled for further reduction to 3.1 percent in 1987.

Sincerely,

Arthur P. Schaffner
For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

FEB 24 1986

REFER TO

CLA-2 CO:R:CV:G
076899 JNB

076899

Area Director of Customs
New York Seaport
New York, New York 10048

Re: Internal Advice 73/85; Classification of Storalene

Dear Sir:

This internal advice involves the classification of a product known as Storalene 555. This product is used as a substrate or backing for vinyl wall covering materials. It is imported by Stora Kopparberg Corporation of Stamford, Connecticut. It is comprised of a blend of approximately 65 percent cellulosic wood pulp fibers and 35 percent man-made fibers. The textile fibers generally exceed 6 millimeters in length and are not digested in the pulp making process. The wood pulp fibers are generally less than 4 millimeters in length.

On two occasions, (Headquarters Ruling Letters 020956, dated November 13, 1972, and 064032, dated April 11, 1980) a product called Storalene has been classified by Customs as papers, impregnated or coated ... : other, not specially provided for: not lithographically printed: impregnated, coated, or both: not gummed, under the provisions of item 254.80, Tariff Schedules of the United States, (TSUS). Currently, articles classifiable under item 254.80 are dutiable at the rate of 0.4 percent ad valorem.

The Dexter Corporation (Dexter), a domestic manufacturer of a similar product called Dexter Grade 3549, made an inquiry with Customs regarding the classification of Storalene. In Headquarters Ruling Letter 073555, dated May 29, 1984, Dexter Grade 3549 was found to be classifiable as nonwoven fabrics ... of textile materials, whether or not coated or filled: of man-made fibers, under the provisions of item 355.25, TSUS, dutiable at the 1986 rate of 2¢ per pound plus 12.9 percent ad valorem. Products classifiable under this item number are also subject to quantitative limitations pursuant to textile category 669.

The Dexter product was comprised of 12 percent polyester fibers by weight. The textile fibers averaged 6 millimeters in length. The product was used in hospital gowns and surgical drapes.

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As a result of the Dexter inquiry, Customs reassessed the classification of Storalene and determined that the textile classification was more appropriate. Stora Kopparberg was notified by Customs of the intended reclassification. In response to such notice, counsel for Stora Kopparberg has requested that, in light of prior rulings, Internal Advice procedures be invoked to settle the matter.

Counsel avers that an established and uniform practice exists for the classification of Storalene. If, pursuant to the provisions of section 315(d) of the Tariff Act of 1930, (19 U.S.C. 1315(d)), there is such a practice, then Customs will be required to publish a change of practice in the Federal Register and invite public comment. Additionally, issuance of an Internal Advice ruling considering the merits of the change in classification would be premature.

Counsel bases his claim of the existence of a practice on two grounds. First, the Secretary, pursuant to the provisions of 19 U.S.C. 1315(d), has made a finding of an established and uniform practice in this instance. Second, in the absence of a formal "finding", he asserts that there is an established and uniform practice for the classification of Storalene based on continuous entry and liquidation of this product as coated or impregnated paper under the provisions of item 254.80, TSUS.

In Asiatic Petroleum v. United States, 59 CCPA 20, C.A.D. 1029 (1971), the court found that a letter written by the Acting Commissioner of Customs acknowledging the existence of "an established and uniform" practice was sufficient evidence to prove that the Secretary of the Treasury had made a finding that such a practice existed. Counsel posits that if a written acknowledgement is sufficient proof to sustain a finding of a practice, then years of continuous importation of a product in conformance with binding Headquarters ruling letters should also be sufficient proof upon which to base a finding of the existence of an established and uniform practice.

In further support of his claims, counsel references the fact that Customs issued ruling letters 020956 and 064032 to his client classifying Storalene as coated or impregnated paper. The first of these ruling letters was issued in 1972. The subsequent ruling letter was issued to Stora Kopparberg in 1979. Headquarters Ruling Letter 032797, dated April 3, 1975, is alleged to be consistent with these rulings in finding that "certain non-woven fabrics" manufactured on a papermaking machine by a process similar to papermaking were classified under item 254.80. The examined sample in the 1975 decision was found to be 60 percent polyester fibers, 22 percent paper fibers and 18 percent resinous binder.

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Counsel's reasoning is not persuasive. He presents no evidence to establish that the Secretary of the Treasury or his delegate has made a finding of a practice with regard to Storalene. No decision regarding the classification of Storalene has ever been published. Other Headquarters ruling letters (061187 dated June 19, 1979, and 065193 dated February 17, 1981, a reconsideration of the former decision) have specifically held similar products to be textiles rather than paper. We therefore find the Secretary has not made a finding that an established and uniform practice exists with regard to the classification of Storalene.

We concur that an established and uniform practice can be shown by actual uniform liquidations, even though the Secretary of the Treasury has made no 'finding' that such a practice existed. Heraeus-Amersil, Inc. v. United States, 8 CIT ___, 600 F. Supp. 221 (1984), clarified by Slip Op. 85-88 (1985). The Court can make the determination on a case-by-case basis according to certain guiding principles. Factors to be considered are the number of entries resulting in the alleged uniform classifications, the number of ports at which the merchandise was entered, the period of time at which the alleged uniform classifications took place, and whether there had been any uncertainty regarding the classification over its history. Heraeus-Amersil, supra., Slip. Op. 85-88.

There is no evidence to indicate that Storalene was entered at any port save New York. We are informed by the National Import Specialist that the entries have been continuous, but not in large numbers. As noted above, there has been uncertainty over the classification, in that like articles have been held to be textiles for classification purposes. Accordingly, we find, as a matter of law, that an established and uniform practice regarding the classification of Storalene does not exist.

The next issue involves the correctness of the classification of Storalene. Headquarters Ruling Letter 061187 held that the length of the fibers was a determinative characteristic as to whether a product was textile or paper. Nonwoven textiles contain fibers which generally range from 6 to 12 millimeters in length. Cellulosic fibers are generally 1 to 4 millimeters in length. Headquarters Ruling Letter 065193 flatly held that "material with textile fibers in excess of 4 millimeters which are not digested is not paper."

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Additionally, the Dexter Grade 3549, which contained 12 percent polyester fibers by weight, was held to be a textile fabric. A fortiori, Storalene, similarly constructed, but with 34.6 percent by weight polyester fibers, should be considered a fabric.

Textile fibers add characteristics to the product which are not found in mere papers. Specifically, the textile adds strength and flexibility to Storalene to enable its use as a backing for vinyl wall coverings. Further, the product is marketed as a fabric. It should be noted that descriptive literature of Storalene published by the importer refers to it as a fabric. These factors cannot be ignored when considering classification.

Counsel claims that the method of manufacture should be a determinative factor in the classification of Storalene. Headquarters Ruling Letters 061187 and 065193 involved products that were made on a rotoformer, a device which is a modified papermaking machine. Inasmuch as Storalene is manufactured on a papermaking machine, counsel avers that classification as a textile should be precluded.

Customs has ruled that in order to be classifiable as paper, a product must be manufactured on an unmodified papermaking machine. This mandatory language precludes classification as paper of a product made on a modified papermaking machine. By contrast, a nonwoven fabric may be produced by equipment which, though similar to that used in the manufacture of paper, is modified to produce nonwovens. See Headquarters Ruling Letter 061187. Contrary to classification of paper, the classification of textiles is not dictated by the method of manufacture. The mere production of a product on a papermaking or modified papermaking machine does not preclude its classification as a textile. Because of this distinction, we are of the view that the method of manufacture, while influential in the classification of the product, should not be determinative.

Accordingly, we are of the view that the subject storalene is classifiable as nonwoven fabrics ... of textile materials, whether or not coated or filled: of man-made fibers, under the provisions of item 355.25, TSUS, dutiable at the 1986 rate of 2¢ per pound plus 12.9 percent ad valorem. Products classifiable under this item number may also be subject to quantitative limitations pursuant to textile category 669.

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Finally, counsel notes that if the classification of Storalene as a textile fabric is upheld, Stora Kopparberg is entitled to classification under item 254.80, TSUS, of all entries made prior to issuance of a notice from Customs Headquarters modifying or revoking Headquarters Ruling Letter 064032. Such notification is required pursuant to section 177.9(d) of the Customs Regulations (19 CFR 177.9(d)) in order to repeal the effect of the earlier ruling as to future entries. We concur. Accordingly, Headquarters Ruling Letter 064032 is revoked. Counsel shall be notifed of the effective date of revocation.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

076896

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

24 FEB 1986

REFER TO
CLA-2 CO:R:CV:G
076950 JLV

076950

[redacted]

Dear [redacted]

In your letter of September 10, 1985, you requested, on behalf of your client, [redacted] a ruling on whether certain processing operations result in a substantial transformation for country of origin purposes.

The following processing will be performed on standard black plain end steel pipe, ASTM A-120 specification, imported into [redacted]

1. Cut each 20 foot length of pipe into two lengths of 9 feet 11 inches.

2. Thread and ream newly cut ends.

3. Degrease and wash; pickle by immersion in sulfuric acid to remove rust and scale.

4. Galvanize by hot dip in molten zinc after washing, coating with flux, and preheating to 250°F. Blow off excess zinc.

5. Reheat threaded ends and blow off excess zinc.

6. Immerse in chromic acid; varnish.

7. Test, label, and add coupling to one end and a protective cap to the other.

The resulting product is known as rigid electrical steel conduit which will meet the U.L. 6 standard, as well as Federal Specification WW-C-581D and ANSI C80.1. It will be used in construction and other areas where rigid electrical steel conduit is required as a raceway for wires or conductors of electrical current. The costs of processing performed in [redacted] will be approximately 50 percent of the value of the completed conduit.

It is your conclusion that these processing operations substantially transform the black plain end steel pipe into a new and different article, having a distinctive name, character, or use. Anheuser-Busch Brewing Association v. United States, 207 U.S. 556 (1908).

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The cutting to length, threading, reaming, and pickling do not change the imported black plain end pipe into a product of [redacted] These operations are finishing operations that do not affect the underlying nature of the article as "pipe." The additional processing by galvanizing and related processes (fluxing, preheating, hot dipping, chromating and varnishing) presents a novel issue. It is this series of operations that, according to your statements, dedicates the pipe to a specific commercial use. Although other uses are not precluded, it is stated that the commercial realities (primarily the cost of galvanized pipe, the specific lengths, and the UL label) identify the product as rigid electrical conduit. Other uses would be secondary, if not merely fugitive, uses.

Galvanized pipe is used in numerous other applications. Galvanizing, whether hot dip or otherwise, is a treatment that gives surface protection to a product such as steel pipe. The process by which a protective zinc layer is added to the pipe is relevant to its effectiveness and durability. Hot dip galvanizing gives a more durable protection because it involves the interpenetration of the surface layer of ferrous molecules by the zinc. The nature of hot dip galvanizing for rigid electrical conduit is such that it must give a protective coating that is at least 0.0008 inch (0.02mm) thick and evenly distributed to give a smooth surface finish. This standard must be met in order for the pipe to be labeled and used in the industry as rigid electrical conduit (galvanized). Galvanized pipe that does not conform to this standard has other uses such as fencing, water well pipe, plumbing pipe, sprinkler pipe, and heating pipe. Furthermore, galvanized pipe which is not rigid electrical conduit is classified under a statutory provision that does not distinguish between black plain end steel pipe and galvanized threaded steel pipe. Classification as rigid electrical conduit in item 688.30, TSUS, is a special provision that has been held to encompass pipe that meets certain safety and technical standards for galvanizing, flexibility, and threading. Other features of conduit involve relatively minor operations of deburring and grinding to remove rough edges or protrusions which could cause damage to insulation on electrical wires as they are pulled through the conduit.

While the 0.0008 inch minimum thickness is a requirement for rigid electrical conduit (galvanized), the underlying metallurgical structure of the pipe is the controlling character of the pipe in this case. We recognize that rigid electrical conduit requires a protective coating, whether zinc, enamel, or an equivalent coating, and that such a coating must meet certain standards for thickness, eveness, and durability (as measured, for example, by the effects of aging, bending, and heat). They are enhancements of the underlying product, the pipe, and they can further limit the commercial applications for the pipe. However, these advancements ordinarily do not advance a steel product beyond its basic form. For example, steel pipe similar to that in this case is classified in item 610.32, TSUS, and assessed duty at 1.9 percent ad valorem, whether or not galvanized by hot dipping in molten zinc.

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Rigid electrical conduit can be formed, for purposes of the U.L. and other standards, by less costly methods. In fact, the zinc material, the coupling added to each conduit section, and the shipping costs account for more than half of the value added to the pipe in [redacted] Further review of the nature of the processing operations in [redacted] leads us to the conclusion that they are not substantial. We distinguish our decision of November 21, 1985 (file 553739), because the processing in issue, the quenching and tempering together with the upsetting and threading of green tube, was a substantial processing operation resulting in a new and different article having a distinct metallurgical structure which gave it the tensile strength required for API pipe. In this case, the underlying metallurgical nature of the steel pipe is significant and bears directly on whether the product, when coated, will be suitable for use as rigid electrical conduit. The cutting, threading, and galvanizing, therefore, do not change the origin of pipe imported into [redacted]

Black plain end pipe, imported into [redacted] from [redacted] is not substantially transformed by cutting, threading, hot dip galvanizing, chromating, varnishing, and assembly to a coupling, and it does not thereby become a product of [redacted] For purposes of the steel restraint arrangement between the United States and [redacted] the pipe is a product of [redacted]

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076950

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 10 1986

REFER TO
CLA-2:CO:R:CV:G
076957 JCH
814474

076957

Miss Judie Hammond
Secretary to Trade Commissioner
New Zealand Consulate General
Alcoa Building Suite 970
One Maritime Plaza
San Francisco, California 94111-3476

Dear Miss Hammond:

This is in further response to your letter of June 26, 1985, which the New York Region has referred to us for reply and which concerns the dutiable status of whirlpool baths. More specifically, the merchandise consists of fiberglass tubs with various ports in a corner model designated the Cygnet, in an exposed side and front model designated the Kora, and in enclosed models designated the Ibis and Osprey.

These tubs are classifiable under the provision for household articles of plastics, not specially provided for, (n.s.p.f.), in item 772.15, Tariff Schedules of the United States (TSUS). The current column 1 rate of duty required under that provision and applicable to products of New Zealand is 4 percent ad valorem. Faucets and mechanical drains which are in chief value of copper are classifiable under the provision for hand-operated taps or valves of copper in item 680.14, TSUS, requiring a current column 1 rate of duty of 6.1 percent ad valorem. If gold plated and gold represents the metal in chief value, classification would be under the provision for other taps and valves in item 680.19, TSUS, requiring a column 1 rate of duty of 5.2 percent ad valorem.

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The pumps are classifiable under the provision for pumps for liquids in item 660.97, TSUS, dutiable at the current column 1 rate of 3.3 percent ad valorem. The wood supporting frames are classifiable under the provision for articles of wood, n.s.p.f., in item 207.00, TSUS, dutiable at the column 1 rate of 5.5 percent ad valorem.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

076957

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR 26 1986

REFER TO
CLA-2:CO:R:CV:G
076977 JLV

076977

Paul S. Haar, Esq.
Thorpe, Reed & Armstrong
1667 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Haar:

In your letter of September 11, 1985, on behalf of your client, John Harmsen Associates, Inc., you requested a ruling on the tariff classification of a fastener known as "Plastirail."

The fastener is designed for anchoring rail components in concrete and other materials. It consists of a square washer-head shoulder fastener with a square or acme-type thread and a blunt point, and an internally threaded sheath with a threaded plastic interior and a ribbed metal exterior. The fastener measures 13/16 - 7 by 4-5/16 inches. The sheath measures 1-7/8 inches by 4-1/4 inches.

The fastener is a screw. It is designed to be torqued by the head, and, as such, is classifiable as a screw.

The sheath is a fastener or holder used with screws. It is not classifiable as an entirety with the screw because the identity of neither has been merged into that of the other. The screw remains identifiable as a screw, and the fastener or holder retains its identity as such.

Therefore, the screw is classified under the provision for steel screws in item 646.63, Tariff Schedules of the United States (TSUS). The holder, if in chief value of the base metal casing, is classified under the provision for fasteners or holders (except nuts) used with screws in item 646.42, TSUS; if in chief value of the plastic component it is classified under the provision for articles of plastic in item 774.55, TSUS.

Sincerely,

Arthur P. Albertini
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

077005

7 APR 1986

REFER TO
CLA-2 CO:R:CV:G
077005 JLV

District Director of Customs
477 Michigan Avenue
Detroit, Michigan 48226

Re: Decision on Request for Internal Advice No. 85-33

Dear Sir:

In a memorandum of March 5, 1985, you requested advice on the classification of three locomotives, three tenders, and fourteen passenger coaches designed for use on narrow-gauge rails. The merchandise was entered through the port of Detroit in five shipments in 1983 and 1984. The entries are unliquidated. However, the importer has filed protests:

Protest	Entry
3801-5-000967 of 2-18-85	345803 of 10-21-83
3801-5-001358 of 2-25-85	336957 of 11-29-83 338023 of 01-06-84 339266 of 02-16-84
3801-5-001907 of 5-14-85	340029 of 03-12-84

On February 26, 1985, the importer filed with the Court of International Trade a complaint seeking to have all five entries deemed liquidated by operation of law under 19 U.S.C. §1504(a). On May 15, 1985, the first protest was denied by you. In Detroit Zoological Society v. United States, ___ CIT ___ (Slip Op. 86-23, decided February 28, 1986), the court dealt with the jurisdiction issue. Because the entries are unliquidated, we have decided to address the classification issues raised by this request. This ruling is our decision on the classification issues raised by the importer.

FACTS:

The merchandise consists of three locomotives with tenders, and fourteen passenger cars, two of which are designed for use by handicapped persons in wheelchairs. Each locomotive, together with its operator's compartment (the tender) is 27 feet in length, weighs 8 tons, and is powered by an automotive

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gasoline engine and automatic transmission. It is designed for 30-inch gauge track. Each tender is designed to operate with an engine, and provides seating for the operator and two other persons.

The passenger cars are open-side, covered coaches, approximately 82 inches high with step-up entrances to individual bench seats. There are no doors. Two of the cars are specially designed for access by persons in wheelchairs. The cars are designed to be coupled to the locomotive/tender and to each other by a drawbar secured by a 3/4-10 by 5-1/2 inch bolt and matching nut. There are two trucks per car. Each car is braked by a single pneumatic cylinder on each side of every truck. Dual lines connect the braking system to a compressor located on the locomotive.

Each locomotive can pull a maximum of 7 cars. There is no interior lighting system for the cars. There is a safety signal flasher that is hand-operated by an employee to alert the operator to safety problems. The train is designed and intended for use on 30-inch gauge track.

The importer, through its counsel, has stated that the imported "zoo train" does not consist of a locomotive and railway rolling stock within the meaning of the provisions in items 690.05 and 690.15, Tariff Schedules of the United States (TSUS).

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The importer asserts that the locomotive and cars are classified in item 678.50, TSUS, and, additionally, in item 851.60, TSUS. In the alternative, the importer asserts that the proper classification is in item 692.60, TSUS.

ISSUES:

Is the merchandise described in the provisions for locomotives and railway rolling stock, in items 690.05 and 690.15, TSUS? If not, is it classified as an entirety in item 678.50, TSUS, absent a more specific provision, or are the locomotive and cars separately classified.

If the cars are separately classified from the locomotive, are they described under the provision for vehicles (including trailers), not self-propelled, not specially provided for, in item 692.60, TSUS?

Finally, are the provisions in items 851.60 and 960.15, TSUS, applicable?

LAW AND ANALYSIS:

Item 690.05, TSUS, provides for rail locomotives and tenders. Item 690.15, TSUS, provides for railroad and railway rolling stock: passenger cars, not self-propelled. Tariff terms are construed according to their common and commercial meanings, which, absent evidence to the contrary, are considered to be the same.

The term "locomotive" means, in its broadest sense, "self-propelled engine." It is ordinarily used when referring to an engine that operates on rails to pull cars. The

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engine in issue operates on rails, is self-propelled, and pulls passenger cars. There is nothing in the legislative history for rail locomotives (and tenders) of item 690.05, TSUS, which would preclude classification of this lightweight engine under that provision. The tender is clearly a vehicle essential to the engine. Without the tender there would be no seating for the operator. Therefore, the engine and tender are a rail locomotive and tender classified under the provision for such vehicles in item 690.05, TSUS.

The terms "railroad," "railway," and "rolling stock" have meanings which, as above for locomotive, have not been narrowed by the benefit of legislative history or by evidence of an overriding commercial significance. Use of the terms "railroad" and "railway" lead us to conclude that the drafters intended to cover both the equipment that runs on heavy, large gauge rails, and the equipment that runs on lighter, smaller gauge rails.

The term "rolling stock" applies very simply to equipment that runs on railroads or railways. There is no significant limitation by which we can justifiably exclude these vehicles that run on rails. The length of the line, the gauge of the track, and the apparent limited utility of the cars in this case are insufficient evidence for us to narrow the meaning of the provision for railroad and railway rolling stock. Therefore, we conclude that the passenger cars are classified as railway rolling stock (passenger cars), not self-propelled, in item 690.15, TSUS.

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Classification in item 851.60, TSUS, is precluded by Headnote 6(a)(ii), Part 4, Schedule 8, which states that the term "instruments and apparatus" in item 851.60 applies only to certain provisions in Schedule 6. Part 6 of Schedule 6 is not included in the list.

Classification in item 960.15, Appendix to the Tariff Schedules (a provision in effect at the time of entry), is not applicable. There is no evidence that these are anything more than passenger cars with the added capability of providing access for wheelchairs.

HOLDING:

The self-propelled engines and tenders are classified as rail locomotives and tenders in item 690.05, TSUS. The passenger cars are classified as railway rolling stock (passenger cars), not self-propelled, in item 690.15, TSUS.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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077005

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 12 FEB 1986

FILE: CLA-2 CO:R:CV:G
077008 c

077008

TO : District Director of Customs
110 S. Fourth Street
Minneapolis, Minnesota 55401

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 71/85 Concerning the Tariff Classification of Double-Injection Moon Boots and Whether An Established and Uniform Practice Exists to Classify These Boots Under Item 700.56, Tariff Schedules of the United States (TSUS)

FACTS:

The moon boot involved, manufactured in Korea, is a winter boot constructed by sewing a molded plastic shell bottom to a non-molded plastic shaft. The upper material of the shaft ends at a point just below where it has been sewn to the sidewall of the shell, rather than continuing down to the insole. In T.D. 81-79 this office ruled that with respect to this construction that the sidewall of the shell did not constitute a foxing or foxing-like band. However, this boot differs from the boot ruled on in T.D. 81-79 in that it has a separately molded contrasting color outsole which overlaps the upper.

The inquirer maintains that the double-injection moon boots do not have foxing or a foxing-like band and are properly classifiable under the provision for other footwear which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber of plastics and having uppers of which over 90 percent of the exterior surface area is rubber or plastics in item 700.56, TSUS.

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The inquirer also claims that an established practice exists to classify this footwear under item 700.56, TSUS.

It is your position that these double-injection moon boots have a foxing-like band which would preclude their classification under item 700.56, TSUS. You propose classification of these boots under the provision for other hunting boots, galoshes, rainwear, and other footwear designed to be worn over or in lieu of other footwear as a protection against water, oil, grease, or chemicals or cold or inclement weather in item 700.57, TSUS.

071708

ISSUE:

1. Was a clear impression given by Customs in T.D. 81-79 and T.D. 83-116 that these moon boots are classifiable under item 700.56, TSUS?

2. Does an established and uniform practice exist to classify double-injection moon boots under item 700.56, TSUS?

LAW AND ANAYLSIS:

T.D. 81-79 held that a moon boot shell did not simulate the function of foxing which is "to reinforce or supplement the juncture between the sole and upper," because the upper did not extend down to the insole. Thus, it was held, "the sides of the shell bottom do not overlap the upper at this point." In effect it was found that the sides of the shell bottom which were under consideration as foxing-like were themselves the upper in that area between where the shaft ended and the outsole began. This concept was further amplified in subsequent rulings (including T.D. 83-116) covering moon boots in which a raised lip or ridge existed at the joint of sole and upper. Those rulings held that while the ridge was molded at the sole it could not be said to overlap the upper because it was "an integral part of the combined sole and upper."

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It should be noted that nowhere in either Treasury Decision is there a reference to a two-step molding process. In fact, the key element in both decisions was the lack of a pre-existing upper in the areas which were being overlapped. Specifically, in T.D. 81-79 it was stated that had there been a complete upper the shell would have been considered foxing-like. In T.D. 83-116 the molded-in band could only have been an "integral part of the combined sole and upper" if it was created simultaneously with the shell. Furthermore, if T.D. 81-79 had covered two-step molded bottoms the whole issue of raised ridge moon boot bottoms would not have arisen in T.D. 83-116.

The inquirer asserts that a clear impression had been given by Customs that these moon boots were classifiable under item 700.56, TSUS. This claim appears to be derived from case of Heraeus-Amersil, Inc. v. United States, Slip. Op. 84-134 (1984), wherein the court, in discussing whether a finding of a practice by the Secretary of the Treasury had been made, noted that "the proper test for a section 1315(d) finding is merely whether a clear impression is given through appropriate language that such a finding is being made." No such finding has been made in this case. On the contrary, as indicated is the foregoing discussion of T.D. 81-79 and T.D. 83-116, the types of constructions involved in those decisions was discussed in substantial detail and did not include the constuction variant before us now.

The inquirer claims that an established and uniform practice exists based on uniform liquidations. As evidence the inquirer has presented thirteen entries from Korea and six from Italy imported through two ports over a two year period. In the case of Heraeus-Amersil, Inc. v. United States, Slip. Op. 85-60 (1985), the court indicated that the determination

D12

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as to whether a practice exists must be made on a case-by-case basis. However, several factors may be considered in making that determination. These factors are as follows:

(1) the number of entries,
(2) the period of time; and
(3) whether there had been uncertainty regarding the classification of the merchandise over its history.

In reaching its decision the court referred to the case of Washington Handle Co. v. United States, 34 CCPA 80, C.A.D. 346 (1946), wherein 28 liquidations over a period of 2 years did not constitute a practice. Relevant to that court's decision was the uncertainty which existed as to the proper classification of the merchandise during the two year period. Also, the court found that when Customs had not had a reasonable opportunity to adequately investigate the proper classification for a type of merchandise, an established and uniform practice will not arise in the interim.

It is our observation that application of the factors listed in Heraeus-Amersil, supra, militate against the existence of a practice for the following reasons:

(1) The number of entries involved over a two year period is not significant;

(2) Customs was uncertain as to the proper classification of these moon boots noting contrary liquidations at a different port, and

(3) Customs did not have a reasonable opportunity to adequately investigate the product as it appears that the ports involved may not have been aware of the variation in construction.

Also relevant to the practice issue involved here is the case of Siemens America, Inc. v. The United States, 1 CAFC 9, 692 F.2d 1382 (1982), wherein the court refused to find a practice where the appellants failed to prove that they were the sole importer of merchandise imported only at one port even though appellant's merchandise was uniformily classified at that

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800660

D13

port for a 2 year period. In the present situation the inquirer is but one of many importers of moon boots. In addition the inquirer cannot demonstrate that all other importers of these boots had all their entries liquidated under item 700.56, TSUS. In fact, we know of at least three entries of double-injection moon boots entered through the port of Kansas City which were entered and liquidated under item 700.53, TSUS.

HOLDING:

The double-injection moon boots are properly classifiable under item 700.57, TSUS. You should inform the inquirer of this ruling.

Arthur P. Schaffner
for Harvey B. Fox

THIS DOCUMENT MAY BE RELEASED TO THE

D14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 21 1986

REFER TO
CLA-2:CO:R:CV:G
077026 JGH

077026

Kenneth G. Weigel, Esq.
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036

Dear Mr. Weigel:

In your letter of September 25, 1985, you request the classification of chloroxylenol, in behalf of your client, Ferro Corporation, a domestic producer of the same class or kind of merchandise within the meaning of 19 USC 1516(a)(2).

You state that chloroxylenol is an anti-microbial synthetic organic chemical with both industrial and medicinal uses. Some of the uses are said to include a preservative in soaps, creams, and waterless hand cleaners. It is also said to be an active ingredient in surgical scrubs, health care-personnel hand washes, and topical antifungals, and as a preservative and fungicide in adhesives, metal working fluids, photographic film emulsions, starches and printing inks.

You note that Customs has classified the product as an anti-infective agent in item 411.93, TSUS, or in item 403.57, the provision for halogenated, sulfonated, nitrated, or nitrosated derivatives of phenol or phenol-alcohols.

A review of the technical literature indicates that chloroxylenol is an active ingredient in germicides and antiseptics, and is used for mildew prevention. It is also listed as a well-known antimicrobial agent. No reference could be found to its use as an intermediate in the formulation of industrial products.

Cu[illegible] is therefore of the opinion, in view of its many uses the tariff would consider drug uses, that chloroxylenol is a product suitable for medicinal use, and, therefore, classifiable in item 411.93, TSUS. "Suitable for use" does not mean 'chief' use but actually, practically and commercially suitable.

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If you intend to pursue the "domestic manufacturer's petition," you must comply with part 175 of the Customs Regulations, copy enclosed.

As to your request, subsequently withdrawn, that certain information be held in confidence, under Customs Regulations (19 CFR 177.8(a)(3)), no business transaction information, including names, addresses, commercial or financial information or trade secrets, will be considered exempt from disclosure under the Freedom of Infomation Act, unless a basis for the exemption is provided. Furthermore, if a "516" petition is filed, the evidence submitted pursuant thereto is held for public inspection.

Sincerely,

Arthur P Schaffer

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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077026

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR - 4 1986

REFER TO

CLA-2 CO:R:CV:G
077053 JAS
814858

077053

Ms. Leslie A. Barnes
Gladish & Asociates
RD#6 Cargo Bldg. #8
P.O. Box 281074
San Francisco, California 94128

Dear Ms. Barnes:

In your letter of July 22, 1985, you inquire as to the tariff classification of a brass door stopper from South Korea. A sample was submitted.

The sample is of tubular brass construction and measures nearly 4 1/2 inches long and 7/8 inch in diameter. At one end is a plastic push button which, when depressed by the thumo, causes an inner brass tube to extend an additional 2 inches. The article is a security device or door guard which functions much the same as a safety chain. Installed in a pre-drilled hole flush with the floor and in the path of an opening door, the inner tube can be released by depressing the plastic button, thus blocking the door from opening futher. There is no indication whether the device is suitable for use only around the home, or has applications in the workplace or other industrial environments as well.

The brass door stopper security device is classifiable under the tariff provision for other articles of copper, not coated or plated with precious metal, in item 657.35, Tariff Schedules of the United States (TSUS), dutiable at the rate of 5.3 percent ad valorem. Products of the Republic of Korea classifiable in item 657.35, TSUS, are among those for which duty-free entry is authorized under the Generalized System of Preferences (GSP), if otherwise found to be qualified under applicable law and Customs Regulations. Copies of the relevant provisions are enclosed for your reference.

Sincerely,

Arthur P Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

Enclosure

E3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

15 JAN 1986

REFER TO
CLA-2 CO:R:CV:G
077075 JGH

Beverly Pevsner, Esq.
Beiley & Pevsner
7600 Southwest 57th Avenue
Suite 107
Miami, Florida 33143

Dear Ms. Pevsner:

In a letter to you of September 30, 1985 (814868), from our New York office, classification and rates of duty were set forth regarding certain mixtures containing various types of alcohol with mixed xylenes.

This letter concerns the dutiable status of ethanol mixtures containing mixed xylenes, which you state contain by weight 30 to 50 percent ethylbenzene.

Except as otherwise provided below, the mixtures you list would be classifiable as follows:

Percent Mixed Xylenes	Percent Ethanol	Classification
5	95	427.88
10	90	432.10
20 (containing up to 35% ethylbenzene)	80	432.10
20 (containing over 35% ethylbenzene)	80	407.16
25	75	407.16
50	50	407.16

The ethanol mixtures which contain 10 percent mixed xylenes would be classifiable in item 432.10, TSUS, dutiable under items 427.88/901.50 at 3 percent ad valorem plus 60 cents per gallon. The 20 percent mixed xylene mixtures which contain from 30 to 35 percent ethylbenzene are also classifiable in item 432.10, TSUS.

The 20 percent mixed xylene mixtures with over 35 percent ethylbenzene and ethanol mixtures which contain 25 or 50 percent mixed xylenes would be classifiable as a mixture under item 407.16 TSUS, dutiable at 1.7 cents per pound

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plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material, item 427.88/901.50 at 3 percent ad valorem plus 60 cents a gallon.

Products classifiable in item 407.16, TSUS, which are products of a country entitled to GSP benefits are entitled to duty free treatment upon compliance with all the regulations.

The letter of September 30, 1985, referred to above, is modified to the extent inconsistant with the above.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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SL011075

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 06 MAR 1986

FILE: CLA-2 CO:R:CV:G
077089 JLF

077089

TO : Acting Chief, Commercial Operations Branch 2
New York Seaport

FROM : Director, Classification and Value Division

SUBJECT: Proposed Change of Practice: Postage Stamps Printed "Cancelled to Order"

This is in response to your memorandum of September 26, 1985, regarding a proposed change of practice of classification of "Cancelled to Order" postage stamps.

No change of practice has been implemented and the decision in Legal Determination 3611-320, March 23, 1978, should continue to be followed. This decision holds that stamps, if officially issued by the government, are classifiable under item 274.40, TSUS, which provides for postage and revenue stamps, cancelled or not cancelled.

As far as we can tell, the draft proposed change of practice was never acted upon. Our position now is that a change of practice notice will not be issued.

John T Rach
For Harvey B. Fox

[illegible] TO THE

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

26 DEC 1985

REFER TO
CLA-2:CO:R:C:G
077091 JCH

District Director of Customs
P.O. Box 2112
San Juan, Puerto Rico 00903

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 49094000178, 210, 211, 212, 213, 214, 215, 216, 217 and 221.

The above-captioned protests and applications for further review were filed against your tariff classification of electrical articles imported from Singapore. The protests cover a total of 107 entries filed from April 1983 to May 1984.

The merchandise was entered as eligible for an exemption from duty under the Generalized System of Preferences (GSP) as provided for in item 734.20, Tariff Schedules of the United States (TSUS), which covers parts of game machines. However, duty was liquidated at the applicable column 1 rates under the provision for integrated circuits in item 687.74, TSUS, in accordance with our decision of September 14, 1983, IA 8/83, file No. 072542. In that matter, we classified articles described as clip-on-board and dip-on-board components which contain programs for game machines and which it is indicated are similar to the instant merchandise.

The protestant does not challenge our decision, but claims it was a change in an established and uniform practice which cannot be used against the instant entries until published. However, no information or documentation has been submitted, apart from the isolated allegation of a practice, showing the instant importer's importation experience or any other circumstances warranting further inquiry concerning a possible practice.

It is further claimed that a change in tariff classification disqualifying the importer from the GSP free rate has prevented the importer from filing timely claims for an alternative partial exemption from duty under the provision for returned American goods in item 807.00, TSUS. Under that item, the value of American-made components assembled abroad is subtracted from the entered value of the completed article.

077091

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The protestant has been given ample opportunity to perfect the claim for this exemption, but nothing has been forthcoming. In fact, there is not even any indication as to how much it is being claimed the value of the merchandise in all 107 entries should be reduced under item 807.00.

Accordingly, with respect to both the claim that a practice exists and the alternate claim for a partial exemption under item 807.00, we find that this protest fails to specify the nature of and justification for the objections set forth in the degree of detail comtemplated under 19 CFR 174.13(a)(6). As will be shown by our disposition of this matter, these protests contain other procedural defects.

Accordingly, you are instructed to deny Protest No. 49094000217 as a second protest for all of the entries covered by Protest No. 49094000214 in violation of the one-protest-per-entry rule in section 514(c)(1), of the Tariff Act of 1930, as amended. You are also instructed to deny protest No. 49094000221 with respect to its coverage of entry Nos. 413886, 413887, 413926, 412944, 413946, 413985, 414324, 414912, 414925, 415260 and 416264 under the same authority as a duplication in part of protest No. 49094000212. The remainder of that protest and the remaining protests should be denied in full for the reasons expressed above in the preceding paragraphs of this decision. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

E8

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077103 TLL

077103

MAR 21 1986

Joseph F. Sandler, Esq.
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Sandler:

This is in reply to your letter dated October 9, 1985, requesting reconsideration of Headquarters Ruling Letter (HRL) 076683, dated September 26, 1985, holding a certain mixture of sugar and dextrose to be commingled merchandise.

That decision was reached in large part because of the court decision in Arbor Foods Inc. v. United States, Slip Op. 85-31 (1985). In HRL 076683, we pointed out:

> The court observed that, prior to the issuance by Customs of certain telexes to its field offices, the subject blend and other similar blends had been classified as edible preparations. However, the court also noted that the Secretary of Treasury, through a division of the Customs Service, had found that a uniform and established practice did not exist for the instant merchandise or for similar sugar blends. Lastly, the court found that Arbor was unable to establish that the sugar blend possessed a "valid commercial identity" for the purposes of the telexes or to provide information on the chief use of sugar/dextrose blends in the United States. Accordingly, the court denied the requested injunction and refused to overturn the position of the Customs Service that the subject blend should be treated as commingled merchandise.

The above-quoted language pertaining to establishing a "valid commercial identity" is derived from Headquarters instructions dated November 7, 1984, and is consistent with subsequent issuances. See for instance HRL 075305 (January 25, 1985), where we gave importers the opportunity to establish a "valid commercial identity" for their importations.

The three products to be packaged from the imported blend are:

(1) A pure blend in a 2-kilogram retail package; it is labelled "granulated pure cane sugar and dextrose." It consists of 65 percent sucrose and 35 percent dextrose, i.e., it is the exact blend proposed to be imported.

E9

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(2) A blend sold with the cornstarch added is in a 1-1/2 pound plastic package, labelled "10x powdered pure cane sugar and dextrose." This product is also sold in a 2 pound plastic package. This product consists of the exact blend proposed to be imported (65 percent sucrose, 35 percent dextrose) with cornstarch equal to 3 percent of the finished product.

(3) A blend with the molasses added is in a 1-1/2 pound plastic package, labelled "light brown pure cane sugar and dextrose." This product is also sold in a 2 pound package. This product consists of the exact blend proposed to be imported (65 percent sucrose, 35 percent dextrose) plus molasses equal to 22 percent of the finished product.

You state that all of these products have been and are being sold in these packages by U.S. Brands to food wholesalers throughout the U.S., who in turn distribute them to the retail food trade. A representative sample of invoices for these products as well as letters from customers of U.S. Brands have been provided. The first letter is dated October 29, 1985, and lists the purchases made by a firm from U.S. Brands for the period of March 15 to September 27, 1985. Similar information is contained in the other letter, dated October 30, 1985.

This claimed use is consistent with New York Classification Ruling 811745 of January 14, 1985. That ruling dealt with a similar mixture which was packaged for retail sale in 2 kilogram bags at the time of importation. The holding in the New York decision was that the product was classifiable as an edible preparation, not specially provided for, in item 183.05, TSUS, based upon the evidence of retail packaging. Consequently, it is our position that packaging the imported blend in the manner described in this ruling would be acceptable.

Under the circumstances of this case, classification under item 183.05, TSUS, would be considered appropriate on condition that the imported blend is packaged for retail sale. The application of this ruling to other importations would depend on the applicable facts.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

E10

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAR 21 1996

FILE: CLA-2 CO:R:CV:G
077103 TLL

077103

TO : Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Headquarters Ruling 077103; Sugar and Dextrose Importations

Attached is our decision on the subject ruling. This decision is based on a narrow set of facts. Consequently, your office should be alert to any possible diversions in the use of the imported sugar from the use stated in Headquarters Ruling Letter 077103. Should any change occur, you should notify Headquarters immediately.

Harvey B. Fox

Attachment

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E11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

20 MAR 1986

REFER TO

CLA-2 CO:R:CV:G
077108 EMS

077108

Mr. David Esquenazi
Grupo Skenn, S.A. 10414
Apartado Postal 10-10414
1100 Mexico D.F

Dear Mr. Esquenazi:

This is in response to your letter dated August 8, 1985, requesting a tariff classification ruling with regard to a needlepoint kit from Mexico.

The sample kit, style No. 3, includes an appliance cover, yarn and a plastic needle. The appliance cover is complete except for the insertion of the colored yarns on a printed design. The cover consists of four polyester panels sewn together. A textile binding is sewn over each edge. A wood ring which will facilitate removal of the cover from the appliance is attached at the top, through a textile loop. Three sides of the cover are constructed of a quilted fabric. The fourth side is an open weave canvas material, with a printed design. The design consists of four colors, red, green, yellow and black. The design covers only a portion of the panel. Included in the kit are four matching color yarns which are to be inserted into the design by means of the plastic needle.

The question presented by your ruling request is whether this kit should be classified as an entirety or according to its separate components. It is our view that this kit should be classified according to the separate components included in the kit. On numerous occasions Customs has ruled that needlepoint kits are classified in such a manner. See e.g., Headquarters Ruling Letter (HRL) dated May 29, 1985, file No. 075570. Doll kits not sufficiently advanced to be considered dolls have also been classified according to their separate components rather than as an entirety.

Accordingly, the appliance cover is classifiable under the provision for articles not specially provided for, of textile materials, other articles, not ornamented, of man-made fibers, other, in item 389.6270, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4 cents per pound plus 10 percent ad valorem. The acrylic yarns are classifiable under the provision for yarns put up for handwork, and sewing threads, of man-made fibers, valued over 90 cents per pound: yarns put up for handwork in item 310.9300, TSUS, (textile category 605) dutiable at the rate of 14.5 percent ad valorem. Articles falling within textile category 605 from Mexico require a visa. Finally, the plastic needle is

E12

classifiable as a household article, not specially provided for, of plastic in item 772.15, TSUS, with duty at the rate of 4 percent ad valorem. Products of Mexico classified under this provision are eligible for duty-free treatment under the Generalized System of Preferences (GSP).

Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

AA 3 3 '86

REFER TO

CLA-2 CO:R:CV:G
077130 TLL

077130

District Director of Customs
U.S. Customs Service
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Application for Further Review of Your Decision in Protest Number 3004-5-000131

This application for further review protests your classification of wheat germ under item 183.05, Tariff Schedules of the United States (TSUS). Protestant requests classification under item 184.70, TSUS, or item 184.85, TSUS.

FACTS:

The Customs Laboratory report discloses that the imported wheat germ contains 30 percent protein.

ISSUE:

Whether the protein level of the wheat germ precludes classification of the product as commercial wheat germ?

DISCUSSION OF LAW:

Your office has classified the imported wheat germ as being hi-purity (for human consumption) as opposed to Number 2 (commercial grade) based on the amount of protein contained within the wheat germ. This decision was made on the basis of phone conversations with four flour mills, (two in Canada and two in the United States). The information obtained disclosed that Canadian hi-purity contains no less than 29.5 percent protein and American hi-purity would be 25 percent protein or better.

E14

TO THE

We have been able to verify the information you obtained in the AFMA Feed Ingredient Guide. That publication provides that wheat germ must contain not less than 25 percent crude protein to be considered wheat germ and that 25 percent - 30 percent protein is a typical minimum of protein to be contained in wheat. The Guide goes on to say that a substantial quantity is produced for human food uses and the fat and protein in this product will run much higher than the minimum shown.

Protestant has furnished a copy of a January 21, 1985, letter from the miller setting forth their specifications on the "commercial" wheat germ. While those specifications show a protein level of 23 percent, the Customs lab report clearly shows a protein level of 30 percent in the imported product. Since imported merchandise is subject to classification in its condition as imported, we must look to the 30 percent figure in deciding this protest.

Regardless of whether a 25 percent protein figure, a 29.5 percent protein figure or a 30 percent figure is used to define wheat germ for human consumption, the imported wheat germ containing 30 percent would be considered as being for human consumption.

HOLDING:

You are directed to deny the protest. Please see that a copy of this decision attached to Customs Form 19 is furnished the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

071130

RELEASED TO THE

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

21 MAR 1986

REFER TO

CLA-2 CO:R:CV:G
077137 JLV

077137

Richard M. Belanger, Esq.
Sharretts, Paley, Carter & Blauvelt, P.C.
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Belanger:

In your letter of October 16, 1985, you requested on behalf of your client, Slater Steels Corporation, that we find the existence of an established and uniform practice, within the meaning of section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), to classify certain alloy and tool steel products as blooms or billets if the products meet the dimensional requirements of Headnote 3(b), Subpart B, Part 2, Schedule 6, Tariff Schedules of the United States (TSUS).

In support of your position that such a practice exists, you state that your client has imported these alloy steel products as blooms or billets under item 606.69, TSUS, for approximately 20 years. These importations have been principally through the ports of Detroit and Champlain. Additional information from you indicates that all of the imported products have at least one surface that has been machined. However, the controlling criterion for classification purposes, as you state, is one of shape and dimension. Therefore, if an alloy product is within the stated shapes and dimensions in Headnote 3(b), supra, it would be classified as a bloom or billet.

An established and uniform practice is a practice which has existed over a period of years, is known to Customs and the importing community, and is uniform at all the major ports where entries have been regular or of a significant volume of merchandise. 19 U.S.C. 1315(d) codifies the restraint on Customs when classification of an article is found by the Secretary of the Treasury (authority delegated to the Commissioner of Customs) to be an established and uniform practice. The phrase "established and uniform practice" is synonymous with the phrase "long and continuous administrative practice." Biddle Sawyer Corp. v. United States, 48 Cust. Ct. 30, C.D. 2310 (1962), affirmed, 50 CCPA 85, C.A.D. 826 (1963). Unless there is a settled interpretation of the statutory provision by the agency charged with its administration, there is no established and uniform practice. United States v. Missouri Pacific Railroad Co., 278 U.S. 269 (1929). A "settled" interpretation is one which is long-standing in construction, uniform in application, and well-known to the administering authority.

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For the sake of argument (because evidence of actual liquidations has not been received), the alloy steel products produced by your client and its predecessor producer, Colt Industries, are considered to have been entered and liquidated as blooms or billets through the ports of Champlain and Detroit for approximately 20 years. This was not disputed by the Customs authorities at those ports. Classification at those ports was based on the submitted documents which described the products as blooms or billets and as having dimensions within those specified for blooms or billets. Alloy products that differed only in the fact that they were less than 3 square inches in cross-sectional area and were therefore precluded from classification as blooms or billets by statutory definition, were classified as alloy bar. However, the classification of the alloy products in issue has never been the subject of a specific interpretative ruling. Ruling letters that do exist concerning identical or similar alloy products are narrow in construction and, at best, ambiguous when considering the effect of certain statements of alleged facts.

In a ruling letter of March 8, 1974 (file 029525), for example, it was held that certain alloyed round forged steel products, fully conditioned to remove surface defects and for use in an extrusion press, were classified as semifinished steel products (blooms) because grinding to condition the surface was not a cold forming process. Although semifinished products in general were described in that ruling as products that are "converted into finished products by reheating and further hot working" after removal of surface defects by conditioning processes, no further reference was made to whether or not the alloyed products had to be further hot worked by extrusion or to be cut and formed into extrusion dies or machinery parts. In other ruling letters containing similar statements indicating either that the product is to be further hot worked or that "semifinished" products are subjected to conditioning before further hot working, the holdings usually turned on the nature of the rough machining as "conditioning" or "finishing."

These rulings, therefore, are not evidence of a settled interpretation of a statutory provision. Furthermore, Headnote 3(b), the statutory provision in issue, is ambiguous because the term "semifinished" is not defined in the Tariff Schedules. As noted in the discussion on existing rulings, this term has been variously construed, both as to meaning and as to importance. A settled interpretation requires, at the least, a uniform application of the meaning of this term.

In practice, the term "semifinished" has been given greater importance at several ports of entry. Specifically, at Buffalo, alloy steel products which, at the time of importation, were not normalized or rough machined were considered semifinished because the assumption was that they had to be reheated and hot formed. This has been the position at Buffalo since 1971. Products of Colt Industries, Ltd., were involved in classification questions at Buffalo. Other ports of entry have used these criteria to determine whether a product was semifinished: dimensional tolerances within bar specifications, soft centers, or contract requirements for specific dimensional tolerances. Finally, we note that Colt Industries, Ltd., predecessor to your client in the production of the alloy steel

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products in issue, was on notice that the tariff classification differed at two ports of entry. No protests, requests for advice or for rulings on prospective transactions, or differences of opinion were forwarded to Headquarters for review and decision, although the issue has been recognized as unsettled since 1971. Therefore, we cannot find that the tariff classification has been uniform during this long period of liquidation.

We find that there is no established and uniform practice to classify alloy steel products as blooms or billets solely on the basis that they satisfy the requirements for the dimensions in Headnote 3(b), Subpart B, Part 2, Schedule 6, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 11 1986

REFER TO

CLA-2 CO:R:CV:G
077152 JLF

077152

Port Director of Customs
526 Water Street
Room 301
Port Huron, Michigan 48060-5471

Dear Sir:

Re: Decision on Application for Further Review of Protest Nos. 3802-3-000278 and 3802-4-000260.

These protests were filed against your decision in the liquidation on July 8, 1983, of entry No. 83-534118 dated April 26, 1983, and the liquidations on September 7, 1984, of entry Nos. 84-532143 dated March 14, 1984, 84-534002 dated April 20, 1984, 84-535675 dated May 22, 1984, 84-536316 dated June 4, 1984, 84-536911 dated June 14, 1984, 84-537200 dated June 20, 1984, 84-537633 dated June 28, 1984, and 84-537687 dated June 29, 1984. The entries cover shipments of a product called Voranol, said to be used in the preparation of polyurethane resins.

FACTS:

The merchandise, Voranol, has been described by the manufacturer as a polyether polyol (triol). The New York Customs Laboratory and the Chicago Customs Laboratory analyzed samples of the product. New York described the samples as an ether of a polyhydric alcohol. Chicago described the sample as having characteristics of glyceryl (polyoxypropylene-polyoxyethylene) triol (glycerine ether type). The three names given to Voranol, polyether polyol (triol), ether of a polyhydric alcohol (ether of glycerine), and glycerine triol are used to describe the same material.

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The merchandise was classified under the provision for ethers of a polyhydric alcohol in item 428.47, Tariff Schedules of the United States (TSUS). Protestant claims that the merchandise in question is more appropriately classified under the eo nomine provision for triols, in item 428.44, TSUS

ISSUE:

Whether Voranol is classifiable in item 430.20, TSUS, dutiable as a triol in item 428.44, TSUS, or an ether of a polyhydric alcohol in item 428.47, TSUS, or a single compound of ether of glycerine classifiable in item 428.40, TSUS.

LAW & ANALYSIS:

We find, after reviewing the chemical reaction involved in the manufacturing of Voranol, that it is a single compound, as described in Headnote 2(a) of Schedule 4, properly classifiable in item number 428.40, TSUS, as a glycerine ether. C.D. 4067 warrants a finding of this product as a compound and not a mixture. That decision points out that individual molecules of different length polymers are not different compounds. Therefore, the product in the instant case should not be classified as a mixture but as a single compound.

Also, glycerine ether is a proper classification because these types of products are commonly described and listed in the literature as polyethers.

In addition, if Voranol is appropriately described in each of the competing classifications, item 428.40, TSUS,

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prevails because glycerine ether is the first provision listed in the Tariff Schedules. See Part 2(D), Headnote 1, Schedule 4, TSUS.

HOLDING:

Therefore, Voranol is properly classifiable under the provision for glycerine ethers in item 428.40, TSUS.

Entry No. 83-534118 is dutiable at the 1983 rate of 4.4 percent ad valorem. Entry Nos. 84-532143, 84-534002, 84-535675, 84-536316, 84-536911, 84-537200, 84-537633 and 84-537687 are dutiable at the 1984 rate of 4.2 percent ad valorem.

You should deny the protest. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Scheffler

For Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAR - 4 1986

FILE: CLA-2 CO:R:CV:G
077154 JAS

077154

TO : District Director of Customs
40 South Gay Street
Baltimore, Maryland 21202

FROM : Director, Classification and Value Division

SUBJECT: Self-Adhesive Printing Paper; Internal Advice 77/85

By memorandum dated September 9, 1985 (CLA-1-DD:CV:IS:1 RCA), you forwarded a brief, dated July 18, 1985, from counsel representing the importer of the subject paper from Finland.

FACTS:

Submitted samples represent coated papers with backings, 40 to 50 inches wide, which are presure sensitive and imported in rolls 30 to 40 inches in diameter. After importation, these papers are cut to small sizes and used to produce printed self-adhesive labels. This is stated by counsel to be only known commercial use for these papers.

You state these papers have been entered at various times under the provision for sheets, strips, tapes, stencils, monograms, and other flat shapes or forms, all the foregoing articles which are pressure sensitive, in item 790.55, Tariff Schedules of the United States (TSUS). Entries have likewise been accepted under the provision for duplex decalcomania paper, in item 254.32, TSUS. Counsel advances arguments that the subject papers are properly classifiable under the provision for printing paper, impregnated, coated, or both but not otherwise treated in item 254.46, TSUS.

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ISSUE:

Does item 790.55, TSUS, most specifically describe the subject papers?

LAW AND ANALYSIS:

Initially, counsel maintains that the essential character of these papers is imparted by their high quality printing surfaces, and that they are covered by Schedule 2, Part 4, Subpart B, Headnote 1, TSUS, which governs importations under item 254.46, TSUS, among others. This headnote describes the merchandise covered in Subpart B, in part, as paper and paperboard, in rolls and sheets, not cut to size or shape, and not made up into articles finished or not finished. Moreover, it is noted that while the papers are to become pressure sensitive labels, in their finished condition, it is their status as printing papers, as imported, that controls their classification. Finally, counsel maintains there is no legislative intent that item 790.55, TSUS, be invasive of other provisions, and that the subject merchandise is a material not within the provision for "articles," in item 790.55.

Nothwithstanding coverage of the subject merchandise by Schedule 2, Part 4, Subpart B, Headnote 1, TSUS, it is our opinion that item 790.55, TSUS, applies here by reason of Schedule 2, Part 4, Headnote 1(v) which precludes from inclusion in Part 4 certain articles specifically provided for in Schdule 7. In this regard, Schedule 7, Part 13, Subpart A, Headnote 2, TSUS, which governs entries under item 790.55, TSUS, defines the term "pressure sensitive" as referring to "...articles which have an adhesive coating on one or both surfaces that will adhere to other surfaces upon the application of pressure only." This headnote specifically describes the subject paper. See p.2 of counsel's brief. We have been cited to no convincing authority that the term "article" is to be limited, as counsel suggests, to exclude the subject papers.

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The judicial and administrative decisions cited by counsel are either legally or factually distinguishable. United Mineral and Chemical Corp. v. United States, 63 Cust. Ct. 522, C.D. 3946 (1969), considered merchandise described as polyurethane plastic foam permanently laminated to double-faced pressure sensitive tape. In confirming classification in item 770.40, TSUS, and negating the applicability of item 790.55, TSUS, the court noted, at p.526, that "...as stipulated by the parties hereto, it is the polyurethane plastic... not the pressure sensitive tape, which imparts to the article... its essential characteristics." In addition to the obvious dissimilarities between the merchandise at bar and that which we are presently considering, there is no showing why, or to what extent, the essential characteristic of the subject paper is imparted by its printing qualities, rather than its pressure sensitive qualities. In The Holson Co. v. United States, 64 Cust. Ct. 76, C.D. 3961 (1970), the court, in considering the classification of certain photo album leaves, concluded from the testimony that they were not pressure sensitive articles at all, in that they did not comport with the aforecited definition of "pressure sensitive." In Inter-Maritime Forwarding Co., Inc. v. United States, 70 Cust. Ct. 133, C.D. 4419 (1973), the provision competing with the one in item 790.55, TSUS, was for electric insulators, of rubber or plastics, in item 773.30, TSUS. Again, this case is of no value in resolving the issues currently before us. Finally, our decision of September 12, 1977 (053484), dealt with a pressure sensitive plastic stick-on badge of an animal cartoon character, and held it to be a "toy," in accordance with the Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, definition of that term.

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These decisions are cited by counsel for the purpose of showing that neither the courts nor Customs has treated item 790.55 as being an invasive tariff provision. This obscures, however, the real issue in this case, that is, whether Schedule 2, Part 4, Headnote 1(v), TSUS, would preclude the applicability of item 254.46, assuming it otherwise applies.

HOLDING:

Having concluded that the subject papers are within the headnote defining "pressure sensitive," we further conclude that they are specifically provided for under the provision for sheets, strips, tapes, stencils, monograms and other flat shapes or forms all the foregoing articles are pressure sensitive, in item 790.55, TSUS.

Arthur P. Schaffner
For Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 24 1986

REFER TO
CLA-2:CO:R:CV:G
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807983

077156

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Re: Application for Further Review of Detroit Protest No. 3801-5-000012

Dear Sir:

This application for further review is against your classification of a cheese sauce as an edible preparation not specially provided for under item 183.05, Tariff Schedules of the United States (TSUS). The protestant is of the opinion that the product should be classified as a sauce under item 182.46, TSUS.

The product in question is "Prince" 785 Cheese Sauce Mix. This product was the subject of ruling request 807983 which apparently was merged into another file and was not separately responded to. The file on ruling request 807983 contains much pertinent information regarding "Prince" Cheese Sauce Mix.

Component material breakdowns furnished by the importer indicate that the different ingredients are present in the product, by weight and by value, as follows:

Ingredient	Percent By Weight	Percent By Value
whey	64	54.3
flour	9	4.95
salt	9	1.9
starch	8	10.16
cheddar cheese	8	28.60
miscellaneous	2	0.12

All parties (the importer, the concerned import specialist in Detroit and the NIS) agree that the butterfat content of this mix is below 5.5 percent by weight of the mixture.

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This cheese sauce mix is a cheese flavored, orange colored powder. It is imported in bulk, to be repackaged after importation into individual pouches of one and one-quarter ounces, net. These pouches are to be added to a retail size box of macaroni, and the final product sold as "Macaroni and Cheese Dinner". In use, the cheese flavored powder will be combined with other ingredients to make a cheese sauce for the macaroni. Thus, directions on the box instruct the consumer to cook and drain the macaroni, then add the sauce mix (one and one-quarter ounces), together with one quarter cup each of butter or margarine (two ounces) and milk (two ounces). After mixing, the macaroni and cheese dish is ready to serve.

The term "sauce" has been the subject of many rulings and much litigation through the years. In Bogle v. Magone 152 U.S. 623 (1888), the Supreme Court stated:

> "The word 'sauce' as commonly used, designates a condiment, generally but not always in liquid form, eaten as an addition to and together with a dish of food, to give it flavor and make it more palatable; and is not applied to anything which is eaten, alone or with a bit of bread, either for its own sake only, or to stimulate the appetite for other food to be eaten afterwards."

The March 1982 Summary of Trade and Tariff Information entitled "Edible Preparations" points out that "(t)he sauces included in this summary are substantially finished food preparations and not mere materials used in the manufacture of sauces;...".

Applying the foregoing criteria to the product at hand, it is apparent that the cheese flavored powder, combined with butter or margarine, milk, and cooked macaroni, make a macaroni and cheese dinner, the basic components of which are (1) macaroni and (2) cheese flavored sauce. The cheese flavored sauce in the finished dish consists of 1-1/4 ounces of cheese flavored powder, 2 ounces of butter or margarine, and 2 ounces of milk. These ingredients are added directly to the hot macaroni--without prior mixing. This manner of preparation does not, however, negate their status as

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constituents (ingredients) of the sauce, that is, the powder acting as a flavoring agent, the milk acting as a liquid medium for the powder, and the oil provided by the butter or margarine imparting smoothness, body, and flavor to the sauce. In fact, directions printed on the retail box to guide the consumer in preparing this dish require the addition of the milk and butter or margarine, with the powder to the hot macaroni. Because the presence of the butter and milk in the sauce is not optional, and because these ingredients are not present in the sauce mix, as imported, it is necessary to decide whether the imported powder is a finished, or substantially finished, food preparation as required for classification as a sauce in item 182.46, TSUS, or whether it is merely a material, an ingredient, used in the manufacture or preparation of a sauce.

The concept of sauces as "substantially complete food preparations" rather than as "materials used in the manufacture of sauces" has been the subject of prior judicial and administrative rulings. In Del Gaizo Distributing Corp., Mennella Bros. Inc. v. United States, T.D. 48376 (1936), for example, the Court held that tomato paste which consisted of tomato pulp from which all the fiber, seeds, and peel had been removed, and whose use was found to be as an ingredient in soups and in the preparation of many sauces, was classifiable under the provision for "tomatoes, prepared or preserved in any manner" under Par. 772, Tariff Act of 1930, rather than as "sauces" or "pastes".

The point that it is necessary to have a "substantially complete food preparation" to be treated as a sauce was emphasized in United States v. Neuman & Schviers Co., Inc., 18 CCPA 1 (1930), where the Court, in holding that a wine and salt mixture labeled "Sauce Theo" used in place of sherry in the preparation of various a' la Newburg dishes was not a sauce, made reference to the previously cited quotation in Boyle v. Magone and then stated:

> If a broader meaning of the word "sauce" is given than is indicated in the above quotation, it would be inclusive of any substance used to season or flavor food in the process of cooking or preparing it, and its application would lead us far afield in the classification of this character of merchandise.

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> We agree with the court below that the article in controversy is not a sauce. It may well be a flavoring which might be used in making sauce, but, in its imported condition, it hardly responds to the word "sauce".

The fact that some sauce preparations do require the addition of other ingredients--for example, the addition of a liquid to reconsitute a powdered sauce preparation, or the addition of small amounts of seasonings or other ingredients--does not necessarily preclude classification of these products, for tariff purposes, as finished, or substantially finished, food preparations. Thus "Bisto", a powdered gravy which was to be combined with water or stock to make a gravy or to add to soups or stews has been classified, by administrative ruling, under the provision for sauces in item 182.46, TSUS, (T.D. 56211(66)). Again, a liquid consisting of various spices, oil, salt, and sugar, which was to be mixed with beef broth, or hot water and then applied to various meats for flavoring effect was also classified as a sauce in item 182.46, TSUS, (T.D. 56241 (46)). In United States v. H. J. Heinz Co. (T.D. 49557, (1938)) the Court classified a tomato sauce, designated as "Tomato 'B' Sauce", to be used in the preparation of that company's baked beans and pork product, under the provision for "sauces of all kinds" in paragraph 775, Tariff Act of 1930. In so ruling, the Court noted that, although the sauce would be mixed with the food "while the same is being prepared", that fact did not change its nature as a sauce, "nor does the fact that in use it is diluted by the addition of water with salt, pepper, and a slight amount of arrowroot added, affect its classification as sauce."

In a letter dated October 9, 1959 (File TC 462.421, circulated as C.I.E. 1478/59, October 22, 1959), Headquarters classified three sauce preparations from Italy, under the provision for sauces of all kinds in paragraph 775, Tariff Act of 1930. The last of these preparations, Pesto Alla Genovese, consisted of 40 percent basil leaf, 30 percent cheese, and 30 percent olive oil. In describing these sauces, it was noted that "(t)his merchandise is intended for use on foods as it is found in the jar, except that it is recommended that a little butter be added to the Pesto Alla Genovese."

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In summary, simple materials, even if containing some seasoning and spices, if not containing all the ingredients essential for their use as a sauce, and if chiefly used as an ingredient in soups, sauces, and other food preparations, were considered materials only and not substantially finished sauces. On the other hand, a tomato sauce containing salt and spices, which, with the addition of olive oil was ready for use as a pizza sauce by pizza manufacturers, was ruled to be a complete sauce. Another food preparation--a mixture of spice, nut, fruit, vegetable, and fish ingredients--chiefly used in the preparation of a sauce for pasta con sarde was found to be a material rather than a finished, or substantially finished food preparation, since it required the addition of other ingredients--namely, garlic oil, tomato, onion, and fish (optional)--essential to its use as a sauce.

Powdered or concentrated sauce preparations, which required the addition of a liquid, such as water, broth, or stock, to bring them to a liquid state, were held to be substantially finished sauces. Finally, it was found that finished, or substantially finished sauces may have their seasonings adjusted, or may be allowed the addition of small quantities of non-essential ingredients, such as arrowroot (a thickener) or butter (for flavoring). In their imported condition, however, sauce preparations must be complete, that is, they must be ready to use in respect to all their essential ingredients.

In determining whether the cheese sauce mix at issue may be considered a finished, or substantially finished preparation, it is necessary to consider the ingredients which actually make up the finished sauce preparation. To review briefly, a serving of the prepared sauce will consist of 1-1/4 ounces of cheese flavored powder, one half stick (2 ounces) of butter or margarine, and 2 ounces of milk. The cheese flavored powder first, is the primary flavoring agent in the sauce. Of the two ingredients combined with the mix, the milk appears to play a similar role to that of other liquids--water, broth, or stock,-- added to other powdered or concentrated sauce mixes and, based on the rulings cited, its presence as an ingredient should not affect any determination as to the tariff status of the cheese flavored powder. The

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final ingredient added, however, the butter or margarine, is a substantial ingredient in the finished sauce (about 38 percent by weight), and is required in this large amount to impart smoothness, body, and flavor to the sauce. Because of the quantity of butter or margarine which must be combined with the cheese powder and because of the function of this ingredient it may not be disregarded or discounted in determining the tariff status of the cheese sauce mix. Accordingly, since the cheese flavored sauce mix lacks an essential ingredient--that is, the butter or margarine--it is not, in its condition as imported, a finished, or even a substantially finished food preparation, but is, by itself, only a material, or ingredient, used in the making of a sauce. Classification of this product under the provision for other sauces in item 182.46, TSUS, would therefore be precluded.

In the instant case, however, the butterfat content of the cheese flavored sauce mix is below 5.5 percent by weight, and this butterfat is almost entirely attributable to the cheddar cheese in the mix. The whey content of the cheese sauce mix, however, is over 16 percent by weight of the mix and, in itself, contains less than 5.5 percent by weight of butterfat. Consequently, in the absence of a more specific provision, and based on the composition of the mix, this office would classify this cheese flavored sauce mix under the provision for other edible preparations not specially provided for (including prepared meals individually packaged) in item 183.0040, TSUS, and subject to quotas proclaimed pursuant to Section 22 of the Agricultural Adjustment Act, as amended, in item 950.19, Part 3, Appendix to the Tariff Schedules. As no quota quantity has been allocated under item 950.19, merchandise subject to quota under this item number may not be imported into the United States.

It should be noted that an earlier New York Regional ruling letter (File 806484) was issued to the same inquirer classifying a similar cheese flavored sauce, containing over 5.5 percent by weight of butterfat, under the provision for edible preparations not specially provided for containing over 5.5 percent by weight of butterfat and not packaged for retail sale in item 182.92, TSUS, and subject to quota in item 950.23, Part 3 of the Appendix to the Tariff Schedules. As no quota quantity had been allocated to Canada under this quota,

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the importer was advised that importations of this merchandise would not be permitted.

Accordingly, you are directed to deny this protest. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 21 1986

REFER TO

CLA-2 CO:R:CV:G
077157 TLL

District Director of Customs
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Application for Further Review of Protest No. 3004-4-000151

The subject application for further review concerns the classification of Brussels sprouts. Your office classified these Brussels sprouts under item 137.71, Tariff Schedules of the United States (TSUS), because you considered the imported vegetables to be fresh, chilled, or frozen for purposes of the TSUS. Protestant argues for classification under item 141.89, TSUS, as "vegetables... otherwise prepared or preserved."

ISSUE PRESENTED:

Whether blanching the Brussels sprouts for a period of six to eight minutes prior to importation constitutes more than mere blanching which traditionally has been considered to be incidental to freezing.

FACTS:

In reviewing the issue presented, it is not necessary to describe in detail the complete method for harvesting and processing Brussels sprouts. We have, however, set forth the following processing steps number 8-12 of a 12 step operation, as described by the processor:

8. The sprouts are then removed from the water to the cooking area. The cooking machine is a wire-meshed belt with injection of live steam from the top to the bottom which is enclosed in a chamber. These sprouts are cooked for 6-8 minutes at 212°F. (This stage is also referred to as "Blanching").

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9. Sprouts are then run through cooling equipment and cooled to 60°F.

10. After cooling, sprouts are run through belt and balance of outer layers are trimmed and prepared for freezing.

    Product at this time is fully cooked and trimmed and ready for consumption.

11. Sprouts are then run through quick freezing equipment at minus 20-30°F to ensure the retention of very good quality and to avoid any deterioration.

12. Sprouts are then run through sizing machinery and are sized in three different sizes:

    a) Baby Size - from 0 - 15/16ths

    b) Small Size - from 15/16ths - 1 1/4

    c) Larger Size - from 1 1/4 - 1 1/2

    From this sizing machine, sprouts are run into cardboard totes and shipped to the United States to be packaged for final consumer packs.

The concerned import specialist, who is of the opinion that item 141.89, TSUS, represents the proper classification, toured the processing plant and reported the following observation:

> This is the second year these sprouts have been purchased by [purchaser]. They have prepared a Brussels Sprouts in Cheese Sauce package that is being test sold on the East Coast and is not available locally.
>
> [Purchaser] requires Brussels sprouts that do not need further cooking because the cheese sauce cannot be overcooked. They are unable to acquire the right kind of product in California; the only ones they have found to suit their needs are grown in British Columbia.
>
> The shipper usually uses a peroxidase enzyme test that is not as sensitive as the catalase enzyme test used by [purchaser].
>
> The Brussels sprouts are first washed, which removes the outer leaves, then sorted, discarding any over 1 1/4 inch diameter. They are then conveyed through a steaming blanch, sprayed for cool-down and frozen in bulk.

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> I ate two Brussels sprouts that were partially cooled and found them completely tender. We then went to the lab where a number of completely frozen Brussels sprouts were placed in boiling water, brought to a boil and cooked two minutes, barely heating through. These were edible as cooked Brussels sprouts. The centers were yellow and there was no bitter taste. One lab technician was testing the blanched Brussels sprouts, using the shipper's peroxidase test which shows immediate reaction. They had not quite satisfied this test. When it showed complete, they would begin using [purchaser] catalase test, which takes 10 minutes. The sprouts we had eaten were not considered sufficiently blanched for [purchaser's] requirements.
>
> Those Brussels sprouts that do not meet [purchaser's] specifications will be sold as a frozen product to other purchasers who do not want a completely cooked product. There is a price difference of about 1 cent a pound higher for [purchaser's].

The laboratory report which concludes that item 137.71, TSUS, represents the proper classification did make the following observations:

> Our visual examination of the "whole" sprouts from all four bags found there are no visual differences. We found the centers of the sectioned "cooked" sprouts to have a creamy yellow color and sweet taste. We found the centers of the "fresh frozen" sprouts to have a brownish color and tasted sweet with a tinc of bitter aftertaste.

DISCUSSION OF LAW:

There have been a number of Treasury Decisions which have held frozen Brussels sprouts not to be "prepared or preserved" within the meaning of the TSUS. While these decisions are not in question, it should be noted that the blanching of the vegetables in question was necessary to inactivate the enzyme peroxidase and such activity stopped after 3-4 minutes maximum, and in some cases only 90 seconds. In the case under

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consideration, the U.S. purchaser requires a product which needs no further cooking because the cheese sauce in which the Brussels sprouts are packaged cannot be overcooked. This distinction between cooking and blanching is supported by dictionary definitions. See for instance, Websters' New International Dictionary, Second Edition, Unabridged (1954) which defines "blanch," "to make white by removing the skin of, as by scalding." "Cook" is defined as "to prepare (food) by boiling, roasting, baking, broiling, etc.; to make suitable for eating by the agency of fire or heat."

Accordingly, it is our conclusion that these particular Brussels sprouts are prepared or preserved within the meaning of the TSUS and should be classified under item 141.89, TSUS. None of the precedents regarding frozen Brussels sprouts are deemed to be applicable to this particular transaction; consequently, they should continue to be followed.

You are directed to grant this protest. A copy of the decision should be attached to the Form 19 Notice of Action, to be sent to the protestant.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JAN 27 1986

REFER TO
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815273

077165

M. Barry Levy, Esq.
Sharretts, Paley, Carter
& Blauvelt, P.C.
Eighty Broad Street
New York, New York 10004

Dear Mr. Levy:

Your letter dated September 4, 1985, addressed to our New York office concerning the dutiable status of a sequined tiara, has been referred to us for a direct reply to you.

The sample submitted which we assume is the product of a country entitled to the column 1 rates of duty is a sequined tiara having a "crown-like" strip glued to a plastic headband. The inner surface of the headband has a row of teeth approximately 1/8 inch in length.

The issue to be resolved is whether this tiara comes within the provision for other tiaras in item 750.20, Tariff Schedules of the United States (TSUS), or is classifiable under the provision for other combs in item 750.15, TSUS, because the supporting headband has a row of 1/8 inch teeth.

Schedule 7, Part 8, Subpart A, Headnote 2, TSUS, provides that "For the purposes of this subpart, the term 'combs' means toothed instruments having not over two rows of teeth, for adjusting, cleaning, or confining hair, or for personal adornment".

In the case of Rohner Gehrig & Co., Inc., and Etna Products Co. v. United States, Abstract No. 60940 (1957), the Customs Court held that certain devices used to hold the hair in a "pony tail" are combs rather than clinchers or barrettes. The devices involved consisted of two semi-circular tooth parts, pinned or hinged together at one end. In use the devices were opened and the hair inserted, after which they were snapped shut.

The court's rationale for its finding was hat "combs are eo nomine specially provided for, barrettes are not, and we are of the opinion that, inasmuch as the articles at bar are fairly within the description of combs, even though perhaps equally within the description of barrettes, classification should take place under the eo nomine provision for combs, rather than under the more general provisions by component material, which are less relatively specific in their application to the merchandise."

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We do not believe that the above-cited decision is controlling as to the classification of the sequined tiara because that decision was rendered prior to the effective date of the tariff schedules which have eo nomine provisions for barrettes and tiaras. It is our view that the court would have decided Rohner Gehrig, supra, differently had there been an eo nomine provision for barrettes in the Tariff Act of 1930, even though the teeth in the barrettes involved were a very substantial part of those barrettes. In the instant situation the teeth do not appear to be a substantial part of the tiara.

It is our position that the sequined tiara is classifiable under the eo nomine provision for tiaras in item 750.20, TSUS, regardless of the presence of teeth. However, classification of this type of merchandise should proceed on a case by case basis rather than relying on guidelines which may prove difficult to apply to product variations.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

077165

G10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

12 FEB 1986

REFER TO

CLA-2:CO:R:CV:G
077195 PR

077195

Saul L. Sherman, Esquire
Schnader, Harrison, Segal & Lewis
1111 Nineteenth Street, N.W.
Suite 1000
Washington, D.C. 20036

Dear Mr. Sherman:

This is in reply to your letter of October 28, 1985, on behalf of Franco Manufacturing Co., Inc., concerning the tariff status of terry towels made in Taiwan.

Two samples were submitted -- a plain white towel, rectangular in shape, measuring 15 3/4 inches by 27 inches, and a printed (with apples, jelly jar, and a flower design) towel, rectangular in shape, measuring 14 3/4 inches by 26 inches.

First you ask if a label on the plain towel containing, along with the required country of origin, fabric content, and care instructions, the notation "DISHTOWEL" will enable that towel to be classifiable as a terry dish towel valued over 45 cents each and over $1.45 per pound, in item 366.2420, Tariff Schedules of the United States Annotated (TSUSA).

The provisions for dish towels are statistical (nonstatutory) provisions. Dish towels and other towels both fall under the same statutory classification item (366.24), but dish towels are annotated separately for quota and statistical purposes. In the absence of authority to the contrary, and to maintain the continuity and general scheme of the tariff schedules, we will apply the General Interpretative Rules (General Headnote 10, TSUSA) to the statistical annotations as well as for the statutory provisions.

"Dish towels" is, in effect, a use provision. General Headnote 10 (e)(i) provides that in a classification controlled by use (other than actual use), it is the chief use in the United States of the class or kind of merchandise to which the imported articles belong that governs. In its condition as imported, even with the "dish towel" notation on the label, the plain white terry towel belongs to a class or kind of merchandise chiefly used as hand towels. Accordingly, it is classifiable

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...LEASED TO THE

in item 366.2460, TSUSA, with a textile category designation of 363.

However, if the towel is imported with the words "Kitchen Towel" printed across it, as you have suggested, or with other printing similar to the second sample, then the chief use of the class or kind of merchandise to which those towels belong would be as dish towels, and they would be classifiable in item 366.2420, TSUSA, with a textile category designation of 369.

Due to the frequent changes of statistical suffixes (the last 2 digits of the item number) and the applicability of textile restraints, you should contact your local Customs office prior to importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

077195

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JAN 30 1986

REFER TO
CLA-2 CO:R:CV:G
077211 c

District Director of Customs
U.S. Customs Service
1 E. Bay Street
Savannah, Georgia 31401

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1703-3-000248

This protest was filed against your decisions in the liquidations of the following entries:

Entry No.	Date	Date of Liquidation
82-276465	9-13-82	6-3-83
83-351744	12-14-82	6-3-83
83-351451	12-06-82	6-3-83
83-351772	12-20-82	6-3-83

FACTS:

The footwear involved consisting of men's nylon suede hiker hi-cut shoes, canvas low-cut B/B shoes, canvas hi-cut B/B shoes, nylon track shoes, Astro-turf shoes, men's nylon jogger shoes and nylon and leather upper B/B shoes were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear is classifiable under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Should the cost breakdowns submitted by the inquirer showing the footwear to be in chief value of leather be accepted?

RELEASED TO THE

077211

A3

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on this matter was that importer submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

With respect to stock No. 75169, Astro-turf shoes imported under entry No. 83-351772, the component value breakdown claims 1.80 square feet of Everskin leather present per pair. However, the Customs laboratory report on this style shows .82 square feet per pair on a man's size 8. Normally, this difference would be sufficient to show the chief value as being rubber and plastics but this manufacturer also shows leather inspection/sorting, cutting and trimming charges of 60 cents, plus stitching charges of 60 cents, so that leather remains the component of chief value even though the cutting and trimming costs are the highest we have seen up to the present time. However, we have no "tangible evidence" that these costs are false and we will accept the protestant's claim that stock No. 75169 is in chief value of leather.

With respect to stock No. 71868, child's nylon and leather joggers imported under entry No. 83-351772, the component value breakdown claims 1.504 square feet of leather present per pair. However, the Customs

RELEASED TO THE

A4

laboratory report on this style shows .56 square feet of leather per pair. The breakdown submitted shows a total leather cost of $1.328 and we have adjusted the leather cost as follows:

.56 X $1.328 = $0.495			
1.504	.043	Insp./sort	
	.172	cutting	Value of rubber/plastic
	.021	trimming	components on MFGR's breakdown
	.15	stitching	equals $1.235
	$.881	Leather cost	

In view of the foregoing computation stock No. 71868 should be classified under item 700.95, TSUS, as liquidated.

With respect to the component value breakdowns submitted covering the remaining stock numbers, we have no "tangible evidence" that the leather costs are false. Consequently, we will accept the documentation submitted showing them to be in chief value of leather. However, the youth's sizes 11-1/2 to 2 should be treated as unisex and liquidated under item 700.45, TSUS.

HOLDING:

The protest should be denied in part as to stock No. 71868, child's nylon and leather joggers imported under entry No. 83-351772 and allowed as to the stock numbers covering the footwear imported under the remaining entries. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

AS

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

20 MAR 1986

CLA-2 CO:R:CV:G
077212 c

077212

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005599

This protest was filed against your decision in the liquidation on February 10, 1984, of entry No. 84-121814-5 dated January 12, 1984, covering a shipment of athletic footwear manufactured in Korea.

FACTS:

The athletic footwear involved was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear involved is in chief value of leather and is therefore classifiable as leather footwear under item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

1. Does the documentation presented by the protestant show that the footwear is in chief value of leather?

2. Is Customs required to accept the cost breakdowns submitted by the protestant?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has

A6

evidence in its possession that the cost breakdown is erroneous; or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that importer submitted data need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

In reviewing the component value breakdowns submitted, we note that the manufacturer has allocated his stitching costs on the basis of his material costs, counting the costs of materials with the "V" typed in the "stitching part" column. This allocation is not in agreement with the instructions set forth in T.D. 81-0186 dated December 16, 1981, that the "cost of stitching leather overlays onto the fabric uppers should be allocated among the material comprising the uppers in proportion to their relative weights."

In view of the foregoing, we have ignored the stitching charges shown on the value breakdowns because they are not calculated correctly and without the stitching charges, we note that the following styles with split leather overlays are in chief value of rubber/plastics:

Style No.	Leather Total	Rubber/Plastics Total
BOG 6277 (Inv. 2/pg. 13)	$0.894	$1.082
HOG 96410 (Inv. 3/pg. 29)	.822	.959
HOG 6380 (Inv. 3/pg. 32)	.775	.803
JOG 6380 (Inv. 3/pg. 35)	.588	.691
BOG 6274 (Inv. 4/pg. 47)	1.109	1.253
BOG 6274 (Inv. 5/pg. 66)	.894	1.082
BOG 6275 (Inv. 5/pg. 69)	.894	1.082
BOG 6277 (Inv. 7/pg. 103)	1.109	1.253

A1

It is our opinion that the foregoing listed styles were properly classified as liquidated under item 700.95, TSUS. However, with respect to the other styles which are claimed to be in chief value of leather, we have no "tangible evidence" which would permit us to categorically state that the information provided by the protestant as to component material of chief value is false. Accordingly, those styles are in chief value of leather and should be reliquidated under item 700.35, TSUS, or item 700.45, TSUS, as applicable.

HOLDING:

The protest should be denied in part as to the styles listed above and allowed as to the remaining styles covered by the protest. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE

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677212

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR - 6 1986

REFER TO

CLA-2 CO:R:CV:G
077215 c

077215

District Director of Customs
Savannah, Georgia 31401

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1703-3-000105

This protest was filed against your decisions in the liquidations on January 3, 1983, of entry No. 82-254108 dated March 8, 1982, entry No. 82-254323 dated March 15, 1982, entry No. 82-254432 dated March 15, 1982, entry No. 82-254683 dated March 30, 1982, and entry No. 82-254684 dated March 30, 1982.

FACTS:

The leather/fabric sport shoes manufactured in Korea were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the sport shoes are properly classifiable according to gender and value as leather footwear under items 700.35 or 700.45, TSUS.

ISSUE:

Does the documentation provided by protestant show that the sport shoes are in chief value of leather?

LAW AND ANALYSIS:

Entry No. 82-254108

A review of the manufacturer's component material breakdown for footwear covered by invoices numbered 1 through 4 shows that such footwear is in chief vlaue of leather. Footwear covered by these invoices should be reliquidated accordingly.

TO THE

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With respect to the footwear covered by invoices numbered 5 through 8, there were no manufacturer's component value breakdowns submitted at the time of entry or at the time of protest. While the protestant states in its covering letter that these component value breakdowns were not requested at any time, the New York Seaport did circulate a notice through the CIE in April 1981 to all ports suggesting that they request component value breakdowns on this leather/fabric athletic footwear if it was not presented at the time of entry and required to aid in classification. Therefore, we believe that the protestant should have been aware of the necessity of supplying component value breakdowns on this type of athletic footwear. In the absence of component value breakdowns, it is our position that footwear covered by invoices numbered 5 through 8 were properly classified as liquidated under item 700.95, TSUS.

Entry No. 82-254323

As to the invoices numbered 1 through 5, we note that the manufacturer's component value breakdowns indicate that footwear covered by these invoices is in chief value of leather. We have no reason to dispute these breakdowns and footwear covered by these invoices should be reliquidated accordingly.

The invoices numbered 6 through 10 cover footwear not included in this protest.

With respect to invoices numbered 11 and 12, we find that stock No. 75164 is in chief value of rubber and plastics based on a review of H.S. Corporation's component value breakdown. Our computation is as follows:

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NO

Leather

Leather cost	$1.2764
Less salvaged waste	.0889
Net leather cost	1.1875
Cutting	.0520
Trimming	.2970
Total	$1.5365

Rubber and Plastics

Cost	$1.0614
Cutting	.0232
Trimming	.2640
Sole labor	.2222
Total	$1.5708

In accord with the above computation, footwear covered by invoices numbered 11 and 12 were properly classified as liquidated under item 700.95, TSUS.

Entry No. 82-254432

As to footwear covered by invoices numbered 1, 2, and 3, we note that the manufacturer's component value breakdowns show the shoes to be in chief value of leather. We have no reason to dispute the value breakdowns and footwear covered by those invoices should be reliquidated accordingly.

Entry No. 82-254683

With respect to invoices numbered 1 and 2, we note that the component value breakdowns submitted by the manufacturer show the footwear to be in chief value of leather. We have no reason to dispute the value breakdowns and footwear covered by those invoices should be reliquidated accordingly.

The invoices numbered 3 through 7 cover other types of footwear and are not included in this protest.

Entry No. 82-254684

As to invoice No. 1, we note that the component value breakdown submitted by the manufacturer shows the footwear to be in chief value of leather. We have no reason to dispute the value breakdowns and footwear covered by the invoice should be reliquidated accordingly.

The invoices numbered 2 and 3 cover welt footwear classifiable under item 700.29, TSUS, and are not included in this protest.

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077215

The invoices numbered 4 and 5 do not include any manufacturer's component value breakdowns indicating that the footwear is in chief value of leather. Consequently, in the absence of manufacturer's component value breakdowns showing the footwear to be in chief value of leather, it is our position that the footwear was properly classified in liquidation under item 700.95, TSUS.

HOLDING:

The protest should be allowed in part as to those invoices covering footwear which we have found to be in chief value of leather. These styles should be reliquidated under items 700.35 or 700.45, TSUS, as applicable. However, youth's sizes 11 1/2 to 2 should be treated as unisex and reliquidated under item 700.45, TSUS. The protest should be denied as to the remaining footwear.

A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

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A12

516710

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 24 1986

REFER TO

CLA-2 CO:R:CV:G
077217 c

District Director of Customs
Boston, Massachusetts 02109

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0401-3-00903

This protest was filed against your decisions in the liquidations of the following entries:

Protest No.	Entry No. and Date	Date of Liquidation
82-265307-8	11-08-82	8-26-83
83-268333-6	6-28-83	8-26-83
83-264953-2	6-08-83	8-15-83

FACTS:

Certain athletic footwear manufactured in Korea was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather and are therefore classifiable under the provisions for leather footwear in item 700.35, TSUS, or 700.45, TSUS, depending on gender and value per pair.

ISSUE:

1. In determining component material of chief value of footwear should the values of the plastics and rubber components be broken out separately?

2. Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

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A13

LAW AND ANALYSIS:

It has been consistently our position that in determining component material of chief value of footwear that the values of the plastics and rubber components should be combined.

We agree with your finding that the shoes covered by entry No. 83265307-8 and the 1,464 pairs of shoes going to Sears on invoice No. 1 covered by entry No. 83264953-2 are in chief value of leather and are classifiable as claimed.

The component material breakdowns submitted by the protestant covering 12,600 pairs going to Zayres on invoice No. 2 covered by entry No. 83264953-2 and the 16,800 pairs of shoes covered by entry No. 83268333-6 show that rubber and plastics constitute the component material of chief value of the shoes. Therefore, these shoes were properly classified under item 700.95, TSUS.

HOLDING:

The protest should be allowed in part as to these shoes covered by entry No. 83265307-8 and the 1,464 pairs of shoes going to Sears on invoice No. 1 covered by entry No. 83264953-2. The protest should be denied in part as to the 12,600 pairs of shoes going to Zayres on invoice No. 2 covered by entry No. 83264953-2 and the 16,800 pairs of shoes covered by entry No. 83268333-6. A copy of this decision sould be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

Harvey B. Fox
Director, Classification
and Value Division

DOCUMENT MAY BE RELEASED TO THE PUBLIC

077217

A14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 21 1986

REFER TO

CLA-2 CO:R:CV:G
077218 c

077218

District Director of Customs
Boston, Massachusetts 02109

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0401-4-000785

This protest was filed against your decision in the liquidation on July 18, 1984, of entry No. 84-368692-4 dated June 26, 1984, covering a shipment of athletic shoes manufactured in Taiwan.

FACTS:

The women's vinyl flatties involved were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather and are therefore classifiable as leather footwear under item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Does the documentation presented show that the shoes are in chief value of leather as claimed by the protestant?

LAW AND ANALYSIS:

The [illegible] presented is sparse. The CF 5523 for the shipment states in column 9 that the shoes are in chief value of plastic. We have no reason to doubt this statement inasmuch as a detailed component material breakdown apparently has not been submitted.

In view of the foregoing, it is our opinion that the shoes were properly classified in liquidation under item 700.95, TSUS.

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HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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077218

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR 26 1986

REFER TO
CLA-2 CO:R:CV:G
077240 c

077240

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005088

This protest was filed against your decisions in the liquidations on February 10, 1984, of entry No. 84-190434-9 dated December 25, 1983, and entry No. 84-190436-5 dated January 3, 1984, covering shipments of athletic footwear manufactured in Korea.

FACTS:

The leather/nylon joggers involved were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather and are therefore classifiable under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

The protestant also claims that the footwear was classified as not being "of leather" based on an erroneous theory of law that when determining component material of chief value for the purposes of classification under items 700.35, 700.45, and 700.95, TSUS, the separate values of "rubber" and "plastics" are combined before comparing them to the value of the "leather." It is the protestant's position that the value of the rubber and the plastics must be broken out separately.

B3

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

ISSUE:

1. In determining component material of chief value of footwear, should the individual values of the plastics and rubber components be broken out separately?

2. Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

It has been consistently our position that in determining component material of chief value that the values of the plastics and rubber components should be combined.

The manufacturer's component value breakdowns reflect the following costs:

Entry No. 84-190434-9

Invoice No. 1	Leather Costs		Rubber/Plastics Costs	
(M/B Velcro Joggers)	M	B	M	P
	$1.37	$1.29	$0.96	$0.89
cutting	.09	.09	cutting .19	.19
trimming	.03	.03	trimming .17	.17
	$1.49	$1.41	sole labor .20	.20
			$1.52	$1.45

Invoice No. 2	Leather Costs	Rubber/Plastics Costs
(Child's Velcro Joggers)	$1.13	$0.77
cutting	.09	cutting .19
trimming	.03	trimming .17
	$1.25	sole labor .20
		$1.33

"Sole labor" listed under the rubber/plastics components above covers the costs of grinding and buffing the different layers of the bottoms. LD 81-0186 dated December 16, 1981, specified that these costs should be allocated among the materials comprising the bottoms. It is not possible to allocate the stitching charges above because there is no indication of weights on the various components comprising the uppers.

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It is our position that a review of the manufacturer's component breakdown on entry No. 84-190434-9 itemized above shows that the joggers are in chief value of rubber/plastics. Consequently, they were properly classified in liquidation under item 700.95, TSUS.

As to entry No. 84-190436-5, we note that the cost breakdown submitted on Invoice No. 2 has a somewhat different format but shows a value for the leather components of $0.9275 against $0.715 for the rubber/plastics components. The manufacturer has added 15 cents for stitching leather to leather but even disallowing this charge, leather would still be the component of chief value based on the manufacturer's figures. In view of the foregoing it is our position that Invoice No. 2 should be reliquidated under item 700.45, TSUS.

HOLDING:

The protest is allowed in part as to that footwear covered by entry No. 84-190436-5 (Invoice No. 1). The protest is denied in part as to that footwear covered by entry No. 84-190434-9 (Invoices Nos. 1 and 2). A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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077240

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR - 3 1986

REFER TO
CLA-2 CO:R:CV:G
077241 c

077241

Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005093

This protest was filed against your decisions in the liquidations on January 20, 1984, of entry No. 84-190421-3 dated November 26, 1983, and entry No. 84-190422-6 dated November 25, 1983, covering shipments of athletic footwear manufactured in Korea.

FACTS:

The leather/nylon joggers involved were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

The protestant maintains that in determining component material of chief value of footwear the values of the rubber and plastics must be broken out separately.

ISSUE:

1. In determining component material of chief value of footwear, should the values of the plastics and rubber components be broken out separately?

2. Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

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LAW AND ANALYSIS:

It has been consistently our position that in determining component material of chief value of footwear that the values of the plastics and rubber components should be combined.

The manufacturer's component value breakdowns submitted with the entries reflect the following costs:

Entry No. 84-190421-3

	Leather Costs		Rubber/Plastics Costs	
Invoice No. 1				
Stock No. 1387		$1.05		$0.79
(Child's Velcro Joggers)	cutting	.09	cutting	.15
	trimming	.03	trimming	.10
	Total	$1.17	Sole labor	.20
			Total	$1.24

	Leather Costs			Rubber/Plastics Costs		
Invoice No. 2		M	B		M	B
Stock Nos. 1978						
1478		$1.37	$1.29		$0.96	$0.89
(M/B Velcro Joggers)	cutting	.09	.09	cutting	.19	.19
	trimming	.03	.03	trimming	.17	.17
	Total	$1.49	$1.41	sole labor	.20	.20
				Total	$1.52	$1.45

Entry No. 84-190422-6

		M	B		M	B
Stock Nos. 1978						
1478						
(Men's Velcro Joggers)		$1.37	$1.29		$0.96	$0.89
	cutting	.09	.09	cutting	.19	.19
	trimming	.04	.04	trimming	.17	.17
	Total	$1.50	$.142	sole labor	.20	.20
				Total	$1.52	$1.45

It should be noted that "sole labor" listed under the rubber/plastics components covers the costs of grinding and buffing the different layers of the bottoms. LD 81-0186 of December 16, 1961, stated that these costs should be allocated among the materials comprising the bottoms. However, it is not possible to allocate the stitching charges on the above

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because there is no indication of the weights of the various components comprising the uppers.

Our analysis of the manufacturer's component cost breakdowns shows that rubber/plastics constitute the component material of chief value of this footwear. Consequently, it is our view that classification under item 700.95, TSUS, was appropriate.

HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

By Harvey B. Fox
Director, Classification
and Value Division

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47724

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

12 FEB 1986

REFER TO
CLA-2 CO:R:CV:G
077242 c

077242

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-006349

This protest was filed against your decision in the liquidation on March 16, 1984, of entry No. 84-190447-5 dated February 2, 1984, covering a shipment of athletic footwear manufactured in Korea.

FACTS:

Certain men's and boys' leather/nylon joggers were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear is properly classifiable under the provision for leather footwear in items 700.35 and 700.45, TSUS, according to gender and value per pair.

ISSUE:

(1) Does the documentation provided by the protestant support its claim that the footwear is in chief value of leather?

(2) Is Customs required to accept the component material breakdown submitted by the protestant?

LAW AND ANALYSIS:

The value breakdowns submitted with the entry of the subject footwear are as follows:

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Invoice No. 1

	Leather Costs	Rubber and Plastic Costs	
(Men's Nylon/Lea Joggers)	$0.84		$0.77
cutting	.09	cutting	.19
trimming	.03	trimming	.10
	$0.96	sole labor	.20
			$1.26

Invoice No. 2

(Boys' Velcro Jogger)	$1.00		$0.59
cutting	.09	cutting	.10
trimming	.01	sole labor	.14
	$1.10		$0.83

Invoice No. 3

(Men's Velcro Jogger)	$1.32		$0.76
cutting	.10	cutting	.10
trimming	01	sole labor	$ .14
	$1.42		$1.00

The "sole labor" costs listed under the rubber and plastics components presumably covers the costs of grinding and buffing the different layers of the bottoms. Ordinarily these costs should be allocated among the materials comprising the bottoms. However, it is not possible to allocate stitching charges on the above because there is no indication of the weights of the various components comprising the uppers.

With respect to the 7200 pairs of athletic shoes covered by invoice No. 1, it is our position based on the cost information supplied by the manufacturer that those shoes were in chief value of rubber/plastics and were properly classified as liquidated under item 700.95, TSUS.

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous; or (3) the cost breakdown is so patently inaccurate on its face that Customs officers

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have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that importer supplied data need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses. With respect to the component material breakdowns covering invoices numbered 2 and 3, we do not find any "tangible evidence" which would refute the figures supplied by the manufacturer. Consequently, such footwear is in chief value of leather and should be classified under items 700.35, and 700.45, TSUS, according to gender and value per pair as claimed by the protestant.

HOLDING:

The protest should be denied in part as to that footwear covered by invoice No. 1. The protest should be allowed in part as to that footwear covered by invoices numbered 2 and 3. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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077242

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

5 MAR 1986

REFER TO
CLA-2 CO:R:CV:G
077247 PR

This ruling concerns the tariff status of woven inked typewriter ribbon imported in material lengths.

ISSUE:

The issue presented is whether woven typewriter ribbons that have been inked are classifiable as coated or filled fabrics and, if not, whether they are more correctly classifiable under the provisions for articles of textile materials, not specially provided for, or under the provisions for narrow fabrics.

FACTS:

On June 18, 1985, the Customs Service ruled (file 074455) that certain woven nylon ribbons were classifiable under the provision for other woven fabrics, of man-made fibers, coated or filled, in item 356.40, Tariff Schedules of the United States (TSUS). The ruling was made on the basis that the ink visibly and significantly affected the surface or surfaces of the fabric otherwise than by a change in color, and amounted to a reversal of Customs prior position, as evidenced by T.D. 70-135(13) and T.D. 70-161(4), which was to classify the subject merchandise under the provision for articles of textile materials, not specially provided for, of man-made fibers, in item 389.60 (now 389.62), TSUS.

LAW AND ANALYSIS:

It is contended that our ruling of June 18, 1985, should be rescinded because:

(1) The ink does not visibly and significantly affect the surface or surfaces of the woven ribbon otherwise than by a change in color, and, therefore, it cannot be considered a coating or filling for tariff purposes;

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(2) The Customs Service has an established and uniform practice to classify inked woven ribbons in material lengths under the provisions for articles of textile material, not specially provided for, and is prohibited by regulation from administratively changing that practice without going through a formal change of practice procedure; and

(3) Inked woven ribbons are not commonly or commercially considered to be coated or filled fabrics.

Surface Character:

Headnote 2(a), Subpart 4C, Schedule 3, TSUS, defines the phrase "coated or filled" as follows:

> 2. For the purposes of the tariff schedules --
> (a) the term "coated or filled", as used with reference to textile fabrics and other textile articles, means that any such fabric or other article has been coated or filled (whether or not impregnated) with gums, starches, pastes, clays, plastics materials, rubber, flock, or other substances, so as to visibly and significantly affect the surface or surfaces thereof otherwise than by change in color, whether or not the color has been changed thereby;

In H. Rosenthal Co. v. United States, 81 Cust. Ct. 77, C.D. 4769 (1978), aff'd 67 CCPA 8, C.A.D. 1236 (1979), the court ruled that a coating for tariff purposes need not be visible to the naked eye, or even under a microscope; it need only visibly affect the surface of a fabric and this is satisfied if the fabric is visibly stiffer than the same fabric in an uncoated condition.

Following the decision in Rosenthal, Customs published T.D. 81-219, which stated that, in view of the court's holding, Customs would consider the surface of a fabric to be visibly affected if, among other things, "the coating or filling material imparts a shine, luster or glossy appearance, or a dull appearance, that is noticeable by a casual examination." While

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no samples were submitted, based on our general experience with inked typewriter ribbons, it appears that the ink meets the quoted criteria in T.D. 81-219.

Practice:

There are only two ways for an established and uniform practice to develop — (1) publication of the full text of a Customs ruling in the Customs Bulletin, section 177.10(b), Customs Regulations (19 CFR 177.10(b)), and (2) uniform liquidations over a long period of time, Heraeus-Amersil, Inc. v. United States, Slip Op. 84-13, 600 F. Supp. 221 (1984).

Section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)), requires Customs to proceed with a formal change of practice procedure prior to administratively changing an established and uniform practice if the change will result in the assessment of a higher rate of duty or if the change results in the assessment of a lower rate of duty and the matter is of sufficient importance to involve the interests of domestic industry. It is the latter requirement that is in issue here.

Domestic industry has made it clear that our ruling of June 18, 1985, may have a significant adverse effect on it. However, before section 177.10(c)(1) can become operative, there must also be a finding that the ruling changes an established and uniform practice. We believe there exists a substantial question whether the appropriate portion of section 177.10(c)(1) may be invoked after Customs has issued a ruling. However, since it is determined that no practice existed with respect to the subject merchandise, we need not decide, at this time, the applicability of the second portion of section 177.10(c)(1) to already issued rulings.

In view of our finding that there exists no practice applicable to inked woven ribbons imported in material lengths, the following

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observations are in reply to positions submitted to Customs.

1. Abstracted rulings, such as T.D.'s 70-135(13) and 70-161(4), do not establish a practice. See Ditbro Pearl Co., Inc. v. United States, 72 Cust. Ct. 1, C.D. 4497 (1974), aff'd 62 CCPA 95, C.A.D. 1152 (1975); Borneo Sumatra Trading Co., Inc. v. United States, 56 Cust. Ct. 166, C.D. 2624 (1966).

2. The existence of an administrative (statistical) annotation, in this case item 389.6255, does not establish a practice. Item 398.6255 is an administrative subdivision of the statutory item 389.62 and as such is inserted into the Tariff Schedules of the United States Annotated (TSUSA) by a committee established by section 484(e), Tariff Act of 1930, as amended (19 U.S.C. 1484(e)). It is not a finding of a practice and is neither indicative of nor evidence of the existence of a practice. In fact, item 389.6255 is applicable to all woven inked ribbons of man-made fibers, classifiable under item 389.62, not just those ribbons imported in material lengths, which are here in issue.

3. The inquirer is correct in its observation that a practice may be shown by uniform liquidations at various ports over a period of time. However, our National Import Specialist concerned with this merchandise advises that no practice based on liquidations exists because this merchandise, woven inked ribbons in material lengths, has not been imported, or if it has, such importations are so few and so scattered that they cannot reasonably constitute an established and uniform practice. We have polled all our districts and our findings support the views of the National Import Specialist. We are unable to find any significant importations of the subject merchandise, and the inquirer has failed to provide any evidence, or indication, of such.

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Commercial Designation:

Customs has been presented with ample and convincing evidence that inked typewriter ribbons and similar inked fabrics are not commercially known, considered, or placed in the same category as coated or filled fabrics. The evidence consists of affidavits, lexicon definitions, and distinctions made in the trade and commerce of this country between inked ribbons and coated or filled fabrics. Apparently, "coated or filled" fabrics refers in the wholesale trade to textiles which have been treated with the intention that the fabric characteristics be permanently altered, while an inked ribbon merely serves as a medium for the storage and transmission of the ink.

It is a cardinal rule that tariff terminology is given its common and commercial meaning, and where those two are different, the commercial designation prevails. Florsheim Shoe Co. v. United States, 71 Cust. Ct. 187, C.D. 4495 (1973). However, this rule does not normally apply when a term is otherwise defined in the tariff schedules. Schott Optical Glass, Inc. v. United States, 67 CCPA 32, C.A.D. 1239 (1979). It follows, therefore, that where a tariff term is defined, and that definition is unambiguous, the definition must take precedence over all other factors, including the common or commercial meaning. It also follows that since legislative history cannot be used to create an ambiguity in an otherwise clear and unambiguous statute, United States v. Corning Glass Works, 66 CCPA 25, C.A.D. 1216 (1978), commercial designation also cannot be used to create an ambiguity in an otherwise clear and unambiguous statutory definition. It was with these principles in mind that the ruling of June 28, 1985, was issued.

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However, in reviewing the entire matter, we now recognize that an inherent ambiguity does exist with respect to the headnote definition of "coated or filled," Rosenthal, supra, notwithstanding. That phrase is defined in terms of itself -- "coated or filled .. means that any such fabric ... has been coated or filled ..."

Therefore, what purports to be a definition is really an explanation (of what substances can be coatings or fillings) coupled with a requirement (that the substances affect the surface(s) of the fabric otherwise than by color). Read literally, a fabric can be coated or filled but not qualify for classification as such because it does not have a sufficient amount of coating of filling to be a coated or filled fabric for tariff purposes. In actuality Headnote 2(a) leaves open the definition of "coated of filled."

We note the United States Customs Court decision in Bruce Duncan Co., Inc. v. United States, 80 Cust. Ct. 48, C.D. 4736 (1978), where the court considered, in determining whether a fabric was coated or filled, the fact that machinery applying plastics to the fabric was known as "coating ... equipment," that the mechanics of applying the plastics to the fabric was called a "coating printing process" and that manufacturers of the merchandise considered the fabrics "coated" (at pg. 50).

While no specific industry definition of "coated or filled" has been presented to Customs, nor are we aware of any, as stated previously, it is clear from the information that has been submitted that the process of inking ribbons is not known in the trade and commerce as a coating process. Accordingly, even though the ink may visibly and significantly affect the surface(s), the fabric is not "coated or filled" with ink, and is not, therefore, classifiable in item 356.40, TSUS.

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Articles vs. Narrow Fabrics

We have also reviewed the original classification of inked ribbons in material lengths under the provisions for articles of textile materials not specially provided for. In examining pertinent court cases, there appears some authority to support such classification (e.g., Boyle Needle Co. v. United States, 5 Ct. Cust. Appls. 43, T.D. 34009 (1913); J. B. Hendriques Inc. v. United States, 46 CCPA 54, C.A.D. 695 (1958).

However, in our view, the more correct position is that the subject merchandise is classifiable as material, rather than as an article. In Harding Co. v. United States, 23 CCPA 250, T.D. 48109 (1936), rolls of brake lining material, which could reasonably only be used to make brake linings, were held to be material because they were not dedicated, in their imported condition, to the making of any particular brake lining. See also Terumo-America, Inc. v. United States, 2 CIT 121 (1981), where glass rods in 48 inch lengths, dedicated for use in thermometers, and incapable of being made into anything else, but which had not attained an individuality as finished or unfinished thermometers, were held to be material (at pg. 125). The court stated, "it is well established that the mere fact that imported merchandise is dedicated to use in making particular articles or parts does not take the merchandise out of the class of 'material'" (at pg. 126).

As material, the merchandise is specially provided for, under the provision for other narrow fabrics, of man-made fibers, ribbons, in item 347.60, TSUS. Narrow fabrics are defined in Headnote 2, Subpart 4A, Schedule 3, as, among other things, woven fabrics not over 12 inches in width, with fast edges. The typewriter ribbons clearly meet this definition, whether inked or not inked.

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HOLDING:

Woven inked typewriter ribbons are classifiable under the provisions for narrow fabrics in Subpart 4A, Schedule 3, TSUS, and not as coated or filled fabrics or as articles of textile materials not specially provided for.

EFFECT ON OTHER RULINGS:

In accordance with section 177.9(d), Customs Regulations (19 CFR 177.9(d)), our ruling of June 18, 1985, file 074455, and the rulings on which T.D.'s 70-135(13) and 70-161(4) are based, are hereby modified to reflect the holding of this ruling.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

077247

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

20 MAR 1986

REFER TO
CLA-2 CO:R:CV:G
077250 TLL

077250

Chief, Customs Information Exchange
United States Customs Service
New York Seaport
6 World Trade Center
Room 450
New York, New York 10048

Dear Madam:

A Customs Form 6431, dated July 18, 1984, from the port of Pembina, North Dakota, concerning entry No. 85-141685-6, dated November 20, 1984, relates to a difference in the classification of paper used for the making of envelopes from Canada. The case is listed on page 1 of the most recent list of differences in CIE N 89/79 Suppl. 44, dated December 13, 1985. The file was transmitted to Headquarters on October 30, 1985.

FACTS:

The imported product is a kraft paper. Pembina advises us in the submitted CF 6431 that the chief use of this particular paper is for the making of envelopes. Pembina points out that these envelopes need paper of certain qualities, no curl, high bursting strength and tear resistance, sizing, gluing qualities, pick and hardness and is not designed to be used by high speed printing presses. Pembina also points out that this wrapping paper does not fit the analysis of commercial specifications, including government specifications, for either writing or printing papers.

ISSUE:

Whether this paper, designed for the making of envelopes, should be classified as wrapping paper under item 252.81, Tariff Schedules of the United States (TSUS) as book paper and printing paper, not specially provided for, under item 252.67, TSUS, or as other, not specially provided for, weighing over 18 pounds per ream, under item 252.90, TSUS.

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DISCUSSION OF LAW:

In D. C. Andrews and Co. of Mass. v. United States, 55 Cust. Ct. 354 (1965), the court held that the protestant had not overcome the burden that certain kraft paper, composed of 100 percent sulphate pulp, and chiefly used for the making of tags was classified as paper, not specially provided for, in paragraph 1409, of the Tariff Act of 1930, as amended. In so holding, the Court pointed out that the subject paper being of a class or kind used for the making of tape, labels, and file folders was not synonymous with their understanding of wrapping paper uses, that is, enclosing and covering a package. This definition of wrapping paper is consistent with our understanding of the term. See, for instance, the definition of wrapping paper contained in the Dictionary of Paper, 3rd. Edition (1965) which provides, "a general term applied to a class of papers made of a large variety of furnishes on any type of paper machine and used for wrapping purposes."

Internal Advice 117/83, held certain Windsor Wove Envelope paper to be classified in item 252.67, TSUS, as printing paper; however, the product under review now is so different from Windsor Wove Envelope paper that we do not find Internal Advice 177/83 to be controlling. Accordingly, we find the rationale set forth in Andrews, supra, to be controlling and the merchandise should be classified in item 252.90, TSUS, the successor to paragraph 1409, Tariff Act of 1930, as amended.

CONCLUSION:

The paper should be classified in item 252.90, TSUS.

Sincerely,

Arthur P Schaffner

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR - 6 1986

REFER TO
CLA-2 CO:R:CV:G
077268 c

077268

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-006348

This protest was filed against your decisions in the liquidations of the following entries.

Entry No.	Dated of Entry	Date of Liquidation
83-337996-6	6-05-83	3-02-84
84-190435-2	1-05-84	3-02-84
84-190440-4	1-12-84	3-02-84
84-190441-7	1-12-84	3-02-84

FACTS:

Certain leather/nylon joggers were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear is properly classifiable under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Should the cost breakdowns submitted by the protestant showing the footwear to be in chief value of leather be accepted?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the

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cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on this matter was that importer submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

The manufacturer's component value breakdown submitted on Entry No. 84-190435-2, Stock No. 18981-9, Patt. No. KTN2414, Boy's Velcro Jogger reflects the following costs:

Leather		Rubber/Plastics	
Material cost =	$1.14	Rubber/plastic material =	$0.89
Cutting cost =	.09	Cutting cost =	.19
Trimming cost =	.03	Trimming cost =	.17
	$1.26	Outsole labor =	.20
			$1.45

The foregoing cost breakdown shows that the shoes covered by the breakdown were in chief value of rubber/plastics and therefore, were properly classified under item 700.95, TSUS, as liquidated.

A review of the manufacturer's cost breakdown submitted covering the remaining footwear liquidated under item 700.95, TSUS, shows that the footwear is in chief value of leather.

HOLDING:

The protest is denied in part as to the Boy's velcro joggers, stock No. 18981-9, Patt. No. KTN2414 covered by Entry No. 84-190435-2. The protest is allowed as to the other footwear covered by the remaining three

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entries. It should be noted that any youths' sizes 11-1/2 to 2 should be treated as unisex and liquidated under item 700.45, TSUS. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Scuffleri

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 10 1986

REFER TO

CLA-2 CO:R:CV:G
077273 TLL

077273

Mr. Marvin Talbott
Laser Arts
1712 Cathedral
Plano, Texas 75023

Dear Mr. Talbott:

This is in reply to your letter dated November 8, 1985, requesting a ruling on the tariff classification of holograms. Neither a sample nor a description of the item to be imported was provided, although a pictorial explanation of how a hologram was made was provided.

Assuming the holograms are made in the manner described in the Holography Handbook, they would be classified under item 274.50, Tariff Schedules of the United States (TSUS), as a photograph not specially provided for, other, carrying a 1986 rate of duty of 3.2 percent ad valorem. This classification would occur because Headnote 2(d), Part 5, Schedule 2, TSUS, defines the term "photographs" as embracing "only pictures other than motion pictures, produced on photosensitive materials, and includes positive and negative images on exposed, or exposed and developed, photographic film," and because of the dictionary definition of the term hologram. See for instance, the definition contained in the Second College Edition of Websters' New World Dictionary (1972), which defines "hologram" as:

> a photographic plate containing the record of the interference pattern produced by means of holography.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

21 FEB 1986

REFER TO

CLA-2:CO:R:CV:G
077288 DW

077288

Steven P. Kersner, Esq.
Brownstein, Zeidman & Schomer
Suite 900
1401 New York Ave., N.W.
Washington, D.C. 20005-2101

Dear Mr. Kersner:

Under the authority of section 177.1, Customs Regulations, you have requested, on behalf of Inner Secrets, Inc., a ruling on the tariff classification of ladies' undergarments. Samples were submitted along with your request dated November 7, 1985. The initial request was supplemented by a letter dated November 26, 1985, which was followed by a meeting at Headquarters on February 3, 1986, and additional submissions of February 3, and February 5, 1986.

The garments are composed of a woven fabric that is a blend of 65 percent polyester and 35 percent cotton. The first sample is described as a "bustier camisole" which has wire cups, eight panels with plastic stays, and a traditional hook closure found on brassieres. The plastic stays are used for stiffening the garment. A textile bow is located between the two cups.

The other sample described as "tap pants" is a short-like brief with a scalloped edging. On both sides of the garment there are slits extending approximately 2-1/2 inches. Textile bows are located at the end of each slit.

You point out in your letter that Inner Secrets is a company engaged in the importation, sale, and marketing of underwear. It is your view that the garments are classifiable as underwear in item 378.05, Tariff Schedules of the United States (TSUS) under category 652, because they are imported, sold, and marketed as a set.

Relying on the recently decided case of Mast Industries, Inc. v. United States, Slip Op. 85-114 (October 28, 1985), where the court held that certain nightshirts composed of cotton twill fabric having the weight and softness appropriate for nightwear were not classifiable under the eo nomine provision for shirts, you argue that the garments in question are underwear and not outerwear.

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The class or kind of merchandise that is considered to be underwear for tariff purposes consists of garments worn next to the skin and under outerwear. It is our view that the "tap pants" are too revealing to be worn as outerwear. Thus, they belong to a class of garments known as underwear and are classifiable as other underwear ornamented, women's, of man-made fibers in item 378.0576, Tariff Schedules of the United States Annotated (TSUSA) dutiable as the rate of 28.3 percent ad valorem. The category designation for this classification is 652.

You contend that the undergarment covering the upper torso is not classifiable as a brassiere because it is made from woven fabric; is not sold according to cup size; is not sold in the bra department; and does not satisfy the definition of brassieres as "women's undergarments designed to support the breast" found in the Summary of Trade and Tariff Information covering body supporting garments (USITC Publication No. 841, January 1978).

Although we agree that this garment is not composed of a traditional bra-like material, we are persuaded that it is a structured garment designed to support the breast. Given its wire cups that provide support, plastic stays which create eight disparate panels, and hook closure, it is distinguishable from the knit tank top that Customs ruled was classifiable as underwear in Headquarters Ruling Letter 076052 dated May 24, 1985.

Even if we were to find that the "bustier camisole" were sold in the underwear section of department stores, it is well settled that while the manner in which an article is merchandised is one of the factors to be considered in determining its classification, it is not determinative. Russ Berrie & Co., Inc. v. United States, 76 Cust. Ct. 218, C.D. 4659 (1976). Thus, the undergarment is classifiable under the provision for brassieres and similar body-supporting garments for women and girls in item 376.2430, TSUSA, under category 649, with duty at the rate of 32 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077289 JGH

05 FEB 1986

077289

Beverly L. Pevsner, Esq.
Beiley & Pevsner
7600 Southwest 57th Avenue
Suite 107
Miami, Florida 33143

Dear Ms. Pevsner:

Your letter of November 8, 1985, concerns the dutiable status of an ethanol-ethylbenzene mixture from Brazil or Argentina.

You state that your client, BEH Chemicals Corp., proposes to import a mixture consisting of 2 to 20 percent ethylbenzene and 98 to 80 percent ethanol.

A mixture of ethanol and ethylbenzene containing an amount equal to 7 percent or more by weight of ethylbenzene is classifiable as a benzenoid mixture in item 407.16, TSUS. Such a mixture containing less than 7 percent ethylbenzene is classifiable under the provision for ethanol in item 427.88/901.50, TSUS. The rate of duty is 3 percent ad valorem plus 60 cents per gallon. Under item 407.16, if the mixture is a product of a GSP eligible country, it would be entitled to duty-free treatment, if all the requirements are met.

Sincerely,

John T. Rath

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR 26 1986

REFER TO
CLA-2:CO:R:CV:G
077303 c

077303

District Director of Customs
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3001-3-000517

This protest was filed against your decisions in the liquidations on August 12, 1983, of entry No. 986370 dated January 24, 1983, entry No. 987397 dated March 17, 1983, entry No. 987208 dated March 8, 1983 and entry No. 988553 dated May 19, 1983.

FACTS:

The merchandise involved consists of fabric/leather athletic footwear produced in Korea which was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear is in chief value of leather which requires its classification under the provisions for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Is Customs required to accept the component cost breakdowns submitted by the protestant?

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LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous; or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that importer-submitted data need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

The value breakdown provided by the manufacturer with respect to footwear designated as stock No. 71360 and imported under entry No. 986370 is as follows:

Leather purchased = .55 sq. ft.	leather cost = $1.08
" " present in shoe = .20 sq. ft.	cutting cost = .11
" " waste = .35 sq. ft.	$1.19

Rubber & Plastics	= .90
cutting	= .31
trimming	= .08
sole labor	= .07
	$1.36

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While the leather cost shown appears excessive and the leather waste exceeds the amount claimed present in the shoe, the figures still show that rubber/plastics is the component material of chief value.

The value breakdown provided by the manfacturer covering footwear designated as stock No. 71868 and imported under entry No. 987208 is as follows:

Leather purchased = .55 sq. ft.		leather cost =	$.87
" " present in shoe = .20 sq. ft.		cutting =	.11
" " waste = .35 sq. ft.			$.98

Rubber & plastics =	$.90
cutting	.31
trimming	.08
sole labor =	.07
	$1.36

Again the leather cost and leather waste figues appear to be excessive. However, the figures still show that rubber/plastics is the component material of chief value.

The value breakdown provided by the manufacturer covering footwear designated as stock No. 73169 and imported under entry No. 986370 is as follows:

Leather purchased = 1.78 sq. ft		leather cost =	$1.25
" " present in shoe = .62 sq. ft.		cutting =	.15
" " Leather waste = 1.16 sq. ft			$1.40

Rubber/plastics =	$.85
cutting =	.18
trimming =	.14
sole labor =	.11
	$1.28

The leather waste figures here greatly exceed the maximum waste figures allowable as per our previous instructions on this matter.

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The value breakdown provided by the manufacturer covering footwear designated as stock No. 75124 and imported under entry No. 986370 indicates that .49 square feet of leather out of a total of 1.52 square feet purchased was salvaged. According to our calculation this would reduce the leather cost to 80 cents plus 15 cents for cutting and trimming which amounts to a total cost of 95 cents for leather against a total cost of $1.18 for the rubber/plastics component.

The protestant has submitted additional cost breakdowns for the foregoing style numbers which it states were not submitted at the time of entry but later on due to CF 28's and CF 29's. These cost breakdowns purport to show that the shoes covered by the aforementioned stock numbers are in chief value of leather.

A comparison of the additional cost breakdowns with the original breakdowns are so inconsistent and contradictory that we cannot accept them. For example, the original cost breakdown on footwear covered by stock No. 75124 indicates a salvaged waste figure of 0.49 sq. ft. per pair while the latter breakdown makes no mention of salvaged waste. Also, we note in three instances the amount of leather purchased as shown by the latter cost breakdown shows a substantial increase in leather purchased over that shown on the original breakdown.

In view of the foregoing it is our position that footwear covered by the above-listed stock numbers was properly classified in liquidation under item 700.95, TSUS.

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With respect to the other styles of footwear involved in this protest, we have no "tangible evidence" which would permit us to categorically state that the breakdowns showing the footwear to be in chief value of leather are false. Therefore, those styles should be reliquidated under item 700.35, TSUS or item 700.45, TSUS, as applicable. However, any youth's sizes 11-1/2 to 2 should be treated as unisex and reliquidated under item 700.45, TSUS.

HOLDING:

The protest should be denied in part as to that footwear covered by stock Nos. 71360, 71868, 73169 and 75124, and allowed in part as to the other styles protested. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner
For Harvey B. Fox
Director, Classification
and Value Division

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077303

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

FEB 18 1986

REFER TO
CLA-2:CO:R:CV:G
077305 JLF

077305

District Director of Customs
511 N.W. Broadway Federal Building
Room 198
Portland, Oregon 97209

Re: Decision on Application for Further Review of Protest No. 2904-4-000082

This protest was filed against your decision in the liquidations of March 28, 1984, and March 30, 1984, entry Nos. 84-408852-1, dated February 21, 1984, and 84-408657-8, dated February 7, 1984, covering parts of articles called the "Talking View-Master".

FACTS:

The "Talking View-Master" is used for viewing and listening to 3-D cartridges. The cartridges consist of photographs mounted on a cardboard disk and a miniature phonograph disk, both of which are encased and mounted on a plastic covered cardboard plate. The sample submitted is a molded plastic encasement containing a pair of plastic magnifying lenses. The inserted cartridge is magnified by the enlarging lenses which the viewer looks through.

The cartridges to be used with the subject device contain various standard children's stories, i.e., "Peter Pan," Bambi," etc.

Classification of the device upon importation was under item 722.50, Tariff Schedules of the United States (TSUS), providing for parts of projectors. This classification was in

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error and in succeeding protests "Talking View-Master" parts were classified under item 722.55, TSUS, which provides for parts of photographic film viewers which contain an optical lens. Counsel for the importer maintains that the merchandise should be classified under item 722.56, TSUS, as parts of photographic film viewers without an optical lens. Ultimately, it was suggested that the device is classified as a toy under item 737.95, TSUS.

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ISSUE:

Whether the "Talking View-Master" is a photographic film viewer under item 722.55 or item 722.56, TSUS, or a toy under item 737.95, TSUS. Inasmuch as the "View-Master" does not project, classification under item 722.50, TSUS, is obviously not an issue.

LAW AND ANALYSIS:

Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, states:

> For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults.

An examination of the sample provided reveals that the merchandise of which the imported articles are parts is chiefly used for the amusement of children. The cartridges contain pictures of amusing cartoons. Only standard children's stories are available on the cartridges for this particular view-master. In light of the above reasons and since the device is marketed as a toy, we believe that it is chiefly used as a toy.

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Customs found in TD 56184(95) that miniature viewers used for a similar purpose were classifiable under the provision for toys, not specially provided for. A rather unsophisticated viewer was also classified as a toy in CIE Letter 1102/65 of August 3, 1965. The "Talking View-Master", although considered relatively more sophisticated than the above described items, should not be barred from classification as a toy. It is not unusual to now find increasingly sophisticated and technologically advanced toys. It is the amusement feature which will ultimately determine classification. The sights and sounds produced by the "View-Master" are clearly designed to amuse children even though the viewer itself does not have any patently amusing features. Even though the device could be used, we assume, to produce educational material, its chief use, it appears, would always be amusement.

Counsel for the importer makes extensive arguments that because the device is relatively unsophisticated compared to other optical equipment, it should not be included in the provision for optical lenses. However, this provision is intended to encompass all items with an optical lens, regardless of the optical precision or accuracy of the lens.

If the subject device is provided for in both the photographic film viewer and toy provisions, then Headnote 1, Subpart E, Part 5, Schedule 7, requires that the toy provision take precedence.

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HOLDING:

Thus, the "Talking View-Master" parts are properly classifiable as other parts of toys, not specially provided for, in item 737.95, TSUS. This holding does not necessitate a determination as to whether or not the item contains an optical or non-optical lens.

The protest should be denied except to the extent reclassification as indicated above results in a partial allowance. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schefflin

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

MAR 17 1986

CLA-2 CO:R:CV:G
077311 DW
812886

077311

Mr. Mark Bierig
Ardee Merchandise Corp.
130 Grand Street
Carlstadt, New Jersey 07072

Dear Mr. Bierig:

Your letter dated March 27, 1985, requested the tariff classification of a sewing kit in a blister retail package from Taiwan. A sample was submitted on November 27, 1985, following a conversation with a member of my staff.

The sewing kit contains the following items: scissors, tracing wheel, assorted needles, needle threader, pin cushion, box of straight pins, hem gauge, tape measure, thimble, seam ripper, marking pencil with brush eraser, and 12 spools of varicolored threads.

The issue raised by your request concerns whether the merchandise is classifiable as a sewing set in leather cases or other containers of types ordinarily sold therewith in retail sales, other in item 651.13, Tariff Schedules of the United States (TSUS).

The term "sewing set" was construed in New York Merchandise Co., Inc. v. United States, 66 Cust. Ct. 20, C.D. 4162 (1971) where the court stated:

> In our opinion the sine qua non to designation of an article of commerce as a "sewing set" is that an article which contends to be such contains, needle and thread, the essentials needed to perform the act of sewing, in addition to whatever other sewing accessories it may happen to include, i.e., scissors, thimbles, pins, tape measure, etc.

In the past, Customs required the container to be substantial or reuseable. See Headquarters Ruling Letter 072763 dated June 4, 1984. It is now our view that the requirement for a substantial or reuseable container is erroneous. Nevertheless, we note that the advertising claims on the blister package indicate that it is a reuseable container. To remove the contents, the user simply slides out the cardboard.

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An examination of the sewing kit in question reveals that it satisfies the definition of a "sewing set" described in the New York Merchandise case, because it contains needles and thread which the court found to be essential.

Thus, the sewing set is classifiable in item 651.13, Tariff Schedules of the United States, with duty at the rate of 9.5 percent ad valorem. As a product of Taiwan, it is eligible for duty-free treatment under the Generalized System of Preferences upon compliance with all applicable regulations.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

JAN 23 1986

REFER TO
CLA-2 CO:R:CV:G
077312 c

077312

District Director of Customs
Boston, Massachusetts 02109

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0401-5-000633

This protest was filed against your decisions in the liquidation on February 25, 1985, of entry No. 419716 dated September 11, 1984, and in the liquidation on March 1, 1985, of entry No. 84-419717 dated September 5, 1984, covering shipments of women's nylon aerobic shoes manufactured in Korea.

FACTS:

The women's nylon aerobic shoes, stock Nos. 64568, 64543, 64550 and 64691 were classified in liquidation under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics: other: footwear with soles which overlap the upper other than at the toe or heel: other: valued over $3.00 but not over $6.50 per pair in item 700.67, Tarif Schedules of the United States (TSUS), with duty at the rate of 90 cents per pair plus 37.5 percent ad valorem.

The protestant maintains that the sole overlaps the upper only at the heel and toe portions of the shoe. Consequently, it claims that the footwear is properly classifiable under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or

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plastics: other: footwear having soles (or midsoles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any midsoles also being affixed exclusively to one another and to the outsole with an adhesive); valued not over $6.50 per pair in item 700.61, TSUS, and dutiable at the rate of 37.5 percent ad valorem.

ISSUE:

Does the sole of the sample shoe overlap the upper other than at the toe or heel?

LAW AND ANALYSIS:

An examination of the sample submitted indicates that the sole overlaps the upper by approximately 3/16 inch at both the front and back portions of the shoe. The overlap in the front occupies approximately 5 inches of the shoe's perimeter while the overlap in the back portion of the shoe also occupies approximately 5 inches of the shoe's perimeter.

The protestant in support of its position that the overlap of the upper is only at the heel and toe portions of the shoe states that the statute does not describe the overlap as a jogging type overlap. It merely states "toe" and "heel." The protestant further argues that the exclusionary langauge in a tariff provision must be narrowly interpreted. International Seaway Trading Corp. v. United States, 69 Cust. Ct. 144, C.D. 4385 (1972); Canadian Pac Ry Co. v. United States, 73 F.2d 831, 834 (CCPA 1934).

The principle that protestant has extracted from International Seaway, supra, has been only partially quoted. That principle fully stated is that "An exception clause in a statute must be strictly construed in accordance with the legislative purpose underlying the statute." With respect to the proper interpretation of the scope of item 700.61, TSUS, we find it quite

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relevant that USITC Investigation No. 332-101, dated August 1979, which is stated to be "printed for the Use of the Committee of Finance (of the United States Senate)" states at page 78 that "proposed new items 700.61, 700.62, and 700.62X are intended to cover joggers. This quote states the "legislative purpose underlying the statute" and is critical to interpreting the phrase "other than at the toe or heel."

Information before us is that the trade meaning of "toe" includes items which go much farther back in the shoe, as in a "steel toe" in safety work footwear, and items which end before the toes even begin, as in the "toe" inserted in the quick release mechanism of a ski binding. We have found only one use of the phrase "at the toe" in our trade reference. That is on page 247 of the "Manual of Shoemaking." The photo on page 249 makes it clear that, in that context, "at the toe" means only a vertical line about 1/100 inch wide at the front tip of the shoe. It is improbable that such an extremely restrictive definition would have been intended by Congress but such a use by the trade indicates that it is unlikely the trade would also apply the phrase "at the toe" to a five inch long toe bumper present on the instant footwear and also indicates that the phrase "at the toe" has no one trade meaning. A review of dictionaries also indicates that there is not one clear common meaning for "at the toe."

In view of the expressed legislative intent that items 700.61-700.63, TSUS, cover primarily joggers, it is our opinion that "at the toe" means the small area of the toe covered by the flat sole of a cemented jogger where it overlaps the upper.

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HOLDING:

The women's nylon aerobic shoes were properly classified under item 700.67, TSUS. The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schuffler

for Harvey B. Fox
Director, Classification
and Value Division

CIE 317

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 1 1 1986

REFER TO

CLA-2 CO:R:CV:G
077329 TLL

John N. Politis, Esq.
Barnes, Richardson and Colburn
Equitable Plaza, Suite 2012
3435 Wilshire Boulevard
Los Angeles, California 90010

Dear Mr. Politis:

Your letter dated April 24, 1985, submitted on behalf of your client Nutritional Products International, Inc., requesting a tariff classification ruling on a dried dairy product in powder form was forwarded to this office for response. No samples were furnished with your inquiry.

You state in your letter that the product to be imported, which you call a yogurt mix, is manufactured as follows:

1. Non-fat milk is fermented with lactic yogurt bacteria, producing yogurt.

2. Citric acid is added to the yogurt, imparting a high acidity to the mixture.

3. The mixture of yogurt and citric acid is dehydrated into powder form.

4. Guar gums, starches, gelatin, authorized flavors, and authorized color are added and blended with the dry yogurt powder.

5. The powder is bulk packed for export to the United States.

The product, as imported, consists by weight of 53 percent yogurt (64 percent by value), 14 percent citric acid, and 33 percent guar gums, starches, gelatin, flavors and colors. After importation into the United States, the product will be mixed with sugar and then packaged for retail sale. The ultimate purchaser of the product will blend the mixture with milk to produce a yogurt drink or a soft frozen yogurt dessert.

The issue presented by your letter is whether this product is classifiable under the provision for yogurt and other fermented milk in item 118.10, Tariff Schedules of the United States (TSUS), or under the provision for malted milk; and articles not specially provided for, of milk or cream in item 118.30, TSUS.

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In support of your contention that this product should be classified as a yogurt under item 118.10, TSUS, you cite Headquarters Ruling Letter (HRL) 012285 dated June 11, 1971, and Western Dairy Products, Inc. v. United States, 72 Cust. Ct. 75 (1974).

HRL 012285 held certain sterile fruit yogurt in cans to be classified under item 118.10, TSUS. The Western case held Savortex Calcium Reduced Dried Skim Milk (CRDSM) to be classifiable under the provision for articles not specially provided for of milk under item 118.30, TSUS. In so holding, the court pointed out the difference between CRDSM and whey and yogurt which are specifically listed in the tariff schedules. We do not find these precedents cited as being controlling in determining whether the imported product is a yogurt.

The applicable Food and Drug Administration regulation, 21 CFR 131.200, defines yogurt as:

> the food produced by culturing one or more of the optional dairy ingredients specified in paragraph (c) of this section with a characterizing bacterial culture that contains the lactic acid-producing bacteria, Lactobacillus bulgaricus and Streptococcus thermophilus. One or more of the other optional ingredients specified in paragraph (b) and (d) of this section may also be added. When one or more of the ingredients specified in paragraph (d)(1) "(nonfat milk solids)" of this section are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Yogurt, before the addition of bulky flavors, contains not less than 3.25 percent milkfat and not less than 8.25 percent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultrapasteurization. To extend the shelf life of the food, yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

While Customs is not required to follow the FDA definition of yogurt, it is our position that that definition accurately reflects the common and commercial meaning of what is or may be a yogurt. Products must meet this definition of a yogurt in order to be sold as a yogurt. This is in accord with the fundamental theory of Customs jurisprudence that an imported article should be classified according to its true commercial character. Computime, Inc., v. United States, Appeal No. 85-1050, appearing on page 27 of the October 2, 1985, Customs Bulletin.

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As indicated in the above description of the product, yogurt is a fermented milk of the lactic acid type. The lactic acid in the product is produced by the growth and activity of specific acid producing cultures which, in the fermentation process, generally cause the breakdown of lactose to lactic acid. The two strains of lactic acid producing bacteria (Lactobacillus bulgaricus and Streptococcus thermophilus) develop the typical flavor and acid taste which is peculiar to yogurt.

In describing the manufacture of the mixture under consideration, you state that "citric acid is added to yogurt, imparting a high acidity to the mixture." This citric acid is added in a substantial quantity (citric acid comprises 15 percent by weight of the final mixture) and the presence of this ingredient in this quantity is atypical of yogurt either as described above in the Federal Regulations or as described in other technical references. See Cheese and Fermented Milk Foods by Frank Kosikowski (copyright 1977) 2nd edition, pages 73-75, 82-87, and Modern Dairy Products by Lincoln M. Lampert (copyright 1975) 3rd edition, pages 227-229.

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Based on the information provided, it appears that the natural fermentation of the milk, begun by culturing the milk with lactic acid-producing bacteria, was at some point in the manufacturing process supplanted by the direct acidification of the milk with citric acid to achieve the required acidity level. The resultant product, accordingly, would not be considered milk which has been fermented into yogurt by the fermenting activity of lactic acid-producing bacteria, since the final "yogurt" is apparently obtained by both bacterial fermentation and direct acidification. Nor could the titratable acidity of this product be expressed as lactic acid, since a substantial amount of citric acid was also added to the product.

It is noted, finally, that the instant product will not be sold for use as a yogurt. The imported mixture, with added sugar, will ultimately be reconstituted with unfermented milk to make various milk based flavored dairy products.

Based on the foregoing analysis, we find that the yogurt component of the product at issue was not produced solely by fermentation with yogurt bacteria, but by fermentation combined with direct acidification with a substantial amount of citric acid. This product would not be considered yogurt under the standards for "yogurt" established by the Food and Drug Administration nor under the manufacturing procedures followed by commercial yogurt makers in the United States. For these reasons, the product would not be considered "yogurt and other fermented milk" as provided for in item 118.10, TSUS.

Further, such conclusion is consistent with a number of Headquarters precedents. ORR Ruling 73 0219 of November 19, 1973, classified a mixture consisting of 74 percent spray dried yogurt powder and 25.5 percent cocoa butter (assuming the value of the cocoa butter to be higher than the value of the yogurt powder) under the provision for other edible preparations not

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specially provided for in item 182.95, TSUS. This product was not considered, apparently, to be a form of yogurt, as provided for in item 118.10, TSUS, nor an article not specially provided for, in chief value of milk or cream, in item 118.30, TSUS, since the value of the cocoa butter was believed to be higher than that of the yogurt powder.

Headquarters letter of July 23, 1973 (file number 452.53, 028813) classified a freeze dried or spray dried yogurt under the provision for articles not specially provided for, of milk or cream, in item 118.30, TSUS. Headquarters stated "that the spray dried products do not constitute yogurt within the common meaning of the term."

Headquarters letter of April 30, 1973 (file number 452.513 KW, 023602) classified two spray dried yogurt powders under the provision for other articles not specially provided for, of milk or cream, in item 118.30, TSUS. It was held in this ruling that spray dried yogurts did not constitute yogurt within the common meaning of the term.

Based on the preceding analysis and on prior administrative rulings on somewhat similar products, this mixture of "yogurt" and citric acid, dried and then combined with other ingredients is not "yogurt" as provided for in item 118.10, TSUS, but a "yogurt" flavored dairy base for beverages and frozen desserts. Since the product is in chief value of its milk ingredients, it would be classifiable under the provision for articles not specially provided for, of milk or cream in item 118.30, TSUS.

Articles classified in item 118.30, TSUS, are subject to quota quantity restrictions listed in item 950.11 in Part 3, Appendix to the Tariff Schedules. Total import quantities allocated under item 950.11 are 6,000 pounds per calendar year. Additionally, an import license, issued to the importer by the U.S. Department of Agriculture, would be required at the time of entry of such merchandise. Applications for an import quota license for this merchandise may be obtained from the U.S. Department of Agriculture at the following address:

Head, Dairy and Import Group
Dairy, Livestock and Poultry Division
Foreign Agricultural Service
U.S. Department of Agriculture
Washington, D.C. 20250

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

FEB 26 1986

REFER TO
CLA-2 CO:R:CV:G
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077339

District Director of Customs
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3001-3-000421

This protest was filed against your decisions in the liquidations on July 15, 1983, of the following entries:

Entry Number	Entry Date
778770	1-31-82
778845	2-04-82
779214	2-04-82
781598	7-08-82
782099	8-04-82
782426	8-19-82
782505	8-17-82
985207	11-10-82
985313	11-16-82
986831	2-14-83
987530	3-28-83

FACTS:

The fabric/leather/rubber/plastic joggers and sport shoes manufactured in Korea were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear involved is in chief value of leather and is therefore classifiable as leather footwear under item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

We note that this protest applies to 30 invoices in 11 entries according to protestant's "Exhibit A." Your CF 645 dated November 2, 1983,

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refers only to the 5742 pairs of stock No. 75123 on invoice 4 of CE 82-778770. It is assumed that you intended that invoice to be representative of all 30 invoices.

ISSUE:

(1) Does the documentation provided by the protestant show that the footwear is in chief value of leather?

(2) Is Customs required to accept the cost breakdown submitted by the protestant?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous; or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that importer submitted data need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

With respect to stock No. 75123, we agree that the amount of leather claimed by the maker to be present in the shoe is not realistic. The amount of 1.40 square feet of leather per pair is far more than the Customs Laboratory has ever found on any other oxford height athletic shoe. However, we do not consider that fact to be the type of "tangible evidence" which would permit us to categorically state that the information provided by the protestant as to component material of chief value is false.

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Also, we note that stock No. 75123 is apparently a vulcanized sneaker rather than a cemented jogger. Among athletic footwear with leather overlays, vulcanized sneakers are much more likely to be in chief value of leather than cemented joggers.

HOLDING:

The footwear in issue is classifiable as claimed by the protestant. The protest should be allowed. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

MAY BE RELEASED TO THE

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047339

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077340 JGH

077340

4 MAR 1986

Mr. Leon Fetkowitz
Kaymont Chemical Corporation
142-05 Roosevelt Ave.
P.O. Box 1636
Flushing, New York 11354

Dear Mr. Fetkowitz:

Your letter of November 18, 1985, concerns the dutiable status of nitrocellulose resins packed in denatured ethanol, a product of Brazil.

The nitrocellulose would be packed in 28 percent wetted echanol, which has been denatured with 2 percent toluene. The product is to be used solely for industrial applications, such as the manufacture of lacquers, adhesives or varnishes. None of the ethanol, you emphasize, will be used for fuel purposes. In fact, you note that you are prepared to maintain detailed records and sign affidavits or certificates that all of the imported material went for industrial purposes and none was used for fuel purposes. You add that your customers or distributors would also execute such certificates.

In view of the provisions relating to commingled merchandise in General Headnote 7, TSUS, the imported merchandise would be separately dutiable. The nitrocellulose resins would be dutiable under the provision for cellulosic resins in item 445.25, TSUS. The rate of duty is 5.6 percent ad valorem. Products of Brazil classifiable under item 445.25, TSUS, are entitled to duty free status under the Generalized System of Preferences, if all the requirements are met. Ethanol is classifiable under item 427.88, TSUS, dutiable at the rate of 3 percent ad valorem. Declarations executed both by the end users as well as the importer to the effect that the ethanol will not be used for fuel purposes will be required. If such declarations are not received, the ethanol would be subject to an additional duty of 60 cents per gallon.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

FEB 28 1986

REFER TO
CLA-2 CO:R:CV:G
077355 JEH

077355

Mr. Jack Heath
Director of Operations
Savoy Leather Manufacturing Corporation
Ward Hill Industrial Park
Post Office Box 287
Haverhill, Massachusetts 01830-0487

Dear Mr. Heath:

This is in response to your letter of November 18, 1985, regarding the tariff classification of an unfinished audio and video cassette storage unit, style 1412, from Taiwan and Hong Kong.

A sample was submitted of a finished and an unfinished case. The unfinished portion is a product of Taiwan.

You advised the National Import Specialist that the main body of the case would be fabricated in Taiwan of die cut sections of vinyl leatherette, foam and cardboard which are manufactured into various panels by a process of gluing and stitching with PVC binding. The panels are joined by the stitched PVC binding. The exterior surface has an ornamental stitch applied. You indicated that foreign labor represents approximately 90 percent of the total labor and that all the materials whether assembled abroad or in the United States are of foreign origin. The 10 percent labor performed in the United States consists of affixing four rivets, crimping the tuck lock and handle in place, and inserting the molded tray.

You also advised the National Import Specialist that it would not be cost efficient to perform any other labor in the United States or to incorporate significant United States materials.

The finished item is a carrying case designed to hold 12 audio cassettes. The case is designed so that the user may transport cassettes from one place to another. The case is an attache-like design manufactured of padded leatherette vinyl. The interior is fitted with a molded plastic tray having 12 sections. The top flap is secured by a tuck lock and the case is carried by a molded plastic carry handle which is affixed to the top. When sold at retail the item is packaged in plastic shrink-wrap with a paper advertisement insert indicating it is a "12 Cassette Carrier."

E10

RELEASED TO THE

It is your position that the unfinished case, as imported, consists of parts and should be classified under the provision for articles of rubber or plastic, not specially provided for in item 774.55, Tariff Schedules of the United States (TSUS).

The issues involved are whether the imported article is an unfinished audio and video cassette storage unit, and, if so, whether it is classified as luggage.

General Interpretative Rule 10(h), TSUS, provides unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(ii), TSUS, provides that "the term '<u>luggage</u>' covers brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', sample, etc.), and like containers and cases designed to be carried with the person." The finished audio cassette carrying case is a container designed to hold specific items, audio cassette tapes, and designed to be carried with the person. Therefore, the finished audio and video cassette case is properly classified within the definition of the term luggage.

The article in its condition as imported has been sufficiently processed so as to be classified as luggage. The minimal labor performed in the United States by adding various fittings and packaging for retail would not adversely affect the classification of the case as unfinished luggage.

Accordingly, the unfinished audio and video cassette case is classifiable under the provision for luggage, of other material, other in item 706.6245, TSUS, and dutiable at the rate of 20 percent ad valorem.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

RELEASED TO THE

E11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

4 MAR 1986

CLA-2 CO:R:CV:G
077373 JGH
815795

077373

Mr. J. J. Eroncig
Peninsula Corp.
3939 N.W. 25th Sreet
Miami, Florida 33142

Dear Mr. Eroncig:

This is in reference to your inquiry of October 15, 1985, concerning the dutiable status of a mixture of gasoline and alcohol. It is assumed that by "alcohol" you mean ethanol.

You state that the gasoline would be produced in Jamaica and blended with ethanol, imported into Jamaica from Brazil, to produce a mixture of 50 percent gasoline and 50 percent ethanol.

The mixture would not qualify for duty-free status under the Caribbean Basin Economic Recovery Act (CBERA). According to 19 USC 2703(a)(2) of the CBERA and section 10.195, Customs Regulations, a simple combining or packaging operation in a beneficiary country is not sufficient to make an article eligible for duty-free treatment under the CBERA even though the total processing operations in the beneficiary country cause the article to meet the value requirement of the CBERA. An article made from a simple combining or packaging operation would not qualify for duty-free status even though one of the components of the article is a product grown, produced or manufactured in a beneficiary country.

Section 10.195(a)(2), Customs Regulations, states that the blending of foreign and beneficiary country tobacco is an example of an operation that would be considered a simple combining. The mixture made from such a blending operation, even though one of the components is a product of a beneficiary country, therefore, would not qualify for duty-free status under the CBERA as a product grown, produced or manufactured in a beneficiary country. Following this example, the blending of foreign ethanol and beneficiary country gasoline would be considered a simple combining operation and the mixture that is made from this operation would not qualify for duty-free status under the CBERA as a product of a beneficiary country.

RELEASED TO THE

E12

A mixture of 50 percent gasoline and 50 percent ethanol is classifiable under the provision for mixtures not specially provided for in item 432.10, TSUS. The rate of duty would be the highest rate applicable to any component of the mixture, which in this case would be ethanol in item 427.88/901.50 at 3 percent ad valorem plus 60 cents per gallon.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

RELEASED TO THE

E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

14 MAR 1986

REFER TO

CLA-2 CO:R:CV:G
077374 JNB
814946

077374

Mr. D.P. Phillips
Vice President, International
Klein Tools, Inc.
7200 McCormick Boulevard
Chicago, Illinois 60645

Dear Mr. Phillips:

Your letter of May 1, 1985, requests reconsideration of New York ruling letter 812494 which held that unassembled slip-joint plier forging halves from Japan, when imported in equal numbers in the same shipment, are classifiable as slip-joint pliers, other, under the provisions of item 648.82, Tariff Schedules of the United States (TSUS), dutiable at the 1986 rate of 13 percent ad valorem. You take issue with the statement made in the New York letter that the finishing process done in the United States and the probable joining of the plier halves by a nut and bolt fastener neither adds substantial value to them nor changes their character.

Your request for reconsideration lists, among others, the following processing steps which are performed on the forgings in the United States: 1) coining; 2) punching the plier slot; 3) machining the ribs; 4) broaching; 5) grinding; 6) heat treating; 7) induction hardening; 8) additional grinding; 9) polishing, assembly and packing. You include a copy of Headquarters Ruling Letter dated May 2, 1985 (Control No. 727439), which held that the processing described above transformed these forgings so as to make them a product of the United States. Because of this extensive processing, you claim that the forgings are more properly classifiable as parts of pliers under the provisions of item 648.89, TSUS, dutiable at the 1986 rate of 6.2 percent ad valorem.

As noted in the New York ruling letter, General Headnote 10(h), TSUS, provides that "unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished." This Headnote does not apply when material of substantial value is added which also changes the character of the article. I.A. 187-75.

E14

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The processing performed subsequent to importation does not change the basic character of the forgings. By virtue of their configuration at the time of importation, the forgings solely are dedicated to use as pliers. The imported articles possess the elementary form and substance of slip joint pliers and are unsuitable commercially for any other use. See Redden & Martin v. United States, 5 CCA 485 (1915), where unfinished scissor blade forgings which underwent numerous finishing operations in the United States were held to be classifiable as unfinished scissors rather than as forgings of iron or steel.

Accordingly, we are of the view that Headnote 10(h) is applicable in this instance. Unassembled and unfinished plier forgings, when imported in equal numbers in the same shipment, are still classifiable as pliers.

Headnote 10(ij), TSUS, provides that "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such article." The subject plier forgings are not imported as parts, but rather are imported in equal numbers to be finished and assembled into a final, complete article. Accordingly, a classification of such forgings as parts cannot prevail over the specific provision for slip-joint pliers.

The unfinished unassembled plier forgings, when imported in equal numbers in the same shipment, are properly classifiable as slip joint pliers, under the provisions of item 648.82, TSUS, dutiable at the rate of 13 percent ad valorem. New York ruling letter 812494 is hereby affirmed.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

F1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB - 6 1986

REFER TO

CLA-2 CO:R:CV:G
077375 JAS

077375

Mr. John Mack
Phillips Cables Limited
King Street West
Brockville, Ontario K6V 5W4
Canada

Dear Mr. Mack:

In your letter of October 2, 1985, reference C1-C6.8, you inquire as to the tariff classification of an all-dielectric optical cable from Canada. Samples and literature were submitted.

The literature depicts a cable, shipped in standard lengths of 100 meters, composed of a central non-metallic core member covered by thermoplastic rubber insulation. A number of buffer tubes each containing optical fibers of graded index glass and filled with moisture resistant compound covered by a core wrap, surround the core. A black polyethylene jacket encases the product. These cables are designed for high speed voice, data and video communications.

You note that a ruling from the Area Director of Customs, New York Seaport, dated February 2, 1984 (808204), classified a somewhat similar article under the provision for other electrical apparatus for making or breaking electrical circuits, for the protection of electrical circuits ...in item 685.90, Tariff Schedules of the United States (TSUS). The merchandise the subject of that ruling, however, was essentially a static wire consisting of a steel aluminum exterior and a fiber optic core. Related literature indicated the article's principle feature was as a ground wire or lightening arrester designed to protect the fiber optics. This description no doubt influenced Customs decision to classify the article in item 685.90.

For Customs purposes, merchandise is classified according to its primary design and function. Because the article presently under consideration clearly functions primarily as an optical fiber transmission cable, its function as a ground wire being clearly subordinate, it is classifiable under the provision for optical fibers, whether or not in bundles, cables or otherwise put up, with or without connectors and whether mounted or not mounted, in item 707.90, TSUS, dutiable at the rate of 10 percent ad valorem.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE

for Harvey B. Fox
Director, Classification
and Value Division

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: FEB - 4 1986

FILE: CLA-2 CO:R:CV:G
077394 c

077394

TO : District Director of Customs
300 S. Ferry Street
Terminal Island
San Pedro, California 90731

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 72/85 Concerning the Tariff Classification of Crib Mobile Toy Figures Manufactured in Taiwan

FACTS:

The merchandise involved consists of four plastic parts which after importation are used in connection with a child's crib mobile. These plastic parts are imported in bagged assortments of four and are intended to portray a dog, a horse, a bunny, and a lamb. Each shape is basically two dimensional and measures approximately 5 inches by 5 inches. The depth of each shape is approximately 1/4 inch. Each shape is made of vinyl with a flat strip of styrofoam "sandwiched" between two layers of vinyl. The front portion and back portion of each shape are of different colors. The front portion has animal features painted on it while the back portion does not. Each shape also has two holes in the upper torso into which a vinyl hanging strip is to be inserted. Each is in a running configuration with only one front and one rear leg visible. None of the shapes is free standing or realistically colored.

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The inquirer maintains that the merchandise is classifiable under the provision for other toy figures of animate objects: not having a spring mechanism: not stuffed in item 737.40, Tariff Schedules of the United States (TSUS).

It is your position that the merchandise is classifiable under the provision for other toys, not specially provided for in item 737.95, TSUS.

ISSUE:

Do the subject parts constitute "toy figures of animate objects" for tariff purposes?

LAW AND ANALYSIS:

The inquirer argues that the parts involved in this request are in forms and configurations which represent full bodied known living animals such as a horse, a lamb, a bunny and a dog. For this reason these parts are animate objects for the purpose of classification under item 737.40, TSUS.

In the case of Louis Marx & Co., Inc. v. United States, 66 Cust. Ct. 139, C.D. 4183 (1971), the court stated that "'figures of animate objects' must be read to mean forms or representations of humans or animals." It is our view that a proper interpretation of the phrase "forms or representations" has reference to a reproduction of the appearance of an animate object as a clearly defined configuration in three dimensional form. The samples are only shapes or silhouettes of particular characters rather than being multi-dimensional, full bodied representations of animate objects. This insufficient portrayal or likeness is reinforced by the one-sided coloration and pattern of the mobile shapes.

It is not sufficient to assert as the inquirer does that "the toys in this request... represent full bodied known living animals..." or that "such toy is clearly shaped to represent an animal with a full body and various physical features." What is needed is that the toy article itself

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incorporate the full-body character and that it be configured and detailed to some reasonable degree to depict the overall physical features of the animal it seeks to represent.

HOLDING:

The sample animal shapes, although designed to amuse infants by their appearance, lack a configuration which would allow classification as toy figures of animate objects: not having a spring mechanism: not stuffed in item 737.40, TSUS.

It is our position that the merchandise is classifiable under the provision for other toys, not specially provided for in item 737.95, TSUS. You should inform the inquirer of this ruling.

Arthur Schaffler
for Harvey B. Fox

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

077384

F5

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JAN 23 1986

REFER TO

CLA-2 CO:R:CV:G
077396 JAS

077396

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

This is our decision on Application for Further Review of Protest No. 3801-5-001845, dated May 3, 1985. At issue is consumption entry 85273915, dated October 19, 1984, liquidated April 5, 1985. The subject of this protest is the MS300LD industrial laser from the UK.

FACTS:

The subject unit is a high power (100-500 watt) industrial laser. The unit includes the laser head, a power supply which is a free standing cabinet on casters, connected to the laser head by flexible conduit, a cooling unit mounted in a separate cabinet, CNC display, keyboard, TV monitor, work chamber, and binocular viewing. The unit is designed to weld, cut, and drill metals, ceramics, silicon, carbides, diamonds, and other materials found suitable for laser processing.

The laser pulse energy level and duration is programmed into the unit depending on the nature of the work piece to be processed, and whether it is to be drilled, cut or welded. Pulse durations of two milliseconds or less are used for drilling and cutting operations, while durations of 1-20 milliseconds are used for welding tasks, laser soldering and brazing applications.

Because of submitted literature indicating that industrial lasers, as a general class or kind, are designed to machine or work on a variety of materials, protestant maintains that the proper classification is under the provision for other machine tools, in item 674.42, Tariff Schedules of the United States (TSUS). Because such high power units as the MS300LD are

F6

used only to work metal, the subject entry was liquidated under the provision for metal-working machine tools, in item 674.35, TSUS. Information obtained from a domestic manufacturer of similar laser equipment indicates that units of this type are chiefly used to drill metal, (over 60 percent of all applications), with cutting and welding constituting the remaining applications.

ISSUES:

(1) Is there evidence sufficient to support classification as a metal-working machine tool as opposed to an "other" machine tool, and (2) if a metal working machine tool, is the subject unit specifically classifiable in item 674.33 as a "drilling" machine tool?

LAW AND ANALYSIS:

With respect to issue (1), statements in the promotional literature as to the variety of materials industrial lasers are designed to work are general in nature. More specific statements in the literature with respect to the high power lasers like the MS300LD indicate it is used to work a variety of metals. This "working" includes drilling, cutting, welding, soldering, and brazing. Those persons concerned with selling, distributing, and promoting a particular article have every incentive to know its uses, and their opinions are extremely relevant to the issue of chief use. See Davis Products, Inc. et al v. United States, 59 Cust. Ct. 226, C.D. 3127 (1967), Novelty Import Corp., Inc. v. United States, 60 Cust. Ct. 574, C.D. 3462, 285 F. Supp. 160 (1968), and related cases. From the submitted literature, and the referenced oral advice received from a domestic manufacturer of similar units, we conclude that the subject unit belongs to that class or kind of machine tool chiefly used to work metal.

968440

With respect to issue (2), that is, whether "drilling" as a form of metal working would require classification of the MS300LD in item 674.33, it is our opinion that a laser is not considered the type of "drilling" machine encompassed by item 674.33. The common meaning of the term "drilling," encompasses a motor-driven device fitted with an end cutting tool that is rotated with sufficient power either to create a hole or to enlarge an existing hole in solid material. It is therefore apparent that the subject laser does not "drill" for tariff purposes. See discussion in Giddings & Lewis Machine Tool Co. et al v. United States, 61 Cust. Ct. 284, C.D. 3612 (1968). There is no issue as to whether the subject unit is a "machine" for tariff purposes, or that it "works" metal. Note Schedule 6, Part 4, Subpart F, Headnote 1(a).

HOLDING:

The subject unit is a machine tool which is chiefly used to work metal, but is not specifically provided for as a drilling machine. The correct classification is in item 674.35, TSUS, as a metal-working machine tool.

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action, to satisfy the notice requirements of section 174.30(a), Customs Regulations.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

071396

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

APR - 9 1986

CLA-2 CO:R:CV:G
077430 JNB

077430

Area Director of Customs
New York Seaport
New York, New York 10048

Re: Internal Advice 54/85; Classification of Rollers for Printing Presses

Dear Sir:

This internal advice involves the classification of rubber rollers used in offset lithography printing presses. The rollers are comprised of metal spindle cores which have synthetic rubber covers. Rollers with worn out or damaged rubber are received by Harrigan Roller Company of Baltimore, Maryland, who strips the rubber and exports the bare spindles to West Germany or the United Kingdom. New rubber coverings are applied abroad, and Harrigan reimports the finished rubber rollers.

The rollers are currently classified as other parts of printing machinery under item 668.50, Tariff Schedules of the United States (TSUS), dutiable at the rate applicable to the printing machinery of which they are parts. Inasmuch as the rollers are parts of printing machinery, other, classifiable under item 668.23, TSUS, they are dutiable at the rate of 3.6 percent ad valorem.

A question has been raised as to whether the rollers are more properly classifiable as print rollers, used for printing, stamping or cutting designs, other, under item 668.34, TSUS, dutiable at the rate of 9.5 percent ad valorem. Harrigan Roller Company has requested a binding ruling on the classification of the rollers. Because importations of the finished products are ongoing, a binding ruling governing a prospective transaction cannot be issued; however, the Internal Advice procedure is correctly being employed to decide the proper classification.

The subject rollers ink and dampen printing plates in the offset lithographic printing process. The print image areas on the printing plate are grease receptive and water repellent. The non-print areas are water receptive and grease

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repellent. The printing plates are mounted on plate cylinders which come into contact with the subject rollers. The rubber rollers transfer ink or dampening solution to the plate cylinder. The plate cylinder then transfers the images to a blanket cylinder which deposits the ink on paper which is passed around a transfer cylinder.

The plain language of item 668.34, TSUS, requires that print rollers classified thereunder be used for printing, stamping or cutting designs. Customs Ruling Letter dated September 25, 1968, (Control No. TC 426.221) found unengraved rollers to be classifiable under item 668.50, TSUS, while engraved rollers were classified under item 668.34, TSUS. In ORR 457-69, rollers which merely fed ink on to rubber types which in turn printed on cartons or packages were classified under item 668.50, TSUS. The ruling noted that the rollers "do not correspond to print rollers enumerated in item 668.34."

Offset printing plates were held to be classifiable under item 668.50 rather than as plates engraved or otherwise prepared for printing under item 668.38 because, contrary to the plain language of the statute, they were not engraved or otherwise prepared for printing in their condition as imported. See Customs Ruling Letter dated April 23. 1979, (Control No. 062155). See also, ORR 175-69.

The subject rollers service the plate cylinder and are unimaged. In accordance with noted precedent, they are classifiable as other parts of printing machinery under item 668.50, TSUS, dutiable at the rate of 3.6 percent ad valorem which is applicable to parts of printing machinery, other, as provided by item 668.23, TSUS.

The rollers imported with new rubber covers may be entered under item 806.20, TSUS, upon compliance with section 10.8, Customs Regulations (19 CFR 10.8). Duty would be assessed on the cost or value of the foreign repairs. Unlike entry under item 807.00, TSUS, no proof that the metal roller spindles sent abroad were of United States origin would be necessary. Registration on a CF 4455 may now be waived upon satisfactory proof that the imported rollers are the same articles that were exported for repairs.

Sincerely,

Arthur P. Scherffius

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

077430

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 24 1986

REFER TO

CLA-2:CO:R:CV:G
077440 JLF
815891

077440

Roberto S. Bianchi
President
RoEL International, Corporation
6250 Westpark, Suite 110
P.O. Box 271707
Houston, Texas 77277

Dear Mr. Bianchi:

Your letter dated October 22, 1985, addressed to our New York office, regarding the classification of an ear piercer device, which is a product of Switzerland has been referred to our office for direct reply to you.

The ear piercing device, marketed as "Sterisept", consists of a clear plastic instrument pre-loaded with an ear stud and clutch. The ear studs are made of surgical steel, either plain or electro-plated with inert, nontoxic 24 karat gold. The picture of the item you submitted with your letter shows that the studs may contain precious or semiprecious stones.

The issue presented by your request is whether the plastic instrument and ear stud is classifiable as an entirety or whether the merchandise should be separately classified.

Customs has previously issued Ruling 072133, dated April 19, 1983, which classified medi-studs, temporary training studs used to pierce the earlobes, under item 740.38, TSUS, which provides for jewelry and other articles of personal adornment.

Applying the criteria set forth in Ruling 072133, the ear stud and clutch which comprise part of the "Sterisept" kit are classifiable as jewelry and other articles of personal adornment under item 740.38, TSUS. The pre-loaded disposable ear piercing instrument, the remaining part of the "Sterisept" kit, shall be separately classified as an article of plastic, not specially provided for, in item 774.55, TSUS.

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The ear stud and clutch classified under item 740.38, TSUS, is dutiable at the rate of 13.1 percent *ad valorem*. The plastic disposable instrument classified under item 774.55, TSUS, is dutiable at the rate of 5.7 percent *ad valorem*.

Sincerely,

Arthur P. Scheffler

For Harvey B. Fox
Director, Classification
and Value Division

077440

THIS DOCUMENT MAY BE RELEASED TO THE

F12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

4 MAR 1986

CLA-2:CO:R:CV:G
077441 DW
816006

077441

Mr. Gary Fultheim
110 E. 9th Street
Suite C1110
Los Angeles, California 90079

Dear Mr. Fultheim:

In a letter dated October 17, 1985, you inquired about the appropriate tariff classification and textile category of two woven camisoles. Sample garments accompanied your request.

The submitted samples, styles 5401 and 51202 are camisole style garments manufactured from 100 percent cotton and 100 percent rayon woven fabrics, respectively. Each garment extends straight across the bustline with shoulder straps that measure approximately 1/4 inch, and features an embroidered design and a full front opening. The opening is secured by buttons on style 5401 and by ties on style 51202. The embroidery is considered to ornament the garment for tariff purposes.

We agree with your conclusion but not your rationale that the garments are not blouses. It is our view, which is supported by lexicographic authorities, that a garment must have a neckline in order to be classified as a blouse. These camisole garments which extend straight across the bustline with narrow shoulder straps do not have necklines.

Thus, the garments are classifiable under the provision for other women's wearing apparel, ornamented, of cotton, not knit, other in item 384.0996, dutiable at the rate of 20 percent ad valorem, in category 359, or if in chief value of man-made fibers in item 384.2697, TSUS, dutiable at the rate of 28.3 percent ad valorem, in category 659.

RELEASED TO THE PUBLIC

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Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Cutoms office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077462 JGH

077462

3 APR 1986

Ms. M. B. Zaretsky
Rio Imports Inc.
2701 West Howard Street
Suite 102
Chicago, Illinois 60645

Dear Ms. Zaretsky:

Your letter of November 7, 1985, concerns the dutiable status of solidified ethanol from Brazil.

IMCO Solified Ethanol is said to consist of 95 percent ethanol, 4 percent vegetable cellulose and 1 percent Prolamine protein. The product is intended to be used to warm foods and in non-vented heaters.

The fuel, a jelly-like or soapy mass, is generally marketed in cans for use in small stoves or chafing dishes. The addition of solidifying or gelling agents is considered to make the fuel easier to handle and somewhat safer to use.

Solidified alcohol of the composition given above is classifiable as a mixture not specially provided for in item 432.25, TSUS. The rate of duty is 5 percent ad valorem, but not less than the highest rate applicable to any component material. The applicable rate of duty is for ethanol in items 427.88/901.50, TSUS, of 3 percent ad valorem plus 60 cents per gallon.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

G1

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR - 9 1986

REFER TO

CLA-2 CO:R:CV:G
077469 DW

077469

Mr. James Tang
Hecny Brokerage Services, Inc.
10804 S. La Cienega Blvd.
Inglewood, California 90304

Dear Mr. Tang:

Your letter dated December 9, 1985, requested the tariff classification of a garment that is a product of Macau. A sample was submitted along with your request.

The sample garment manufactured from a fabric that is a blend of 65 percent polyester and 35 percent cotton has a full front opening secured by eight buttons, pointed collar inserted in a collarband, long sleeves with two button adjustable cuffs, single breast patch pocket, a deep tailed bottom that is longer in the back, and an unattached fabric tie belt.

It is our view that the subject merchandise is not considered to be a nightshirt for tariff purposes. We have determined that the garment is classifiable as a shirt, because it is designed to be worn as outerwear. With its deep tails, the garment is too revealing to be worn without slacks, shorts, or a skirt. Then too, the unattached tie belt made from the same fabric as the garment is characteristic of a shirt, rather than nightwear.

Thus, the shirt is classifiable in item 384.9115, Tariff Schedules of the United States Annotated (TSUSA), under textile category 641, and dutiable at the rate of 18 cents per pound plus 27.5 percent ad valorem. The flimsy fabric belt is not considered to be a separate garment for tariff purposes. It is classifiable as an entirety with the shirt.

Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

We have learned that the sample garment is the subject of a pending transaction at the port of Los Angeles. In the future, please use the Internal Advice procedure set out in section 177.11, Customs Regulations.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

11 MAR 1986

REFER TO

CLA-2 CO:R:CV:G
077476 c

077476

Ms. Laura Cobb
Assistant Buyer
ERO Industries, Inc.
5940 W. Touhy Avenue
Chicago, Illinois 60648

Dear Ms. Cobb:

In a letter dated December 12, 1986, you inquired as to the dutiable status of a miniature bed tent which we assume is the product of a country entitled to the column 1 rates of duty. A sample was submitted for examination.

Our New York office issued a ruling dated February 6, 1985 (file No. 812243) holding that bed tents are properly classifiable under the provision for other toys, not specially provided for in item 737.95, Tariff Schedules of the United States (TSUS). You ask that this ruling be amended because the miniature bed tents which you have imported are display items rather than toys.

The sample miniature bed tent which you have submitted is distinguishable from the tent which was the subject of the cited ruling. That ruling which was issued to another firm involved a play tent designed to be set up on a child's mattress to create a play environment on the bed. Those bed tents are chiefly used for the amusement of children and are considered toys for tariff purposes.

The product submitted by your firm is not a bed tent, but a miniature version of a bed tent, used for display purposes only. It measures approximately 19 inches by 8 inches high and is used by sales personnel to demonstrate what the actual bed tent looks like. Due to its small size it eliminates the problem of space needed to set up the actual size tents. It is made of nylon and has plastic poles. The sample has a zippered front opening with velcro tabs to hold the flaps open. There are two mesh ventilation panels on top of the tent.

It is our position that the miniature bed tent is classifiable under the provision for other articles not specially provided for, of textile materials, not ornamented, of man-made fibers in item 389.6270, TSUS, and dutiable at the rate of 4 cents per pound plus 10 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO
CLA-2 CO:R:CV:G
077494 JLV

077494

District Director of Customs
Post Office Building
Pembina, North Dakota 58271

Re: Decision on Request for Internal Advice Concerning the Classification of Certain Mine Arch Support Units

Dear Sir:

In your memorandum of January 8, 1986, you requested advice on the classification of certain mine arch support units. This request was in response to a request by counsel, dated November 22, 1985, as supplemented by letters of November 26 and December 18, 1985, with attachments, on behalf of the importer, for a ruling under the provisions for internal advice in sections 177.1(c) and 177.11(b)(3) of the Customs Regulations (19 CFR 177.1(c), 177.11(b)(3)). This ruling is our decision on the classification issue.

FACTS:

The imported merchandise is described as a yieldable mine arch support consisting of three specially arched channel sections and four clamps designed for use with the arch. The channel sections have a cross-sectional shape that, descriptively, appears like the Greek alphabet letter psi without the vertical intersecting line. For the three piece system the two leg sections have been bent to receive the canopy section which has also been bent to specification. When nested to form the support arch, the four clamps are torqued for a specific load capacity. When in use, the steel to steel friction of the overlapping or nested sections provides the yield load of each arch. These yield loads are essential in compensating for changes in mine shaft pressures.

Each arch is manufactured for a particular size of mine shaft, load capacity, and the type of equipment to be used in the mine shaft. These

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different needs are reflected by differences in the weight of steel, curve of each section, clamps, and number of sections necessary for each arch. A mine shaft will use a large number of arches. Planks, wire, or other roofing material cover the arches and assist in providing the safety and support of the mine shaft. The arches are apparently spaced three or four feet apart.

The importation also included extra canopy sections, clamps, and nuts and bolts, tiebars, and corrugated steel sheets. Each arch support unit, however, consists only of one canopy section, two leg sections, and four clamps.

It is the importer's position that the arches are classifiable under item 652.94 (item 652.96 if alloy steel), Tariff Schedules of the United States (TSUS), which provides for columns, pillars, posts, beams, girders, and similar structural units or, in the alternative, under item 653.00, TSUS, which provides for other structures and parts of structures of steel. The arches were classified by you under item 609.80, TSUS, which provides for angles, shapes, and sections, not drilled, not punched, and not otherwise advanced, other than alloy iron or steel.

It is your position that the individual arch support units are classifiable as an entirety, and the remaining components would be separately classifiable.

ISSUE:

At issue is whether or not the arch sections are basic shapes within the meaning of item 609.80, TSUS, or are precluded from classification therein by Headnote 1(iv), Part 2, Schedule 6, TSUS, because they are articles specially provided for elsewhere in the tariff schedules, or parts of articles.

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LAW AND ANALYSIS:

Recent judicial opinions have provided specific applications of the operation of Headnote 1(iv), supra, concerning products clearly described in Part 2 of Schedule 6 but also described elsewhere either specifically or as a part of an article. Standard Commodities Import and Export Corp. v. United States, __ CIT __, Slip Op. 85-124 (1985); E. R. Hawthorne and Co. v. United States, Appeal No. 83-1379 (CAFC March 28, 1984); Nissho-Iwai American Corp. v. United States, __ CIT __, 602 F. Supp. 88 (1984), affirmed on Appeal No. 85-1259 (CAFC August 30, 1985).

The imported steel arches are dedicated to use as mine supports by virtue of a predesigned curvature of the leg and canopy sections. It is claimed that the components of these arches should be considered either eo nomine under item 652.94 (or 652.96) as beams or girders (the horizontal canopy section) and as columns or posts (the arching vertical leg sections) because they are designed to support vertical loads, or, under the principle of ejusdem generis, as an entirety which is a "similar structural unit" within those provisions.

The court's opinion in S. G. B. Steel Scaffolding and Shoring Co., Inc. v. United States, 82 Cust. Ct. 197, C.D. 4802 (1979), provides some guidance, although the stated issue in that case was whether shore frame systems were specifically described in items 652.90-652.98 (now 652.90 - 653.00) as other structures and parts of structures rather than as other articles of iron or steel in item 657.20 (now 657.25). The shore frame system comprises a number of components fitted and used together for various supporting or load bearing purposes. The support function of the shore frame is not unlike that of the steel arch under consideration.

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After thoroughly discussing the meaning of the term "structure," the court concluded that the scaffold-like shore frames were classifiable as structures in item 652.98, TSUS (now 653.00).

The steel mine support arches are functionally similar to the shore frames which were used in a linear series or (unlike the mine supports) were stacked one on top of another. Each three-piece arch (plus the four clamps) is a complete unit, the components of which are precisely bent to form a specific size and shape for a mine tunnel. In view of the S.G.B. Steel Scaffolding case, supra, we consider the complete unit as a structure, rather than a beam, post, or similar structural unit which is functionally a part of a structure. Therefore, the mine support arches are classifiable as structures in item 653.00, TSUS.

Classification of each mine support arch in item 609.80, TSUS (or 609.82 if alloy iron or steel) is precluded by Headnote 1(iv) because an arch, under the facts submitted, is clearly identifiable as solely used as a mine support structure. Standard Commodities Import and Export Corp., supra, is noted.

The remaining components of the imported merchandise are separately classifiable. The extra canopy sections are classified in item 609.80, TSUS, and the extra clamps are classified in item 657.25, TSUS.

HOLDING:

Each mine arch support unit, consisting of three sections and four clamps, is an entirety and is classifiable as a structure in item 653.00, TSUS. The extra sections and clamps are separately classified as basic

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shapes in item 609.80, TSUS, and as other articles of iron or steel in item 657.25, TSUS.

Because of the nature of the articles in issue, this decision is narrowly restricted to the facts of this case.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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677494

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 21 1986

REFER TO

CLA-2 CO:R:CV:G
077495 JGH

077495

Beverly L. Pevsner, Esq.
Beiley & Pevsner
7600 Southwest 57th Avenue
Suite 107
Miami, Florida 33143

Dear Ms. Pevsner:

Your letter of December 19, 1985, concerns the tariff status of an ethanol/ethylbenzene mixture. The mixtures may be products of Brazil, Argentina, Italy, France or Poland.

You state that your client proposes to import a mixture consisting of 199-plus proof ethanol and ethylbenzene. Ethylbenzene content would be 15, 20, 25 percent or greater. The mixture will be used as an octane enhancer in motor fuel.

A mixture of ethanol and ethylbenzene, with an ethylbenzene content of 15, 20, or 25 percent of the entire mixture would be classifiable as a benzenoid mixture in item 407.16, TSUS. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. If a product of a country eligible for GSP benefits, such a mixture would be duty free, if all the requirements are met. If the mixture is a product of France or Italy, it would still be classifiable in item 407.16 but the highest rate applicable would be under item 427.88/901.50 at 3 percent ad valorem plus 60 cents per gallon. If a product of Poland, the highest rate under item 407.16 would be 20 percent ad valorem plus 60 cents per gallon. No decision can be made on the "or greater" amounts, as this is too vague a description upon which to base a decision.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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12 FEB 1986 CLA-2:CO:R:CV:G
077496 PR

077496

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

This is in reply to a memorandum of December 17, 1985, file 816044, from your Chief, Commercial Operations Branch 3, concerning the question of whether textile belts accompanying dresses, pants, and the like, should be separately classifiable from those garments.

In our ruling of November 6, 1985, file 077013, this office held that ties were separately classifiable from the blouses with which they were imported. The basis of this decision was Headnote 3, Part 6, Schedule 3, Tariff Schedules of the United States (TSUS). The language in our ruling of November 6 clearly indicated that belts would also be separately classifiable from the garments with which they are imported. It is our view that the requirements of Headnote 3 take precedence over any prior rulings of the Customs Service or any practice that may have existed prior to the enactment of that headnote.

We have consulted with the Department of Commerce, which assisted in the drafting of Headnote 3, and have been informed that the separate classification of belts and ties was one of the main reasons for Headnote 3. Commerce is aware of the problems that will result from our application of that headnote to belts. However, in an effort to alleviate the situation, it was agreed that any ruling on the matter would be effective only to merchandise entered, or withdrawn from warehouse, ninety (90) days from the date that our ruling, copy enclosed, is published in the Customs Bulletin.

Sincerely,

(Signed) J. T. Rech

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

[redacted]

G9

DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

*U.S. GPO: 1984-719-979

12 FEB 1986

CLA-2:CO:R:CV:G
077496 PR

077496

This ruling concerns the tariff status of a certain dress.

FACTS:

The submitted sample is a woman's blue dress, stated to be a product of China, made from a woven fabric that is labelled to be 55 percent cotton and 45 percent man-made fibers. It has a stand collar; an 8-snap front opening that extends from the neckline to the elasticized waist; front and rear yokes that taper downward in a V-fashion and which are edged with burgundy-colored piping, the visible portion of which is less than 1/4 inch wide; less then elbow-length sleeves with two-button cuffs, and similar burgundy-colored piping inserted in the cuff seam; two belt thread loops, one at each side seam; two inserted pockets, one at each side seam just below the waist; and a large box-pleat in front that extends from the elasticized waist to the hem. The fabric from the body of the garment is slightly gathered where it meets the yokes, imparting a shirred effect.

Accompanying the dress is a tie-belt that consists of three sections. The two outer or tie portions are burgundy woven fabric strips, each approximately 3/8 inch wide and 29 inches long. The center portion, which is burgundy on one

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side and blue on the other, is approximately 25 inches long and 2-1/2 inches wide; the corners are rounded; and the burgundy side has four decorative-appearing, but otherwise nonfunctional, tucks that extend its length.

We assume both the dress and the tie-belt are in chief value of cotton.

ISSUE:

Two principal issues are presented by the subject garment and belt -- (1) is either ornamented for tariff purposes; and (2) are the belt and dress classifiable as a single entity or are they separately classifiable?

LAW AND ANALYSIS:

Headnote 3, Schedule 3, Tariff Schedules of the United States Annotated (TSUSA), lists the type of features that constitute ornamentation. One of the features listed is tucking. Therefore, the belt is ornamented with the four rows of decorative nonfunctional tucking. The dress is not ornamented for tariff purposes since neither the gathered appearance at the yoke seams nor the expandable box pleat are mentioned in Headnote 3. Furthermore, Customs has consistently held that, because of the existence of a practice, piping, the visible portion of which is less than 1/4 inch in width, inserted in the entire length of a seam, does not constitute ornamentation.

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The Customs Service, in the past, has stated that there existed an established and uniform practice to classify fabric coordinated belts as entireties with the garments they accompanied, submerging the identity of those belts into the garments. However, subsequent to the practice finding and issuance of a number of rulings following the practice, Congress enacted Headnote 3 to Part 6, Schedule 3, TSUSA, which provides as follows:

> (a) Except as provided in (b) of this headnote, each garment is to be separately classified under the appropriate tariff item, even if two or more garments are imported together and designed to be sold together at retail.
>
> (b) The provisions of paragraph (a) of this headnote shall not apply to --
>
> (i) suits,
> (ii) pajamas and other nightwear,
> (iii) playsuits, washsuits, and similar apparel,
> (iv) judo, karate, and other oriental martial arts uniforms,
> (v) swimwear, and
> (vi) infant's sets designed for children who are not over 2 years of age.

In a ruling dated November 6, 1985, file 077013, Customs held that the comparatively recent enactment by Congress of Headnote 3, Part 6, Schedule 3, TSUSA, had, in effect, nullified past rulings and practices which were in conflict with that headnote. That ruling also interpreted Headnote 3 and concluded that the words "garment" and "garments" were intended to include accessories, such as neckwear, belts, and scarfs.

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We have contacted the drafters of Headnote 3, who confirmed that Headnote 3 was intended to eliminate the entireties rule as it was being applied to belts and neckwear, in particular. However, it was not intended that all belt-like articles fall within the purview of the headnote. Only substantial belts or belt-like articles are meant to be affected by the application of Headnote 3. In this regard, we conclude that, generally, all belts with nontextile attachments for closures are substantial. Tie-type belts that are no more than mere string ties made from the same fabric as their accompanying garments are not substantial and are considered to be part of those garments. In this instance, the tie-belt accompanying the subject dress is a substantial belt and is, therefore, separately classifiable from the dress.

HOLDING:

In accordance with the principles expressed above, the subject dress is classifiable under the provision for other women's dresses, of cotton, not ornamented and not knit, in item 384.4925, TSUSA, with duty at the 1986 rate of 12.8 percent ad valorem. This garment falls within textile and apparel category 336. The subject tie-belt is classifiable under the provision for other women's ornamented cotton apparel, not knit, in item 384.0996, TSUSA, with duty at the rate of 20 percent ad valorem. The applicable textile and apparel category designation is 359.

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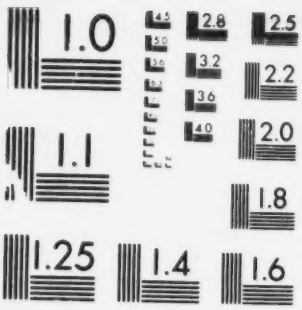

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NAVY PUBLICATIONS AND PRINTING SERVICE OFFICE
BUILDING 157 2, WASHINGTON NAVY YARD
WASHINGTON, D.C. 20374

However, since we understand that most textile belts imported with articles of apparel are not invoiced separately and do not, when subject to visa, import license, or quota restriction requirements, have the necessary accompanying documentation, an importer of such merchandise may, for merchandise entered, or withdrawn from warehouse, for a period of ninety (90) days from the date of the publication of this ruling in the Customs Bulletin, continue to enter such merchandise as entireties, under one textile and apparel category. Upon the expiration of that ninety (90) day period, all merchandise subject to this ruling will be classified in accordance with the principles set out above.

(Signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

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	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE			(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

•U.S. GPO: 1984-719-379

077496

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077501 DW

077501

MAR 26 1986

Miss H. K. W. Ho
British Embassy
Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

Your letter dated July 2, 1985, on behalf of Armel Enterprises, Inc., concerning the proper category designation for a women's blouse and shorts set buttoned together at the waist, has been referred to this office for a response.

The merchandise was entered at John F. Kennedy Airport as a romper under category 337. Customs, however, required visas for a blouse and shorts under categories 341 and 348, respectively. Sample merchandise accompanied your letter.

The submitted sample, manufactured from 100 percent woven cotton fabric, consists of shorts and a blouse buttoned together at the waist. The sleeveless blouse features a jewel neckline in the front and a full rear opening secured by a tie at the center. The shorts feature a fully elasticized waist. The item may be worn as separates or as a combination, either attached or unattached.

We do not agree with your designation of the garment as a romper. It is our view that an adult romper is a one-piece abbreviated garment. Garments with detachable top and bottom components are outside the scope of the term "romper" for customs purposes. In addition, the two garments do not combine to form a playsuit because, as stated above, they may be worn apart from each other.

Thus, the proper classification for the top is under the provision for blouses in item 384.4609, Tariff Schedules of the United States Annotated (TSUSA) under category 341. The shorts are classifiable in item 384.4725, TSUSA. The appropriate category designation is 348.

Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR - 9 1986

REFER TO

CLA-2 CO:R:CV:G
077504 DW

077504

Mr. Dumrong Indharameesup
Royal Thai Embassy
1990 M Street, N.W.
Suite 380
Washington, D.C. 20036

Dear Mr. Indharameesup:

Your letters dated June 28, 1985, and August 5, 1985, addressed to the Department of Commerce, and concerning the tariff classification of an unfinished sarong have been referred to this office for a response. A sample garment has been furnished along with your request.

The sample is a piece of printed woven cotton fabric which measures 40 inches wide and 67 inches long, and features two edges that have selvages and two edges that are unfinished.

The Customs Service has ruled that lengths of fabric suitable for draping into sarongs are classifiable as other wearing apparel. See ORR Ruling 93-69 dated March 25, 1969.

It is our view that the subject merchandise is suitable for draping around different parts of the body. Under General Headnote 10(h), Tariff Schedules of the United States Annotated (TSUSA), unifinished and finished articles are classifiable under the same tariff provision. Thus, both the unfinished and finished sarongs are classifiable under the provision for other women's wearing apparel, not ornamented, of cotton, other in item 384.5299, TSUSA, with duty at the rate of 9.4 percent ad valorem. A visa for category 359 is required for this merchandise.

Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 26 1986

REFER TO

CLA-2 CO:R:CV:G
077506 jlj

077506

Miss H. K. W. Ho
Second Secretary of Hong Kong
Commercial Affairs
British Embassy, Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

You ask us, through Ms. Claire McDermott of the Department of Commerce, to review the tariff classification of a ladies' wool jacket imported by Woodstock Industries (your case number HK62/85). You submitted a sample jacket along with your request.

The sample submitted is a ladies' knit jacket with long sleeves, round neck, and a full-front opening which is fastened by seven metal buttons. The garment consists of 100 percent wool fibers. A narrow band of weft knit fabric is added to the ends of the sleeves, the neck, the front placket, and the entire bottom of the garment. This band has several functional purposes. It finishes the ends where it is placed, and it prevents fraying of the fabric ends. We have held previously that a band performing such functions does not constitute ornamentation for tariff purposes. See Customs Headquarters Ruling Letter (HRL) 070810 of June 14, 1983. The jacket is intended to be worn over other garments. It extends from the wearer's neck to the top of her hips.

The only issue you raise is whether the sample is a sweater or a jacket. You claim that the item is a sweater because it "is tailor made, of seven gauge, and with fully open front and long sleeves." In spite of the fact that the fabric of the garment has less than twelve wales per inch, we believe that the special tailored effect which this garment possesses enables Customs to rule out calling it a sweater.

To begin with, the tailored effect includes the fabric itself, which is specially treated by a boiling process. The process produces boiled wool fabric. Boiled wool fabric has a rigidity uncharacteristic of sweater fabric, which is known for its elasticity. This fabric also lacks the characteristic visible knit stitches generally associated with sweater fabric. Thirdly, the two front panels of fabric are sewn with an additional row of stitching on each side of the seam; this extra stitching is non-contrasting in color, but it adds to the tailored effect. In addition, the fact that the garment itself is constructed from several cut panels sewn together also gives it a tailored look. The net effect of the tailored look on the fabric and on the garment is to remove it from consideration as a sweater and to put it into the category of a "jacket."

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Finally, we note that the sample is representative of a style of garment that was originally made in Austria and in West Germany, where it was known as a loden coat. Although the current sample is made in Hong Kong, it is an imitation of that style. We are informed that it is commercially recognized in the wearing apparel trade as a coat or jacket, not as a sweater.

The sample is classified under the provision for other women's wearing apparel, not ornamented, of wool, knit, other, valued over $5.00 per pound, coats, in item 384.62, dutiable at the rate of 32 cents per pound plus 20 percent ad valorem for products of Hong Kong. The textile quota category is 435. Due to the frequent changes in the statistical suffixes (i.e., the last two digits of the item number) and the applicability of import restraints, the importer should contact his local Customs office prior to the importation of this merchandise.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE
PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

12 FEB 1986

REFER TO

CLA-2 CO:R:CV:G
077507 JNB

077507

Miss H.K.W. Ho
British Embassy
Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20006

Re: Tariff Classification of Cotton Towels

Dear Miss Ho:

This is in response to your letter of July 30, 1985, addressed to the Department of Commerce and forwarded to this office for decision, requesting a classification of certain cotton articles described as towels. The towels are being imported by the Hotel Meridien, San Francisco, California.

The submitted sample is an article of terry construction, 22 x 34 inches in size, and jacquard figured. While not expressly stated in your request, it appears that you are concerned with reclassification of importations of the towel-like article that have already been made.

The subject article, while referred to as a towel in the trade, is, in fact, a bathmat. It is of a weight and size which would indicate use as a bathmat. Further, the article includes an internal border pattern characteristic of a bathmat rather than a towel.

The subject bathmat is classifiable as other furnishings, not ornamented, of cotton, of pile or tufted construction, under item 366.65, Tariff Schedules of the United States (TSUS), dutiable at the rate of 8.5 percent ad valorem. Articles classifiable under this item number are subject to the restrictions of textile category 369.

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We note that you have apparently requested a ruling on a matter that is not prospective, but rather is the subject of a current transaction. Technically, this is in contravention of the Customs Regulations. We caution that the Internal Advice procedures spelled out in section 177.11 of the Regulations (19 CFR 177.11) should be used in future when classification disputes arise with regard to current transactions.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

20 MAR 1986

REFER TO

CLA-2 CO:R:CV:G
077518 JLF

077518

Mr. Jack Hauss
Vice President
Cappelle, Inc.
7, Carriage Court
Scarsdale, New York 10583

Dear Mr. Hauss:

This is in response to your letter of December 6, 1985, requesting a ruilng regarding the classification of your products, Lumiere Violet R 347 and Lumiere Violet PTM 344.

Both products have been analyzed in the Customs Laboratory. Lumiere Violet R is pigment violet 3:X, which is a benzenoid toner having a Chemical Abstract Service (CAS) number of 67989-22-4. Lumiere Violet PTM is pigment violet 3, also a benzenoid toner, having a CAS number of 1325-82-2.

As both CAS numbers are listed in the Chemical Appendix to the Tariff Schedules of the United States Annotated (TSUSA), both products are properly classifiable under the provision for benzenoid toners in item 410.32, TSUS, dutiable at the 1986 rate of 21.4 percent ad valorem.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077529 JLF

077529

12 FEB 1986

Mr. Peter Park
United Fabrics of America
570 7th Avenue, #703
New York, New York 10018

Dear Mr. Park:

This is in response to your letter of November 18, 1985, in which you requested information regarding the country of origin, classification, dutiability and quota category of woven fabric to be imported from Korea.

Your questions refer to two types of merchandise: greige fabric made in the United States and shipped to Korea to be dyed, printed and finished, and U.S. made yarn also shipped to Korea to be woven into fabric which will then undergo the same processes mentioned above.

The fabric is fully dutiable as a product of Korea and is classified in item 338.50, Tariff Schedules of the United States (TSUS), which provides for other woven fabrics of man-made fiber. The rate of duty is 2 cents per pound plus 17.9 percent ad valorem.

The tariff provisions permitting an allowance for U.S. made materials are inapplicable in this case. Although item 806.20, TSUS, provides for articles exported for repairs or alterations, the processing operations described above are considered part of the manufacturing of the finished articles and go beyond the scope of this tariff provision. The processing in Korea involves more than mere assembly and thus, the merchandise is also ineligible for tariff treatment under 807.00, TSUS, which provides a duty allowance for U.S. made components assembled abroad.

In the first instance, the fabric is dyed and printed. In the second instance, weaving, dyeing and printing of the fabric occurs. None of these operations can be considered assembly operations.

Headnote 2, Part 1, Schedule 8, TSUS, provides that any product of the United States which is returned after having been advanced in value or improved in condition abroad or assembled abroad, shall be a foreign article. The fabrics involved in both situations you propose require a visa from the Korean government upon return to the United States. Presently, we do not have enough information to determine the textile category of these fabrics. It may be subject to absolute quota. Please find enclosed the tariff schedules containing item 338.50, TSUS, which may prove useful to you in determining the further statistical breakdown of the imported fabric. This breakdown is necessary in order to determine the textile category needed for quota purposes.

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In conclusion, no allowance is made for the U.S. made material involved. The domestically made greige goods sent to Korea for dyeing and finishing and also the domestically made yarn sent to that country for dyeing, weaving into fabric, and finishing is subject to full duty under item 338.50, TSUS, at the rate of 2 cents per pound plus 17.9 percent ad valorem.

In regard to your question concerning the procedure before shipping and necessary documentation, we have enclosed a copy of "Importing into the United States." If you have other questions in this area, you should write to the Area Director of Customs, 6 World Trade Center, New York, New York 10048, or call our National Import Specialist, located in New York — Ms. Alice Masterson (212-466-5896).

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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077529

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

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REFER TO

077532

06 FEB 1986

CLA-2 CO:R:CV:G
077532 JNB
816355

John Giagu
Vice President
Medical Action Industries, Inc.
1934 New Highway
Farmingdale, New York 11735

Re: Classification of Surgical Towel

Dear Mr. Giagu:

This is in response to your letter of November 27, 1985, requesting a ruling concerning the classification of surgical towels which are the products of mainland China. You also request information as to any other requirements regarding the importation of these articles. Samples have been submitted.

You state that the towels will be imported in bulk. They will be inspected, washed, dried, folded, packaged and sterilized in the United States. It is claimed that the articles to be imported will not be used as towels. Rather, you aver that they will be used as surgical drapes for absorbing excess fluids from the surgical site or acting as a sterile field for surgical instruments. You claim that they are not sold as towels but as Operating Room Towels, with the primary function of infection control.

The submitted samples are of 100 percent cotton woven fabric. They are sealed in a sterile surgical pack and measure 16 by 32 and 1/4 inches. By name and use the subject samples are towels. The articles are the same size and shape as towels and are bought and sold as such. Accordingly, your suggestion that these articles are surgical drapes rather than towels is rejected.

The towels are classifiable under the provisions for other furnishings, not ornamented, of cotton, other towels, not jacquard-figured, under the provisions of item 366.26, Tariff Schedules of the United States (TSUS), dutiable at the rate of 11.3 percent ad valorem. A visa is required for the importation of such towels under category number 369.

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Pursuant to section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) and section 134.11 of the Customs Regulations (19 CFR 134.11) every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article, at the time of importation into the Customs territory of the United States.

As noted, the towels are imported in bulk, with the bulk packages marked as being the product of China. The packaging for each individual towel is not marked with any country of origin. While the towels undergo certain processes in the United States, we are of the view that none of these processes, including washing, drying, packaging and sterilization, can be considered to substantially transform the imported product into a new and different article of commerce having a new name, character and use. Accordingly, marking only of the bulk importations does not indicate the country of origin of the product to the ultimate consumer and is inadequate.

Be advised that for Customs purposes each individually packaged towel must be conspicuously marked on such package as a product of China. Additionally, the towels must be marked in conformance with the rules and regulations of the Textile Fiber Products Identification Act. This Act is administered by the Federal Trade Commission. We suggest that you contact that agency for information concerning its marking requirements.

Sincerely,

John T. Carl

For Harvey B. Fox
Director, Classification
and Value Division

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8 JAN 1986

CLA-2 CO:R:CV:G
077536 JGB

077536

Miss Beth C. Ring
Attorney at Law
Sandler & Travis, P.A.
505 Park Avenue
New York, New York 10022

Dear Miss Ring:

Your letter of December 26, 1985, supplements the information provided in your request for a ruling dated August 14, 1985, and follows our letter to you dated December 24, 1985 (our file No. 076798). You have requested a ruling as to the tariff status of finished shirts exported from Israel (country "B"), which are made in part in country "A" and in part in Botswana (country "B"). Your request is on behalf of [redacted]

You request confidential treatment of the name of country B and for the extensive cost and production figures provided us. Samples of two shirts have been provided: an oxford cloth boy's size with button-down collar and a women's over-sized "big shirt." We understand that these samples are not made in the two countries specified, but are provided as examples of the shirts proposed to be imported. You state that in the past your client has imported shirts that have been classified in items 379.55 and 383.47 of the Tariff Schedules of the United States (TSUS). Since September 1, 1985, those items have been renumbered to 381.56 and 384.46 respectively and bear the respective column one rates of duty of 21 and 16.5 percent ad valorem. When eligible for duty reduction under the United States-Israel Free Trade Area Implementation Act of 1985, the items would bear 14.7 percent and 11.6 percent ad valorem rates of duty.

Although your original ruling request described four possible production alternatives, you have since identified one of these as the production method to be followed. This method has the patterns made in country A and shipped with the shirt fabric to country B where the components would be cut, the collars, cuffs, pocket flaps and placket would be sewn (or faced) and the buttons sewn to the placket. All the components would then be returned to country A where buttonholing of the placket and presumably of the cuffs (and in some instances the collar) takes place prior to assembly and pressing.

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Citing 19 CFR §12.130(b), you correctly note in your submission of August 13, 1985, that a textile product that consists of materials produced in more than one foreign country is considered a product of the country where it last underwent a substantial transformation or a "transformation into a new and different article of commerce." You also note that an example provided in our regulations (19 CFR §12.130(e)(1)(v)) namely, "substantial assembly by sewing and/or tailoring of all cut pieces of apparel articles which have been cut from fabric in another foreign...country...into a completed garment (e.g. the complete assembly and tailoring of all cut pieces of...shirts)" conforms to the operations expected to be undertaken in country A by your client, suggesting that the finished shirts would be a product of country A.

You responded to our request for detailed financial information by providing the name and function of the machine involved in each operation, the capital investment involved with each processing operation (by stating the cost of the machines), and the costs involved with each processing operation by stating the wage rate of each operator by occupation, whether in country A or country B. This information remains part of our file and forms the basis for our decision.

The information you provided shows that the parts of the shirt, even those faced, do not constitute a shirt when they leave country B and that the processes that take place in country A substantially transform the parts into a finished shirt which is a new and different article of commerce.

The capital investment is primarily in country A when compared to country B and bears a ratio of about 12:1. The time involved in labor applied to the garment or its parts runs in favor of country A in a ratio of about 2:1. Our regulations require an examination of time, labor, and capital, among other things, to perform an analysis of whether manufacturing processes are substantial in a given country with respect to a specific product; therefore, our focus must be on the product, itself, and what is done to it, to determine where the substantial manufacturing took place. Nevertheless, it is useful to compare the relative cost and complexity of the manufacturing steps to arrive at a country of origin determination.

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Taking all the factors presented into consideration, we conclude that country A is the country where the substantial manufacture of these shirts takes place. Therefore, they should be marked as having Israeli origin.

The difficulty in making a determination of country of origin will necessarily vary according to the financial facts and evidence presented. Our regulations are drafted in comprehensive language to permit relevant factors to be considered. Therefore, simple tests such as comparing the number of components assembled in one country to the number assembled in another, while easy to apply, will not necessarily lead to a correct answer.

If your client's processing or manufacturing plans change, we will endeavor to respond with a country of origin determination to specific descriptions of the new processes, as appropriate.

The claim for confidentiality will be allowed for the business and proprietary information presented. The claim of confidentiality with respect to the identity of country B will not be allowed on the grounds that the mere name or identity of a country from which goods may be lawfully imported into the United States is not a proprietary or business confidential matter.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox,
Director, Classification
and Value Division

[redacted]

CODE AND DATE					(5) REVIEWER	(6) REVIEWER	(7) REVIEWER B2
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CODE AND DATE					(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-72)

• U.S. GPO: 1981-417-788

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077544 JGH

077544

8 FEB 1986

Ms. Cheryl Osborne
Lancaster Distral Group
1125 N.E. 7th Avenue
P.O. Box 417
Dania, Florida 33004

Dear Ms. Osborne:

Your letter of November 12, 1985, concerns the dutiable status of fuel grade anhydrous ethanol, a product of Colombia.

You state that the grain feedstock used to produce the ethanol in Colombia would probably be grain sorghum grown in the United States.

The ethanol in this case would be considered a product of Colombia, and would be classifiable in item 427.88, TSUS, with a rate of duty of 3 percent ad valorem. In addition since it is a fuel grade ethanol, it would be subject to an added duty of 60 cents per gallon in item 901.50, TSUS. The fact that the grain sorghum is grown in the United States would not affect the ethanol's classification or rate of duty.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 19 1986

REFER TO

CLA-2 CO:R:CV:G
077560 jlj
814581

077560

Mr. Robert Prach, Traffic Manager
H. H. Brown Shoe Co., Inc.
630 Third Avenue
New York, New York 10017

Dear Mr. Prach:

In Customs Headquarters Ruling Letter (HRL) 076906 of November 26, 1986, you were advised that certain unfinished work boots from South Korea would probably be classified in item 700.35, Tariff Schedules of the United States (TSUS).

It has been brought to our attention that the outsole in HRL 076906 can only be attached to the welt strip by means of stitching or cementing. Both means of attachment would result in welt footwear classifiable in item 700.27, TSUS, if valued over $5.00 but not over $6.80 per pair, or in item 700.29, TSUS, if valued over $6.80 per pair.

HRL 076906 is hereby modified accordingly. The unfinished work boots which were the subject of that letter are classified in item 700.27, TSUS, or in item 700.29, TSUS, depending upon their value.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

3 FEB 1986

REFER TO
CLA-2:CO:R:CV:G
077561 JCH

Daniel A. Pinkus, Esq.
Assistant Chief Counsel
International Trade Litigation
U.S. Customs Service
26 Federal Plaza
New York, New York 10278

Dear Mr. Pinkus:

Re: EAC Engineering Division of the East Asiatic Co., Inc. v. United States, Court No. 82-1-00096

Enclosed is our decision issued pursuant to the remand orders of the court in Slip Op. 85-111 and Slip Op. 85-120.

Sincerely,

Arthur P Scheffler
For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

3 FEB 1986

CLA-2:CO:R:CV:G
077561 JCH

This decision concerns the tariff classification of spark detectors and is issued pursuant to the remand order by Chief Judge Edward D. Re, U.S. Court of International Trade, in EAC Engineering Division of East Asiatic Company, Inc. v. United States, Court No. 82-1-00096. Our decision follows:

ISSUE:

In the court's memorandum opinion and order of October 24, 1985, Slip Op. 85-111, the liquidated classification of the merchandise under the provision for optical measuring, checking, analyzing, or automatically-controlling instruments and apparatus in item 712.05, Tariff Schedules of the United States (TSUS), was not sustained, but the court at the same time declined to accept the plaintiff's alternative claim for classification under the provision for nonoptical measuring, checking, etc., apparatus in item 712.49, TSUS, even though the Government conceded the alternative applicability of that provision. In a clarifying opinion and order issued on November 26, 1985, Slip Op. 85-120, it was indicated, in effect, that the item 712.49 classification would not be considered until the court had the benefit of the Customs Service's views regarding material facts and other considerations not previously taken into account administratively and bearing on the plaintiff's additional alternative claims for classification of the merchandise under the provision for electrical measuring, checking, etc.,

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apparatus used for measuring or detecting alpha, beta, gamma, X-ray, cosmic and similar radiations, in item 712.15, TSUS, and the provision for electrical articles, not specially provided for (n.s.p.f.), in former items 688.40 and 688.45, TSUS, depending on the year of importation.

FACTS:

The merchandise is a photoelectric device which detects the infrared radiation from sparks in industrial ducts or pipes through which combustible materials flow. Upon spark detection, a signal is received by a control console which activates a dousing mechanism. This merchandise was previously described in our protest review decision of July 17, 1981, file No. 067394, and classified as optical goods. Supplements to that description and the more complete description of the merchandise in Slip Op. 85-111 as they may relate to the ascertainment and consideration of new material facts pertinent to a correct classification of the merchandise are as follows:

LAW AND ANALYSIS:

With respect to the claimed applicability of item 712.15, we can discern no dispute as to the fact that the sensor in question reacts only to infrared energy or as to the fact that no secondary reaction in its silicon element or in the larger apparatus in which impulses are received involving energy emissions at a higher frequency or of an ionizing type occurs. It would also seem self-evident that item 712.15 is limited to

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articles dealing with electromagnetic energy above the ultraviolet spectrum or with ionizing radiation, and that articles sensing electromagnetic energy below the X-ray spectrum are not included. Materials supporting this conclusion include the Explanatory Notes to the Brussels Nomenclature (1966), Vol. 3, pp. 1640 and 1641, and the Summary of Trade and Tariff Information, Analytical and Other Scientific Instruments (1983), p. 53.

Doubt, therefore, would only seem to be injected with respect to the nonapplicability of item 712.15 by reference in the latter document to "semiconductor counters" as includable in that item. However, it is our conclusion that that description does not include the silicon device in question, but rather includes only semiconductor devices used to detect ionizing radiation or electromagnetic radiation above the ultraviolet spectrum. Therefore, the instant merchandise does not satisfy the requirements of item 712.15, which are a duplication of the requirements of Headnote 2(c), Subpart D, Part 2, Schedule 7, TSUS.

The claim for classification under item 712.49 is subject to a different headnote requirement, viz., the requirement in subdivision (a) of the same headnote that other electrical measuring, checking, etc., instruments and apparatus operate using an electrical phenomenon which varies in accordance with the factor to be ascertained. The facts as previously stated by us and by the court include no information as to the

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satisfaction of this headnote requirement. Therefore, this would appear to represent an area where the record is incomplete, where the court's primary interest in the remand is focused, and where considerations equally germane to both remaining claimed classifications are involved.

This interpretation of the remand order is also reinforced by our concurrent reading of Chief Judge Re's views in A & A International, Inc. v. United States, 5 CIT 183 (1983). In that matter, the classification of detecting and signalling apparatus under both item 712.49 and the basket provision for electrical goods was rejected in favor of the specific provision for signalling apparatus in item 685.70, TSUS. Since Headnote 1(vi), Part 5, Schedule 6, TSUS, the part where item 685.70 appears, excludes from that part "electrical instruments and apparatus provided for in schedule 7", where item 712.49 appears, it was assumed that classification under the latter item was rejected because the varying-electrical-phenomenon requirement was not satisfied. Unlike the language in other TSUS exclusionary headnotes, the above-quoted language does not limit the exclusion to merchandise "specifically" provided for elsewhere. In this connection, item 712.49 cannot be characterized as nonspecific or as a basket provision anyhow since an "other" breakout can only be regarded as such if the language in the superior heading to which it relates includes an n.s.p.f. phrase.

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"Other" breakouts otherwise carry the same degree of specificity as the language in the superior heading to which they relate. Therefore, despite previous references to item 712.49 as a basket provision, we view the remand order as a requirement similar to the result of the A & A International, Inc. decision that claims for item 712.49 classifications be based on an affirmative showing through the pertinent material facts that the varying-electrical-phenomenon requirement has been met.

The long-held view, although not specifically defined by either court or administrative precedents, has been that the requirement is satisfied if an analog electrical signal is involved as opposed to electrical applications associated with bistable or so-called flip-flop and similar devices. The electrical phenomena employed in photoelectric devices may be in either category depending on whether they are involved in a quantitative determination or just detect the presence or absence of light above or below ambient or other set energy levels. If of the latter type, the instant sensor would detect a phenomenon which would be analogous to the phenomenon which Chief Judge Re described as merely an "abnormal or temporary event" in the A & A International, Inc. matter, supra, at 189, after citing previous authority using the same description.

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An examination of the submissions in our previous file in this matter discloses little technical information concerning the operation of the sensor except that the scan is at a 130 - degree angle. It is also stated that "an impulse is fed to the control console" when a spark passes within the scan. Further information furnished in support of the protest includes descriptions of the silicon element and its housing which also add little to the court's description. However, the foregoing offers clues upon which various assumptions may be predicated.

Photoelectric sensors of the type which would satisfy the varying-electrical-phenomenon criterion would generally be of the photoresistive or photoconductive type in which variations of an electrical parameter, such as resistance, occur that are proportionate to variations in light. It is this type of sensor to which the term "transducer" would be more appropriately applied, a term we note is absent in the descriptive materials available to us. This type of sensor deals with changes in electricity rather than with the generation of electricity.

The reference to the feeding of an impulse to the control console suggests the generation of electricity or of a signal which is more typical of photovoltaic sensors. These are less typically used for quantitative determinations. However, both types of sensors may have silicon elements, and both types may

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be used for either quantitative determinations or in more simple applications merely involving switching control. Therefore, while the use of one type of sensor or another would be a factor to be considered in determining whether the applicable headnote requirement has been satisfied, the main consideration would be how the sensor is used.

In this connection, while we note that the larger system is further described as operating in a wide range from the near visible to the invisible infrared spectrum, it is our conclusion that has reference only to the setting of the threshold level of detection on the control console. Our analysis of the system is that no quantitative measurements are made and that any variations between the threshold and maximum levels of energy detection still result in a single, rather than a proportionate or incremental, response in the system. We further note that the control console performs through its own internal programming many of its functions, such as coordinating responses to sparks in multiple locations, timing of the dousing period, etc., independently of the response from any single sensor.

But our lack of attention to this apparent disqualification under the varying-electrical-phenomenon requirement both in our previous classification of the instant merchandise and in the defense of this litigation should not be regarded as inadvertency on the part of the Customs Service. Rather, it

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reflects awareness of the principle of United States v. Corning Glass Works, 66 CCPA 25, C.A.D. 1216 (1978), in which it was held that "checking" as used in the TSUS does not require a measurement. Accordingly, it was our view that the sine qua non for satisfaction of the applicable headnote requirement could no longer be regarded as an analog electrical phenomenon or a quantitative determination. It necessarily followed that considerations concerning into which category of photoelectric device the instant merchandise fell was, for the most part, not pertinent to its tariff classification, and that the salient automatically-controlling features of the total system should be regarded as the primary design and functional features more pertinent for tariff classification purposes. In this reconsideration of our previous classification and its underlying premises, it is our conclusion that our reliance on the Corning Glass Works decision, supra, was misplaced.

It is now our opinion that while "checking" as used in the TSUS does not require a quantitative determination, it does, at least, require a qualitative determination. Against this reevaluation, the instant sensors cannot be shown to meet either standard. But that does not mean that classification as electrical articles, n.s.p.f., automatically ensues.

Sensors and transducers are not specially named in the TSUS, and their classification is usually determined by their status as parts chiefly used as components of the larger

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apparatus which responds to the sensed phenomenon. Classification in a basket provision would only be warranted when no specific provision exists for either the larger apparatus or the component of the larger system of which the sensor is most immediately a part of. It has been our position that industrial control devices not otherwise provided for elsewhere are specifically contemplated under the description for control panels in item 685.90, TSUS. A supporting reference for this view is the Explanatory Notes to the Brussels Nomenclature, id. p. 1450. Also of interest in this connection is Heading 8537 of the draft Conversion of the Tariff Schedules of the United States into the Nomenclature Structure of the Harmonized System (1983), which is derived, in part, from our present tariff treatment of qualifying control devices as control panels.

HOLDING:

1. Alpha, beta, gamma, X-ray and cosmic radiations are a class or kind of radiation which involves electromagnetic energy at frequencies above those for the ultraviolet spectrum or corpuscular or ionizing energy.

2. Infrared radiation is not included among the types of energy described above.

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3. Neither the sensors in question, nor the larger apparatus of which the sensors are components, detect energy outside of the infrared spectrum, nor do they employ secondary reactions involving higher-frequency electromagnetic or corpuscular or ionizing emissions.

4. The signals produced by the sensors in question are a response above a set threshold level from a silicon element which either varies an electrical parameter in response to light or together with a junction or barrier layer produces an electrical potential in response to light.

5. The control console receiving the signal responds only to energy levels above the threshold level, and the same response is made regardless of any variations in an electrical parameter.

6. The sensor and control console make no quantitative or qualitative determinations regarding the nature of the sparks or the amount of sparks detected.

7. Neither the sensors nor the control console either separately or in combination depend for their operation upon an electrical phenomenon which varies in accordance with the factor to be ascertained.

8. The control console is primarily a switching device controlled by a combination of the signals from attached sensors, internal programming, and manually-operated push button controls, and is used for industrial control purposes, rather than in scientific applications.

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9. The sensors are made to specifications for chief use as parts of the control consoles to which they are attached by wires.

10. Based on the foregoing findings as to material facts and the preceding discussion, we respectfully propose for the court's consideration reclassification of the merchandise at issue under the provision for control panels and parts in item 685.90, TSUS.

Arthur P. Scheffler
For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

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REFER TO

31 JAN 1986 CLA-2:CO:R:CV:G
077575 JGH

Mr. Irv E. Grayson
Filex International Inc.
3434 Lang Road
Houston, Texas 77092

Dear Mr. Grayson:

This is in reference to letters from your firm of August 9, and December 16, 1985, concerning the dutiable status of an ethanol-ethylbenzene mixture from Brazil. The typical analysis of the product was said to disclose an ethanol content of 70 percent and an ethylbenzene content of 8 percent, with the balance being various types of xylenes.

A mixture with the composition stated above is classifiable under the provision for benzenoid mixtures in item 407.16, TSUS. A product of Brazil classifiable in item 407.16 is entitled to duty free status under the Generalized System of Preferences. An ethanol mixture containing ethylbenzene in the amount of 7 percent or more of the entire mixture would be classified as a benzenoid mixture in item 407.16.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 11 1986

REFER TO

CLA-2:CO:R:CV:G
077577 JLV
816393

077577

Mr. Terry Oikawa
C. Itoh & Co. (America) Inc.
1001 Fannin Street, Suite 2410
Houston, Texas 77002

Dear Mr. Oikawa:

In your letter of November 8, 1985, you requested a ruling on the tariff classification of several articles. In a ruling of December 20, 1985 (file 816393), all articles except for the conductor pipe were classified. This ruling concerns the classification of the conductor pipe.

As described in your letter, the conductor pipes will be of steel, measuring 26 inches in outside diameter and having a wall thickness of 1 inch. They will be in lengths of up to 70 feet, 70 to 100 feet, and over 150 feet. The ends of each pipe will be bevelled. Certain sections of the pipe will be rubber sheathed with a copper/nickel cladding. An epoxy coating may, as an option, be added to pipes below the splash zone. All pipe surfaces above the splash zone will be multicoated.

The conductor pipes are casings which provide a barrier to the sea water, silt, and other foreign material, and protect the drilling apparatus and other essential pipes and equipment encased within them. The various protective coatings, sheathing, or metal cladding do not make the pipe more than what what is: tubular casing.

Steel casings of this kind are classifiable under the provision for pipes and tubes in Subpart B, Part 2, Schedule 6, Tariff Schedules of the United States (TSUS). See the comments on this at page 95 of the Tariff Classification Study, Schedule 6 (November 15, 1960). Therefore, depending on metallurgical composition, method of fabrication of the steel pipes, and other relevant criteria for the classifi-

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cation of pipe, all of the conductor pipes described by you would be classified in Subpart B, Part 2, of Schedule 6, TSUS, under the appropriate provision for pipes and tubes.

Sincerely,

Arthur P. Scheffler

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 19 1986

REFER TO

CLA-2 CO:R:CV:G
077581 c
816303.

077581

Mr. Shelton Townley
Rogers & Brown Customs Brokers, Inc.
2 Cumberland Street
Charleston, South Carolina 29402

Dear Mr. Townley:

Your letter dated October 11, 1985, addressed to our New York office concerning the dutiable status of a PVC garment bag produced in Taiwan, has been referred to this office for a direct reply to you. A sample was submitted for examination.

The sample garment bag made of 4 mil thick polyvinyl chloride has been embossed to impart a simulated nylon appearance. It measures 40 inches by 24 inches and has a 32 inch nylon coil zipper closure. The bag is designed so that when a garment is carried by a hanger handle, the bag serves as a protective covering. The front of the bag is imprinted with the name of a retail clothier.

You suggest that this garment bag is classifiable under the provision for containers of rubber or plastics, with or without their closures, chiefly used for the packing, transporting, or marketing of merchandise in item 772.20, Tariff Schedules of the United States (TSUS).

In the case of Imperial Packaging Corp. v. United States, 2 CIT 250 (1981), the court interpreted the term "merchandise" as used in item 772.20, TSUS, as referring "to products which are still in the stream of commerce" rather than articles which are personal effects or commodities in the hands of the ultimate consumer. In this instance classification under item 772.20, TSUS, is precluded because the garment bag is given to the purchaser after the marketing process has terminated.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS, provides that "For the purposes of the tariff schedules — (a) the term 'luggage' covers — (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel."

It has been consistently our position to view substantiality of construction as essential to a finding that an article is designed to contain clothing or other personal effects during travel. An examination of the sample bag reveals that it is substantially constructed noting that the seams are reinforced with PVC edging and stitching.

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In view of the foregoing, it is our opinion that garment bags represented by the sample are classifiable under the provision for other luggage of other materials in item 706.62, TSUS, and dutiable at the rate of 20 percent ad valorem.

Sincerely,

Arthur J. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR - 6 1986

REFER TO
CLA-2 CO:R:CV:G
077586 c

077586

Area Director of Customs
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-007494

This protest was filed against your decision in the liquidation on March 23, 1984, of entry No. 84-268532-4 dated February 23, 1984.

FACTS:

Certain athletic footwear produced in Korea and designated as style Nos. BOG-6277 and EOG-6277 were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear is in chief value of leather and should have been classified under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Should the cost breakdowns submitted by the protestant showing the footwear to be in chief value of leather be accepted?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous or (3) the

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cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on this matter was that importer submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

In reviewing the manufacturer's breakdowns, we note that the manufacturer has allocated his stitching costs on the basis of his material costs which is erroneous. Our previous instruction on this matter was that the "cost of stitching leather overlays onto the fabric uppers should be allocated among the materials comprising the uppers in proportion to their relative weights."

In view of the foregoing we have ignored the stitching charges shown on the manufacturer's breakdowns because they are incorrect and without these charges the following listed styles with split leather overlays are in chief value of rubber/plastics:

Style No.	Leather Total	Rubber/Plastics Total
BOG-6277 (Invoice No. 1)	$1.109	$1.118
BOG-6277 (Invoice No. 3)	$ .894	$ .947

Based on the revised component cost figures, style No. BOG-6277 (invoice No. 1) and style No. BOG-6277 (invoice No. 3) were properly liquidated under item 700.95, TSUS.

With respect to the component cost breakdowns submitted covering the remaining styles, we have no "tangible evidence" that the leather costs are false. Consequently, we will accept the documentation submitted showing

077586

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them to be in chief value of leather. However, the youth's sizes 11-1/2 to 2 should be treated as unisex and reliquidated under item 700.45, TSUS.

HOLDING:

The protest should be denied in part as to those styles covered by style No. BOG-6227 (invoice No. 1) and style No. BOG-6277 (invoice No. 3) and allowed as to the remaining style numbers. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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087586

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 17 1986

REFER TO

CLA-2 CO:R:CV:G
076587 JGH

076587

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Internal Advice 50/85 on the Classification of 21 Entries Involving Petroleum Products of Mexico

The products were described by the Customs laboratory as "Blending Gasoline." They were said to be a complex mixture of hydrocarbons and benzenoids containing lead.

On behalf of the importer it is contended that the 21 entries should be classified as benzenoid mixtures in item 407.16, TSUS.

Analysis of representative samples by an independent laboratory were submitted by the importer. These samples were tested by laboratories not associated with Customs approved public gaugers and, therefore, the results are not from Customs approved petroleum laboratories.

A review of samples from six of the entries based on information supplied by the importer led the Customs laboratory to the opinion that none of the samples met the minimum octane rating for leaded gasoline under the current standards, (ASTM D 439); and that only three of the entries conformed to the specifications for leaded motor fuel under T.D. 66-23(13) standards; and that possibly six of the entries could be classified under item 407.16, TSUS. On review of the data supplied and tests made on three of the six entries, it was concluded that all six probably contained over 5 percent dutiable benzenoids since they all had similar boiling ranges.

Based on all of the the evidence supplied, the 21 entries are classified as follows:

Entry Nos.	Classification TSUS No.
84 103 068-2	475.25
84 103 358-2	475.25
84 367 916-4	475.25
84 103 274-5	407.16
84 103 321-0	407.16
84 103 336-2	407.16
84 104 089-2	407.16
84 104 622-3	407.16
84 104 635-9	407.16

C11

Entry Nos.	Classification TSUS No.
83 101 008-1	432.10/429.70
83 101 372-9	432.10/429.70
83 101 672-6	432.10/429.70
84 101 401-9	432.10/429.70
84 101 444-6	432.10/429.70
84 101 481-5	432.10/429.70
84 103 012-9	432.10/429.70
84 103 013-2	432.10/429.70
84 103 099-6	432.10/429.70
84 103 292-3	432.10/429.70
84 103 309-0	432.10/429.70
84 103 342-7	432.10/429.70

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

076587

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

FEB 19 1986

REFER TO
CLA-2 CO:R:CV:G
077589 c

District Director of Customs
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 30014-0-00191

This protest was filed against your decision in the liquidation on March 16, 1984, of entry No. 83-987438 dated March 22, 1983, covering certain footwear produced in Korea.

FACTS:

Certain jogger type footwear was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that this footwear is properly classifiable as leather footwear under item 700.35, TSUS, or item 700.45, TSUS, according to gender and value per pair.

ISSUE:

Should the cost breakdowns showing the footwear to be in chief value of leather be accepted?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous; or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

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The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that importer submitted data need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

The leather claimed to be present in the shoes and the leather present in the shoes as found by laboratory analysis is as follows:

Stock No.	Claimed Present	Lab. Finding
72184	.712 sq. ft.	.70 sq. ft.
75383	.92 sq. ft.	.90 sq. ft.
79129	.80 sq. ft.	.84 sq. ft.
75151	1.50 sq. ft.	1.42 sq. ft.
73169	.719 sq. ft.	.64 sq. ft.

Although there is an overstatement of the leather present on four of the five styles, it is not sufficient to change them from chief value of leather to chief value of rubber/plastics. There are other items on the cost breakdowns which are improbable, e.g., $.45 per pair to "inspect" and "cut" the leather in stock No. 079129, but we do not have "tangible evidence" which would enable us to categorically state that the costs assigned are false.

HOLDING:

We accept the cost breakdowns showing the footwear to be in chief value of leather. The protest should be allowed. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Scheffler

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

FEB 10 1986

REFER TO

CLA-2 CO:R:CV:G
077590 JLF

077590

District Director of Customs
111 West Huron Street
Buffalo, New York 142302

Dear Sir:

Re: Decision on Application of Further Review of Protest No. 0901-5-850022

This protest was filed against your decision in the liquidation of several entries filed in July 1984, covering merchandise which is edible preparations known as "Giant Freezies" and "Super Pops."

FACTS:

The merchandise involved in the application for further review consists of "Giant Freezies" and "Super Pops" made of water, frustose-glucose, citric acid, natural and artificial flavors, carboxymethyl cellulose and artificial colors, preserved with 1 per cent sodium benzoate and potassium. The merchandise is manufactured by Kisko Products of Canada, sold in a liquid state and subsequently frozen by the retail consumer prior to consumption.

The merchandise was classified under item 183.05, Tariff Schedules of the United States (TSUS), which provides for other edible preparations. Protestant claims that the merchandise in question is more appropriately classifiable under the provision for other beverages, not specially provided for, in item 166.40, TSUS. Protestant also claims that the merchandise is properly classifiable under this latter provision by virtue of an established and uniform practice.

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ISSUES:

a. Whether the "Giant Freezies" and "Super Pops" are classifiable as edible preparations in item 183.05, TSUS, or as other beverages, not specially provided for, in item 166.40, TSUS.

b. Whether there is an established and uniform practice requiring classification under the provision claimed by protestant, item 166.40, TSUS.

LAW AND ANALYSIS:

a. Headnote 1, Subpart B, Part 12, Schedule 1, provides that to be classified in this subpart as a beverage a product must be "fit for use as a beverage." To have merely the possibility of such use is insufficient. See Ruling 068841, October 8, 1981.

Although the merchandise reached the consumer in liquid form and could possibly be drunk, it is intended by the manufacturer that the product be frozen and consumed in its solid form. "Giant Freezies" and "Super Pops" are substances prepared and chiefly used as human food. See Headnote 3, Subpart B, Part 15, Schedule 1.

b. A mere list of liquidated entries is insufficient to show an existence of an established and uniform practice of classification. Even if this list was considered a basis for a uniform practice, no practice is shown in this instance because all of the listed importations have occurred at the same port in the same month. Furthermore, there were relatively few importations in this short period of time. No other specific information about these importations has been provided.

HOLDING:

"Giant Freezies" and "Super Pops" are properly classifiable as other edible preparations under item 183.05, TSUS, dutiable at 10 percent ad valorem.

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You should deny the protest. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Scheffler
For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

FEB 19 1986

REFER TO
CLA-2:CO:R:CV:G
077601 SM

077601

Mr. Ike Matitia
International Seaway Trading Corp.
1328 West 9th Street
Cleveland, Ohio 44113

Dear Mr. Matitia:

You have requested a ruling on the classification of a men's P.U. Upper Court Shoe, style No. 64-65071-A.

Because we do not consider this shoe to have a "foxing-like band applied or molded at the sole and overlapping the upper," it is classifiable in item 700.56, TSUS. The extended bumper in the front of the shoe overlaps the upper by about one half inch and is cemented and stitched to the upper. There is no question that this piece looks and functions like a foxing. However, it does not "substantially encircle" the upper. The back sidewall overlaps the entire height of the EVA midsole wedge, but it has been "tucked in" at its top so it neither "overlaps the upper" nor appears to do so by even a "de minimis" amount. Hence it would not count towards "substantial encirclement" of the upper.

Sincerely,

Arthur P. Schaffner

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 19 1986

REFER TO
CLA-2 CO:R:CV:G
077606 c

077606

Ms. Shirley Ross
Shelcore Inc.
1107 Broadway
Suite 1516
New York, New York 10010

Dear Ms. Ross:

In a letter dated January 23, 1985 (file No. 811826), addressed to you, our New York office ruled that a play-quilt is classifiable under the provision for articles not specially provided for, of textile materials: ornamented, other, of man-made fibers in item 386.13, Tariff Schedules of the United States (TSUS).

The sample was described in the referenced ruling "as a child's play-quilt designed to be used on the floor for a child to play with. The label on the representative sample indicates that the material is man-made fibers. There are four printed sections of cartoon characters in the center of the quilt. Each section has an article sewn onto it. One section has a circular print fabric with a squeaker toy underneath it, a second section has a circular textile fabric sewn on for decoration, the third has a mirror sewn on, and the last has a plastic ring sewn to it."

The rationale for classification of this merchandise under item 386.13, TSUS, was based on an observation that the play value of the quilt is subordinate to the functional aspect of serving as a protective floor covering for a young child.

Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, provides that "For the purposes of the tariff schedules, a '<u>toy</u>' is any article chiefly used for the amusement of children or adults."

We have reconsidered our rationale in this matter and are now of the opinion that the functional aspect of the play-quilt is subordinate to its play value. In view of the fact that the merchandise is chiefly used for the amusement of children, it is classifiable under the provision for other toys not specially provided for in item 737.95, TSUS. The duty rate is determined by the country of origin. Products of most favored nations are dutiable at the rate of 8.3 percent ad valorem with certain duty concessions for developing countries.

Sincerely,

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Arthur P Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

DS

Enclosure

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 26 1986

REFER TO

CLA-2 CO:R:CV:G
077609 JGH

077609

George White
Altra Corporation
Two Executive Drive
Fort Lee, New Jersey 07024

Dear Mr. White:

Your letter of December 12, 1985, concerns the classification and rate of duty of an alkylbenzene/ethylalcohol blend from a country entitled to benefits under the Generalized System of Preferences (GSP). It is assumed that you are referring to a mixture to be used for fuel purposes.

It is your opinion that a blend containing 5.5 or 7 percent alkylbenzenes and 94.5 or 93 percent ethanol should be classifiable as a benzenoid mixture in item 407.16 and, thus, eligible for duty-free treatment, since item 407.16 is a GSP item.

A mixture of ethanol and alkylbenzenes, with the alkylbenzene content in an amount equal to 7 percent or more by weight of the entire mixture is classified in item 407.16, TSUS. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The highest applicable rate would be under item 427.88/901.50 at 3 percent ad valorem plus 60 cents per gallon. If a product of a country eligible for GSP benefits, such a mixture would be duty free if all the requirements are met.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

12 FEB 1986

REFER TO

CIA-2 CO:R:CV:G
077612 SM

077612

Mr. Donald Mendoza
Minerva Overseas Corporation
55 West 39th Street
17th Floor
New York, New York 10018

Dear Mr. Mendoza:

You have inquired as to the dutiable status of imported fabric, hand woven in India, 45 percent by weight of cashmere yarn of U.S. origin, 55 percent silk originating in Mainland China. The fabric is 44/45 inches in width, in chief value of cashmere, and unfinished at the time of importation into the United States from India. A small swatch of the fabric was sent to us for examination.

All articles imported into the United States are subject to duty under the Tariff Schedules of the United States unless specifically exempted. There is no provision in the tariff schedules that would authorize any exemption or allowance in duty for the fabric in question. It is fully dutiable as a woven fabric of wool, since you state it will be in chief value of cashmere. Since it is 30 inches or over in width, if valued over $2.00, but not over $9.00, per pound, it would be classified under item 336.62, dutiable in 1986 at 24 cents per pound plus 38 percent ad valorem. If valued over $9.00 per pound, it would be classified under item 336.64, dutiable in 1986 at 6 cents per pound plus 33.8 percent ad valorem. It is highly unlikely that the fabric would be valued at less than $2.00 per pound.

Section 12.130 of the Customs Regulations, 19 CFR section 12.130, provides that a textile product that consists of materials produced or derived from, or processed in, more than one foreign country shall be a product of that country where it last underwent a substantial transformation, that is, where a new and different article of commerce emerged as a result of substantial manufacturing or processing operations. The weaving or otherwise forming of fabric will usually constitute a substantial transformation. Hence the fabric will probably be a product of India. Since fabric classified under both item 336.62 and item 336.64 falls within the textile category 410, a visa from the government of India would be required.

Sincerely,

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Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 10 1986

REFER TO

CIA-2 CO:R:CV:G
077614 c

District Director of Customs
2039 Federal Office Building
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3001-4-000167

This protest was filed against your decision in the liquidation on February 10, 1984, of entry No. 83-934627-8 dated February 8, 1983.

FACTS:

Certain textile/leather upper athletic shoes were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that these athletic shoes should have been classified under the provision for other footwear of leather for men, youths and boys in item 700.35, TSUS.

As support for the claimed classification under item 700.35, TSUS, the protestant asserts that the legislative history indicates that in adopting the language in the current tariff schedules of "footwear of leather," in item 700.35, TSUS, Congress intended to eliminate the chief value requirement which had been provided for in paragraph 1530(e), Tariff Act of 1930, as amended. Alternatively, the protestant claims that the subject footwear is in chief value of leather based on its submitted cost breakdown.

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ISSUE:

(1) Does the legislative history to the footwear provisions show that Congress intended to eliminate the chief value requirement for classification under item 700.35, TSUS?

(2) Is Customs required to accept the cost breakdown submitted by the protestant?

LAW AND ANALYSIS:

The protestant's contention that the omission of the chief value requirement in item 700.35, TSUS, indicates a change in Congessional intent is without merit. The body of the tariff schedules is preceded by a section entitled "General Headnotes and Rules of Interpretation." That the General Headnotes and Rules of Interpretation do not represent a change in the interpretation of the term "chief value" is indicated by the following passage in the Tariff Classification Study Submitting Report:

> The General Headnotes and Rules of Interpretation to the proposed revised schedules constitute an innovation in connection with the tariff classification laws, there being no set of provisions in the present tariff structure. As is generally true with related matters in the existing Customs laws, the substance of most of the proposed headnotes and rules is contained in scattered statutory provisions and in practices based on established administrative and judicial precedent.

General Headnote 9(f)(i), TSUS, defines the term "of" as meaning that the article is wholly or in chief value of the named material. The protestant's reference to the case of Magnesium Elektron, Inc. v. United States, 50 Cust. Ct. 71, C.D. 2391 (1963), is not germane because this case involved the interpretation of certain paragraphs under prior acts and not the tariff provisions under the Tariff Schedules of the United States.

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has

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evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, relating to cost breakdowns was that importer submitted data need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

The cost breakdown submitted by the protestant states that the average quantity of leather in each pair of shoes is 2.074 sq. ft. The Customs laboratory report shows 0.8 sq. ft. for size 2 1/2 shoes and 1.0 sq. ft. for size 10 1/2 shoes. The unit cost for leather in the shoes is stated to be $0.598 per sq. ft. That unit cost, if accurate, when applied to the quantity of leather found by laboratory analysis in size 10 1/2 shoes, would result in a total cost of leather for these shoes of $0.79 per pair assuming a waste of 0.311 sq. ft. per pair (the waste shown on the breakdown) or a cost of $0.84 per pair assuming a waste of 0.4 sq. ft. per pair (the waste estimated by the import specialist). In either case, the cost of the leather would be considerably less than the cost of the rubber and plastics shown on the breakdown. The disparities in costs would be comparable or greater for size 2 1/2 shoes.

The fact that the shoes have less than one half the leather that the maker claimed to be present is sufficient "tangible evidence" to enable us to categorically state that the cost breakdowns are false in view of the inability of the protestant to plausibly explain the discrepancy.

RELEASED TO THE

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HOLDING:

The footwear involved was properly classified as liquidated under item 700.95, TSUS. The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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07764

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAR - 6 1986

FILE: CLA-2 CO:R:CV:G
077616 JAS

077616

TO : District Director of Customs
Seattle, Washington 98174

FROM : Director, Classification and Value Division

SUBJECT: Classification of the Book States of War

This is in further reference to our memorandum of October 18, 1985 (076354), to which you responded on December 24, 1985 (CLA-2 SE:C:DA-12)

Initially, we incorrectly assumed that the importer had challenged your proposed classification and had argued that classification should be in item 270.25. It is now clear that your original request was limited to the narrow issue of whether printing by offset is considered lithography for tariff purposes. The letter from the importer, dated December 6, 1985, appears to support your (and our) position inasmuch as it is now clear that a flat plate was used in the printing process. In this context, printing by offset is clearly lithographic for tariff purposes. We were, however, unable to comment on the broader classification issue inasmuch as the sample book was unavailable.

Having now received and examined the book, there are statements in our October 18 memorandum which require clarification. The submitted sample, States of War, is a bound compilation of 44 lithographs from European and American artists, each having a caption listing author, date and city of birth, title of the work, and sending gallery. In addition, the compilation contains signed acknowledgments and a forward, each 1 page long, and a 10 page unsigned introduction. The introduction defines a central theme which the lithographs attempt to portray, that of "...the complex cultural and spiritual dilemmas of a post-industrial nuclear age." The introduction attempts to interpret many of the lithographs as the artists' portrayals of the various emotional, social and political issues integrating expressions of power, violence, anguish, and changing sexual rolls in modern society.

Attached for your information and future guidance are Protest Review Decision, dated May 5, 1983 (072090), and our letter of August 20, 1985 (076794). You will note that the "essentially textual" criteria which had traditionally governed classifications in item 270.25, TSUS, and to which we alluded in our October 18, 1985, memorandum, was effectively repealed by the Florence Agreement, 17 U.S.T. 1835, T.I.A.S. No. 6129 (1966), and no longer represents Customs position in such matters. The Florence Agreement amendments essentially expanded the scope of the basket provision for books, in

D12

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item 270.25, TSUS. As indicated in our August 20 decision,"... the Florence Agreement implementation has expanded the provision for books to include articles which are 'less than essentially textual' and which are pictorial." See also paragraph 1, p. 4 of our May 5, 1983, decision. Thus, the real issue here is whether, despite the obvious pictorial content in States of War, the textual content may be viewed as more than incidental, thus warranting classification as a book. Because of the nature of the involved tariff provisions, particularly in view of the expanded scope of the provision for books in item 270.25, TSUS, Customs officers in the future will be required to make this determination on a case-by-case basis.

We have previously held that captions and indexes do not normally control classification. See p.2 of our August 20 decision. The 63 page compilation States of War depicts 44 lithographs which, standing alone, are difficult to interpret, at best. The unsigned introduction defines the various styles and techniques of many of the artists, and contains pointed interpretations of many of the lithographs, the emotions, social statements, and complexities of life in general each artist is attempting to depict. It is our opinion that the introduction in this instance is more than an incidental feature and that there is sufficient thematic integration of the text to warrant classification under the provision for books, not specially provided for, in item 270.25, TSUS. Copies of the cited decisions are attached.

For Harvey B. Fox

Attachment

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR 11 1986

REFER TO
CLA-2:CO:R:CV:G
077647 SM
815159

077647

Mr. Charles Belner
R. H. Macy Corporate Buying
47 West 34th Street
New York, New York 10001

Dear Mr. Belner:

We have been asked to reconsider that portion of New York Ruling 815159, of October 21, 1985, that determined that style 1023, women's tap pants manufactured from 100 percent polyester woven fabric, is properly classified under item 384.9497, TSUSA, as other women's wearing apparel.

The proper classification for this article is under item 378.6530, TSUSA, in textile category designation 652, as underwear, not ornamented, of man-made fibers, not knit. The appearance and structure of the tap pants indicate that they are chiefly used as underwear, worn under an outer garment and thus concealed in normal use.

The 1986 rate of duty for item 378.65 is two cents per pound plus 8.5 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077649 JGH

20 MAR 1986

077649

Mr. Joseph A. Savoca
International PetChemco Inc.
101 Park Avenue
New York, New York 10178

Dear Mr. Savoca:

Your letter of January 16, 1986, concerns the dutiable status of an ethanol mixture. You state that you are interested in importing a mixture of 80 percent ethanol, 12.5 percent toluene and 7.5 percent xylene, or any xylene isomers including ethylbenzene, under item 407.16, TSUS.

Before a mixture of this type would be classifiable as a benzenoid mixture in item 407.16, TSUS, the ethylbenzene content would have to be known. An ethanol mixture containing ethylbenzene in an amount equal to 7 percent or more of the entire mixture by weight would be classifiable in item 407.16, TSUS. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. The highest component rate would apply to ethanol under item 427.88/901.50. The rate of duty is 3 percent ad valorem plus 60 cents per gallon. Chemical mixtures classifiable in item 407.16, which are products of a country entitled to benefits under the Generalized System of Preferences (GSP) may be free of duty if all the requirements are met.

A mixture of 80 percent ethanol with toluene and xylene added where the ethylbenzene content is less than 7 percent by weight would be classified as a chemical mixture in item 432.10, TSUS. The rate of duty is 5 percent ad valorem but not less than the highest rate applicable to any component material. The applicable rate of duty in this case would be that for ethanol in item 427.88/901.50 at 3 percent ad valorem plus 60 cents per gallon.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 26 1986

REFER TO

CLA-2 CO:R:CV:G
077653 JGH

077653

Beverly L. Pevsner, Esq.
Beiley and Pevsner
7600 Southwest 57th Avenue
Suite 107
Miami, Florida 33143

Dear Ms. Pevsner:

Your letter of January 3, 1986, concerns the dutiable status of mixed xylenes.

You state that the mixed xylenes which your client proposes to import may contain as much as 50 percent ethylbenzenes by weight. Mixed xylenes which contain over 25 percent ethylbenzene by weight are classified as benzenoid mixtures in item 407.16, TSUS. Since the value of xylenes fluctuates, they may be dutiable under the applicable rate for item 407.16, 1.7 cents per pound plus 13.6 percent ad valorem, or the highest component rate, that for alkylbenzene in item 402.36, TSUS, of 0.6 cent per pound plus 17.3 percent ad valorem.

Chemicals classifiable under item 407.16, TSUS, which are products of countries eligible for GSP benefits are entitled to duty-free status if all the requirements are met.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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E2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 24 1986

REFER TO

CLA-2:CO:R:CV:G
077655 JLF

077655

Mr. Michael H. Powell
LM Period Miniatures
1341 Cambridge Road
West Vancouver, B.C. V7S 2M7
Canada

Dear Mr. Powell:

This is in response to your letter of January 13, 1986, in which you explain that you will be importing into the United States two miniature rooms for a showing at the International Guild of Miniature Artisans Exhibition in New York and then exporting this merchandise from the United States within a period of ten days.

You inquire about entering the merchandise and posting a bond of 10.2 percent under item 737.1560/960.70. You may make a consumption entry for the merchandise using this procedure. This is permitted by Customs in view of the impending legislation by Congress that would make certain of the special duty-free provisions permanent. However, Customs cannot determine when or if this legislation will pass. The posted bond money will not be returned to you until the legislation is enacted.

These model rooms may be temporarily admitted free of duty under bond if exported within one year from the date of their importation. Under this procedure, the merchandise is classifiable as samples solely for use in taking orders for merchandise, in item 864.20, Tariff Schedules of the United States (TSUS).

The procedure for entering this merchandise temporarily imported under bond is contained in 19 CFR 10.31, Customs Regulations, a copy of which is enclosed for your review.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

E3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 19 1986

REFER TO

CLA-2:CO:R:CV:G
077670 JLF

077670

Ms. Katherine G. Marchetti
Dietary Specialties, Inc.
P.O. Box 227
Rochester, New York 14601

Dear Ms. Marchetti:

Your request of December 27, 1985, to our New York office for an exemption from the additional duty on pasta products imposed by Presidential Proclamation 5354, has been referred to our office for direct reply to you.

The merchandise which is the subject of your request is low protein macaroni products, " Aproten Low Protein Imitation Macaroni Products", made from corn starch and tapioca starch, and classifiable under the provision for macaroni, noodles, vermicelli, and similar alimentary pastes, not containing egg or egg products in item 182.35, Tariff Schedules of the United States (TSUS). Customs has determined that these products are considered alimentary pastes and are therefore similar to other macaroni products, even though the flour or starch used in manufacturing is different. This determination is based upon considerations of commercial interchangeability, adaptability to substantially the same uses, and that these products are indeed so used as typical wheat flour based macaroni and macaroni products.

Presidential Proclamation 5354 dated June 21, 1985, imposed a duty rate increase to 40 per cent ad valorem for pasta products, from member states of the EEC, not containing egg or egg products.

We have considered the reasons listed in your request for an exemption. However, the Presidential Proclamation encompasses all macaroni products and does not grant us discretion in assessing the duty.

E4

Therefore, the merchandise subject to your inquiry, classifiable in item 182.35, TSUS, as macaroni, noodles, vermicelli, and similar alimentary pastes, not containing egg or egg products, is subject to the duty of 40 percent ad valorem.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification and
Value Division

077670

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

FEB 19 1986

REFER TO

CLA-2:CO:R:CV:G
077695 JLF

077695

District Director of Customs
101 E. Main Street
Norfolk, Virginia 23510

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1401-4-000251

This protest was filed against your decision in the liquidation on October 12, 1984, of Entry No. 84-127421, dated February 16, 1984, covering merchandise described as paper boxes covered with textile fabric.

FACTS:

The merchandise involved in this application for further review consists of paper boxes covered or lined with textile fabric. The invoice covering the shipment described the merchandise as "Brocade Boxes". The boxes were classified as other articles, not ornamented, of silk, not specially provided for, in item 389.30, Tariff Schedules of the United States (TSUS). Protestant claims that the boxes are specifically provided for in item 256.48, TSUS, as boxes of paper, covered or lined with textile fabric.

ISSUE:

Whether the brocade box is classifiable as boxes of paper covered or lined with textile fabric, in item 256.48, TSUS, or other articles, not ornamented, of silk, not specially provided for, in item 389.30, TSUS.

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077695

LAW AND ANALYSIS:

Headquarters Ruling 074854, dated September 19, 1984, addresses the above issue and the principles stated in that ruling will be adhered to in this case.

Because of the context, the meaning of the term "of" does not mean "in chief value of". Although the chief value of these boxes is the textile covering or lining, the merchandise remains specifically described in item 256.48, TSUS.

HOLDING:

Thus, the paper boxes are classifiable in item 256.48, TSUS, as boxes of paper, covered or lined with textile fabric.

You should allow the protest. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

FEB 24 1986

REFER TO

CLA-2:CO:R:CV:G
077708 DW
814943

077708

Mr. Mark J. Laumann
Fritz Companies, Inc.
7550 22nd Avenue South
Minneapolis, Minnesota 55450

Dear Mr. Laumann:

Your letter dated August 2, 1985, on behalf of Republic Airlines, Inc., requesting the tariff classification of a disposable pillowcase has been referred to Customs Headquarters for a response. A sample pillowcase was submitted with your request.

The rectangular pillowcase measuring approximately 13 inches by 17-3/4 inches is manufactured from a nonwoven polyester fabric. Three edges of the fabric have been glued together, thereby permitting a pillow to be inserted into the opening along the remaining side. You state that the chief use of the article is to cover pillows used on commercial aircraft.

The issue raised by this request concerns whether the pillowcase is described by the term "furnishings" in Headnote 1, Subpart C, Schedule 3, Tariff Schedules of the United States (TSUS) which provides:

<u>Subpart C Headnote</u>:

> 1. For the purposes of this subpart, the term "furnishings" means curtains and drapes, including panels and valences; towels, napkins, tablecloths, mats, scarves, runners, doilies, centerpieces, antimacassars, and furniture slipcovers; and like furnishings; all the foregoing, of textile materials, and not specially provided for.

It is clear that the pillowcases do not fall within the named articles in the headnote. Therefore, the question is whether the subject pillowcase is embraced by the words "like furnishings".

E8

In this regard, Customs has classified automobile and airplane seat covers under the provisions for textile furnishings. See ORR Ruling 77-0150 dated December 30, 1977.

The pillowcase at issue fits squarely within the above definition and is classifiable as an unornamented furnishing in item 367.60, TSUS.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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801778

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 31 1986

REFER TO
CLA-2 CO:R:CV:G
077712 c
816514

077712

Ms. Michelle Holmes
The Craft Trading Company
132 East Carrillo Street
Santa Barbara, California 93101

Dear Ms. Holmes:

Your letter dated December 5, 1985, addressed to our New York office concerning the dutiable status of an item described as "a backpack which has the appearance of a plush stuffed animal," has been referred to this office for a direct response to you. A sample was submitted for examination.

The merchandise is to be imported in two sizes, 19 inches and 25 inches. The sample submitted is the small size and consists of a stuffed head, arms, and legs with an empty torso. The body cavity forms the pack which measures approximately 14 inches by 7 inches. The pack has standard backpack harness straps and hardware permanently affixed to the arms and legs. There is a standard backpack pick-up loop sewn to the underside of the animal head. The pack portion is lined with rayon satin and the exterior is manufactured of man-made fiber pile fabric.

You have submitted advertising literature which reads "The pet backpack is perfect for children 6 to 16, soft, lovely, furry, zippered back, for school, camping or anywhere you need a cuddly companion."

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), Tariff Schedules of the United States (TSUS), provides in pertinent part that "For the purposes of the tariff schedules - (a) the term 'luggage' covers (i) travel goods such as *** knapsacks, *** and like articles designed to contain clothing or other personal effects during travel."

Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, provides that "For the purposes of the tariff schedules, a 'toy' is any article chiefly used for the amusement of children or adults."

General Interpretative Rule 10(e)(i), TSUS, provides that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses if any combined."

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The issue presented is whether the sample animal backpack is chiefly used for the amusement of children or adults. If so used it would be considered a toy for tariff purposes. If not so chiefly used, it would be considered luggage for tariff purposes.

In a recent decision this office had occasion to rule as to the dutiable status of a Koala "candy bear" which was in chief value of man-made textile materials and measured approximately 12 inches in height. The head, arms and legs of the bear were stuffed but the body cavity was empty. The bear was dressed in overalls which formed the bottom half of the torso with plush fabric forming the top half. The hollow body cavity of the bear formed an interior compartment while a zipper closure across the front of the bear secured the lined compartment and a smaller pouch therein. Adjustable textile tape harness straps were attached to the rear of the overalls at the seam and at the back of the stuffed head to form armholes.

In reaching the conclusion that the "candy bear" is a toy for tariff purposes, this office took the position that the utilitarian aspect of the merchandise was incidental to its play value for the following reasons:

(1) The "candy bear" is so small as to be confined to use by 2 to 5 year old children,

(2) the amount of storage space is minimal;

(3) the "candy bear" is in fact a plaything and can provide frivolous amusement to the users. See United States v. Topps Chewing Gum, Inc., 58 CCPA 157, C.A.D. 1022 (1971). Wilson's Customs Clearance, Inc. v. United States, 59 Cust. Ct. 36, C.D. 3061 (1967); and

(4) as a practical matter the candy bear would not be chiefly used as an article of utility i.e., for the users to carry their personal belongings during travel.

In the case of Ideal Toy Corp. v. United States, 78 Cust. Ct. 28, C.D. 4688 (1977), the court made the observation that when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose incidental to the amusement.

It is our observation in this instance that although the novelty backpack does have some play value, it is incidental to its utilitarian function for the following reasons:

(1) The novelty backpack is purposefully designed to be a functional backpack;

(2) the lack of stuffing in the torso renders the article less like a fully stuffed animal and more like a backpack;

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(3) the absence of any filler material causes the article to collapse thus lessening its play value; and

(4) the carrying capacity of the cargo compartment would allow one to carry large items.

In view of the foregoing, it is our position that the novelty backpack is classifiable under the provision for luggage of other textile materials in item 706.4144, TSUS, and dutiable at the rate of 20 percent ad valorem. The applicable textile quota number is 670. As a product of Taiwan this merchandise would be subject to textile quota restraints.

This merchandise may be subject to the requirements of the Textile Fiber Products Identification Act. For further information it is suggested that you direct an inquiry to the Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580.

There are no special requirements for labelling this merchandise other than country of origin labelling requirements.

For your information there is enclosed a copy of section 12.130f, Customs Regulations, concerning manufacturer's declarations which is self-explanatory.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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071712

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 14 MAR 1986

FILE: CLA-2 CO:R:CV:G
077715 JGH

077715

TO : Regional Commissioner of Customs
Chicago, Illinois 60603

FROM : Director, Classification and Value Division

SUBJECT: Application to Imported Ethanol of the End Use Provisions Set Forth in the Law and Regulations; Your Memorandum of January 24, 1986 (AUD-1-O:A:C JPN)

Your memorandum raises questions as to the authority of Customs to respond with appropriate enforcement measures when ethanol or ethanol mixtures dutiable under item 427.88, TSUS (either directly or by application of the highest-component-rate scheme invoked with respect to certain mixtures containing ethanol) are diverted to a use inconsistent with the nonfuel use claimed in entry declarations.

It is Customs position, which has been affirmed judicially, that a provision such as item 901.50, TSUS, imposes a reciprocal actual use requirement on its antecedent provision, in this case item 427.88, TSUS, requiring that the two provisions be read together. Humphrey & MacGregor, Inc. v. United States, 61 Cust. Ct. 162, C.D. 3555 (1968). Accordingly, a claim that a reduced rate of duty applies to imported nonbeverage ethanol -- that is, the rates of duty imposed by items 427.88 and 901.50 together less the rate imposed by item 901.50 (or, stated otherwise, that only the duty imposed by item 427.88 applies) -- is subject to the actual use requirements and procedures set forth in General Headnote 10(e)(ii), TSUS, and sections 10.131-10.139 of the Customs Regulations.

General Headnote 10(e)(ii), TSUS, provides that the actual use specified in the tariff provision for entitlement to duty-free or reduced-duty treatment is established only when

> *** such use is intended at the time of importation, the article is so used, and proof thereof is furnished within 3 years after the date the article is entered ***.

The 3-year period specified is the maximum period afforded to an importer to submit proof that merchandise (in this case, ethanol) has been used in a manner consistent with the entry declaration, i.e., that the ethanol was not used as or in fuel, as described in item 901.50, TSUS. If such proof is not submitted within that period, the entry is to be liquidated as fully dutiable, with the understanding that the subsequent submission of the required proof will not entitle the importer to a

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remission or refund of the additional duties imposed. Czarnikow-Rionda Company v. United States, 66 Cust. Ct. 431, C.D. 4229 (1971); 60 CCPA 6, C.A.D. 1071 (1972). The 3-year period does not operate to permit an importer to delay reporting to Customs that ethanol entered for nonfuel use was used as or in fuel.

When a diversion (i.e., to fuel use) occurs, the time limit ceases to have any significance and an immediate application of the laws and requirements relating to ethanol imported for fuel use is appropriate. Importers are under an obligation to notify Customs promptly of any such diversion, of any use which is inconsistent with that stated in the entry declaration, or of any event which materially impacts any statement made in that declaration. When a diversion occurs which is inconsistent with the use specified in the entry declaration, the latter becomes a false statement subjecting the importer to possible civil and criminal liability unless immediately corrected. In this regard, 19 U.S.C. 1485(a)(4) imposes an affirmative obligation on every consignee to correct its entry documents upon learning that statements contained therein are not true or correct.

The 3-year period in no way acts as a bar to an inquiry during that period by Customs, on its own initiative, into the end use or other status of the imported ethanol. Just as Customs has the authority and obligation to liquidate promptly at the higher rate when it is advised of a diversion by the importer, so it must also liquidate promptly at the higher rate when a diversion is discovered through an independent investigative initiative. In the latter event, however, consideration should be given to the assessment of any penalties which may be appropriate.

Any proof of use filed by the importer within the 3-year period must be conclusive and unequivocal, precluding the possibility of any diversion after that period.

On September 25, 1985, we issued instructions to the field regarding the content of the declarations of intent required to be filed at the time of entry in an effort to produce statements which credibly and unambiguously established that the ethanol to which they relate is entitled to entry at the reduced rate. The declarations require knowledge of the end use of the merchandise and may be considered fraudulent if the importer claims to be the end user but cannot demonstrate that he possesses the capability of using the ethanol in the manner claimed; similarly, an importer who is not the end user of the ethanol cannot claim knowledge of end use without providing the identity of the end user and demonstrating that the latter possesses the capability of using the ethanol in the manner claimed. Our instructions of September 25, 1985, were designed to ensure the protection of the revenue to the greatest extent possible, but were not meant to abridge the discretion of the district director to require an importer to provide whatever information he deems appropriate (whether more or less than that specified in our instructions) to ensure that the tariff provisions are properly applied and the duties due the Government are collected. We

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believe, however, that a strong declaration upon entry enhances the chances of success of any penalty action initiated pursuant to a subsequent diversion not promptly reported to Customs.

In the case of warehouse entries, the declaration of use is properly filed at the time the withdrawal for consumption is made and the proof of use is due not later than 3 years from that date. However, neither this period nor the period permitted for warehousing (5 years) acts to preclude the District Director from requiring whatever evidence is necessary in order to determine duty liability or to assure that the revenue is protected.

Your memorandum suggests that the 3-year period provided for in General Headnote 10(e)(ii), TSUS, and the implementing regulations are being misapplied with respect to ethanol imported by Union Carbide. The increased duties should be assessed immediately upon

(1) a partial withdrawal from warehouse for consumption for use as fuel,

(2) any identified diversion to fuel use occurring within 3 years of withdrawal, or

(3) any identified diversion to fuel use while warehoused (e.g., unauthorized removal and use as fuel),

on any quantity of ethanol so withdrawn and/or identified as having been diverted.

With regard to your comment in the penultimate paragraph of your memorandum suggesting that the regulations be amended to require that the end user, rather than the importer, be responsible for maintaining records regarding the use or disposition of the imported ethanol, we believe that this obligation is properly that of the importer since it is the importer who enjoys the benefit of reduced duties upon entry and will bear the burden of any increased duties in the event proof of use consistent with reduced-duty status is not filed within the period permitted. Your perceived problems in this area stem from the misconception that "the importer will meet the requirements of the regulations by providing proof of shipments to other ethanol processors." As previously noted, such "proof" is clearly deficient as proof of nonfuel use and will not entitle the importer to avoid the imposition of the increased duties. The nature of the proof demanded should be such as to effectively guarantee that there will be no subsequent diversion of the ethanol to fuel uses.

We hope this information is helpful to you.

Harvey B. Fox

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077715

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

4 MAR 1986

REFER TO

CLA-2 CO:R:CV:G
077749 JLF
814322

077749

Mr. Alamgir S. Shaikh, VP
Sidko International, Inc.
Importers, Exporters & General Merchandiser
P.O. Box 47776
Doraville, Georgia 30362-0776
Attn: Mr. Alamgir S. Shaikh, VP

Dear Mr. Shaikh:

Your letter dated June 26, 1985, addressed to our New York office requesting a ruling for tariff classification purposes on towels from Pakistan, has been referred to our office for direct reply to you.

It was necessary to reconstruct your file and to duplicate the documents contained in it. As a result, we were unable to review the sample you submitted. However, based upon the description our New York office provided to us, we have found the towels which measure 25.25 by 14.5 inches, to be manufactured from plain unprinted cotton terry towelling material. The towels, as described above, are, in our view, primarily used in the United States as hand towels.

The towels are classifiable under the provision for towels, of cotton, of pile or tufted construction, and if valued not over 45 cents each, in item 366.1965, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the 1986 rate of 11.1 percent ad valorem. If valued over 45 cents each and valued not over $1.45 per pound, then the towels are classifiable in item 366.2260, TSUS, at the duty of 13.6 cents per pound. If valued over 45 cents each and valued over $1.45 per pound, the towels are classifiable in item 366.2460, TSUS, dutiable at the 1986 rate of 11.1 percent ad valorem.

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These towels may be subject to visa, export license, or quota restraints applicable to textile category 363. Due to frequent changes in the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

FORWARDED TO THE

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 31 1986

REFER TO
CLA-2:CO:R:CV:G
077759 SM
816434

077759

Mr. John Casanas
J. M. Rodgers Co., Inc.
90 West Street, Room 1510
New York, New York 10006

Dear Mr. Casanas:

You have requested a tariff classification ruling for children's shoes, Pattern No. BG-060, to be made in Hong Kong and imported by Childcraft Footwear Corporation.

The merchandise is a child's all-plastic jogger-type shoe with a four-eyelet U-throat, padded collar, and cemented wedge-type unit molded outsole that overlaps the upper at the toe and heel. The determinative question for classification purposes is whether the shoe has a foxing-like band applied or molded at the sole and overlapping the upper.

A foxing-like band requires, among other points, a vertical overlap of one-fourth inch or more encircling or substantially encircling the entire shoe. While the unit molded sole on Pattern No. BG-060 overlaps the upper by about a 1/2 inch in the extreme toe and heel areas, it overlaps the upper by less than 1/8 inch everywhere else. Hence this shoe is not considered to have a foxing-like band, and it is properly classified under item 700.56, Tariff Schedules of the United States.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 26 1986

REFER TO
CLA-2 CO:R:CV:G
077764 DFC

077764

Ms. Judy L. Cook
Manager, Import Dept.
Pagoda Trading Company, Inc.
44 Kimler Drive
St. Louis, Missouri 63043

Dear Ms. Cook:

In a letter dated February 3, 1986, you inquired as to the dutiable status of a woman's casual shoe manufactured in Taiwan. A sample has been submitted for examination.

The sample, style BRN-555, is a woman's closed-toe, closed-back, slip-on, causal shoe consisting of a plastic upper, a wood wedge, and a plastic outsole. There is a textile "mudguard" strip cemented to the front portion of the upper. This strip extends from underneath the upper (between the upper and the outsole) to a point on the upper 3/8 inch above the sole. There is a wrap around the wedge made of the same textile which also extends up to a point 1/8 inch above the sole, and is cemented to the upper.

Item 700.56, Tariff Schedules of the United States (TSUS), provides for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper).

The issue presented is whether the shoe possesses foxing or a foxing-like band which would preclude its classification under item 700.56, TSUS. It should be noted that the Customs Service published a notice in the Federal Register of May 23, 1983 (48 FR 22904), setting forth its position as to what constitutes foxing or a foxing-like band.

In the referenced ruling Customs took the position that:

(1) a mudguard may meet the definition of a foxing; and

(2) a foxing or foxing-like band must encircle or substantially encircle the entire shoe.

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An examination of the sample reveals that the textile "mudguard" encircles less than 50 percent of the perimeter of the shoe. It is our view that the encirclement of the perimeter here does not constitute a substantial encirclement of the shoe so as to qualify the "mudguard" as foxing or a foxing-like band.

In view of the foregoing it is our position that the sample shoe is dutiable at the rate of 6 percent ad valorem under item 700.56, TSUS, provided that plastic constitutes over 90 percent of the exterior surface area of its upper.

Sincerely,

Arthur P. Schaffer

FOR Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 21 1986

REFER TO

CLA-2 CO:R:CV:G
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077782

Mr. Richard G. Lamb
President
Windsurfing Hawaii, Inc.
120 Santa Barbara St.
Santa Barbara, California 93101

Dear Mr. Lamb:

In your letters dated December 13, 1985, you inquired as to the dutiable status of certain windsurfing articles produced in Hong Kong and Taiwan.

The merchandise involved is described as follows:

(1) Harness - The harness is worn by sailors and allows them to hook in to a line on the boom of a sailboard. It is made of non-rip woven nylon fabric and foam padding. It has heavy duty-nylon webbing and adjustable buckles which lock into position while sailing. It is presumed the component material of chief value is the nylon fabric. Across the body of the harness is printed the inscription "windsurfing hawaii" in white letters and above the inscription is printed in white a wave and sailing logo. This entire inscription and logo measure approximately 8 inches long. Extending from the outside seam on the right side of the harness is a woven label, 1-1/2 inches by 1 inch bearing the "windsurfing hawaii" inscription and logo.

(2) Base Pad - The Base Pad is used on fiberglass boards. It is fastened to the mast base and normally left there permanently except for long-term storage or cleaning. The pad has a pouch for storing line, car keys and other essentials. The base pad measures approximately 10 inches long by 16 inches high, made of non-rip woven nylon fabric and heavy duty nylon webbing with velcro closures and plastic buckles.

Across the pouch on the pad is printed in white letters the inscription "windsurfing hawaii" and above the inscription is printed in white a wave and sailing logo. This entire inscription and logo measure approximately 6-1/2 inches long. Along the side of the pouch is a woven textile label 1-1/2 inches by 1 inch bearing the "windsurfing hawaii" inscription and logo.

(3) Boom Strap - The boom strap is affixed to the boom, usually permanently or until it wears out, to attach harness lines to the boom. It is made of 1-1/2 inch woven nylon webbing with velcro closures, plastics buckles and metal ring. It is presumed the component material of chief value is the nylon webbing. Sewn on the boom strap is a woven label approximately 1-1/4 inches long by 1/2 inch wide. It has a white background and red sailing logo.

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(4) Speed Seat - The speed seat is used in conjunction with the harness to enhance its function. It is made of woven nylon fabric with nylon webbing and plastic buckles. The seat is a V-configuration measuring approximately 24 inches long and 7 inches wide at the center. It has 2 woven textile labels on the seat. Each label has the "windsurfing hawaii" inscription and wave and sailing logo. One label, measuring 1-1/2 inches by 1 inch, (folded to 1 inch by 1 inch) protrudes from the right seam.

(5) Boom End Pad - No sample was submitted.

(6) Safety Belt - This is used as a safety device in case of the failure of the universal joint. It is permanently affixed to the mast foot of the board. It is a circular 1-1/2 inch wide nylon webbing with a diameter of 4 inches. It has sewn on it a 1-1/2 inch by 3/4 inch woven label with the "windsurfing hawaii" inscription and wave and sailing logo.

(7) Sail Bag - This is used to carry fully battened sails when unrigged from the mast and boom. These bags are necessary for the proper stowage of sails to prevent batten warpage and damage to the sail fabric.

(8) Extension Bag - This is used to carry spare boom extensions.

Both items 7 and 8 are nylon carry bags similar to duffel bags. They have a nylon drawstring closure which is locked by means of a cord lock. Each is carried by means of a side woven polypropylene handle.

(9) Pully Hook Cover - This item protects the aluminum booms and bases from damage from the steel pulley hook while sailing. It is permanently affixed to the outhaul and downhaul pulley hooks. It is a knit fabric-covered foam cover with a 1 inch by 2 inch woven label bearing the "windsurfing hawaii" inscription and wave and sailing logo. It is presumed the knit fabric is composed of man-made fibers, and is the component material of chief value.

You have asked if the windsurfing items can be considered boat parts for tariff purposes. It is to be noted that sailboards (also called windsurfers) are considered to be pleasure boats. There is a statistical suffix for them under the provision for pleasure boats valued not over $15,000 each in item 696.0545, Tariff Schedules of the United States (TSUS). Combined parts are classifiable under item 696.15, TSUS.

General headnote 10(ij), TSUS, states that "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part." In the case of Victoria Distributor, Inc. v. United States, 57 CCPA 80, C.A.D. 980 (1970), the court interpreted this headnote to mean that an article could be a part if it were solely or chiefly used with the article and aided in the safe or efficient operation of the main article.

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077782

Articles 1 through 4 (sample of item 5 was not submitted), 6 and 9 clearly appear to aid the safe and efficient operation because they keep the user from falling off, aiding the user's ability to steer and maintain control. They also serve to prevent damage to the sailboard. It is our position that these articles are chiefly used as parts of sailboards which requires their classification under the provision for parts of pleasure boats in item 696.15, TSUS, with duty at the rate of 4.4 percent ad valorem or entitled to duty-free treatment under the Generalized System of Preferences, if otherwise qualified.

Items 7 and 8 are classifiable under the provision for luggage of textile materials, other, in item 706.4152, TSUS, and dutiable at the rate of 20 percent ad valorem. Item 706.4152, TSUS, falls within textile category 670. If a product of Taiwan, this merchandise is subject to quota and visa restrictions. If a product of Hong Kong, it is not currently subject to quota and visa restrictions.

You claim that your competitors are entering this merchandise at other ports and are being accorded more favorable rates than your merchandise. We will investigate this matter further if you will provide the names of the importers and the ports of entry involved. However, in order to alleviate this situation a copy of this letter will be circulated to all ports in order to ensure that the merchandise will be uniformily so classified.

Your samples are being returned under separate cover.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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077782

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
077784 DW
815399

30 MAR 1986

077784

Mr. Pirkash Mirchandani
Just Class
1407 Broadway, Suite 3807
New York, New York 10018

Dear Mr. Mirchandani:

Under the authority of section 177.2, Customs Regulations, Headquarters retains authority to independently review all tariff classification ruling letters issued by the Regional Commissioner, New York Region.

In New York ruling 815399 dated October 15, 1985, a long sleeved garment manufactured from 100 percent woven cotton extending from the shoulders to below the knees and featuring a full front opening with a nine button closure, a breast pocket, and a partial rear opening with an eight button closure was classified under the provision for other women's, girls', or infants' wearing apparel, not ornamented: of cotton: not knit: other: other: other blouses, shirts,... and shorts: blouses,... and slacks, blouses with two or more colors in the warp and/or the filling: women's, in item 384.4605, Tariff Schedules of the United States Annotated (TSUSA), with duty at the rate of 16.5 percent ad valorem.

Our inspection of the subject garment leads us to the conclusion that the garment should not have been classified as a blouse. The length of the garment, its narrow silhouette, and the side seam pockets persuade us that the garment is classifiable as a dress. We consider this garment to be appropriate for wear without other garments. And, the presence of modest front and back slits does not change our position.

Thus, the garment is classifiable under the provision for other women's wearing apparel, not ornamented, not knit, dresses, other in item 384.4921, TSUS, with duty at the rate of 12.8 percent ad valorem. As a product of India, this garment requires a visa for textile category 336. New York ruling 815399 is revoked.

Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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F10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 31 1986

REFER TO
CLA-2:CO:R:CV:G
077785 SM
816720

077785

Mr. Ike Matitia
International Seaway Trading Corp.
1382 West 9th Street
Cleveland, Ohio 44113

Dear Mr. Matitia:

You have requested a classification ruling for a women's plastic boot from Italy. The boot, style "Incas," approximately ten inches high, has a two-color functionally stitched plastic upper and a non-removable foam-backed synthetic fleece lining and insole. The two-color part of the upper is stitched to a white vinyl strip that is double-stitched to the outside of the unit-molded rubber/plastic cup sole. The determinative question for classification purposes is whether the boot has a foxing-like band applied or molded at the sole and overlapping the upper.

The white vinyl strip is not a foxing-like band. It is part of the upper, and where it is double-stitched to the molded bottom it is too high up to be "applied or molded at the sole." The sidewall of the cupsole is not a foxing-like band because it does not overlap the upper but lies underneath it and because there is a 1/4 inch gap between the upper edge of the white vinyl strip and the upper edge of the cupsole in which the white vinyl strip is the upper; nothing else, except the lining, covers the foot in that 1/4 inch space.

Therefore, the boot is properly classified under item 700.56, Tariff Schedules of the United States.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

077826

REFER TO

25 MAR 1986

CIA-2 CO:R:CV:G
077826 DW
816861

Mr. Ben Wolf
Franco Manufacturing Co., Inc.
555 Prospect Street
Meteuchen, New Jersey 08840-2293

Dear Mr. Wolf:

You have requested the tariff classification of certain terry towels that are products of Taiwan. Four samples were submitted along with your request dated January 14, 1986.

Each cotton terry towel measures approximately 25 3/4 inches by 14 3/4 inches, and features four successively larger labels. Three of the labels marked 1, 2, and 3 are identified as "Dish Towels," and have the country of origin, wash and care instructions, fiber identification, supplier's name, and RN number. The remaining label which is unmarked is the label currently used on your products.

You wish to ascertain whether a towel with a large label bearing the words "Dish Towel" would result in its classification as a terry dish towel, valued over 45 cents each and over $1.45 per pound, in item 366.2420, Tariff Schedules of the United States Annotated (TSUSA).

In a recent ruling dated February 12, 1986, file 077195, where we considered the classification of terry towels, we stated:

> The provisions for dish towels are statistical (nonstatutory) provisions. Dish towels and other towels both fall under the same statutory classification item (366.24), but dish towels are annotated separately for quota and statistical purposes. In the absence of authority to the contrary, and to maintain the continuity and general scheme of the tariff schedules, we will apply the General Interpretative Rules (General Headnote 10, TSUSA) to the statistical annotations as well as for the statutory provisions.
>
> "Dish towels" is, in effect, a use provision. General Headnote 10(e)(i) provides that in a classification controlled by use (other than actual use), it is the chief use in the United States of the class or kind of merchandise to which the imported articles belong that governs. In its condition as imported, even with the "dish towels" notation on the label, the plain white terry towel belongs to a class or kind of merchandise chiefly used as hand towels...

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077826

However, if the towel is imported with the words "Kitchen Towel" printed across it, as you have suggested, or with other printing similar to the second sample, then the chief use of the class or kind of merchandise to which those towels belong would be as dish towels, and they would be classifiable in item 366.2420, TSUSA, with a textile category designation of 369.

Based on the foregoing ruling, the instant merchandise is classifiable in item 366.2460, TSUSA, under category 363.

Due to the frequent changes of statistical suffixes (the last 2 digits of the item number) and the applicability of textile restraints, you should contact your local Customs office prior to importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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F13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2:CO:R:CV:G
077834 JGH
816452

11 MAR 1986

077834

Ms. Lizbeth R. Levinson
D'Amico, Luedtke, Demarest & Golden
1920 N Street, N.W.
Washington, D.C. 20036

Dear Ms. Levinson:

Your letter of December 3, 1985, concerning the dutiable status of a mixture of 93 percent ethanol (199-plus proof) and 7 percent ethylbenzene, a product of Brazil, has been referred to us for a reply. The imported product is to be mixed with petroleum derivatives to produce a motor fuel.

A mixture of the type described would be classifiable as a benzenoid mixture in item 407.16, TSUS. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. In this mixture the highest rate would be for ethanol in items 427.88/901.50, TSUS, of 3 percent ad valorem plus 60 cents per gallon.

Merchandise classifiable in item 407.16, TSUS, if a product of Brazil, a country entitled to GSP (Generalized System of Preferences) benefits, would be duty free upon compliance with all applicable regulations.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

RELEASED TO THE

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR 26 1986

REFER TO
CLA-2 CO:R:CV:G
077863 JGH

077863

District Director of Customs
Detroit, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3801-5-002126 on the Classification of Iron Oxide Pellets

The pellets, a product of Canada, were entered in April 1985, liquidated in May 1985, and the protest was filed in June 1985. The importer claimed that the iron oxide pellets are classified under the provision for iron or steel waste and scrap in item 606.09, TSUS. The port classified the importation under the provision for other iron compounds in item 4[illegible].94.

The Customs laboratory described a sample of the importation as consisting of small, spherical pellets of varying diameter (0.06 inches and smaller) and composed of iron oxide, an inorganic chemical compound.

The material is not metal, not magnetic, not melted or reprocessed, nor of pigment grade. It is as described: an inorganic compound.

You are directed to deny the protest in full.

A copy of this decision should be furnished the protestant with the Form 19 Notice of Action.

Sincerely,

Arthur P. Schiffrin
Chief, General
Classification Branch

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: APR - 3 1986

FILE: CLA-2 CO:R:CV:G
077882 JLF

077882

TO : Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 1/86 Concerning the Tariff Treatment of Merchandise Identified by the Importer as Model TS-23 Annular Saw

This is in response to your memorandum dated February 14, 1986, requesting Internal Advice on the tariff classification of a machine tool, identified by the importer as model TS-23 Annular Saw. Your request was initiated by a letter dated December 12, 1985, from Mr. Keither Robinson, on behalf of Specialized Grinding Systems, Montville, New Jersey.

FACTS:

The merchandise at issue is a model TS-23 Annular Saw which is a machine tool specially designed for the fully automatic slicing of semi-conductor material, including silicon.

The merchandise was classified as other metal-working machine tools, in item 674.35, Tariff Schedules of the United States (TSUS), since it is chiefly used to slice silicon, a "base metal" as defined under Headnote 2, Schedule 6, TSUS. The importer would classify the Annular Saw as other machine tools in item 674.42, TSUS, and believes this classification is more appropriate since silicon is a non-metallic substance.

ISSUE:

Whether the slicing of silicon is a metal working function.

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PUBLIC

LAW AND ANALYSIS:

Headnote 2, Schedule 6, TSUS, states that for purposes of the tariff schedules, the term "base metal" encompasses silicon. Customs has previously ruled that an annular slicing machine used to cut silicon was classifiable in item 674.35, TSUS, under the provision for other metal-working tools.

The importer relies on the definition of silicon as a non-metallic element found in the Webster's Dictionary to support the contention that the annular saw is properly classifiable in item 674.42, TSUS. The importer also emphasizes that silicon will receive future treatment as a non-metal under the Harmonized Commodity Code.

Although the dictionary definition of silicon is clearly stated, in view of the headnote in Schedule 6 and Customs previous rulings, silicon must be treated as a metal for tariff purposes. Also, we note that future treatment of silicon under the Harmonized Commodity Code has no bearing on present transactions. Therefore, since silicon is considered a metal in the tariff schedules, the annular saw used to slice silicon is properly classifiable as an other metal-working machine tool in item 674.35, TSUS.

HOLDING:

In view of the foregoing, the model TS-23 Annular Saw is classifiable under the provision for other metal-working tools in item 674.35, TSUS, dutiable at 4.8 percent ad valorem. You should advise the inquirer of this decision.

Arthur P. Scheffler

Harvey B. Fox

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071882

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 9 1986

REFER TO
CLA-2:CO:R:CV:G
077890 JLF

077890

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-5-013011

This protest was filed against your decision in the liquidation on August 23, 1985, of entry No. 85-186537-1 dated July 11, 1985, covering a shipment of parquet flooring panels.

FACTS:

The merchandise involved in this application for further review consists of prefinished wood flooring panels made by laminating three layers, one on top of the other. The top layer consists of thin (1/8 inch thick or less) strips of oak, pine, beech, ash and other woods arranged in various patterns. The core layer (5/16 inch thick) consists of softwood or particleboard. Attached to the core layer is a wood veneer backing (1/16 inch thick). Most of the boards measure approximately 5 to 8 inches in width and 8 feet in length. A few are square shaped measuring 8 inches by 8 inches or 12 inches by 12 inches. All of the boards are tongue-and-grooved.

This merchandise was classified under the provision for wood flooring in blocks, assembled sections or units, or other

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forms in item 202.60, Tariff Schedules of the United States (TSUS). Protestant claims that the merchandise is more appropriately classifiable as wood flooring in strips and planks in item numbers 202.56 or 202.58, TSUS.

ISSUE:

Whether prefinished flooring panels composed of three layers are in strips and planks or whether they should be considered assembled sectiors or units.

LAW & ANALYSIS:

The court in D.B. Frampton & Company, Dorf International, Inc. v. United States, 60 Cust. Ct. 4, C.D. 3243 (1968) stated that a plank, whether conventional or assembled, falls within the provision for flooring, in strips or planks. The protestant relies on this case to support his claimed classification. However, we find the merchandise (Doweloc) in that case to be clearly distinguishable from that at issue here.

The product Doweloc consisted of strips of lumber, 2 inches thick fastened together laterally. A number of thick strips of lumber were placed together edge by edge to build up the width of this flooring. The court therefore concluded that flooring composed merely of several strips of lumber is flooring in strips and planks.

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068779

Dant & Russell, Inc. v. United States, Slip Op. 81-109, concluded that preassembled sections of strip flooring identical to the merchandise under consideration here are classifiable in item 202.60, TSUS. We find the prefinished flooring panels to be classifiable accordingly. Legislative history as indicated by the Tariff Classification Study clearly supports classification of preassembled sections of strip flooring in item 202.60, TSUS. See Tariff Classification Study, Explanatory Materials, CIE 1/64, vol. 1, p.165.

ORR Ruling 556-68 was issued to the protestant's Swedish counterpart and classifies identical merchandise in item 202.60, TSUS. CIE 2017/65 and ORR 988-70 classifies similarly laminated flooring in item 202.60, TSUS.

HOLDING:

Thus the flooring panels are properly classifiable as other wood flooring in blocks, assembled sections or units, or other forms in item 202.60, TSUS, dutiable at the 1985 rate of 4.4 percent ad valorem.

You are instructed to deny the protest in full.

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057890

A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

068790

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAR 31 1986

FILE: CLA-2:CO:R:CV:G
077891 JLF

077891

TO : District Director of Customs
Los Angeles, California 90053-3379

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 96/85, Tariff Classification of a Leather Audio Cassette Carrying Case.

This is in response to your memorandum dated November 19, 1985, requesting internal advice on the tariff classification of merchandise identified by the importer as a "cassette case". Your request was initiated by letters dated July 30, 1985, from Charles Moed, on behalf of Limerence Marketing Company, Los Angeles, CA.

This matter should not have been made the subject of an internal advice but rather should have been handled as a protest. The letter sent by Mr. Moed contained sufficient information to be regarded as an informal protest including the fact that the entries have been liquidated. Consequently, this file is being returned to you for whatever action you deem appropriate.

With respect to the merits of the inquiry, we find that of the two competing classifications, the "cassette case" is more properly classifiable as luggage, of leather, in item 706.13, Tariff Schedules of the United States (TSUS), rather than as bags, baskets, boxes, and cases, of leather, in item 791.65, TSUS.

Ruling 077355, February 28, 1986, held that unfinished cassette carrying cases are classifiable as luggage, since they are designed to contain specific items to be carried with the person. See Schedule 7, Part 1, Subpart D, Headnote 2(a)(ii), TSUS.

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A copy of this memorandum may be attached to your final notice of action on the protest. All other requirements of 19 CFR 174.30 apply.

Arthur P. Schaffer
for Harvey B. Fox

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VES-3-17-CO:R:CD:C
106263 PH

[redacted]

Dear [redacted]

With your letter of July 6, 1983, you enclosed a copy of a decision by the United States District Court for the District of Columbia in Sea-Land Service, Inc., v. Dole (Civil Action No. 83-0929) and Foss Alaska Line, Inc., v. Dole (Civil Action No. 83-0972).

The Court held that the decision of the Department of Transportation permitting [redacted], to carry domestic cargo between Dutch Harbor, Alaska, and Vancouver, British Columbia, on its subsidized vessels was "... arbitrary and capricious, an abuse of discretion, and contrary to law." To reach this decision, the Court found that:

> ... under existing statutes and regulations the joint rate tariffs requisite to foreign ship service coastwise between Vancouver and Dutch Harbor are non-existent. See American Trucking Association, Inc. v. ICC, 656 F.2d 1115 (5th Cir. 1981). There is no realistic possibility that any foreign carrier could qualify for such service. (At p. 7, memorandum opinion.)

The American Trucking Association, Inc., case referred to in the foregoing quotation, among other things, upheld the deregulation effected by the Interstate Commerce Commission (ICC) under the Staggers Rail Act of 1980 of certain rail transportation provided in connection with trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) service, including movements involving ocean carriage.

You requested an opinion from us that:

> (1) because the ICC deregulation under the Staggers Rail Act of 1980 with regard to TOFC/COFC tariffs "... does not also exempt rail carriers from their obligation to file tariffs with respect to commodities moving in other equipment, such as boxcars, gondolas,

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> and hoppers [,]" a foreign vessel could qualify for service between Dutch Harbor and other points in the United States via Vancouver under the third proviso to 46 U.S.C. 883; and
>
> (2) under section 4.80b, Customs Regulations (19 CFR 4.80b), and American Maritime Association v. Blumenthal, 590 F.2d 1150, a foreign vessel could transport merchandise from Dutch Harbor to Vancouver for movement onward to other points in the United States if the merchandise is manufactured or processed into a new and different product before carriage onward to the United States.

Title 46, United States Code, section 883, in part, prohibits the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by citizens of the United States. The third proviso of this statute states that:

> ... this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said Commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities.

We have ruled that through routes are "... recognized by the Interstate Commerce Commission ..." within the meaning of the third proviso when tariffs for them have been filed with the Commission, have not subsequently been rejected, have been effective according to their terms, and have not been subsequently suspended by the Commission or suspended or withdrawn. Any operator may provide the connecting water facilities on a through route in compliance with this proviso provided the operator is named in the tariffs filed.

We cannot comment on the routes for which the ICC accepts rate tariffs since the deregulation effected by that Commission under the Staggers Rail Act of 1980. However, in our ruling of September 14, 1982 (file: VMS-3-17-CO:R:CD:C 105806 PM), referred to in your letter, we held that:

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> [i]f the Interstate Commerce Commission does not accept for filing a rate tariff in connection with a through route involving rail-vessel service between a point in the continental United States and a point in Alaska via a Canadian port, and there is no rate tariff in effect for that through route, the ocean transportation portion of that service may not be performed by a foreign-flag or other non-coastwise-qualified vessel under the third proviso to 46 U.S.C. 883.

Conversely, if a through route is "... recognized by the Interstate Commerce Commission ..." (see previous paragraph for when such recognition occurs, for purposes of our administration of the third proviso) for vessel-Canadian rail transportation from Dutch Harbor to another point in the United States via Vancouver, a foreign-flag or otherwise non-coastwise-qualified vessel could perform the ocean transportation portion of that service under the conditions set forth in the previous paragraph.

Enclosed, for your information, is our most recent ruling (VES-3-17-CO:R:CD:C 106132 PH, June 20, 1983) on the third proviso. We assume that you are aware of H.R. 1076, a bill now before Congress under which the third proviso would be revoked. We are also enclosing a copy of that bill.

Section 4.80b, Customs Regulations, promulgated under the authority of 46 U.S.C. 883, provides, in part, that:

> ... merchandise is not transported coastwise if at an intermediate port or place other than a coastwise point (that is at a foreign port or place, or at a port or place in a territory or possession of the United States not subject to the coastwise laws), it is manufactured or processed into a new and different product, and the new and different product thereafter is transported to a coastwise point.

In American Maritime Association v. Blumenthal, 590 F.2d 1156 (1978), cert. den. 441 U.S. 943, the United States Court of Appeals, District of Columbia, considered whether Alaskan crude oil could be transported by non-coastwise-qualified vessels from Alaska to the United States Virgin Islands (a non-coastwise point) and there refined and then transported onward to a point in the continental United States. The Court held that the oil could be so transported because the continuity of the transportation was broken because the products of the crude oil transported after refining were quite

106263

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different from the crude oil transported to the Virgin Islands, "i.e., products which are physically, chemically, and usefully different from the original crude oil." (590 F.2d 1156, at 1162, 1163.)

Under section 4.80b, Customs Regulations, and the American Maritime Association v. Blumenthal case, merchandise could be transported by a foreign-flag or otherwise non-coastwise-qualified vessel from Dutch Harbor to Vancouver and there, or at another point not subject to the coastwise laws, be "... manufactured or processed into a new and different product ...." That new and different product could then be forwarded to a point in the United States. The coastwise laws would not be violated by the transportation to Vancouver or that onward to a point in the United States because neither transportation would be considered coastwise trade. Enclosed, for your information, are copies of two decisions (VES-3-CO:R:CD:C 105319 JH, October 27, 1981, and VES-3-CO:R:CD:C 106093 PH, June 7, 1983) applying section 4.80b to merchandise transported from Alaska to the lower continental United States via a foreign port.

Sincerely,

(ACTING) D. H. REUSCH

Edward A. Caole, Jr.
Chief
Carrier Rulings Branch

106263

[redacted]

[redacted]

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CODE AND DATE	[redacted]						
SURNAME	[redacted]						G13
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
U.S CUSTOMS SERVICE 1301 CONSTITUTION AVENUE, NW. WASHINGTON, D.C. 20229	ACTION: P INFO:	UNCLASSIFIED
ACCOUNTING CLASSIFICATION	DATE PREPARED 9/13/85	FILE VES-5-18 CO:R:CD:C 107900 PH
FOR INFORMATION CALL		
NAME PAUL HEGLAND	PHONE NUMBER 566-5706	TYPE OF MESSAGE [X] SINGLE [ ] BOOK [ ] MULTIPLE-ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

MR. S. A RUSSELL
U.S. FLEET MANAGER
STANDARD OIL COMPANY OF OHIO
LOS ANGELES, CALIFORNIA

SEP 13 1985

TELEX NO. 181-212 OR 181-202

REURTEL AUGUST 30, 1985, CONCERNING ENTRY AND CLEARANCE REQUIREMENTS FOR VESSELS ENGAGED IN LIGHTERING OF U.S.-FLAG TANKERS CARRYING ALASKA NORTH SLOPE CRUDE OIL. YOU STATE OIL IS TRANSPORTED FROM ALASKA TO U.S. GULF AND EAST COAST PORTS VIA TRANS-PANAMA PIPELINE. BECAUSE OF SHALLOW WATERS OF MOST GULF COAST PORTS, PART OF CARGO MUST BE LIGHTERED TO U.S.-SEAGOING BARGES PRIOR TO TANKER ARRIVING IN PORT. YOU ASK FOR RULING ON WHETHER LIGHTERING BARGE IS REQUIRED TO OBTAIN ENTRY AND CLEARANCE UNDER NEWLY AMENDED CUSTOMS REGULATIONS.

TREASURY DECISION 85-91 AMENDED 19 CFR 4.3, 4.9, 4.20, AND 4.60 TO REQUIRE VESSEL TO OBTAIN CLEARANCE IF BOUND FOR ANOTHER VESSEL ON HIGH SEAS TO EITHER TRANSSHIP EXPORT MERCHANDISE WHICH IT HAS TRANSPORTED FROM U.S. TO VESSEL OR RECEIVE IMPORT MERCHANDISE FROM VESSEL AND TRANSPORT MERCHANDISE TO U.S.

107900 THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
1	2	A3

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	FILE
FOR INFORMATION CALL		
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THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

VESSEL IS REQUIRED TO MAKE VESSEL ENTRY IF RETURNING FROM VESSEL ON HIGH SEAS AFTER EITHER TRANSPORTING EXPORT MERCHANDISE OUT OF U.S. AND TRANSSHIPPING MERCHANDISE TO VESSEL OR TRANSPORTING IMPORT MERCHANDISE TO U.S. AFTER RECEIVING MERCHANDISE FROM VESSEL.

ALASKA NORTH SLOPE CRUDE OIL TRANSPORTED FROM ALASKA TO U.S. GULF OR EAST COAST PORTS VIA TRANS-PANAMA PIPELINE IS NOT IMPORT CARGO WHEN IT ARRIVES AT U.S. PORTS. U.S. BARGES USED TO LIGHTER TANKERS CARRYING OIL ARE NOT REQUIRED TO OBTAIN CLEARANCE WHEN BOUND TO TANKERS ON HIGH SEAS TO RECEIVE CRUDE OIL OR ENTER WHEN RETURNING TO U.S. FROM TANKERS ON HIGH SEAS WITH CRUDE OIL.

OUR REFERENCE: VES-5-18-CO:R:CD:C 107900 PH.

107900

Edward B. Gable Jr.

EDWARD B. GABLE, JR.
DIRECTOR, CARRIERS, DRAWBACK
AND BONDS DIVISION

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PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
2	2	A4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

28 FEB 1986

REFER TO

VES-10-03-CO:R:CD:C
108053 PH

Mr. Ronald C. Rasmus
President
Great Lakes Towing Company
1800 Terminal Tower
Cleveland, Ohio 44113

Dear Mr. Rasmus:

Your letters of November 22 and 27, 1985, concern our interpretation and application of 46 U.S.C. 316, both with regard to a particular situation and in general. You state that on this past November 20 the foreign-flag vessel M/V OLYMPIC LEADER grounded south of Nebbish Island, Michigan, in Lake Munuscong in United States waters while making its approach on an upbound transit of the Soo Locks. Your company offered salvage assistance to the OLYMPIC LEADER but was refused and the owners of the vessel utilized the services of a Canadian towing company, Purvis Marine, and their Canadian tug to perform the salvage.

Because you believe this to be a violation of 46 U.S.C. 316, you checked with Customs in Sault Ste. Marie. You state that Customs advised you that a treaty between Canada and the United States permitted the Canadian tug company to operate in United States waters "whether or not the vessel was in distress, needed salvage service or, for that matter, a normal tow." You ask whether Canadian-flag tugs may engage in certain activities when United States-flag tugs are available.

Section 4370(a) of the Revised Statutes, as amended (46 U.S.C. 316(a)), provides that it shall be unlawful for any vessel not wholly owned by a citizen of the United States and not having in force a certificate of registry, certificate of enrollment, or other named document to tow any vessel, other than a foreign-flag vessel or a vessel in distress, between ports or places embraced within the coastwise laws of the United States, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel from point to point within the harbors of such places. The penalties for violation of this statute are a fine of not less that $250 to $1000 against the owner and master of the towing vessel and $50 per ton on the measurement of the towed vessel against the towing vessel.

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Both Houses of the Congress recently passed a bill, H.R. 2466, which would have amended this law. This amendment would have made the prohibition in 46 U.S.C. 316(a) applicable to any vessels except those having in force a coastwise or Great Lakes license. This part of the amendment would have ratified Customs already existing interpretation of 46 U.S.C. 316(a). The amendment also would have deleted the exemption for foreign-flag vessels so that an unqualified vessel would be prohibited from towing any vessel, other than a vessel in distress, between coastwise points. This bill was vetoed by the President.

Section 4370(d) of the Revised Statutes, as amended (46 U.S.C. 316(d)), provides, in part, that:

> No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States of the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of section 725 of this title ....

Section 4370(e) of the Revised Statutes, as amended (46 U.S.C. 316(e)), provides, in part, that nothing in section 4370, Revised Statute (46 U.S.C. 316), shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by article II of the treaty between the United States and Great Britain signed in Washington on May 18, 1908 (35 Stat. 2036). This treaty provides that vessels and wrecking appliances from the United States or Canada may salve any property wrecked and may render aid and assistance to any vessels wrecked, disabled or in distress in the waters or on the shores of the other country in that portion of the St. Lawrence River through which the International Boundary line extends and in Lakes Ontario, Erie, St. Clair, Huron, and Superior, the Rivers Niagara, Detroit, St. Clair and Ste. Marie, the Canals at Sault Ste. Marie, and on the shores and in the waters of the other country along the Atlantic and Pacific Coasts within a distance of 30 miles from the International Boundary on such Coasts. The treaty also provides that these reciprocal wrecking and salvage privileges shall include all necessary towing incident thereto. Vessels from either country employed in salving in the waters of the other are required to make a full report as soon as practicable at the nearest customhouse of the country in whose waters the salving took place.

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The Act of June 19, 1878 (20 Stat. 175; 46 U.S.C. 725), as amended, referred to in 46 U.S.C. 316(d), provides that Canadian vessels and wrecking appurtenance may render aid and assistance to Canadian or other vessels, and property wrecked, disabled, or in distress in the waters of the United States contiguous to Canada. This statute provides that it shall be construed to apply to the canal and improvement of the waters between Lakes Erie and Huron, and to the waters of the St. Mary's River and canal. The statute also provides that it shall cease to be in force from the date of a Presidential Proclamation to the effect that Canada has withdrawn, revoked, or rendered inoperative the reciprocal privileges provided for in the statute.

With regard to the particular salvage operation you describe, that of the OLYMPIC LEADER after it was grounded south of Nebbish Island in Lake Munuscong, the Treaty of 1908 and 46 U.S.C. 725 permit the use of a Canadian-flag vessel for this salvage, as well as any towing incident to the salvage.

We will answer the series of questions you raise, in the order asked, on the basis of the statutory authorities described above.

1.(a) Canadian-flag tugs may engage in salvage work in the United States waters or ports listed in the Treaty of 1908 and 46 U.S.C. 725 for United States-flag vessels or equipment, foreign-flag vessels or equipment, and Canadian-flag vessels or equipment.

1.(b) Except for towing which is necessarily incident to salvage permitted under the Treaty of 1908 and 46 U.S.C. 725, or the towing of a vessel in distress, Canadian-flag tugs may not engage in the in-port towing (including pushing) in any United States port of United States-flag vessels. Canadian-flag tugs may engage in such towing of foreign (including Canadian)-flag vessels. This prohibition, under 46 U.S.C. 316(a), applies only to the towing, or pushing, of vessels, so it would not preclude the use of Canadian-flag tugs for docking, undocking, or assistance, if no towing or pushing were involved of vessels other than foreign-flag vessels or vessels in distress in United States ports, nor would it preclude the towing, or pushing, of "equipment" which is not a vessel.

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1.(c) See 1.(b), above. The towing between United States ports of any vessel, except a foreign-flag vessel or a vessel in distress, is prohibited to any vessel other than a coastwise-qualified vessel. Thus, a Canadian-flag tug would not be prohibited from such towing of a foreign (including Canadian)-flag vessel.

1.(d) Insofar as United States law is concerned, Canadian-flag tugs may engage in the towing of any vessel between a United States port and a Canada port, provided, that the tow is not part of an overall tow of a vessel other than a foreign-flag vessel or a vessel in distress between United States ports (see 46 U.S.C. 316(a)).

1.(e) If the assistance provided to vessels transiting the United States Soo Locks and St. Mary's River approaches consists of towing, or pushing, such assistance to vessels other than foreign-flag vessels or vessels in distress must be by United States coastwise-qualified vessels if the assisistance commences and terminates in United States waters. Otherwise, you should be guided by our September 16, 1983 (VES-10-03-CO:R:CD:C 106326 KP), letter to you, copy enclosed for your convenience.

2.(a) Although we cannot comment authoritatively on whether United States-flag tugs are permitted by Canada to engage in salvage operations in Canadian waters, under the Treaty of 1908 and the reciprocal privileges granted under 46 U.S.C. 725, we believe United States-flag tugs should be permitted to engage in the salving of any vessels or equipment in the waters described in those provisions.

2.(b)-(e) We do not know what restrictions Canada places on towing in its waters and between its ports and are unable to comment on these questions.

With regard to your allegation that United States-flag tugs are routinely prohibited by Canadian Customs authorities from towage and salvage assistance to Canadian and foreign-flag vessels in Canadian waters and ports, we are sending a copy of your letter with a copy of a related complaint from the Pacific Northwest regarding the permitted use of Canadian-flag vessels in the United States and the

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denial of permission for a similar use of United States-flag vessels in Canada, to the United States Department of State. We are asking that Agency to investigate this matter, in view of the provisions for reciprocity in the Treaty of 1908 and 46 U.S.C. 725.

Sincerely,

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

Enclosure

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108053

A9

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 14 MAR 1986

FILE: VES-11-CO:R:CD:C
108192 PH

TO : Port Director
Jacksonville, Florida

FROM : Director, Carriers, Drawback and Bonds Division

SUBJECT: Tonnage Certificate for the M/V HUAL CARMENCITA

Pursuant to his telephone conversation on February 11, 1986, with Mr. Paul Hegland of my staff, Inspector John Heafer of your Port sent a copy of the tonnage certificate for the HUAL CARMENCITA. Mr. Heafer asked what is the proper document for this vessel under the 1969 International Convention on Tonnage Measurement of Ships.

The tonnage certificate for the HUAL CARMENCITA is entitled "Det Norske Veritas Certificate of Tonnage Measurement (measured in accordance with the Convention ... concluded in Oslo on the 10th of June 1947 ...)." According to this certificate, the HUAL CARMENCITA was built in 1983.

Information Notice 82-134, issued December 10, 1982, informed Customs officers of the coming into effect of the International Convention for Tonnage Measurement of Ships, 1969, and the imminent ratification thereof by the United States. The United States has ratified the Convention (TIAS 10490). Pursuant to the 1969 Convention and as stated in the Information Notice, "Vessels of contracting parties constructed on or after July 18, 1982, must be assigned International Tonnage Certificates."

The HUAL CARMENTICA is a Norwegian-flag vessel. Norway is a party to the 1969 Convention. Thus, it appears that under the 1969 Convention, as described in the Information Notice, the HUAL CARMENCITA should have been measured under the 1969 Convention and should be carrying a tonnage certificate issued under that Convention.

We have reviewed the 1969 Convention, however, and due to the definition in that Convention of "new ship," the 1969 Convention actually only requires vessels "the keel of which [were] laid, or which [were] at a similar stage of construction, on or after the date of coming into force of the present Convention [July 18, 1982]" to be measured under and carry a tonnage certificate issued under the 1969 Convention. (See Article 2(6) of the 1969 Convention.) We have telephonically inquired of the agents for the HUAL

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CARMENCITA as to the date the keel was laid for that vessel. After checking with the Norwegian owners of the vessel, the agents stated the keel of the vessel was laid on June 11, 1982. Accordingly, because its keel was laid before the coming into force of the 1969 Convention, the HUAL CARMENCITA may properly use its old Det Norske Veritas tonnage certificate until July 18, 1994.

Please convey to Mr. Heafer our thanks for his alertness in noticing this discrepancy and for bringing this problem to our attention. We are having this memorandum published to alert other Customs ports of this interpretation of the 1969 Convention in these circumstances.

Edward B. Gable, Jr.

Edward B. Gable, Jr.

108192

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200248

DEC 19 1972

DB 731.1 O
200248

For Publication

Mr. Fred R. Boyett
Regional Commissioner of Customs
New York, New York 10004

T.D. 73-26-P
4

Dear Mr. Boyett:

T.D. 53739-J, as amended by T.Ds. 68-87-S and 71-135-U, authorizing the allowance of drawback under the provisions of section 1313(b), title 19, United States Code, on cold rolled steel sheets, coiled or cut, manufactured by Wheeling-Pittsburgh Steel Corporation, Pittsburgh, Pennsylvania, at its Steubenville, Ohio, factory, (North Works) with the use of steel ingots, slabs, and hot rolled coils, is hereby further amended to cover the various steel products listed in the attached Exhibit A manufactured by the company under section 1313(b) in the factories of the company listed in schedule 1, with the exceptions noted below, where specified manufacturing operations take place with the use of ferromanganese, fluorspar, and spelter.

There are enclosed, approved, copies of the manufacturer's supplemental statements subscribed to on June 7, 1972, and November 10, 1972, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

The quantity of imported ferromanganese and fluorspar, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of such merchandise of the same kind and quality as that designated which was used in the manufacture of the exported articles as shown by the schedules which are attached to the manufacturer's statement of June 7, 1972, and forms a part thereof.

[redacted]

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CODE	[redacted]					A12
SUR-NAME						
DATE						

DEPARTMENT OF THE TREASURY—BUREAU OF CUSTOMS CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (5-72)

200248

The quantity of imported spelter, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity equivalent to the quantity of such merchandise of the same kind and quality as that designated which appears in the exported articles, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

Operations conducted by separate legal entities cannot be made the subject of a rate of drawback issued to Wheeling-Pittsburgh Corporation although they are wholly-owned subsidiaries. Accordingly, this authorization does not provide for the allowance of drawback on such steel products manufactured by [redacted] factory and [redacted] at its factory located at [redacted] with the use of ferromanganese, fluorspar and spelter.

Although it is not clear whether the [redacted] manufactures exported articles covered by this amendment, the foregoing denial applies to the operations of this company. This denial is explicitly stated in order to obviate possible misunderstanding.

Drawback may be allowed hereunder, upon compliance with the law and the regulations, on the articles covered hereby which are manufactured on and after August 1, 1968, and exported on and after September 1, 1968. Exportation shall be made within 5 years after importation of the imported merchandise.

There are enclosed extra copies of the manufacturer's drawback statements and of this authorization, which may be furnished with the first drawback claim filed hereunder to the special agent in charge pursuant to section 22.4(g) of the Customs Manual.

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. TEBEAU
Director, Carriers,
Drawback and Bonds Division

Enclosure 139530

[redacted]

A13

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

MAY 29 1973

R:CD:D
731.1 GS
200972

200972

[redacted]

Dear [redacted]

This is in reply to your letter of April 30, 1973, in which you ask whether cutting imported labels and sewing them on sheets and pillow cases is a manufacturing process under the provisions of section 1313(a), title 19, United States Code.

Customs has repeatedly held that no drawback can be allowed on imported labels which are placed on articles manufactured or produced in the United States for export, on the basis that the exported articles are not manufactured or produced with the use of the imported labels within the meaning of section 1313(a). This holding is in accordance with Beadleston et al. vs. the United States (104 Fed. Rep. 295), and with Schlitz Brewing Co. vs. the United States (181 U.S. Rep. 584). Consequently your operation does not qualify for drawback.

With respect to future importations, your attention is invited to the fact that the labels you describe in your letter, both the cardboard and cloth labels, may be admitted temporarily free of duty under bond in accordance with item 864.05 and headnote 1, Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States. A copy of the Customs Regulations pertaining to Temporary Importations Under Bond is enclosed herewith.

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. TEBEAU
Director, Carriers,
Drawback and Bonds Division

Enclosure

[redacted]

	[redacted]	REVIEWER	REVIEWER	[redacted]	REVIEWER	REVIEWER
CODE						A14
SUR-NAME						
DATE						

DEPARTMENT OF THE TREASURY—BUREAU OF CUSTOMS CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (5-72)

JAN 1 7 1974

DRA-1-00-R:CD:D 0
201132

For Publication

T.D. 71-95-L

201132

Dear Mr. Boyett:

You are hereby authorized to allow drawback upon compliance with the provisions of title 19, United States Code, section 1313(b), and Part 22 of the Customs Regulations, on chain link fence manufactured by Phelps Dodge Steel Company, Inc., Catano, Puerto Rico, with the use of galvanized wire; cold drawn steel wire, welded steel wire mesh, and nails manufactured by the company with the use of steel wire rod; and fence posts manufactured by the company with the use of hot rolled steel skelp.

There is enclosed, approved, a copy of the manufacturer's drawback statement subscribed to on July 2, 1973, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

The quantity of imported galvanized wire, steel wire rod, and hot rolled steel skelp, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed the quantity thereof equivalent to the quantity of such merchandise of the same kind and quality as that designated which appears in the exported articles, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on articles covered hereby which are manufactured on and after January 1, 1971, and exported on and after August 6, 1971. Exportation shall be made within 5 years after importation of the imported merchandise.

[redacted]

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CODE	[redacted]					B1
SURNAME						
DATE						

DEPART[redacted] CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (5-72)

There are enclosed extra copies of the manufacturer's drawback statement and of this authorization, which may be used in connection with verification of the first drawback claim filed hereunder.

Sincerely yours,

(Signed) J. P. TEBEAU
J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

Mr. Fred R. Boyett
Regional Commissioner of Customs
New York, New York 10004

Enclosure

201132

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B2

OCT 9 1975

DRA-1-09-R:CD:D T
203311

203311

Mr. Jack T. Lacy
Regional Commissioner of Customs
Chicago, Illinois 60603

Dear Mr. Lacy:

You are hereby authorized to allow drawback upon compliance with the provisions of title 19, United States Code, section 1313(b), and Part 22 of the Customs Regulations, on titanium rod, wire and bar manufactured by [redacted] with the use of titanium sponge, titanium ingot, and titanium billet.

There is enclosed, approved, a copy of the manufacturer's drawback statement subscribed to on July 22, 1975, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (5) of the Customs Regulations.

The quantity of imported titanium sponge, titanium ingot, and titanium billet, or of such merchandise manufactured under drawback regulations, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of such merchandise of the same kind and quality as that designated which was used in the manufacture of the exported articles, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after August 1, 1973, and exported on and after February 13, 1974. Exportation shall be made within 5 years after importation of the imported merchandise.

There are enclosed extra copies of the manufacturer's drawback statement and of this authorization, which may be used in connection with verification of the first drawback claim filed hereunder.

[redacted] Sincerely yours,

(Signed) J. P. TEBEAU

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REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
	J. P. Tebeau Director Carriers, Drawback and Bonds Division				

DEPARTMENT [illegible] SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-8-73)

FEB 10 1976

205847

DRA-1-09 R:CD:D MM
205847

[redacted]

Dear [redacted]

This is in reply to your letter of January 14, 1976, in which you furnished additional information regarding a krinkling process to ascertain whether this process would be considered a manufacture or production for purposes of title 19, United States Code, section 1313.

According to the facts set forth in your letter, Chambray fabric is desized and resinated. It is then run through a mechanical device in rope form, after which it is dried in a loop dryer to produce wrinkles in the fabric.

Headquarters, U. S. Customs Service is of the opinion that the described operation would not result in a new and different product having a distinctive name, character or use and accordingly the krinkling process would not be a manufacture or production within the meaning of section 1313.

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

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CODE AND DATE	(1) INITIATOR [redacted]	[redacted]	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME	[redacted]	[redacted]					
CODE AND DATE			(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY - U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

206724

SEP 10 1976

DRA-1-09-R:CD:D T
206724

[redacted]

Dear [redacted]

This is in further reference to your company's application for a rate of drawback on resilient sheet vinyl floor coverings manufactured under the provisions of title 19, United States Code, section 1313(b), with the use of polyvinyl chloride resins. Receipt is acknowledged of the company's drawback statement subscribed to on August 19, 1976, in furtherance of its drawback application. Section 1313(b) provides, in part:

> If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise there shall be allowed upon the exportation of any such articles * * * an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported * * *

The description and specifications of the imported and domestic polyvinyl chloride resins which have been included in the company's drawback statement have been reviewed in detail. It is noted that the respective properties of the imported and domestic merchandise set forth in the parallel columns differ in various respects.

The U. S. Customs Service is of the opinion that polyvinyl chloride resins which do not have the same properties as set forth in ASTM Designation D 1755-66 are not merchandise of the "same kind and quality" within the meaning of section 1313(b). If your company has further information to submit in this respect, it will receive prompt review, and you will be advised of the final decision as to your drawback application.

Sincerely yours,

[redacted]

(Signed) J. P. Tebeau

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

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BS

JAN 11 1977

DRA-1-09-R:CD:D T
207235

207235

[redacted]

Dear [redacted]

Receipt is acknowledged of the supplemental drawback statement of your company subscribed to on December 21, 1976, in furtherance of its application for a rate of drawback dated December 21, 1976, to cover titanium metal (sponge), titanium metal ingot, sheet, strip, bar, plate and billets manufactured under the provisions of title 19, United States Code, section 1313(b), with the use of magnesium metal.

Efficient Customs administration and orderly liquidation of drawback claims require that a complete drawback statement be employed for drawback authorizations rather than an amendment form. Please resubmit the present statement in the form used initially to establish a rate of drawback under section 1313(b). A sample format for the preparation of a drawback statement is enclosed for your convenience. The effective dates which your company has requested will not be affected by this change in the form of the drawback statement used.

Upon receipt of the revised statement, further consideration will be given to your application.

Sincerely yours,

George C. Steuart

George C. Steuart
Chief
Drawback and Bonds Branch

Enclosure [redacted]

B6

DRA-1-RRUCDB
211997 NR

ISSUE:

Whether drawback is applicable when designated merchandise used in an assembly operation to manufacture an article under drawback conditions is subsequently dismantled from the completed article for convenience in shipping for exportation purposes.

FACTS:

A drawback claimant has an approved contract under section 1313(a), title 19, United States Code, to assemble tractors and other automotive articles for export with the use of imported machinery, engines, subassemblies, and parts. The claimant asks if drawback would be allowed for imported tires under the following set of facts;

1. Imported tires are mounted onto rims which in turn are affixed to a tractor assembled under drawback conditions.

2. The assembled tractor is tested.

3. After testing, the rims and tires are removed from the tractor.

4. The tires and rims are separated.

5. The tires are tied into a bundle and the rims are packed in boxes.

6. The tires and rims are dismantled from the tractor and separated for convenience in shipping.

7. The tractor, together with the bundled tires and packed rims, is shipped and exported as a complete article or as an entirety.

LAW AND ANALYSIS:

The United States Customs Court has held that mounting five imported tires and tubes on American made wheels, four of which were affixed to an automobile and the fifth one placed in the trunk of the automobile as a spare, was a manufacture or production for drawback. See 27 Cust. Ct. 89, C.D. 1352 (1951).

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In Customs Service Decision (C.S.D.) 79-79, we held that a disassembly and repacking operation did not constitute a manufacture or production for drawback. A copy machine was imported and was completely disassembled. Parts of the machine were repackaged, and exported as a kit. In C.S.D. 79-79, the only claimed manufacture or production consisted of a disassembly operation and differs from the facts under consideration.

In the case under consideration, the imported merchandise, consisting of tires, was used in an assembly operation in a manner similar to the operations discussed in C.D. 1352, which the Court held was a manufacture or production for drawback. The subsequent dismantling of the tires and rims was for convenience in shipping the tractor with the tires and rims as an entirety for exportation.

The claimant's drawback contract should incorporate fully the operation described and should be supported by proper record keeping.

HOLDING:

Drawback is applicable for designated merchandise which is used in an assembly operation to manufacture an article under drawback conditions and the designated merchandise is subsequently disassembled from the completed article for convenience in shipping the units as an entirety.

Marilyn G. Morrison
Director
Carriers Drawback and Bonds Division

211997

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B8

JUL 6 1982

214340

DRA-1-09-CO:R:CD:D
214340 B

Re: Your letter of May 11, 1982 - Exportation for Drawback

Dear [redacted]

In the referenced letter you ask whether drawback may be obtained under the manufacturing drawback laws for certain quartz components contained in temperature measuring devices.

A client leases temperature recording devices to U.S. exporters who place the devices in containers of merchandise for export. Upon arrival at the port of entry in the foreign country, the devices are removed and are supposed to be returned to your client's lessee in the United States. However, approximately 50,000 of these instruments are annually lost and are not returned to the lessee, who must then pay your client for the lost instruments.

As you state in your letter, an exportation occurs when merchandise is sent out of the United States with the intent that it join the commerce of some foreign country. This is the definition set out in Customs Regulations section 113.55(a) and is taken from the opinion in many court cases, most notably Swan & Finch Co., v. United States, 23 S. Ct. 702, 190 U.S. 143 (1903). It is the intent at the time the merchandise leaves the United States which controls.

In a few cases, for example U.S. v. Coastwise Steamship & Barge Co., T.D. 38047, 9 Ct. Cust. Appls. 216 (1919) it was held that although at the time of exit from the United States the requisite intent was not present subsequent circumstances indicated that because the merchandise was found to have been intentionally landed in a foreign country to be the subject of commerce in that country, an exportation had occurred.

In your client's case, however, the facts do not warrant such a conclusion by us. After leaving this country, the instruments simply disappear. Their location is not known. They could be in a foreign country, could have been relanded in the United States, or could be at the bottom of the sea. It is known that they were not landed in a foreign country to become a subject of commerce of that country (see concurring opinion, Coastwise Steamship supra, 9 Ct. Cust. Appls. at (219). Finally, in order to claim drawback the claimant must affirm on the drawback entry that the merchandise was exported with the intention that it not be relanded in the United States.

B9

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Our conclusion would be the same if your client sold the instruments outright to the U.S. customer. Even if an export bill of lading were prepared, the fact remains the the instruments do not exit the United States with the requisite intent that they become the subject of commerce in some foreign country.

These instruments are not considered ships' equipment or supplies under 19 U.S.C. 1309, since they are not necessary for the operation, navigation, or safety of the vessel or its crew. These are instruments which monitor the temperatures which containerized cargo are subjected to during voyages.

Sincerely,

George C. Steuart

George C. Steuart
Chief
Drawback and Bonds Branch

[redacted]

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

B10

CODE AND DATE	[redacted]			(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER
SURNAME							
CODE AND DATE				(12) REVIEWER	(13) REVIEWER	(14) REVIEWER	(15) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

214340

FOR-1-CO:R:CD:D
217616 L

217616

[redacted]

Dear [redacted]

Re: Your Letter Dated December 28, 1984

You ask whether steel pipe, manufactured in a foreign trade zone (FTZ) from nonprivileged steel plate imported from the European Community (EC), and entered for consumption as pipe, will, in the form entered, be considered a product of the FTZ and not subject to quota restrictions applicable to steel pipe and tube imported from the EC.

The question is raised in connection with a decision announced on November 29, 1984, to enforce limits on pipe and tube imports from the EC pursuant to section 805(b) of the Trade and Tariff Act of 1984, P.L. 98-573.

In general, quota considerations come into play at the time merchandise is removed from the FTZ into Customs territory for consumption. See Inter-Maritime Forwarding Co., Inc. v. United States, C.D. 2242. An exception may occur where the language of the applicable quota agreement or other restraint provides otherwise.

With respect to the Steel Import Stablization Act (Title VIII, P.L. 98-573), section 804(1) defines "bilateral arrangement" in part to include those arrangements relating to the "importation into" the United States of certain categories of steel products. Section 805(b)(2) of that Act, however, provides that at the request of the Secretary of Commerce the Secretary of the Treasury shall take action to ensure that the aggregate quantity of EC articles entered into the United States are in accordance with the arrangement.

Merchandise in a FTZ, while imported, is not entered into the Customs territory of the United States. For most purposes articles manufactured in a FTZ are considered to be products of the FTZ. Since the pipe manufactured in the FTZ is entered into the United States for consumption as a product of the FTZ and not of the EC the quantitive restraint on pipe and tube from the EC would not be applicable.

B11

Section 15 of the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81o(c)), provides that:

> The Board may at any time order the exclusion from the zone of any goods or process of treatment that in its judgement is detrimental to the public interest, health, or safety.

Accordingly, as the operation may result in circumvention of a quota, you should obtain, through the zone grantee, specific approval from the Foreign Trade Zones Board for the proposed operation.

This is an information letter within the meaning of 19 CFR 177.1(d)(2).

Sincerely,

Edward B. Gable, Jr.
Director

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

217616

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CODE AND DATE	[redacted]	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER
SURNAME						
CODE AND DATE		(13) REVIEWER	(14) REVIEWER	(15) REVIEWER	(16) REVIEWER	(17) REVIEWER
SURNAME						

DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

23 DEC 1985

REFER TO

CON-1-CO:R:CD:D
218199 R

ISSUES:

1. Whether the Customs Service must recognize a customhouse broker's lien for freight?

2. Whether a customhouse broker's lien for freight must be certified by the carrier?

3. Whether the Customs Service must recognize a lien for freight on merchandise other than the merchandise on which the lienor advanced money for freight?

FACTS:

A customhouse broker and a carrier advance money to an importer to pay freight on a shipment of merchandise. Subsequent to that shipment the importer imports another shipment of merchandise. Under the applicable State law, the customhouse broker and carrier each have a lien against the second shipment of merchandise.

LAW AND ANALYSIS:

The provision on liens, 19 U.S.C. 1564, was amended by section 212 of the Trade and Tariff Act of 1984 (Act of October 30, 1984, sect. 212, 98 Stat. 2984). Section 212 added a new sentence to 19 U.S.C. 1564.

> The provisions of this section shall apply to licensed customs brokers who otherwise possess a lien for the purposes stated above upon merchandise under the statutes, or common law, or by order of any court of competent jurisdiction of any State.

Prior to that amendment the Customs Service ruled, in an internal advice request (file 302729) dated October 22, 1975, that it would recognize, under 19 U.S.C. 1564, only liens filed by carriers. In that ruling, the Customs Service noted that it had refused to recognize a lien filed by a port authority.

During the hearings on the language which was enacted as section 212, the Customs Service position was brought to the attention of Congress. Hearings before the Committee on Ways

B13

and Means on Miscellaneous Tariff and Trade Bills 98th Cong., 656-662 (November 15, 1983 and June 21, 1984). The language of the amendment shows that Congress rejected the view that 19 U.S.C. 1564 was not applicable to customhouse brokers. The Customs Service cannot refuse to recognize a lien for freight on the ground that the lien is possessed by a customhouse broker rather than by a carrier.

The second question is whether a customhouse broker must have its lien certified by a carrier because of the regulatory requirement set in 19 CFR 141.112(b). The language of that section is unchanged since T.D. 73-175. At that time the Customs Service position was that 19 U.S.C. 1564 provided protection only to carriers. If a customhouse broker advanced payment for freight, the carrier would not necessarily know that fact. As such, the carrier would not necessarily have knowledge of the facts. In that circumstance, the carrier would not be able to certify the validity of a lien. It seems clear that strict adherence to the requirement in 19 CFR 141.112(b) would tend to frustrate the change in 19 U.S.C. 1564 made by section 212 of the Trade and Tariff Act of 1984. It is likely that such an interpretation would be viewed as imposing an unreasonable requirement. Campbell v. U.S., 107 U.S. 407, 410 (1882) and American Pistachio Corp. v. U.S., 23 Cust. Ct. 103, 108, C.D. 1198 (1949). A notice of a lien possessed by a customhouse broker need not be signed or certified by a carrier. In view of the change made by section 212 of the Trade and Tariff Act of 1984, the term "carrier" in 19 CFR 112(b) is to be construed as the person possessing the lien.

The third question is whether recognition is to be given to a lien on merchandise other than the merchandise on which the lienor advanced freight money. The question is whether 19 U.S.C. 1564 is to be construed as covering general, rather than specific, liens. A possessory lien is general where the lienor has the right to hold personal property as security for the amount owed on a general account, and a possessory lien is specific where the lienor has the right to hold personal property as security for a demand on one contract. A specific lien is security for a demand arising out of one transaction while a general lien is an enlargement of a specific lien and it secures the demand arising out of a series of transactions. Restatement, Security sections 60, 61, and 62 (1981 reprint). A lien of a carrier is an example of a specific lien.

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Restatement, Security section 61(b). Dobie, Bailments and Carriers section 149 (1914). Attorneys, factors, and bankers generally are entitled to have general liens. In re. Brown, 4 Fed. Cas. 339 (No. 1984) (D.C.S.D.N.Y. 1842).

The Act of July 18, 1866, c. 201, sect. 17, 14 Stat 178, 182 was the first lien recognition statute in the laws on Customs. That provision was interpreted as applying to any person who claimed a lien on imported goods possessed by a Customs officer. 16 O.A.G. 74 (1878). That provision was repealed by the Act of March 2, 1867, c. 188, sections 3 and 4, 14 Stat. 546, 547. Section 3 of the Act of March 2, 1867, restricted recognition of liens to those liens held by a carrier on goods imported in that carrier's vessel or vehicle. Section 3 of the Act of March 3, 1867, was codified as Rev. Stat. section 2981. T.D. 3453 (1878) held that Rev. Stat. section 2981 (1878 ed.) did not cover recognition of a lien for freight due on merchandise forming the whole or part of a previous importation. In 16 O.A.G. 74 (1878), the Attorney General opined that Rev. Stat. section 2981 (1878 ed.) recognizes the lien of the owner or consignee of the vessel or vehicle in which the goods arrive in the United States. That ruling held it was proper to refuse to recognize the lien of an inland carrier who moved the goods in bond through the United States after importation.

The Act of June 10, 1880, c. 190, sect. 10, 21 Stat. 173, 175 amended Rev. Stat. section 2981 by reenacting part of the language of the Act of July 18, 1866, c. 201 sect. 14 14 Stat. 178, 182. However, only a lien for freight was to be recognized. As a result of that change in T.D. 5353 (1882) the Solicitor of the Treasury held that Rev. Stat. section 2981, as amended by the Act of June 10, 1880, covered liens of inland carriers. However even the lien for freight was subject to a narrow view. Although the opinion published as 16 O.A.G. 74 (1878) implied that all liens were covered by the language of the 1866 Act, in T.D. 7938 (1886), and reaffirmed in T.D. 8069 (1887), the Treasury Department held that a lien for freight and wharfage that occurred before the voyage to the United States would not be recognized. Although abandoned goods were held subject to a charge of general average in T.D. 12489 (1892), in T.D. 14472 (1893), the Treasury Department refused to recognize a lien for general average under Rev. Stat. section 2981, as amended by the Act of June 10, 1880. Administrative decisions and commentaries of that period regarded Rev. Stat. section

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2981, as amended by the Act of June 10, 1880, as protection only for carriers. T.D. 9486 (1889), T.D. 15066 (1894), Elmes, Law of the Customs, section 649 (1887), and Gould and Tucker, Notes on the Revised Statutes of the United States, 629 (1889). The basis for that narrow interpretation seems to have been the recognition that Rev. Stat. section 2891, as amended by the Act of June 10, 1880, provided the sole instance of the Government holding another's property for a purpose other than the enforcement of the public right. See T.D. 8813 (1888) which was issued in response to 19 O.A.G. 101 (1888). Since the statute was viewed as favoring private parties rather than public interests, it appears that the scope of the provision was expanded only by statutory amendment. The language for expanding section 2891 to cover other charges and contribution for general average was in the Act of May 21, 1896, c. 217, 29 Stat. 129. See also T.D. 22596 (1900), T.D. 22683 (1900), and T.D. 24431 (1903) which make it clear that the Treasury Department viewed Rev. Stat. section 2891, as amended by the Act of May 21, 1896, as a protection for carriers.

Rev. Stat. section 2891 was repealed by the Tariff Act of 1922. Section 564 of that Act superseded Rev. Stat. 2981, but the relevant language remained unchanged. Section 564 of the Tariff Act of 1930 replaced section 564 of the 1922 Act without any change. See also 35 O.A.G. 228 (1927).

Article 851 of the Customs Regulations of 1923, which implemented the 1922 Tariff Act, restricted the recognition to a lien of a carrier on merchandise actually carried and taken out of the carrier's possession by the Customs Service. The note to article 288 of the Customs Regulations of 1931, which implemented section 564 of the Tariff Act of 1930, shows that the Customs Service viewed the statute as being applicable to only carriers. Further, the definitions of freight and charges in article 289 of the Customs Regulations of 1931, which essentially repeated the earlier definitions found in article 431 of the Customs Regulations of 1899 and in article 738 of the Customs Regulations of 1915, define those terms so that they could apply only to the goods in the shipment in issue. Articles 293-295 of the Customs Regulations of 1937 and section 8.25 of the Customs Regulations of 1943 do not expand the scope of Customs Service position on lien recognition beyond that already discussed.

The language of section 212 of the Act of October 30, 1984, simply makes the 19 U.S.C. 1564 available to customhouse

218199

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brokers. It does not expand the scope of the basic statute. The problem that was brought to the attention of Congress in the prepared statement of the National Customs Brokers and Forwarders Association of America, Inc., did not include the issue presented here. Hearings before the Committee on Ways and Means on Miscellaneous Tariff and Trade Bills, 98th Cong., 661 (November 15, 1983 and June 21, 1984).

With the repeal of section 17 of the Act of July 18, 1866, the applicable statutory language indicates that specific liens were intended to be recognized under 19 U.S.C. 1564. The amendment made by section 212 of the Act of October 30, 1984, did not change that concept. There is nothing in the history of the provision to suggest that the Customs Service is entitled to take an expansive interpretation of that provision.

HOLDINGS:

1. The Customs Service will not deny recognition of a lien under 19 U.S.C. 1564 on the ground that the lienor is a customhouse broker rather than a carrier.

2. Section 141.112(b) of the Customs Regulations is to be interpreted in light of the amendment made by section 212 of the Tariff and Trade Act of 1984 and certification of a lien under 19 U.S.C. 1564 is to be by the lienor or the lienor's agent.

3. Under 19 U.S.C. 1564 only specific liens will be recognized.

Edward B. Gable, Jr.
Director, Carriers,
Drawback and Bonds Division

218199

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

SEP 26 1985

REFER TO

BON-1-CO:R:CD:D
218259 R

The Honorable
Jack Kemp
House of Representatives
Washington, D.C. 20515

Dear Mr. Kemp:

Thank you for your communication of September 6, 1985, which enclosed correspondence from Ms. Karen L. Kraus on behalf of Mr. Charles Nicosia. (File No. K 63 Al.)

Mr. Nicosia imported an automobile that did not comply with the United States statutory standards on emissions and safety. To guarantee the payment of all Customs duties and the compliance with all importation requirements which include meeting the motor vehicle emissions and safety standards, Mr. Nicosia was required by law (42 U.S.C. 7522(b) for emission standards and 15 U.S.C. 1396(b) for safety standards) to post a performance bond with the U.S. Customs Service in order to get immediate possession of the automobile.

The invoice from Ja-Mar Forwarding, Inc., which was included with Ms. Kraus' letter, shows that Mr. Nicosia employed a corporate surety on the performance bond. The invoice shows that Mr. Nicosia deposited $1550.00 as collateral with the surety and paid $25.00 as a bond premium. The surety on the bond is the Washington International Insurance Company. The amount of the collateral and the premium charged is a matter between Mr. Nicosia and the surety company; the contract between those two parties does not come within Customs Service jurisdiction.

Under the statutory procedures established by Congress, the Environmental Protection Agency (EPA) and the Department of Transportation (DOT) have the primary responsibility for the motor vehicle emissions and safety standards and Customs simply enforces the standards at the border for those agencies. The relevant Customs Regulations are in 19 CFR 12.73 and 12.80, copy enclosed. These regulations require that the importer obtain certification of statutory compliance from EPA and DOT for the U.S. Customs Service. Failure to obtain timely certifications is a breach of the performance bond which provides for the assessment of liquidated damages to compensate the Government for the breach. The Area Director of Customs at the port of entry, Newark, New Jersey, was informed by EPA that Mr. Nicosia failed to comply timely with the terms under which the vehicle was released to him. Accordingly, the Area Director of Customs

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must issue a demand for liquidated damages under the bond against Mr. Nicosia and his surety, Washington International Insurance Company. Under 19 CFR 12.80(e), if the Area Director of Customs fails to receive a certification notice from the National Highway Transportation Safety Administrator, DOT, within 180 days after entry, the Area Director is required to demand redelivery of the motor vehicle. Failure to comply is a breach of the bond.

Although there is some evidence in correspondence from Ms. Kraus that the motor vehicle was scrapped, there is no evidence that EPA or DOT witnessed the scrapping operation or approved of the operation as a satisfaction of Mr. Nicosia's statutory obligations. In any event, the Customs Service, in its limited jurisdiction over this matter, has no choice but to follow the directions of EPA and DOT.

In view of the likelihood that liquidated damages will be assessed, the Customs Service, for obvious reasons cannot release Mr. Nicosia or his surety from the bond obligations. If liquidated damages are assessed, Mr. Nicosia and his surety have a right to petition for relief. The procedures with respect to those rights are set forth in 19 CFR 172.1-172.33, copy enclosed.

If we can be of any further assistance to you in this or any other matter, please call on us. We are forwarding a copy of this reply to: (1) Manufacturers Operations Divisions U.S. Environmental Protection Agency 401 M Street, SW., Washington, D.C. 20460; and (2) National Highway Traffic Safety Administration Department of Transportation 400 7th Street, SW., Washington, D.C. 20590.

Sincerely,

Michael H. Lane

Michael H. Lane
Assistant Commissioner
Commercial Operations

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

27 JAN 1986

REFER TO

CON-9-CO:R:CD:D
218341 GS

ISSUE:

Is a process in which a number of imported tires are hydraulically compressed and banded with plastic tape a repair, alteration, or process within the meaning of item 864.05, Tariff Schedules of the United States (TSUS)?

FACTS:

Loose automobile tires are imported into the United States and taken to a processing facility for the purpose of compressing and banding them into sets of 10 tires. The compressed and banded tires are then sent to a foreign trade zone (FTZ) to be used in the manufacture of motor vehicles, thus cancelling the temporary importation bond pursuant to C.S.D. 84-97. The purpose of the tire banding is to facilitate storage and handling at the FTZ.

The tire banding operation itself is said to be performed by a metal holding machine into which 10 tires are manually rolled. A hydraulically operated compressor then compresses the tires while a banding machine threads and pulls plastic tape around the tires. This procedure is repeated four times. The bands are then crimped to provide the needed security. The process results in a set of compressed and banded tires that can more easily be stored and moved about the FTZ during production.

The banding machinery is said to have a value in excess of $400,000 and measures approximately 5 feet high and 15 feet long. Five U.S. workers are employed full-time in the banding operation and numerous other employees performing warehousing operations are indirectly involved. Approximately 250,000 tires compressed into sets of 10 are sent to the FTZ annually.

LAW AND ANALYSIS:

Item 864.05, TSUS, provides for the temporary admission free of duty under bond of articles to be repaired, altered, or processed (including processes which result in articles manufactured or produced in the United States).

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From the above definition it is clear that the processing required under this item may constitute a manufacture or production but may also fall short of manufacture or production and still be an admissable operation under the item. One of the definitions of the verb process is "to prepare for market, manufacture or other commercial use by subjecting to some process." (Webster's Third New International Dictionary Unabridged.) The same source gives as a definiton of the noun process "moving forward progressively from one point to another on the way to completion."

Applicant's operation as described in the facts involves two operations - compressing and bonding. Thus it is more than packing. However, it does not constitute a manufacture or a production. What the operation accomplishes is to make it possible for the tires to be stored and moved easily when used in the manufacture of automobiles, or put another way it makes an efficient manufacturing operation possible.

HOLDING:

The proposed operation is a process within the meaning of item 864.05, TSUS.

Edward B. Gable, Jr.
Director, Carriers,
Drawback and Bonds Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

10 JAN 1986

REFER TO
DRA-1-CO:R:CD:D
218395 R

ISSUE:

Whether the failure to file a notice of intent to export, or get a waiver of that filing requirement, before merchandise is exported is fatal to a same condition drawback claim?

FACTS:

Six protests are involved. The protests are against denials of drawback which are based on failures to file a notice of intent to export, or to get waivers of that filing requirement, under 19 CFR 191.141. The regulatory requirement was published as T.D. 83-212 and was to take effect on December 12, 1983. Assuming that the documentary evidence in each of the six protests is sufficient to prove the exportation of the merchandise involved, there is no evidence that shows that any of the merchandise was exported before that date. This decision is limited to the consideration of the effect of 19 CFR 191.141 on drawback eligibility alone. There is no evidence that Customs waived the requirement before exportation.

LAW AND ANALYSIS:

The filing requirement of 19 CFR 191.141 was the subject of considerable controversy. In T.D. 83-212 (48 F.R. 46753, Oct. 14, 1983, 17 Cust. Bull. 465), at 17 Cust. Bull. 498-499, the purpose of the provision was stated. The Customs Service disagreed with the assertions that there was no authority to require prior notice and that prior examinations of merchandise were unnecessary.

A similar pre-export filing requirement was considered by the appellate court in U.S. v. Lockheed Petroleum Services, 1 Ct. Appls. Fed. Cir. 63, 709 F. 2d. 1472 (1983). That case concerned 19 CFR 22.4(g) (1982) which required a drawback claimant to file an abstract of manufacture before the vessel, on which drawback was to be based, left the U.S. At page 65 the court stated that drawback eligibility depended on the claimant's compliance with that requirement because the failure to comply deprived the Government of the ability to verify the contents of the abstract. The same reasons apply here. The failure to file the required notice of intent to export deprived the Government of the ability to verify the identity of the merchandise with that of the imported merchandise, and the condition of the merchandise that is to be exported.

In protest 3801-000414 the protestant asserts that an examination by a Customs officer on the date of exportation pursuant to the protestant's request to register foreign merchandise is compliance with 19 CFR 191.141. Examination on the date of

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exportation is not notification five working days before exportation. In the case of Spencer, Kellogg and Sons, Inc., v. U.S., 13 Ct. Cust. Appls. 612, T.D. 41459 (1926), the court held that an oral notice, on February 20, to a Government inspector who was doing other work, that the drawback claimant expected to load merchandise for drawback at 8:00 a.m. on February 23 did not satisfy the regulatory requirement that written notice be filed with the collector at least 6 hours before lading of the merchandise and a copy of that notice be given to the Customs inspector at the place of lading. The merchandise was laded during the period from 3 p.m., February 22 to 6:30 a.m., February 23. The court held that the regulation requiring the notice of intent to export was mandatory, and could not be disregarded in favor of proving exportation by some other means. To similar effect is the court's decision in the case of Nestle's Food Co., v. U.S., 16 Ct. Cust. Appls. 451, T.D. 43199 (1929). There the claimant orally notified a Customs inspector at one pier of the export cargo's diversion to another pier when the regulations required written notice to the collector or to the inspector at the place of the actual lading in ample time to secure examination. The court found that as neither the collector or the inspector at the place of lading was told of the diversion, the merchandise was laded without Customs supervision. The court rejected the argument that the oral notification constituted substantial compliance with the regulation. The court in Swift and Co., v. U.S., 10 Cust. Ct. 198, C.D. 753 (1943), reh. den. 11 Cust. Ct. 321, abs. 49029 (1943), held that the failure to notify Customs of a diversion, when required to do so by regulation, was not compliance. It held that no compliance short of actual compliance could be regarded as sufficient compliance. The case of Swan Tricot Mills Corp. v. U.S., 63 Cust. Ct. 530, C.D. 3948 (1969) involves the application of a concept similar to the one advanced by the protestant here. In that case the drawback claimant asserted that a Customs inspector's examination to certify the exportation of bobbins temporarily entered under bond substantially complied with the regulatory requirements relative to rejected merchandise drawback as to the rejected yarn that was on the bobbins. The court rejected that argument. At page 534 of its opinion the court stated why an examination for a purpose other than drawback does not constitute substantial compliance with a regulatory procedure designed for drawback verification:

> For one thing, the yarn here involved was never returned to Customs custody for a drawback examination to determine whether or not it conformed to sample or specifications. In this connection it is important to observe that the Customs examination for drawback purposes is quite different from the examination to satisfy a temporary importation bond. In the examination for drawback purposes, it is essential to determine whether or not the merchandise conformed to sample or specifications. By contrast, in the examination to satisfy a temporary

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> importation bond, it is only necessary to determine what merchandise was laden aboard the vessel for export; hence, there is no need to determine whether the merchandise conformed to sample or specifications. This is illustrated by what occurred in the present case where the Customs inspector who inspected the merchandise to ascertain whether the temporary importation bond was satisfied made no effort to determine whether or not such merchandise conformed to sample or specifications. Nor was he supposed to, since his task was to determine what merchandise was exported.

That reasoning is equally applicable here with respect to the assertion that the certification on the registration form substantially complies with the regulatory requirement of 19 CFR 191.141.

The submission of waybills, particularly waybills which describe the cargo as packages "said to contain" certain merchandise, does not satisfy the requirement of 19 CFR 191.141.

In protest 3801-5-000826, the protestant asserted that the merchandise was examined by Customs prior to export and submitted copies of Canadian Customs and Excise forms in support of that assertion. Canada is not part of the United States. Examination of merchandise by Customs officers of another country in that country must occur after that merchandise leaves the United States. In any event, the United States Customs Service has not delegated same condition drawback examination authority to Canadian Customs officers. Such an examination by Canadian officials, even if it occurred, does not comply with the required procedure in 19 CFR 191.141.

HOLDING:

The failure to file a notice of intent to export, as required by regulation, or to get a waiver of that regulatory requirement, before the merchandise is exported is a basis on which to deny drawback.

George B. Stewart for

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

218395

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

14 JAN 1986

REFER TO

DRA-1-CO:R:CD:D
218449 K

ISSUE:

The issue is whether substituted merchandise that was exported prior to the effective date of the substitution same condition drawback law is eligible for drawback.

FACTS:

For purposes of this decision, it is assumed that all requirements of law (19 U.S.C. 1313(j)((3)) and the Customs Regulations (19 C.F.R. 191.141(h)) are met except that the substituted merchandise was exported prior to the effective date of the substitution same condition drawback law.

LAW AND ANALYSIS:

Section 202 of Public Law 98-573, dated October 30, 1984, amended the same condition (direct identification) drawback law, 19 U.S.C. 1313(j). Generally, the amendment allows same condition substitution drawback within a 3 year time limitation upon the exportation or destruction of merchandise (whether imported or domestic) that is substituted for imported duty-paid merchandise provided that the substituted merchandise is fungible with such imported duty-paid merchandise, that it is in the possession of the party claiming drawback, that it was not used in the United States before exportation or destruction, and that it is in the same condition at the time of exportation or destruction as was the imported duty-paid merchandise at the time of its importation.

In Customs Service Decision (C.S.D.) 85-34, dated February 5, 1985, we noted that under Section 214 of Public Law 98-573, the amendment (Section 202) became effective on November 14, 1984, the 15th day after enactment. However, in C.S.D. 85-34, we ruled, in part, that imported duty-paid merchandise imported before the effective date (November 14, 1984) may be designated for drawback, provided of course, that all other requirements of law including time limitations are met. The ruling cited and followed the decision of the Customs Court in General Motors Corporation v. United States, 32 Cust. Ct. 94, C.D. 1587 (1954).

The Court decision is cited to support a position that C.S.D. 85-34 should be expanded to include exportations of merchandise that were made prior to the effective date for the substitution same condition drawback law. We do not agree. In its decision, the Court went on to address this question and clearly answered in the negative.

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The General Motors Corporation decision concerned Public Law 109, effective August 8, 1951, which extended the privilege to substitute certain merchandise for imported duty-paid merchandise used in the manufacture or production of articles within certain time limitations and exported for drawback. Although Section 202 of Public Law 98-573 concerns substitution same condition drawback rather than substitution manufacturing drawback under Public Law 109, the issues concerning designation of merchandise and the exportation of merchandise prior to the effective dates are identical. We agree with the decision of the Court in General Motors Corporation in holding that merchandise imported prior to the effective date of August 8, 1951, may be designated for drawback. In this regard, the Court stated at page 96 that "A mere reading of the statutory provision shows this to be so."

However, the Court went on to state in General Motors Corporation at page 96 that "Quite obviously, the statute could be effective only as to exportations made on or after August 8, 1951 ...." Further, the Court continued and ruled out retroactive substitution when it stated at page 98 "Clearly, there was no accruing right, prior to August 8, 1951, as to the imported steel herein to have substituted for it, with benefit of drawback, domestic merchandise of the same class or kind." The Court, as we did in C.S.D. 85-34, extended retroactive status only to the designation of imported duty-paid merchandise as the basis for drawback (refund of duty) and did not extend retroactive status to exportations or substitutions. In the absence of a legislative mandate, we have no authority to do so.

HOLDING:

Exportations and/or substitutions made prior to the effective date (November 14, 1984) of Section 202, Public Law 98-573 (19 U.S.C. 1313(j)(3)) are not eligible for substitution same condition drawback.

EFFECT ON OTHER RULINGS:

This ruling supplements C.S.D. 85-34.

Edward B. Gable, Jr.
Director, Carriers,
Drawback and Bonds Division

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218449

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

03 JAN 1986

REFER TO

DRA-1-09-CO:R:CD:D
218493 RB

Issue: Are "articles of domestic manufacture or production" under 19 U.S.C. 1309(b) eligible for drawback pursuant to the substitution provision of the same condition drawback law, 19 U.S.C. 1313(j)(3)?

Facts: Jet fuel produced in the United States is laden as fuel supplies on foreign aircraft operating in international traffic. Drawback is sought to be claimed on this jet fuel under the substitution provision of the same condition drawback law, section 1313(j)(3), imported, duty-paid jet fuel fungible therewith forming the basis for the claim.

In addition to fungibility, it is presumed that any other statutory and regulatory requirements applicable to substitution same condition drawback not in issue herein would also be satisfied.

Law and Analysis: 19 U.S.C. 1309(b) provides in pertinent part that "articles of domestic manufacture or production" laden as supplies upon foreign vessels or aircraft may, under certain conditions, be considered exported for drawback purposes. Section 1309(b) in effect furnishes a statutory means of fulfilling the requirement of exportation in the context of the drawback law. Without this provision, the mere act of lading products of domestic manufacture as supplies on a foreign vessel or aircraft would not otherwise constitute an exportation (see Swan and Finch Co. v. United States, 190 U.S. 143, 145; 17 Op. Atty. Gen. 579, 583; 19 CFR 101.1(k)).

As originally included in section 1309(b), enacted as section 309(b) of the Tariff Act of 1930 on June 17, 1930, it is clear that the expression "articles of domestic manufacture or production" exclusively means articles which are manufactured or produced in accordance with the manufacturing drawback law, as amended, 19 U.S.C. 1313(a) and (b), and applicable regulations, and which are thus intended to qualify for drawback on this basis, sections 1313(a) and (b) being the only provisions to which section 1309(b) could have referred at the time of its original enactment (see H. Rept. 7, 71st Cong., 161-162 (1929)).

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19 U.S.C. 1313(j)(3), the substitution same condition drawback law, enacted as section 202 of Public Law 98-573, the Tariff and Trade Act of 1984, and effective on November 14, 1984, provides in pertinent part that imported, duty-paid articles may, under certain conditions, form the basis of a claim for drawback on other imported or domestic articles fungible therewith, when the latter are exported.

It is apparently desired that section 1309(b) be read in pari materia with section 1313(j)(3), and, as a result, that "articles of domestic manufacture or production" in section 1309(b) be considered exported for purposes of section 1313(j)(3).

The doctrine of in pari materia, however, is resorted to only in cases where the meaning of a statute is ambiguous or doubtful (Northern Pac. Ry. Co. v. United States, 156 F.2d 346, 350 (7th Cir. 1946), aff'd 330 U.S. 248). Because the meaning intended by "articles of domestic manufacture or production" in section 1309(b) is clear, as noted above, the application of this rule of statutory construction in the present case would be unwarranted and incorrect. Inasmuch as section 1309(b) is not specifically amended by section 1313(j)(3), "articles of domestic manufacture or production" as used therein should therefore properly retain the meaning intended at the time of its original enactment (see Manry v. Robison, 56 S.W.2d 438, 447 (Tex. 1932); also note Gemsco v. Walling, 324 U.S. 244, 265).

Furthermore, Customs has previously held, correctly, that imported, duty-paid articles may not themselves be considered exported under section 1309(b) and directly claimed for same condition drawback under 19 U.S.C. 1313(j)(1) (section 201 of Public Law 96-609, effective on December 23, 1980), same condition drawback not being provided for in connection with section 1309(b) (Headquarters letter dated November 28, 1983, file CON-13-01, DRA-1-CO:R:E:E 722625; and cf. Atlas Marine Supply Co. v. United States, C.D. 549). Hence, to permit such articles to form the basis for same condition drawback on other (substituted) articles, when, in identical circumstances, they could not qualify for same condition drawback themselves, would be contradictory and anomalous. "And we should discard any construction that would lead to absurd consequences" (Oates v. National Bank, 100 U.S. 239, 244).

Accordingly, "articles of domestic manufacture or production" as set forth in section 1309(b) cannot be considered exported thereunder for purposes of substitution same condition drawback, section 1313(j)(3).

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Holding: "Articles of domestic manufacture or production" under 19 U.S.C. 1309(b) are not eligible for drawback pursuant to the substitution provision of the same condition drawback law, 19 U.S.C. 1313(j)(3).

Edward B. Gable, Jr.

Edward B. Gable, Jr.

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

17 MAR 1986

REFER TO

DRA-1-CO:R:CD:D
218541 K

Mr. W. E. Weeks
Executive Vice President
Texas Citrus and Vegetable
Import Association
6912 West Expressway 83
Harlingen, Texas 78552-3701

Dear Mr. Weeks:

In your letter of January 8, 1986, you submitted a list of 87 fresh fruits and vegetables ranging from apples to zucchini and suggested that the "Good Delivery Standards" of the regulations of the Department of Agriculture (7 CFR 46.44) should be used to show that fresh fruits and vegetables meet the fungibility test of the substitution same condition drawback law (19 USC 1313(j)).

In your letter, you correctly stated the purpose of the Perishable Agricultural Commodities Act (7 USC 499a-o) is "to suppress unfair and fraudulent practices in the marketing of fresh and frozen fruits and vegetables in interstate commerce." The Act requires that commission merchants, dealers, and brokers must obtain a license and the regulations provide for the means of enforcing the provisions of the Act.

The substitution same condition drawback law (19 USC 1313(j)(3)) requires that the substituted merchandise must be "fungible with such imported (designated) merchandise." Section 191.2(l) of the Customs Regulations defines the term "Fungible merchandise" as "merchandise which for commercial purposes is identical and interchangeable in all situations." Our cursory review of the Perishable Agricultural Commodities Act and applicable regulations of the Department of Agriculture does not reveal a basis to support fungibility for one batch of apples as compared with another batch of apples. Good delivery simply means that there must be compliance with contracts for fresh fruits and vegetables. The quality standards, if any, may be set in individual contracts.

The Department of Agriculture does inspect and grade fruits and vegetables. You imply that the produce industry does not sell and buy fruits and vegetables in accordance with these grades. However, contracts under the "Good Delivery Standards" may, of course, require quality standards of the Department of

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Agriculture. Although the quality standards are not proof positive that two batches of apples may be fungible in all commercial transactions, those standards may be considered along with other information.

The quality standards for fresh fruits and vegetables of the Department of Agriculture are found in 7 Code of Federal Regulations beginning with section 51.100. Sections 51.300 through 51.347 contain the standards for grades of apples. Obviously, U.S. Extra Fancy apples are not fungible with U.S. number 3 apples. Note that the regulations indicate over 40 varieties of apples. One variety is not fungible with another variety. It is more than probable that a batch of imported Black Ben apples and a batch of substituted Black Ben apples, both of which meet the U.S. Extra Fancy grade, are of the same color requirements, and are of same sizes, etc., would meet the fungibility requirements. The burden of proof of fungibility is on the drawback claimant. Evidence to substantiate fungibility may be submitted with the drawback entry for the consideration of the drawback liquidator.

Fresh fruits and vegetables are excluded from the provisions of substitution same condition drawback. However, it may not be practical for perishable goods and the enormous differences in varieties and grades of fresh fruits and vegetables with a limited life span. The substitution same condition drawback law is practical for controlled manufactured goods such as assembly or replacement parts that are made with the use of identical materials and specifications. The substitution same condition drawback law fits a narrow set of facts.

You referred to Customs Service Decision 85-34 which contains guidelines for substitution same condition drawback. Enclosed for your information is a copy of T.D. 85-123 which contains the applicable Customs Regulations for substitution same condition drawback.

Sincerely,

Edward B. Gable, Jr.
Director, Carriers,
Drawback and Bonds Division

Enclosure

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218541

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

29 JAN 1986

REFER TO

DRA-1-CO:R:CD:D
218551 GS

ISSUES:

1. May merchandise, transferred from the Customs territory to a foreign trade zone for manufacturing, be considered exported for drawback purposes?

2. May the articles manufactured in the foreign trade zone from the transferred merchandise be admitted to the Customs territory upon payment of the proper duty?

FACTS:

The request is to transfer to a foreign trade zone merchandise which would be entitled to drawback if exported, to have this merchandise considered exported, and to use the merchandise in the zone in the manufacture of motor vehicles for exportation and domestic consumption.

LAW AND ANALYSIS:

19 U.S.C. 81c states in pertinent part that:

> "Foreign and domestic merchandise of every description, except as prohibited by law, may, without being subject to the Customs laws of the United States except as otherwise provided in this chapter, be brought into a zone .... ."

On the basis of this language C.S.D. 84-97 (also published as C.S.D. 85-10) permitted merchandise processed under item 864.05 (TSUS) to be brought into a foreign trade zone for use in manufacturing and to be considered exported for Customs purposes (except when otherwise indicated in the Foreign Trade Zones Act).

Merchandise not under the restrictions of a temporary importation bond may also be transferred to a foreign trade zone on the basis of the language from 19 U.S.C. 81c, quoted above. However in this situation the transferor has the option of using the second proviso of 19 U.S.C. 81c and claiming domestic status for the merchandise. If transferor uses this option, obviously

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the merchandise will not be considered exported and no drawback will be paid on it. Use of the second proviso is optional, however, as made clear by both the second and third provisos. Thus if the transferor chooses to place merchandise in foreign status, it may do so, in which case the merchandise when used in manufacturing will be considered exported for Customs purposes (except when otherwise indicated in the Foreign Trade Zones Act). The new and different articles which result from the use of the merchandise in manufacturing will then, upon payment of proper duty, be admitted to the Customs territory.

HOLDING:

1. Merchandise transferred to a foreign trade zone for manufacturing and placed in foreign status is considered exported for Customs purposes and is eligible for drawback if all other conditions are met.

2. The new articles resulting from manufacture in the zone may be admitted to the Customs territory upon entry and payment of proper duty.

218551

Edward B. Gable, Jr.
Director, Carriers,
Drawback and Bonds Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

26 MAR 1986

REFER TO
DRA-1-CO:R:CD:D
218613 SMC

ISSUES:

Whether drawback may be claimed under title 19, United States Code, section 1313(a), on the exportation of:

1) eggs produced in the U.S. by chickens that were fed imported chicken feed;

2) whole chickens or parts thereof that were bred from infancy in the U.S. on imported feed; or

3) products such as fertilizers that were manufactured or produced with the use of parts from slaughtered chickens (i.e. blood, bone, viscera) which had been bred in the U.S. on imported feed.

FACTS:

An egg producer in the U.S. contemplates the exportation of frozen eggs. The eggs were produced in the U.S. by chickens that were bred on imported chicken feed upon which duty was paid. In those situations where chickens are no longer of egg producing age, they are slaughtered and exported in whole or in part. When a chicken is slaughtered, very little if any of the chicken is wasted. Various parts such as the blood, bone, and viscera are sold to manufacturers in the U.S. for use in the manufacture of products such as fertilizers. These end products are then exported from the U.S.

LAW AND ANALYSIS:

Section 313(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(a)) requires the use of imported merchandise in the manufacture or production of the exported articles. With respect to the first statutory requirement under this section of the drawback law, the "use" requirement, it must be established whether the imported feed is used in the manufacture or production of the exported articles.

In a previous case in which Customs was asked to rule, feed or grain was also involved. The grain was imported and fed to

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hogs. After being slaughtered, the hams produced from the hogs were exported. It was ruled that where hogs are raised with the use of imported duty-paid grain, hams obtained from such hogs are produced in the United States with the use of imported merchandise within the meaning of the drawback law, and that drawback is allowable upon the exportation of the hams. (DB731, November 29, 1967)

In another case, cells from the kidneys of imported monkeys were grown, being fed with a high nutrient culture media. When the cells reached maturity, polio virus was added to them, permitting the proliferation of the virus in the living cells. The polio vaccine produced therefrom was exported and drawback was allowed. (C/L DB731, July 1, 1959)

The question of whether lactose was used in the manufacture of penicillin was addressed by Customs in another case. Lactose was mixed into a slurry with several other materials. The slurry was then inoculated with an organism after which the lactose was entirely consumed or metabolized by the growing mold organism. It was determined that the lactose was "used" as required by statute to feed the organism which formed the penicillin that was exported.

In order to meet the "use" requirement, it has been established that it is not necessary for any of the imported merchandise to actually appear in the exported article. The test is whether the imported merchandise was used in, that is, consumed in the manufacture or production of the article.

The second statutory requirement which must be met for drawback to be payable, is whether a manufacture or production has taken place. Whereas manufacture describes man-made changes in the essential character of an article or raw material, production describes either changes that are man-induced, natural phenomena (such as growth in living tissue) or changes in condition (shape, size, etc). The definition that Customs has followed is that a manufacture or production occurs when a new and different article emerges from the processing, having a distinctive name, character, or use. (see Anheuser-Busch Brewing Association v. United States, 207 U.S. 556(1907)).

It can be concluded that the proposed processes all involve the use of imported grain, as it is completely consumed by the

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chickens which are bred in the United States. Each process results in the production of articles with distinctive names, characters, or uses from the imported merchandise.

HOLDING:

Drawback is payable under section 1313(a), title 19, United States Code upon the exportation of:

1) eggs produced in the U.S. by chickens that were fed imported chicken feed;

2) whole chickens or parts thereof that were bred from infancy in the U.S. on imported feed; or

3) products that were produced with the use of chicken parts from slaughtered chickens which had been bred in the U.S. on imported feed.

Edward B. Gable, Jr.
Director, Carriers,
Drawback and Bonds Division

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FOR PUBLICATION

276199

FEB 7 1939

The Collector of Customs,

New York, N. Y.

T.D. 49801-H

Sir:

T. D. 47668-J, as extended by T. D. 48792-C, providing for the allowance of drawback on imported laces, lace articles, nettings, veils, veilings, mousseline de soie, voiles, malines, embroideries, motifs, braids, silk dress trimmings and scarfs which are bleached and/or dyed or redyed, or stripped and redyed by the Eagle Lace Dyeing Co., New York, N. Y., is hereby further extended to cover imported tablecloths, napkins, bedspreads and curtains which are dyed or redyed by the aforementioned company.

The manufacturer has filed a supplemental sworn statement, subscribed to December 9, 1938, in accordance with the provisions of paragraph (k) of article 1043, Customs Regulations of 1937, describing the methods which it will follow and the records which it will keep for the purpose of establishing that the articles described therein have been manufactured with the use of properly identified imported merchandise in accordance with the provisions of section 313(a) of the tariff act and the regulations (art. 1041). The manufacturer shall follow the methods described and shall keep the records outlined in this supplemental sworn statement, a copy of which is inclosed for your information.

Drawback may be allowed under this extension, upon compliance with the law and regulations, on the products referred to which are exported on and after November 19, 1938. In cases where the imported merchandise was imported on or after June 18, 1930, exportation shall be made within three years after importation of the imported merchandise, except as provided for by T. Ds. 46089, 46823, 47562, 48159, 48773 and 49344.

There is also inclosed for your information and files a copy of the report of the supervising customs agent, New York, N. Y., dated December 14, 1938, file 1-3507, relating to this matter.

Very truly yours,

(Signed) J. M. Wells

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Commissioner of Customs.

FEB 3 1939

276199

RELEASED TO THE

277941

MAY 3 1972

DB 731.1 GS

For Publication

Mr. Ben A. Burk
Regional Commissioner of Customs
San Francisco, California 94102

Dear Mr. Burk:

T.D. 72-152-N

T.D. 56239-X, authorizing the allowance of drawback on titanium ingots and cast and wrought titanium products, manufactured under the provisions of section 1313(b), title 19, United States Code, by Oregon Metallurgical Corporation at its Albany, Oregon, factory, with the use of titanium sponge, is hereby amended to cover titanium chips and solids manufactured by the company under the provisions of section 1313(b) at its Albany, Oregon, factory with the use of titanium sponge.

There is enclosed, approved, a copy of the manufacturer's supplemental statement subscribed to on March 24, 1972, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after August 1, 1971, and exported on and after September 1, 1971. Exportation shall be made within 5 years after importation of the imported merchandise.

There are enclosed an extra copy of the manufacturer's supplemental statement and of this authorization, which may be furnished with the first drawback claim filed hereunder to the special agent in charge, pursuant to section 22.4(g) of the Customs Manual.

Sincerely yours,

[redacted]

[Signed] J. P. TEBEAU

J. P. TEBEAU
Director, Division of
Carriers, Drawback and Bonds

[redacted]

Enclosure 142026

[redacted]

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278602

JUN 25 1956

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FOR PUBLICATION

TD54121-6

278602

Dear Mr. Dill:

You are hereby authorized to allow drawback upon compliance with the provisions of section 313(b), Tariff Act of 1930, and the drawback regulations (Part 22 of the Customs Regulations), on titanium and titanium alloy ingots, slabs, blooms, billets, bars, sheet bars, strip, sheet, coiled sheet and mill products manufactured by Sharon Steel Corporation, Sharon, Pennsylvania, at its factories located at Farrell and Sharon, Pennsylvania, Lowellville, Niles, and Warren, Ohio, and Detroit, Michigan, with the use of titanium sponge and titanium and titanium alloy products manufactured from titanium sponge. Insofar as the applicant's Niles, Ohio, factory is concerned, this authorization is limited to articles manufactured between October 10, 1955, and January 2, 1956, it being shown in the file that operations at the said factory have been conducted subsequent to the latter date by another corporation.

The manufacturer has filed a statement subscribed to on ~~December~~ July 3, 1956 31, 1955, in accordance with the provisions of section 22.4(h) of the Customs Regulations, describing the methods which it will follow and the records which it will keep for the purpose of establishing that the articles described therein have been manufactured in accordance with the provisions of section 313(b) of the tariff act and the regulations (sec. 22.5). The manufacturer shall follow the methods described and shall keep the records outlined in this statement, a copy of which is enclosed for your information.

The said records shall show:

(1) The quantity, identity, kind, and quality of the imported titanium sponge and of the titanium and titanium alloy products manufactured under drawback regulations from titanium sponge, which will be designated as the basis for the allowance of drawback on the exported articles;

(2) That such designated merchandise has been used in manufacture within 3 years from the date on which it was received by the above-named company;

(3) That the exported products upon which drawback is claimed were manufactured with the use of merchandise of the same kind and quality as that designated as the basis for the allowance of drawback on such exported articles;

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(4) That the exported articles were manufactured within 3 years from the date on which the designated merchandise was received by the above-mentioned company;

(5) That duty-free or domestic merchandise of the same kind and quality as that designated was used in manufacture within a period not to exceed 3 years from the receipt of the said designated merchandise; and

(6) The quantity of titanium sponge and titanium and titanium alloy products, of the same kind and quality as that designated, which appears in the exported articles.

Exportation shall be made within 5 years after importation of the imported merchandise, except that exportation shall be made within 3 years if the merchandise was imported before September 7, 1950.

The quantity of imported titanium sponge and of titanium and titanium alloy products manufactured under drawback regulations from titanium sponge, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of titanium sponge and of titanium and titanium alloy products, of the same kind and quality as that designated, which appears in the exported articles, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after October 10, 1955, and exported on and after October 11, 1955. Exportation shall be made within 5 years after importation of the imported merchandise, except that exportation shall be made within 3 years if the merchandise was imported before September 7, 1950.

Very truly yours,

(Signed) W. E. Higman

[redacted]

Chief, Division of
Classification and Drawbacks

Hon. Robert W. Dill
Collector of Customs
New York 4, New York

Enclosure No. 58138

[redacted]

D12

712.11 279470

SEP 29 1955

Dear [redacted]

Reference is made to your letter of September 8, 1955 (EM:cjr), inquiring (1) whether peanuts imported in the shell may be taken into a customs bonded manufacturing warehouse under the provisions of section 311, Tariff Act of 1930, for the purpose of being shelled, roasted, and salted, and subsequently exported, and (2) whether such peanuts would be subject to the quota limitations established by the President's proclamation of June 8, 1953, as amended and modified (T. Ds. 53289 and 53808).

The roasting and salting of nuts is considered by the Bureau to be a process of manufacture for drawback purposes under section 313 of the said tariff act (note, for example, T. Ds. 52765-J, 53196-B, and 53744-A), and would also be considered a process of manufacture for bonded manufacturing warehouse purposes under section 311.

You are accordingly advised that peanuts imported in the shell may be taken into a bonded manufacturing warehouse under the provisions of section 311 for the purpose of being shelled, roasted and salted, and subsequently exported. No withdrawal of the peanuts for consumption would be permitted (section 19.15(a) of the Customs Regulations), but the shells obtained in processing would be regarded as a waste and destruction thereof permitted under customs supervision in accordance with the second proviso contained in the fifth paragraph of section 311.

Imported peanuts taken into a bonded manufacturing warehouse for use in manufacture and exportation under section 311 would not be subject to the quota limitations referred to above, as the quota limitations apply only to entries, or withdrawals from warehouse, for consumption.

Very truly yours,

Signed) W. E. Higman

Chief, Division of
Classification and Drawbacks

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298222

MAY 12 1971

DB 731.1 T

For Publication

Mr. Fred R. Boyett
Regional Commissioner of Customs
Chicago, Illinois 60605

TD 71-167R

Dear Mr. Boyett:

T.D. 67-157-O, authorizing the allowance of drawback on polytetrafluoroethylene sheet, rod, tube, and tape manufactured underthe provisions of section 1313(b), title 19, United States Code, by Cadillac Plastic and Chemical Company, Division of Dayco Corporation, Detroit, Michigan, at its Dundee Plastics Division, Dundee, Michigan, factory with the use of polytetrafluoroethylene resin, is hereby amended to cover polytetrafluoroethylene plate and film manufactured under section 1313(b) by the said company at its above factory with the use of polytetrafluoroethylene resin.

There is enclosed, approved, a copy of the manufacturer's supplemental drawback statement subscribed to on February 16, 1971, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after August 11, 1965, and exported on and after August 12, 1965. Exportation shall be made within 5 years after importation of the imported merchandise.

Sincerely yours,

[redacted]

(Signed) J. P. TEBEAU

J. P. TEBEAU
Director, Division of
Carriers, Drawback and Bonds

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Enclosure 125384

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D14

T.D. 67-41-F

JAN 3 1967

FOR PUBLICATION

DB 731.1 EC

298372

Mr. Michael Stramiello, Jr.
Regional Commissioner of Customs
New York, New York 10004

Dear Mr. Stramiello:

You are hereby authorized to allow drawback upon compliance with the provisions of section 1313(t), title 19, United States Code, and Part 22 of the Customs Regulations, on pulverized resins manufactured by Union Carbide Corporation, New York, New York, at its Bound Brook, New Jersey, factory with the use of coarse crushed resin.

There is enclosed, approved, a copy of the manufacturer's drawback statement subscribed to on November 29, 1966, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

The quantity of coarse crushed resin manufactured under drawback regulations, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of such merchandise of the same kind and quality as that designated, which was used in manufacture of the exported articles as shown by an abstract of the manufacturing records, which shall be filed with the drawback entry.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby, which are manufactured and exported on and after July 28, 1966. Exportation shall be made within 5 years after importation of the imported merchandise.

In accordance with the recommendation of the investigating agent, the first claim for drawback filed under this authorization shall be forwarded to the customs agent in charge, New York, New York for verification.

Sincerely yours,

[redacted]

(Signed) RAYMOND E. TURNER

RAYMOND E. TURNER
Director, Division of
Entry Procedures and Penalties

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Enclosure 52973

[redacted]

298372 E1

T.D. 69-111-S

APR 11 1969
DR 731.1 T

FOR PUBLICATION

The Regional Commissioner of Customs
New York, New York 10004

Dear Sir:

T.D. 43635-Q, as amended, and particularly as amended by T.D. 53839-K, authorizing, among other things, the allowance of drawback on synthetic resins manufactured under the provisions of section 1313(a), title 19, United States Code, by American Cyanamid Company, Wayne, New Jersey, at its various factories with the use of imported melamine, is hereby further amended to authorize the allowance of drawback on synthetic resins manufactured under the provisions of section 1313(b) at its various factories with the use of melamine.

There are enclosed, approved, copies of the manufacturer's supplemental drawback statements subscribed to on July 30, 1968, and March 17, 1969, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

The quantity of imported melamine, or of such merchandise manufactured under drawback regulations, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of such merchandise as that designated, which was used in the manufacture of the exported articles, as shown by the schedule set forth on pages 4, 5, and 6 of the supplemental statement of July 30, 1968.

Supplemental schedules covering changes in formula may be filed with the regional commissioner, and upon verification of such schedules and approval thereof, drawback may be allowed on the products covered thereby.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are

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manufactured and exported on and after October 1, 1958, disposition thereof shall be made within 5 years after importation of the imported merchandise.

Sincerely yours,

(Signed) RAYMOND E. TURNER

RAYMOND E. TURNER
Director, Division of
Entry Procedures and Penalties

Enclosure 77707

[redacted]

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[redacted]

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JUL 14 1982

CLA-2 CO:R:CV:V
542857 BLS

Area Director of Customs
New York Seaport
New York, New York 10048

Director, Classification and Value Division

Internal Advice Request 118/82, Dutiable Status of "ECGD" Premiums

542857

This is in reference to your memorandum dated July 1, 1982, involving the above-captioned matter.

ISSUE:

Whether certain insurance premiums incurred by the British supplier to ensure against non-payment by a foreign buyer, passed through to the United States importer as part of a CIF duty-paid price, are dutiable under transaction value.

FACTS:

An agency of the British Government, the Export Credit Guarantee Department, offers an insurance policy ("ECGD") to exporters of British merchandise which guarantees 90 percent payment on their overseas shipments in the event of default or bankruptcy of the foreign buyer, import restrictions in the buyer's country, etc. A premium is charged to the supplier based on the value of the individual overseas shipment.

The British supplier sold the subject merchandise to the importer on a CIF, duty-paid basis, and included the premium charge as part of the invoice price. The broker now claims that such charge is an item of insurance as

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provided for in section 402(b)(4)(A), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), and therefore it should be disregarded in determining transaction value.

LAW AND ANALYSIS:

Section 402(b)(1), TAA, provides in pertinent part that the transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States. Section 402(b)(4)(A) provides that the term 'price actually paid or payable' means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the the benefit of, the seller. Emphasis added.

The broker argues that ECGD is an item of insurance, and as such is provided for under section 402(b)(4)(A), which excludes insurance per se as a non-dutiable cost, because it is in fact an item incident to the international shipment of merchandise from the country of exportation to the place of importation in the United States.

On the other hand, you point out that the ECGD charge is in addition to the usual marine insurance, and has nothing to do with the international shipment of the goods. This charge merely ensures the reception of payment by the seller. Therefore, you believe that the ECGD charges are dutiable under transaction value since they are part of the price actually paid or payable and are not the type of insurance to be disregarded under section 402(b)(4)(A).

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HOLDING:

The documentation describing the "ECGD" clearly establishes that this insurance does not cover risks involved in the international shipment of the merchandise, nor is the charge in some manner incurred for transportation and related services incident to such international shipment. Rather, the premiums merely ensure payment for the goods in case of default, etc., by the buyer.

Under these circumstances, we find such costs to be part of the "price actually paid or payable for the merchandise", and therefore dutiable charges under transaction value.

(Signed) Irving W. Smith, Jr.

Harvey B. Fox

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[redacted]

AND DA		(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11 15 73)

APR 26 1985

CLA-2 CO:R:CV:V
543428 CW

Area Director of Customs
New York Seaport
New York, New York 10048

Re: Application for Further Review of Protest No. 1001-3-007383

Dear Sir:

The above-referenced protest concerns the valuation of butanediol shipped in bulk by tanker from Belgium to the United States and purchased by GAF Corporation (importer) from GAF (Belgium) N.V.

The merchandise was appraised under transaction value, section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), at the total invoice price of D.M. 3,434,353.47 (U.S. $1,429,313), which was based upon a unit price of D.M. 3.27 per kg. for a quantity of 1,050,261 kg. The shipping terms were FOB Antwerp, Belgium.

Protestant (importer's customhouse broker) contends that although 1,050,261 kg. of butanediol were ordered by the importer, the actual quantity received by the importer at the time of offloading in the United States was 1,047,034 kg. Therefore, protestant contends that an adjustment should be made to the appraised value of the imported merchandise to account for the difference between the quantity ordered and the quantity delivered.

In the opinion of your office, there is no legal authority under the TAA for making an adjustment to the invoice price to compensate for a deficiency between the quantity delivered and the quantity ordered. We understand that your office requested proof of payment for the imported merchandise from the importer but that no such evidence was provided.

As you know, transaction value is defined in section 402(b) as the price actually paid or payable for the imported merchandise when sold for exportation to the United States, plus amounts for certain items when not already included in that price. It appears that the only evidence available to us in this case regarding the "price actually paid or payable" for the imported butanediol consists of the

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commercial invoice between the parties which reflects a total price of $1,429,313. There is no evidence that a lesser amount was actually paid due to the shortfall in the quantity of merchandise delivered. In fact, the protestant does not allege that an amount different from the total price reflected on the invoice was paid for the imported merchandse.

In the absence of any other evidence of the price actually paid or payable for the imported butanediol, we believe that transaction value is properly represented by the total invoice price for the merchandise.

Accordingly, you are directed to deny the protest in full. A copy of this decision should be attached to the Form 19, Notice of Action, to be sent to the protestant.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 23 1985

FILE: CLA-2 CO:R:CV:V
543445 CW

TO : District Director of Customs
Chicago, Illinois 60607

FROM : Director, Classification and Value Division
Headquarters

SUBJECT: Internal Advice No. 107/84; Valuation of Automobile Engines Purchased by

This refers to your letter of September 14, 1984, received in this office on November 11, 1984, which forwarded the above-referenced internal advice request initiated by (the importer). The issue presented for consideration concerns whether amounts paid by the importer to the manufacturer a related company, for failure to purchase a contracted minimum quantity of engines are dutiable as part of transaction value, section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

The record reflects that the importer and the manufacturer entered into a contract for the purchase of diesel engines and a contract for the purchase of gasoline engines with respect to model years 1983 through 1985. Both contracts provide that a minimum quantity of engines shall be purchased by the importer for each year of the contract. If the minimum number of engines is not purchased during a particular year, the contracts state that the importer shall pay the manufacturer additional compensation equal to a certain amount for each engine below the contracted minimum quantity that is not purchased. The contracts further provide that if purchases exceed a certain quantity during the life of the agreements, the importer shall receive a "special volume discount," payable within 60 days after that quantity is purchased.

During the 1983 model year, the importer purchased no diesel engines and fewer than the specified minimum quantity of gasoline engines. As a result, the importer was required by the contracts to pay the manufacturer certain additional compensation the precise amount of which was subsequently determined pursuant to a settlement agreement between the parties dated February 21, 1984.

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Counsel for the importer refers to the additional compensation as "liquidated damages" and maintains that these amounts are not part of the price actually paid or payable for the imported merchandise under several alternative theories. First, counsel contends that because the additional amounts were paid in connection with engines that were never sold or imported, these amounts are not dutiable as they do not relate to the engines that were imported. Counsel also maintains in this regard that the specific pricing formula set forth in the contracts for engines which were imported was separate from the liquidated damages contractural provision which related only to engines that were not purchased. Secondly, counsel states that even assuming that the additional payments affect the price of the imported merchandise, the payments must be disregarded since they represent changes to the price which are arrived at subsequent to the time of importation. Counsel points out in this connection that the Statement of Administrative Action relating to the TAA provides as follows:

> Changes in a price actually paid or payable which are arrived at subsequent to the time of importation shall not be taken into account in determining a transaction value.

Your office agrees with the importer's position that the additional compensation is not part of transaction value. In the opinion of your office, the additional payments are "not attributable to any particular importation" but, rather, they accrue "on the non-importation of merchandise." Moreover, according to your office, the subject compensation appears to be "simply a contractural obligation that is separate and distinct from the import transaction."

The Chief, Commercial Operations Branch I, New York Seaport, points out in a memorandum of October 31, 1984, that because the record before us does not address the issue of the acceptability, under section 402(b)(2)(B) of the TAA, of the transfer prices between the related parties, transaction value has not been established. Concerning the compensation paid to the manufacturer due to the failure of the importer to purchase the contracted minimum quantity of gasoline engines, the Chief of the Commercial Operations Branch I concludes that these amounts are part of the dutiable value of the imported merchandise under section 402(f) of the TAA. This conclusion is based upon the following analysis:

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> The base selling price of the engines is subject to adjustments. All these adjustments are based upon delivery dates and numbers purchased. It is our opinion that these are not transfer prices or estimates envisioned by TAA #25; nor can these adjustments be termed 'retroactive.' It is our opinion that the price paid or payable is arrived at in terms of the full value of the three-year contract and is not divisible in terms of invoice unit values.

We note initially that your office has not raised or otherwise addressed the issue of the acceptability of the transfer prices between the related parties in this case. As there is insufficient information in the record for us to make a determination regarding this issue, we will assume, for purposes of this decision, that your office is satisfied that the agreements between the parties reflected arms-length negotiations and, therefore, that the transfer prices are acceptable within the meaning of section 402(b)(2)(B) of the TAA.

As you are aware, the words "price actually paid or payable" in the definition of transaction value are themselves defined in section 402(b)(4)(A) of the TAA as:

> ... the total payment (whether direct or indirect ...) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

We believe it is significant that the gasoline purchase agreement refers to a "base selling price," which is the unit price reflected on the invoices that accompanied the engine shipments to the United States. As explained earlier, the agreement provides that if the importer fails to purchase the specified minimum quantity of engines in any given model year, the importer shall pay the manufacturer, in addition to the "base selling price," "a compensation amounting to" a certain amount for each engine below the specified minimum quantity that is not purchased during that model year. In our opinion, the term "base selling price" clearly implies that it is not a firm price but is subject to certain adjustments such as the additional compensation required in the event the minimum quantity of gasoline engines is not purchased. Thus, the agreement essentially provides that the

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final unit purchase price for the engines that are purchased during a model year will not be known until the the number of engines actually purchased during that year is known. This conclusion recognizes that in many business transactions the quantity of merchandise purchased is a significant factor in the determination of the unit price for that merchandise.

Consequently, while the additional compensation required as a result of the importer' failure to purchase the contracted minimum quantity of engines was computed on the basis of a specific amount for each engine below the minimum quantity that was not purchased, we believe that, for the reasons explained above, there is a direct relationship between this additional compensation and the gasoline engines that were purchased (and imported). Therefore, we conclude that the additional compensation required in connection with the purchase of gasoline engines during the 1983 model year is properly part of the price actually paid or payable for the imported gasoline engines.

We also disagree with the alternative argument advanced by counsel for the importer that the additional compensation must be disregarded since it represents a change in the price which was arrived at after the merchandise was imported. We have consistently held in this regard (see TAA #47 and rulings dated September 13, 1984 (543358), and March 30, 1984 (543252)), that where the buyer and seller agree, prior to exportation of the merchandise, to a fixed formula pursuant to which adjustments, either upward or downward, are to be made to the invoice price, those adjustments will be taken into consideration in determining the price actually paid or payable. The "base selling price" and the adjustments thereto set forth in the gasoline purchase agreement clearly were agreed to prior to exportation of the engines to the United States.

However, it is also clear that the settlement agreement was entered into subsequent to the importation of the gasoline engines during the 1983 model year. As we have no reason to believe that the parties did not view the pricing formula set forth in the purchase agreement as representing a fixed formula at the time the agreement was executed, we believe that a price determined in accordance with that formula constitutes the "price actually paid or payable for the merchandise when sold for exportation to the United States." (Emphasis added; see TAA #48). Thus, the amount of

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the additional compensation to be included in transaction value should be calculated on the basis of the provisions of the gasoline engine purchase agreement rather than on the basis of the provisions of the settlement agreement. This amount should be apportioned equally over the number of engines actually imported during the 1983 model year.

In regard to the amounts that were paid by the importer to the manufacturer in connection with the failure of the importer to purchase any diesel engines during the 1983 model year, we agree with counsel for the importer that these amounts are not dutiable inasmuch as the diesel engines were subject to a separate purchase agreement and none were, in fact, imported.

Harvey B. Fox

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: NOV 06 1985

FILE: CLA-2 CO:R:CV:V
543456 CW

TO : District Director of Customs
Detroit, Michigan 48226-2568

FROM : Director, Classification and Value Division
Headquarters

SUBJECT: Internal Advice No. 113/84; Valuation of Automobile Engines Purchased by

This is in reference to your memorandum of October 3, 1984, received in this office on November 28, 1985, which forwarded the above-referenced internal advice request initiated by (the importer). The issue under consideration concerns whether amounts paid by the importer to the seller, a related company, as a result of the importer's failure to purchase a contracted minimum quantity of engines are dutiable as part of transaction value, section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

The facts are that in 1978 the importer and manufacturer entered into an engine purchase agreement which provided that the importer would purchase a specified minimum quantity of engines for each model year from 1981 through 1985. If the importer failed to purhase the minimum quantity during any one of those model years, the agreement required the importer to pay the seller liquidated damages equal to 22 percent of the engine price in effect on March 1 of the applicable model year "multiplied by the number by which (the importer's) purchases of engines is less than" the minimum quantity for that year. According to the agreement, the 22 percent figure consists of a 4 percent non-reimbursable amount and an 18 percent amount which would be repaid by the seller in subsequent years to the extent that the importer purchased more than the mimimum number of engines in those later years.

Because the importer did not purchase the minimum number of engines during the 1981 model year, it was required to pay the seller in excess of $9 million in liquidated damages. In the opinion of your office, the unit price reflected in the invoices which accompanied the engine shipments to the United

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States was based on a quantity discount given in anticipation of purchases of a specified minimum quantity. Consequently, when the importer failed to qualify for this discount price, additional payments became due as provided for in the purchase agreement. Generally speaking, your office believes that these additional payments are dutiable as part of transaction value. However, you indicate that if the 18 percent reimbursable amount is subsequently repaid by the seller, that amount should not be dutiable.

Counsel for the importer contends that the liquidated damage payments are not part of the price actually paid or payable for the imported merchandise for the reason that these payments relate to engines that were not purchased rather than to engines that were purchased and imported. Counsel further maintains that a review of the agreement itself indicates that the parties did not intend for the liquidated damages to be part of the price paid or payable for the engines. Counsel states in this regard that Part 3 of the agreement, entitled "Prices and Payment," sets forth the actual pricing for the engines while Part 2, a totally separate provision from the pricing portion of the agreement, provides for the payment of damages in the event minimum quantities are not purchased. Finally, counsel states that even assuming the additional payments do affect the price of the imported engines, "the holding of TAA #48 make it clear that subsequent adjustments to prices originally thought to be firm do not alter the transaction value estimated on the actual unit sale prices."

The Chief, Commercial Operations Branch I, New York Seaport, believes that both the reimbursable and non-reimbursable liquidated damage payments are part of dutiable value since the various provisions in the agreement providing for the payment of compensation from the importer to the seller assure the seller's "recovery of the cost of producing the engines plus a profit commensurate with the production run." However, the Chief, Commercial Operations Branch I, indicates that "the price paid or payable is arrived at in terms of the full value of the (multiple-year) contract and is not divisible in terms of invoice unit values."

As you know, the words "price actually paid or payable" in the definition of transaction value are themselves defined in section 402(b)(4)(A) of the TAA as:

> ... the total payment (whether direct or indirect ...) made, or to be made, for imported

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merchandise by the buyer to, or for the benefit of, the seller.

We believe that the following provision of the engine purchase agreement is pertinent to a determination of whether the additional compensation paid as a result of the failure of the importer to purchase the minimum quantity of engines during the 1981 model year is part of the purchase price of the imported engines:

> In the event that (the importer) fails to purchase the minimum number of Engines set forth above, because of the major investment in plant and equipment which (the seller) must make in order to produce the Engines required by this Agreement, the improbability of finding alternative purchasers for the Engines specially manufactured, ... and in light of the uncertainty in determining the profits which (the seller) would have made and the costs and incidental damages which (the seller) would have avoided but for such failure, the parties have considered and agreed that, <u>as an essential condition to (the seller's) willingness to sell Engines at the prices provided for herein, the following payments, representing fair and reasonable compensation for (the seller's) anticipated losses, will be made by (the importer) to (the seller) as liquidated damages</u> and not as penalties with respect to the number of units by which (the importer's) purchases of Engines with respect to any model year are less than the minimum quantities specified above ....

As you point out in your October 3, 1984, memorandum, it is clear from the underscored portion of the above-quoted provision that the invoice unit price for the imported merchandise was established based on the premise that the minimum quantity of engines would be purchased. Of course, if this premise proved to be incorrect, the agreement required the importer to pay the seller certain amounts as liquidated damages in addition to the invoice unit values. Thus, the agreement essentially created a pricing formula pursuant to which a base price (the invoice unit price) for the imported merchandise was established which was subject to an upward adjustment at the end of the model year to the extent that the importer's actual purchases during the year were less than the specified minimum quantity. This construction recognizes that in many business transactions the quantity of merchandise purchased is a significant factor

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in the determination of the unit price for that merchandise.

Consequently, while the additional compensation paid as a result of the importer's failure to purchase the contracted minimum quantity of engines was computed on the basis of a specific amount for each engine below the minimum quantity of engines that was not purchased, we believe, for the reasons explained above, that there is a direct relationship between this additional compensation and the engines that were purchased and imported during the 1981 model year.

We also disagree with the alternative argument advanced by counsel for the importer that the additional compensation must be disregarded since it represents a change in the price which was arrived at after the merchandise was imported. We have consistently held in this regard (see TAA #47 and rulings dated September 13, 1984 (543358), and March 30, 1984 (543252)), that where the buyer and seller agree, prior to exportation of the merchandise, to a fixed formula pursuant to which adjustments, either upward or downward, are to be made to the invoice price, those adjustments will be taken into consideration in determining the price actually paid or payable. The invoice unit price and the adjustments thereto set forth in the purchase agreement in this case clearly were agreed to prior to exportation of the engines to the United States.

We understand that in regard to certain model years subsequent to 1981, the importer purchased in excess of the minimum quantity requirements and, as a result, the seller has repaid most, if not all, of the reimbursable liquidated damages paid by the importer in connection with purchases during the 1981 model year. Generally speaking, in situations in which the price paid or payable is determined by application of a formula which is agreed to by the parties prior to exportation of the merchandise, we believe that, in view of the one-year statutory liquidation period, the final purchase price for the merchandise should be ascertainable within one year of the date of entry. In other words, the one-year statutory liquidation period should not be extended in regard to a particular entry soley to enable an adjustment to be made to the invoice price pursuant to an agreed-upon pricing formula. While the repayments of the reimbursable liquidated damages in this case apparently were made more than one year after the dates of entry of the subject imported engines, it is our opinion that these repayments should be taken into consideration in appraising the engines

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imported during the 1981 model year since liquidation of the affected entries has been suspended pending resolution of this internal advice request.

Based on the foregoing, we conclude that the additional compensation paid by the importer to the seller as a result of the former's failure to purchase the contracted minimum quantity of engines during the 1981 model year is properly part of the price actually paid or payable for the engines purchased and imported into the United States during that model year. This additional compensation, which includes both the 4 percent non-reimbursable amount as well as that portion of the 18 percent reimbursable amount which has not been repaid to the importer as of the date of this decision, should be apportioned equally over the number of engines actually imported during the 1981 model year.

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Harvey B. Fox

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DATE: 18 FEB 1986

FILE: CLA-2 CO.R:CV:V
543508 CW

TO : District Director of Customs
Laredo, Texas 78044-3130

FROM : Director, Classification and Value Division
Headquarters

SUBJECT: Internal Advice Request Initiated by World Tile Imports, Inc.

This refers to your memorandum of February 26, 1985, received in this office on March 5, 1986, which forwarded an internal advice request initiated by World Tile Imports, Inc. of Laredo. The issue presented for our consideration concerns the proper appraised value of certain ceramic tiles imported from Mexico.

As we understand the facts involved in this case, Robert K. Woodin ("Mr. W"), a resident of Mexico, is the founder and principal officer and stockholder of World Tile Imports, Inc. ("importer"). Mr. W arranges for the purchase of ceramic tile from unrelated, small-scale producers of tile in Mexico who are largely illiterate and maintain few, if any, records or bank accounts. Mr. W negotiates prices with each tile producer and pays cash for each purchase. Tiles purchased from several producers are consolidated and packed and then transported from Mexico to the importer in Laredo. With respect to each purchase, Mr. W prepares a purchase order reflecting the producer's name and the price for the tile. Mr. W also prepares two types of invoices to the importer for each consolidated shipment forwarded to the United States. One invoice reflects the total price paid to the tile producers and the second reflects "freight" and "handling" costs associated with each shipment. Payment for both types of invoices is made by the importer to Mr. W.

Counsel for the importer maintains that Mr. W is the importer's buying agent and, as a result, transaction value should be derived from the invoice reflecting the amounts actually paid to the tile producers. Counsel states that the amount described in the second invoice as "handling" costs constitutes Mr. W's buying commission and is, therefore, not dutiable as part of transaction value. In support of this contention, counsel has submitted a copy of a written agency

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agreement between Mr. W "D/B/A Materiales Para La Construcion" and the importer. Mr. W has signed the agreement on behalf of both parties. Although both the invoices and the written agreement indicate that Mr. W is doing business in Mexico as "Materiales Para La Construcion," counsel for the importer asserts that Mr. W is not incorporated in Mexico but, "in compliance with Mexican law, is registered to do business in Mexico as an individual proprietor, not as a corporation."

As an alternative argument, counsel maintains that Mr. W should be considered an employee or officer of the importer and, as a result, amounts paid to him as compensation for his activities on behalf of the importer should not be included as part of the price actually paid or payable for the imported merchandise.

Your memorandum of February 26, 1986, characterizes the importer's internal advice request as "totally frivolous." In your opinion, the importer "is simply a dummy corporation set up by (Mr. W) in order to try to charge off more nondutiable charges." You note that the "so-called buying commission" actually exceeds the value of the tile being imported and that the freight charges also exceed the price for the tile. You state that the evidence shows that the relationship between Mr. W and the importer is that of owner and office staff rather than agent and principal.

The words "price actually paid or payable" in the definition of transaction value, section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), are themselves defined in section 402(b)(4)(A) of the TAA as:

> The total payment (whether direct or indirect ...) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

We stated in TAA #7 (542141), in regard to the above-quoted provision, that:

> It is clear from the statutory language that in order to establish transaction value one must know the identity of the seller and the amount paid or payable to him. * * * Therefore, an invoice or other documentation from the actual foreign seller to the agent would be required to establish that the agent is not a seller and

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to determine the price actually paid or payable to the seller.

No invoice or other documentation from the purported foreign sellers, the Mexican tile producers, was furnished in this case. The only documentation in our possession reflecting the claimed transaction prices consists of purchase orders from the importer to the tile producers and invoices from Mr. W to the importer, all of which were prepared by Mr. W. Moreover, the proof of payment furnished to Customs consists only of cancelled checks reflecting amounts paid by the importer to Mr. W. In our opinion, this is insufficient evidence upon which to establish that the prices allegedly paid to the tile producers represent transaction value.

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The above conclusion raises the question as to whether transaction value may properly be based upon the total invoice price (including the purported buying commission) from Mr. W to the importer. It is important to recognize in this regard that transaction value is derived from "the price actually paid or payable for the merchandise when sold for exportation to the United States" (emphasis added, see section 402(b) of the TAA). Inasmuch as Mr. W is the founder and president of the importing company and apparently owns in excess of 95 percent of the stock of that company, it appears that Mr. W and the importer are actually one and the same legal entity. Therefore, we believe that no sale exists between Mr. W and the importer upon which to base a transaction value.

The foregoing determinations necessarily result in the elimination of transaction value as the basis of appraisement for the imported merchandise. The merchandise, therefore, should be appraised on the basis of the transaction value of identical or similar merchandise under section 402(c) of the TAA. We understand that information relating to the transaction value of identical merchandise is available in this case.

(Signed) Harvey B. Fox

Harvey B. Fox

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FEB 14 1986

CLA-2 CO:R:CV:V
543537 CW

District Director of Customs
Cleveland, Ohio 44114

Re: Applications for Further Review of Protests No. 4101-2-000003 and 4101-2-000007

Dear Sir:

The above-referenced protests concern the proper appraisement, under section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), of two continuous casting machines manufactured by Technica-Cuss GmgH of West Germany and imported by The Shenango Company of Dover, Ohio. Both protests, one of which was filed by the importer and the other by the surety, Washington International Insurance Co., concern the same entry.

Your office appraised the merchandise under transaction value, section 402(b) of the TAA, as represented by the original purchase price to the importer ($410,000). The importer advises that, as a result of late delivery of the merchandise, it sought and received a ten percent ($41,000) decrease in the purchase price. The importer further advises that certain defects in the machines were discovered after their importation. With respect to one defect, relating to a limitation on the diameter of bar that the machines could produce, the importer states that no redress could be obtained from the manufacturer because "they had already allowed the $41,000 credit in the the previous year." For this reason, the importer maintains that the $41,000 reduction in the purchase price should be considered, at least in part, as compensation for the above-described defect.

Moreover, the importer states that it returned to the manufacturer certain defective equipment (nine coolers, miscellaneous parts and four hot change frames having an original quoted value of $41,200) for which a refund was received. Therefore, the importer maintains that the appraised value of the imported merchandise should be reduced by a total of $82,200.

Counsel for the surety contends (as does the importer) that the initial decrease of $41,000 in the purchase price was due, at least in part, from certain defects in the

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imported merchandise. Therefore, counsel requests that we allow an adjustment of $41,000 in the dutiable value of the merchandise. Although a number of other issues are raised in the surety's protest, we note that no information or evidence of any kind has been submitted in support of counsel's claims regarding these issues. As a result, no discussion of these additional issues is deemed warranted.

Section 402(b)(4)(B) of the TAA provides that any rebate of, or other decrease in, the price actually paid or payable that is effected after the date of importation of the merchandise shall be disregarded in determining transaction value. However, the Statement of Administrative Action relating to the TAA provides that "(w)here it is discovered subsequent to importation that the merchandise being appraised is defective, allowances will be made."

Concerning the initial decrease of $41,000 in the purchase price of the machines, it is clear from the evidence that this reduction was sought and received due to the late delivery of the merchandise and not as a result of any defect in the machines. Therefore, we believe that section 402(b)(4)(B) of the TAA precludes consideration of this decrease in the purchase price in determining transaction value. In regard to the defective equipment that was returned to the manufacturer, the evidence indicates that the extent of the refund granted by the manufacturer was $24,960, not $41,200. Consequently, we believe that an allowance should be made for the $24,960 refund in determining the transaction value of the subject merchandise.

Therefore, the protests should be denied in part and granted in part in accordance with this decision. A copy of this decision should be attached to the Form 19, Notice of Action, to be sent to the protestants.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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54353 7

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DATE: 24 MAR 1986

FILE: CLA-2 CO:R:CV:V
543574 BG

TO : District Director of Customs
Seattle, Washington 98174

FROM : Director, Classification and Value Division

SUBJECT: Reconsideration of Internal Advice Request 10/84, 543293 CW
Dated January 15, 1985

This is in response to your memorandum which requests reconsideration of Internal Advice request 10/84, dated January 15, 1984. You are requesting our reconsideration of the issue relating to the dutiability of monies paid by the ultimate purchaser to the importer, who transmitted the monies to its parent company in England as contribution for tooling.

It is not necessary to reiterate the facts which relate to this request for reconsideration. For purposes of this ruling, the facts are as described in our prior ruling of January 15, 1985.

You indicate that section 402(h)(1)(A) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), governs in this situation and that the tooling costs are within the definition of assists. You state that the funds were supplied to the manufacturer to purchase or produce the tooling, and that providing funds to obtain tooling is analogous to providing the tooling itself.

We disagree with the conclusion that such payments to the manufacturer to purchase or produce the tooling constitute an assist within the meaning of section 402(h)(1)(A) of the TAA. In our opinion, there is a significant difference between the payment of monies to the foreign manufacturer to enable the latter to purchase or produce tooling, and actually providing the tooling to the manufacturer. Section 402(h)(1)(A) of the TAA specifies the four categories of items or services which are to be considered dutiable assists "...if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer...". While tooling is specifically included in one of those categories, monies paid to defray the cost of purchasing or producing tooling is not included. Therefore, we believe that such monies do not qualify as a dutiable assist.

You further contend that if the monies paid by the ultimate purchaser to the manufacturer through the importer are not considered as assists, then these payments should constitute part of the price paid or payable for the imported merchandise pursuant to section 402(b)(4)(A) of the TAA. The "price actually paid or payable" includes direct or <u>indirect</u> payments made, or to be made, by the buyer to the seller.

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We agree with you that, under the circumstances of Internal Advice Request No. 10/84, such payments constitute part of the price paid or payable for the merchandise. The payments made by the ultimate purchaser, through the importer, to the manufacturer for the tooling are "indirect payments" and are to be included in the price paid or payable.

Therefore, we revoke that portion of our January 15, 1985, ruling which held that the subject tooling payments are not part of the price actually paid or payable for the merchandise. These payments are part of the price actually paid or payable for the imported merchandise and are to be included in dutiable value.

(Signed) Harvey B. Fox

Harvey B. Fox

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543574

DATE: 3 MAR 1986

FILE: CLA-2 CO:R:CV:V
543576 CW

TO : Deputy Assistant Regional Commissioner
(Regulatory Audit), Southeast Region

FROM : Director, Classification and Value Division

SUBJECT: Dutiability of Certain Expenses Incurred During the Assembly Abroad of United States Components

This is in response to your memorandum of June 14, 1985, in which you request advice concerning the dutiability of certain costs incurred in connection with the assembly abroad of United States components entitled, upon their return, to classification under item 807.00, Tariff Schedules of the United States (TSUS). Your request specifically concerns two separate but similar factual situations, each of which relates to an ongoing assemoly operation.

The two factual situations you describe are similar in that both involve a company in the Dominican Republic which assembles United States components provided by a related United States company ("importer"). The assembler in each case does not maintain its own accounting system, expense accounts or general ledger. These functions are handled by the related importer which maintains separate expense accounts for itself and the assembler. The importer in both cases transfers funds to the assembler to reimburse the latter for expenses incurred in the assembly operation.

The imported assembled merchandise involved in the first factual situation (case #1) is being appraised on the basis of computed value, section 402(e) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). For purposes of calculating computed value, the importer in case #1 includes in its cost submission to Customs only expenses which can be directly related to production, such as shop supplies and cost items which meet the statutory definition of assists (e.g., tools). Other more indirect costs, such as office supplies and depreciation expenses, which do not qualify as assists, are not included as part of the computed value cost submission. Profit also is not included.

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Moreover, the importer in case #1 excludes from its cost submission certain expenses charged to the assembler's accounts for indirect labor and related labor benefits. These labor costs are attributed to five production managers, four of whom are United States citizens and one of whom is a citizen of the Dominican Republic. Although these employees receive part of their salaries through the assembler's bank account in the Dominican Republic and the remainder through the importer's bank account in the United States, all of the labor costs attributed to these employees are recorded by the importer in the assembler's indirect labor account as an expense of assembly. The portion of the salaries paid through the importer's bank account was not included in the importer's cost submission because, in the importer's opinion, these costs do not meet the definition of an assist, citing as authority TAA #46 dated February 22, 1982.

The imported assembled merchandise involved in the second factual situation (case #2) is being appraised on the basis of transaction value, section 402(b) of the TAA. The importer provides Customs with estimated costs at the time of entry and then submits actual cost information, upon which the appraised value is based, approximately six months later. Unlike case #1, the importer in case #2 generally includes in the actual cost data furnished to Customs general expenses recorded in the subsidiary's expense accounts. However, as in case #1, the importer excludes from its cost submission certain labor costs attributed to three managers working at the assembler's plant. The managers, consisting of a citizen of the Dominican Republic, a citizen of El Salvador and a citizen of Mexico, receive a portion of their salary through the assembler's bank account and the remainder through the importer's bank account, although all of the labor costs are recorded by the importer in the assembler's expense accounts. The actual cost data provided to Customs does not include that portion of the 3 managers' salaries paid through the importer's bank account for the reason that, in the importer's opinion, these labor costs are not dutiable assists pursuant to TAA #46.

You ask the following specific questions in regard to the above-described two factual situations:

1. If a company maintains the accounting records of a related foreign assembler in a separate cost center or division, should expenses recorded in those accounts be the basis of computed value? If not, what basis could be used?

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2. Are general expenses recorded in accounts maintained for the assembler included in foreign operating costs under computed value? Are such expenses included in transaction value when that value is based on the reimbursement of actual costs recorded in the assembler's expense accounts?

3. Are labor costs recorded in accounts maintained for the assembler included in foreign operating costs under computed value? Are such labor costs included in transaction value when that value is based on the reimbursement of actual costs recorded in the assembler's expense accounts?

4. Is the nationality of the employee a factor in determining the dutiability of his salary?

5. Is the method of payment (i.e., through United States banks versus foreign banks) a consideration in determining the dutiability of labor costs.

6. Is the establishment of residence or the length of residence in the foreign country a factor in determining the dutiability of labor costs?

It is your opinion that in a situation in which a foreign assembler's accounting records are maintained by a related United States company in a separate cost center from its own, these accounts constitute the "commercial accounts of the producer" and should be the basis for the calculation of computed value. It is also your view that where general expenses, including indirect labor costs, are recorded in accounts maintained for a foreign assembler by a related importer, those expenses should not be evaluated as assists since they are not recorded in the importer's expense accounts. Rather, you believe that as these expenses are reflected in the assembler's accounting records, they should be dutiable as part of the assembler's general expenses under computed value and as part of the price actually paid or payable when transaction value is based on the reimbursement of the assembler's actual costs of assembly.

As you know, computed value is defined in section 402(e)(1) of the TAA as the sum of:

(A) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported

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merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

Moreover, as you point out, the Statement of Administrative Action relating to the TAA states the following in regard to subparagraphs (A) and (B) of the above definition:

> The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise will be determined on the basis of information supplied by, or on behalf of, the producer and will be based upon the commercial accounts of the producer, if such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.
>
> The 'amount for profit and general expenses' will be determined on the basis of information supplied by, or on behalf of, the producer and will be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced and unless the figures provided are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise, that are made by producers in the country of exportation for export to the United States.

We agree with you that where a foreign producer's accounting records are maintained by a related United States company, those records should be considered the "commercial accounts of the producer," as those words are used in the above-quoted provisions of the Statement of Administrative Action. Therefore, those records should be the basis for calculating the "cost or value of the materials and

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fabrication" and "an amount for profit and general expenses" under computed value, provided the producer's accounts are maintained in a separate cost center from the United States company's accounts, and the producer's accounts are consistent with the generally accepted accounting principles applied in the country of production.

If, pursuant to the above conclusion, a foreign assembler's accounting records, as maintained by a related United States company, are used as the basis for calculating computed value, then it necessarily follows that all general expenses recorded in the assembler's general expense accounts are includable in the "amount for profit and general expenses" under section 402(e)(1)(B) of the TAA. We understand in regard to case #1 that there are no other producers of merchandise of the same class or kind in the Dominican Republic. Thus, the assembler's actual general expenses and profit, as reflected in the accounting records maintained for the assembler by the importer, constitute the "amount for profit and general expenses" under computed value.

Similarly, in regard to the second part of your second question, it is our position that where, as in case #2, transaction value is based on the reimbursement by a United States importer to a related foreign producer of actual costs recorded in the producer's accounting records, then all of the general expenses reflected in the records maintained by the importer for the producer are properly included in transaction value.

Concerning your third question, we believe that the conclusions expressed above in response to your second question are equally applicable to indirect labor costs when those costs are recorded in expense accounts maintained for a foreign producer by a related United States importer. In our opinion, this is true even in a situation, such as exists in cases #1 and #2, in which a portion of the salary costs reflected in the producer's accounts are actually paid directly to the involved employees through the importer's bank account. Regarding the importers' contention that the portion of the salaries paid through the importers' bank accounts are not dutiable assists pursuant to TAA #46, it is our view that TAA #46 is distinguishable on its facts from the two cases before us. In TAA #46 various United States resident employees of the importer worked at a related foreign assembly plant but were essentially paid by the importer rather than the assembler. These salary costs were not reflected in the assembler's books of account as an

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expense of doing business but, presumably, were reflected as an expense in the importer's accounts. We held in TAA #46 that as the employees' salaries do not qualify as assists, these costs would not be included in the computed value of the imported merchandise.

However, in the two factual situations before us, the salary costs are reflected as expenses in the accounts maintained for the assembler by the importer, but not in the importer's own expense accounts. Therefore, we believe that the issue of whether that portion of the salary costs paid directly by the importer constitutes a dutiable assist does not arise inasmuch as these expenses are already considered dutiable as part of the "amount for profit and general expenses" under computed value or as part of the "price actually paid or payable for the merchandise" under transaction value. This position is consistent with our holdings in TAA #18 dated February 27, 1981, TAA #23 dated April 3, 1981, and TAA #44 dated July 20, 1982. For example, in TAA #18 we stated the following.

> ...air conditioning equipment, a power transformer, telephone switching equipment and emergency generators (provided without charge by an importer to a related foreign producer) do not fall within the definition of assists, as they are not used in the production of the merchandise. Accordingly, unless they are carried on the books of the foreign producer, their cost or value may not be apportioned to the merchandise, and is not includable in transaction value or computed value. (emphasis added.)

Moreover, in TAA #23 we stated the following concerning the dutiability of certain design expenses incurred by a United States importer:

> Accordingly, we cannot categorically state that design expenses are not dutiable for purposes of computed value. We can state, however, that in those cases where such design costs are not carried on the producer's books as either a cost or value of materials and of fabrication, or as a general expense, and such treatment is in accordance with generally accepted accounting principles, such costs would not be part of computed value.

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In answer to your fourth, fifth and sixth questions, it is our opinion that none of the cited factors is a consideration in determining the dutiability of labor costs where, as is the case in the factual situations before us, those costs are recorded as an expense in the foreign producer's commercial accounts.

(Signed) Harvey B. Fox

Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

12 MAR 1986

CLA-2 CO:R:CV:V
543659 EG

Mr. Peter Klestadt, Esq.
Grunfeld, Desiderio, Lebowitz
& Silverman
Two World Trade Center, Suite 2238
New York, New York 10048

Dear Mr. Klestadt:

This is in response to your letter of December 11, 1985, requesting a binding ruling concerning the transaction value of certain free quota merchandise under section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). In responding to this request, we are assuming that you no longer are seeking a ruling as to your November 22, 1985, letter.

You indicate that your client (importer) will order merchandise from its main factory in Taiwan at the actual contract price. The factory in Taiwan will ship this merchandise to your client at a "high" price due to free quota considerations in Taiwan. A letter of credit will be opened by the importer to the factory, and the factory will be allowed to draw down at the high price. Soon thereafter, a corporate check will be issued by the factory to the importer in Taiwanese currency in an amount equal to the difference between the high invoice price and the actual contract price. You further indicate that the check is accompanied by an itemization which lists the shipment details.

It is your contention that the appraised value should be that of the actual contract price, rather than the higher invoice price. You have requested a binding ruling to this effect.

The U.S. Customs Service recently published T.D. 86-56 in the Federal Register which prohibits transactions such as those described in your ruling request. As indicated in the cited T.D., "section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), requires that importers file with Customs documentation which, among other things, allows Customs 'to assess properly the duties on the merchandise, [and] collect accurate statistics with respect to the merchandise * * *.'" A false purchase price appearing on an invoice does not satisfy this requirement. Moreover, the invoice fails the requirement imposed by 19 U.S.C. 1481(a)(5), that each invoice is to set forth "the purchase price of each item * * *."

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Enclosed please find T.D. 86-56 which clearly encompasses the prospective transactions which you describe. Therefore, your request for a ruling which allows entry of the imported merchandise at the contract price with proof of a rebate by the exporter to the importer is denied.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

543659

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DATE: FEB 28 1986

FILE: CLA-2 CO:R:CV:V
543693 EG

TO : District Director of Customs
Savannah, Georgia 31401

FROM : Assistant Commissioner (Commercial Operations)

SUBJECT: Phillips-Van Heusen Corporation - 520 Claim

This is in reference to your note of February 2, 1986, attaching an application for relief filed on behalf of Phillips-Van Heusen Corporation (importer) by Ross & Hardies (attorneys) pursuant to 19 U.S.C. 1520(c)(1) for reliquidation of entry 85-344697-6 of February 4, 1985, liquidated March 1, 1985.

The importer's attorney states that the merchandise in question, i.e., wearing apparel from Korea, was entered at the invoiced values. However, it is claimed that these figures were incorrect and that the merchandise should have been entered at the price on the purchase order. This occurred because neither the importer's customhouse broker nor the import specialist involved were notified of the fact that the invoiced values were not the prices agreed to between the buyer and seller. Actually, the true price was lower than the invoiced price.

The above transaction is part of a high-low arrangement intentionally agreed to by the importer to pay a higher price for merchandise in order to obtain permission to export. In return, the supplier agrees to invoice other merchandise at lower than the actual price.

Based upon these price manipulations, the importer claims that the excess duty paid on the entry in liquidation is refundable pursuant to 19 U.S.C. 1520(c)(1). That section provides authorization to reliquidate an entry to correct "a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law..." which is brought to the attention of the Customs Service within one year of entry. The importer states that the error in this case is one of "inadvertence."

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In Headquarters Ruling 723218 JL, dated May 8, 1984, (copy attached), the same price manipulations occurred between an importer and foreign manufacturers. Invoice prices were considerably higher than actually agreed upon purchase order prices between the parties. The importer paid the invoice prices and the excess payments were to be offset on subsequent shipments by an underpricing of non-quota merchandise. However, entries were made at the invoice prices rather than the lower purchase order prices. The unit prices of the imported textile products were intentionally overstated in order to obtain visas under the quota procedure. In that case, reliquidation pursuant to 19 U.S.C. 1520(c)(1) was denied.

The inadvertence or error which occurred was due to an intentional submission by the importer of an invoice which did not represent the actual price agreed to between the importer and the seller. The submission of the invoice bearing a price which was not the actual price was not a clerical error, mistake of fact, or inadvertence. The characterization of the use of the higher invoice price as an "inadvertence" is incorrect. It is well-established that "negligence, or negligent inaction, by an importer (or his agent) which causes the error sought to be remedied under section 1520(c)(1) will preclude relief being granted." See Ruling 723218 JL.

Your attachment is returned.

(signed) Michael H. Lane

Michael H. Lane

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APR 1 1986

CLA-2 CO:R:CV:V
543709 EGK

Mr. Frank M. Murphy
Customs Manager
Volkswagen of America, Inc.
888 W. Big Beaver
Post Office Box 3951
Troy, Michigan 48007-3951

Dear Mr. Murphy:

In your letter of February 27, 1986, you request a ruling as to the method of appraisement of merchandise pursuant to the valuation statute, section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). You further request a ruling as to the proper importer of record pursuant to 19 U.S.C. 1484.

You indicate that Volkswagen of America, Inc. ("U.S. company") has contractually agreed with Volkswagen AG, Wolfsburg, W. Germany ("manufacturer") whereby the U.S. company intends to sell vehicles in the United States to retail customers for delivery in Europe. You call this arrangement the European Tourist Delivery Program (ETDP). In accordance with this program, a retail customer in the United States contracts with an authorized Volkswagen or Audi dealer for delivery of the vehicle in Europe. The purchase price paid by the customer includes costs incurred for the return of the vehicle from designated shipping agents in W. Germany to the U.S. dealer. An additional charge is borne by the U.S. customer if the vehicle is dropped off at a location other than that designated by the program.

You describe the sequence of events in a typical ETDP transaction as follows. An order is placed by the customer with an authorized dealer, which is received within 5 days by the U.S. company. When the order is received, a telex order from the U.S. company to the manufacturer is transmitted. Within approximately a 1-month time frame, the manufacturer confirms the order with both the U.S. company and the customer. An invoice is sent to the customer as well as to the U.S. company. The invoice received by the U.S. company covers all vehicles delivered in a 1-month period under the ETDP.

You further state that ETDP vehicles may only be purchased through the U.S. company through franchised dealers. All imported vehicles are produced pursuant to the request or order of the U.S. company. The obligation for insuring the vehicle during transit from Europe to the U.S. dealer is assumed by the U.S. company.

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Based upon these facts, it is your contention that the vehicles should be appraised under transaction value pursuant to section 402, Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). Furthermore, you state that "the price actually paid or payable for the imported merchandise when sold for exportation to the United States," is represented by the invoice price between the U.S. company and the manufacturer, rather than the invoice price between the U.S. company and the U.S. retail customer.

We agree with your conclusion regarding which "sale" governs for purposes of valuation of the imported vehicles. As you have indicated, TAA #57 holds the following:

> [I]t is the position of the Customs Service that the transaction to which the phrase 'when sold for exportation to the United States' refers when there are two or more transactions which might give rise to a transaction value, is the transaction which most directly causes the merchandise to be exported to the United States.

In the instant case, the transaction which most directly causes the merchandise to be exported to the United States is the transaction between the U.S. company and the manufacturer. It is this transaction which will govern for purposes of appraisement, assuming that the related party transaction is acceptable within the meaning of section 402(b)(2)(B) of the TAA.

It is our opinion that the U.S. company's interest in the vehicles is not sufficient to qualify it as importer of record. Accordingly, the U.S. company may be designated as consignee on the shipping documents which would entitle it to appoint a licensed customhouse broker to make entry in his own name as importer of record. Otherwise, entry can only be made by the importer or his designated broker pursuant to a properly executed power of attorney.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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(10) REVIEWER	(13) REVIEWER	(14) REVIEWER	
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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73) (Previous editions may be used)

543709

AUG 22 1984

CLA-2 CO:R:CV:V
553100 CW

553100

[redacted]

Dear [redacted]

This is in response to your letter of May 21, 1984, in which you request a ruling regarding the applicability of the duty-free provisions of the Caribbean Basin Initiative (CBI) to wire produced from wire rod in a CBI beneficiary country.

You advise that your company is considering the feasibility of starting off-shore production of high carbon wire, classifiable under item 609.4315, Tariff Schedules of the United States, for export to the United States. You specifically inquire as to whether the processing of wire rod to wire represents sufficient transformation of a product into a new item of commerce as required under the CBI.

We should state initially that since wire, classifiable under item 609.4315, is not among the articles specifically excluded from CBI treatment, it would be eligible for duty-free entry provided that all requirements under the CBI are met. For your information, we have enclosed a copy of the interim CBI regulations, which are set forth in section 10.191 through 10.198 of the Customs Regulations (19 CFR 10.191 - 10.198).

As you may be aware, an article from a beneficiary country is entitled to duty-free treatment under the CBI provided that (1) the article is imported directly from a beneficiary country into the Customs territory of the United States, (2) the article is the growth, product or manufacture of a beneficiary country, and (3) at least 35 percent of the appraised value of the article is attributable to the sum of the cost or value of the materials produced in one or more beneficiary countries, plus the direct costs of processing operations performed in one or more beneficiary countries. For purposes of determining the 35 percent value-content requirement, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the Customs territory of the United States (other than Puerto Rico).

With respect to the first requirement set forth in the preceding paragraph, we direct your attention to section 10.193 of the interim CBI regulations which defines the words "imported directly." Concerning the second requirement, section 10.195 provides that if an imported article is not wholly the growth, product or manufacture of a beneficiary country, then this

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requirement may be satisfied only if the imported article is a new or different article of commerce which has been grown, produced or manufactured in a beneficiary country. Inasmuch as the wire which you plan to import clearly is a new and different article of commerce when compared to the wire rod from which it is made, the wire would be considered to be a product of the applicable beneficiary country for purposes of this CBI requirement.

In regard to the 35 percent value-content requirement, if the wire rod is not wholly the growth, product, or manufacture of a beneficiary country, then its value may be counted toward this requirement only if the rod is substantially transformed in a beneficiary country into a new and different intermediate article of commerce which is then used in the production of a new or different article which is imported into the Customs territory of the United States (see section 10.196 of the CBI regulations). Since the wire to be produced from the wire rod represents the final article which will be imported rather than an intermediate article which will be used in the production of the final article, the cost of the wire rod is not includable in the 35 percent requirement (assuming the rod is not wholly the growth, product or manufacture of a beneficiary country). Of course, the direct costs of the processing operation performed in the beneficiary country may be counted toward this requirement.

Sincerely,

(Signed) Irving W. Smith, Jr.

Harvey B. Fox
Director, Classification
and Value Division

Enclosures

[redacted]

CODE AND DATE		REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER 612
SURNAME							
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

557100

DATE: 07 FEB 1986

FILE: CLA-2 CO:R:CV:V
553373 KP

TO : Area Director of Customs
Jamaica, New York 11430

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 117/84 Concerning the Tariff Classification of a Video Projector

In your memorandum of October 16, 1984 (your reference CLA-2 K:C:DI/III AB K:C:0109), you requested internal advice on the tariff classification of the above-captioned merchandise pursuant to a letter from the importer's counsel dated August 27, 1984. Our decision follows:

ISSUE:

Whether the video projector described below is properly classifiable under the provision for complete television receivers in item 685.11, Tariff Schedules of the United States (TSUS) (1984), the provision for other television apparatus and parts thereof, other, in item 685.22, TSUS (1984), or the provision for electrical articles and electrical parts of articles, not specially provided for, other, in item 688.43, TSUS (1984).

FACTS:

The merchandise in issue is a video projector which is used in conjunction with a video tape player and a viewing screen to show movies or other programs recorded on video tape. Incorporated in the video projector are an electronic chassis, three cathode-ray tubes, three lenses, three

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deflection yokes, three lead glass discs, quadruplers, splitters, and extra high tension cables used to connect the components.

To show a picture, the video projector is connected to the tape player. The tape player then plays a video cassette, converting the video information recorded on the magnetic tape into an electrical signal that is sent through cables to the projector. The projector processes that signal into the final perceptible signal, the video image, which is projected onto the viewing screen.

Technical literature submitted by the importer indicates that the video projector is capable of accepting composite video input signals at a level of 1 volt peak to peak at 75 ohms unbalanced, as well as RGB input signals with a signal level of 0.7 volts peak to peak at 75 ohms unbalanced. The circuitry which processes those signals inside the projector consists of the same type of circuitry used for processing similar signals in color television receivers.

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LAW AND ANALYSIS:

The importer contends that the subject video projector cannot be classified under the tariff provision for complete television receivers in item 685.11, TSUS (1984), because it has no tuner and, therefore, no selectivity capability.

We have previously noted that a television receiver is a particular type of radio receiver. See Customs Rulings CLA-2 CO:R:CV:V 553048 MP (Aug. 21, 1984) and CLA-2 CO:R:CV:V 553020 MS (Nov. 15, 1984). In support of this finding, the importer has provided us with a technical definition of a television receiver which describes that device as "a radio receiver for converting incoming electrical signals into television pictures and the associated sound." Letter from Importer's Counsel dated August 27, 1984, at 4 (quoting R. F. Graf, Modern Dictionary of Electronics 734 (1977)).

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For tariff purposes, a radio receiver has been lexicographically and judicially defined as capable of performing three basic functions: selectivity, amplification, and detection. B & E Sales Co., Inc. v. United States, 9 CIT ___, Slip Op. 85-22 (Feb. 28, 1985). In NEC America, Inc. v. United States, 8 CIT ___, Slip Op. 84-106 (Sept. 25, 1984), the court defined selectivity as "the ability to select a particular frequency from the many radio signals in the atmosphere." This definition is unfit for the tariff provision covering complete television receivers, though, because unlike the radio apparatus provisions, which only cover articles used for the transmission or reception of signals by means of electromagnetic waves transmitted without any line connection, the television apparatus provisions cover the described merchandise regardless of whether the transmission is by electromagnetic waves or by line. Tariff Classification Study of November 15, 1960, schedule 6 at 305.

A definition of selectivity which is more suited to all types of radio receivers, including television receivers, is found in the McGraw-Hill Encyclopedia of Electronics and Computers (S. Parker ed. 1984), which defines the term as "[t]he ability of a radio receiver to separate a desired signal frequency from other signal frequencies, some of which may differ only slightly from the desired value." Id. at 726. By this definition, it is clear that the video projector does not perform a selectivity function. To begin with, the signals which the video projector can accept are not described in terms of frequency, but in terms of signal level. Furthermore, although it can accept certain types of electrical signals and reproduce pictures therefrom, the projector does not and cannot differentiate those signals from other simultaneously transmitted signals. The video projector

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is therefore distinguishable from the single channel paging receivers in NEC America because not only was the signal received by the pagers measured in terms of frequency, but the pagers also had the ability to ferret out that signal from the many radio signals in the atmosphere. Accordingly, the video projector is not classifiable under the provision for complete television receivers in item 685.11, TSUS (1984).

The importer claims that the video projector is properly classifiable under the provision for other electrical articles and electrical parts of articles, not specially provided for, in item 688.43, TSUS (1984), or, alternatively, under the provision for other television apparatus and parts thereof, other, in item 685.22, TSUS (1984). For the following reasons, we agree with the importer's alternatively proposed classification.

Inasmuch as item 685.22 is a more specific tariff provision than item 688.43, it must be shown that the video projector does not fall within the scope of item 685.22 before classification under item 688.43 may be considered. In this regard, the importer maintains that the video projector cannot be classified as television apparatus because such apparatus is provided for in superior headings to item 685.22 as television transmission and reception apparatus, and the video projector is incapable of directly receiving or transmitting signals having frequencies in the range at which commercial television signals are broadcast (i.e., 54 to 890 MHz). However, this argument fails because even though the video projector cannot select a signal having a frequency between 54 to 890 MHz, it nevertheless reproduces visual images by performing the other two functions of a television receiver, viz., amplifying and detecting a baseband video signal. Therefore, although

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the video projector is not a television receiver, it does constitute television reception apparatus. Consequently, in the absence of an even more specific provision therefor, the video projector is classifiable under item 685.22, TSUS (1984).

HOLDING:

The subject video projector is classifiable under the provision for other television apparatus and parts thereof, other, in item 685.22, TSUS (1984), with a column 1 duty rate of 4.2 percent ad valorem. Rulings not in accordance with the principles expressed herein are hereby modified.

(Signed) J. T. Roth

For Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 13 1985

REFER TO

CLA-2 CO:R:CV:V
553607 HS

Mr. Dean Walcutt
President
Certified Oil Company
303 South Front Street
Columbus, Ohio 43215

Dear Mr. Walcutt:

Thank you for your letter of May 8, 1985, regarding the free entry of ethanol under the Caribbean Basin Initiative.

In 1984 we issued a ruling that if azeotropic distillation is performed in a beneficiary country to change beverage grade ethanol into fuel grade this would amount to a substantial transformation permitting duty-free entry upon compliance with the Customs Regulations.

However, domestic interested parties have challenged this position and a notice has been published in the Federal Register inviting written submissions on the question. The comments and views received will be analyzed and evaluated before a decision is made on the petition.

If our 1984 ruling is upheld, the tariff treatment thereunder will of course be extended equally to all importers of fuel grade ethanol. You will note from the enclosures that legislation has been introduced in the Congress which may affect the importation of this commodity.

Sincerely,

Russell Arnold

Russell Arnold
Chief, Value and Special
Classification Branch

Enclosure

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MAR 31 1986

CLA-2 CO:R:CV:V
553656 EM
813165 NY

Peter J. Baskin, Esq.
Sharretts, Paley, Carter &
Blauvelt, P.C.
80 Broad Street
New York, New York 10004

Dear Mr. Baskin:

In your letter of April 3, 1985, on behalf of A & A International, addressed to the New York Customs office and forwarded to us for reply, you asked about the tariff status of certain low-power FM transceivers with headsets (Catalog No. 21-400), the product of Korea.

The merchandise is described in the brochure submitted as a voice-operated, two-way combination FM transceiver, TRC 500 model with headsets, each requiring a 9V battery, and operating on a transmission frequency of 49.830 mHz, not requiring an FCC operating license. The merchandise is also described as a one channel, hands-free, voice-actuated headset walkie-talkie radio with a limited transmission range extending up to a line-of-sight 1/2 mile, and not capable of simultaneous transmitting and receiving. The two-way communication system may be used for recreational activity, such as bicycle outings, and more practical uses such as warehouse inventory, in a hospital, or construction sites, etc.

Such transceivers are aptly defined in the headnote provisions of the Tariff Schedules of the United States (TSUS), as a combination of radio transmitting and receiving equipment in a common housing, employing common circuit components of both transmitting and receiving, and which are not capable of simultaneously receiving and transmitting.

With respect to classification, Presidential Proclamation No. 4561 dated April 7, 1978, 43 F.R. 15127, which became effective on entries made after April 11, 1978, deleted item 685.28, TSUS, and specifically added in item 685.29, TSUS, to include all other hand-held transceivers, and item 685.27, TSUS, included citizen band, except hand-held, transceivers. The purpose was to raise duty rates on imported citizen band transceivers. The classification of low powered transceivers operating on frequencies 49.82 to 49.90 mHz under item 685.26, TSUS, remained unchanged. In 1985, items 685.26 and 685.29, TSUS, were deleted as such and items 685.22 and 685.24, TSUS, respectively, were added in lieu thereof and included the same tariff descriptions.

As a result, low-power radiotelephonic transceivers operating on a frequency range from 49.82 to 49.90 mHz are provided for under item 685.22, TSUS, while all other hand-held transceivers are classifiable under item 685.24, TSUS.

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The term "toylike," with reference to walkie-talkies not requiring a license under item 685.26, TSUS, was first introduced in CIE 5/78 dated September 22, 1978, which provided new statistical breakouts for transceivers (items 685.2600 through 685.2975) pursuant to the cited Presidential Proclamation. However, the term "toylike" as used in the CIE remains vague and indefinite and was not otherwise defined except perhaps that it may have reference to quality of construction of the transceivers. To consider "toylike" as a means for limiting or enlarging a tariff provision when none exists is contrary to proper statutory construction.

On the basis, therefore, that an imported article is classifiable in that tariff provision which most specifically describes it, we believe that the described low-power transceivers, presumably meeting FCC low power standards, are classifiable under the provision therefor in item 685.22, TSUS, since the operating frequency range stated therein of 49.82 to 49.90 mHz is the only expressed limitation of the provision.

Sincerely,

(Signed) RUSSELL J. ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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28 FEB 1996

CLA-2 CO:R:CV:V
553676 EM

District Director of Customs
U.S. Customs Service
477 Michigan Avenue
Detroit, Michigan 48226-2528

Dear Sir:

This ruling is in response to the Application for Further Review of Protest No. 3801-4-000686 dated April 19, 1984. The protest was filed against the decision in the liquidation of Entry No. 84-708322 of November 23, 1983. The entry was liquidated on January 27, 1984.

ISSUE:

The question raised in the protest concerns the applicability of item 801.00, Tariff Schedules of the United States (TSUS), and requirements thereunder, to a steel mold #DD6 exported under an agreement to a Canadian firm by a U.S. company for the production of plastic planters.

FACTS:

One 4-cavity steel mold, valued at $10,500, was previously imported from Portugal by Max Klein Company of Wisconsin. A Canadian Customs form shows that the mold was imported into Canada on August 28, 1983, by Bow Plastics Ltd. In an "exclusive right and license" agreement dated November 24, 1982, and signed by both parties, it was stated that the Bow Plastics Company was responsible for the transportation of the molds back and forth and duties as well as for the care of and any damage done to the mold, and the Bow Company agreed to pay "MK" royalties equal to a percentage of the sales of the plastic planters made from the mold during a certain accounting period of time. The Max Klein Company stated in a letter dated June 7, 1983, that the described DD6 mold was being leased to Bow Plastics and the lease agreement would be considered valid until revoked by either party.

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The Bow Company notified the Customs broker (W. R. Filbin Co.) by letter dated May 18, 1984, that the lease had been accepted on the basis of the consideration of the payment of royalties to Max Klein on the Canadian sale of planters produced from the mold in Canada.

Entry records submitted show that the mold was previously imported into the United States by a Customs broker (W. R. Filbin) for the account of Bow Plastics on Entry No. 83-719159-3 dated July 11, 1983, and duty paid. The Canadian Customs forms show the Max Klein Company to be the owner, vendor and shipper. The mold was presumably later returned to Bow Plastics in Canada by the owner for a second production run and again re-imported by the broker Filbin for the account of Bow Plastics on Entry No. 84-708322 dated November 23, 1983. This entry raised the question of the applicability of item 801.00, TSUS, and gave rise to the protest.

LAW AND ANALYSIS:

Briefly, item 801.00, TSUS, requires the merchandise to be re-imported by or for the account of the person who imported it into, and exported it from the United States, and also the merchandise must have been exported under a lease or similar use agreement. See Sec. 118 of P. L. 98-573.

With respect to the transaction, both agreements, that of November 24, 1982, showing an "exclusive right and license" to use the mold in producing planters, signed by both parties, and the agreement of June 7, 1983, stating that the mold was leased to Bow Plastics Company in Canada, when taken together would give credence and support to the existence of a lease or similar use agreement between the parties. It was intended that the transaction be considered a lease and was specifically

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stated as such in the letter of June 7th. The "exclusive right and license" was the license to use the mold and the fact that consideration therefor was stated in terms of "royalties" rather than a fixed sum appears inconsequential when viewing the transaction as an entirety.

Further, the term "importer" means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The mold was imported into the United States on both occasions from Canada by the Customs agent acting on behalf of his principal, Bow Plastics, who in turn was responsible for the transportation of the molds, back and forth, and given the license to make and sell planters produced from the mold and to pay the duty. Since the Klein Company was the owner of the mold, Bow Plastics was given authority to act on behalf of the Klein Company for shipment of the molds back and forth and to pay the duty thereon. Notwithstanding whose name appears on the entry documents, the submitted documents show a principal-agent relationship between the Max klein and Bow Plastics companies. In those circumstances, the same person was involved with the agreement of the other.

Since the mold was a product of Portugal and imported prior to the dates shown herein, presumably the mold was originally entered duty free under the GSP program. On this basis, the mold was subject to the payment of duty upon its first entry from Canada and met all the requirements of the tariff provision thereafter.

CONCLUSION:

In view of the foregoing, we find that the provisions of item 801.00, TSUS, are available to the importer of the mold in the given

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circumstances. Accordingly, you should grant the protest for the relief requested under item 801.00, TSUS. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

(Signed) RUSSELL A. ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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FEB 4 1986

CLA-2 CO:R:CV:V
553825 KP

Mr. Don Hughes
Imperial Processing Corporation
Post Office Box 479
Kenbridge, Virginia 23944

Dear Mr. Hughes:

This is with reference to your letter dated August 19, 1985, wherein you requested a ruling regarding the eligibility of cigar scrap tobacco from the Dominican Republic for duty-free entry into the United States pursuant to the Caribbean Basin Initiative (CBI).

The cigar scrap tobacco will be produced from cigar leaf tobaccos, some of which are grown in CBI countries and others of which are produced in Europe or the Far East. The manufacturing process for the cigar scrap tobacco will be virtually identical to the procedure set forth in Customs Ruling CLA-2 CO:R:CV:V 553120 KP (Sept. 28, 1984), copy enclosed, with the following exceptions:

1. After the leaf blending step (step 2 in Customs Ruling 553120), the process would continue with the leaf cutting step (step 4 in Customs Ruling 553120).

2. In the leaf cutting step, the leaves would be cut into strips varying from three to six inches in length.

3. After the leaf cutting step, an additional step would be inserted whereby the leaf strips would be sent over searching belts where pickers would remove all foreign matter and objectionable leaves.

4. After the tobacco conditioning step (step 6 in Customs Ruling 553120), the tobacco would be placed in the sweat boxes (step 3 in Customs Ruling 553120), after which the process would be completed as per Customs Ruling 553120 (steps 7 through 11).

In view of the extensive similarity between your proposed operation and the one considered in Customs Ruling 553120, we find that the cigar scrap tobacco emerging from your Dominican processing facility would be a product of the Dominican Republic for purposes of the CBI country of origin requirement.

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You said in your letter that the operating expenses and direct costs of processing the cigar scrap tobacco will, in all cases, exceed the CBI 35 percent "added value" requirement. In this regard, please note that the CBI 35 percent requirement is not a value added criterion; rather, it represents a certain proportion of the appraised value of the CBI article at the time of its entry into the United States which must be attributable to either materials incorporated into the article which were produced in CBI beneficiary countries, the direct costs of processing operations which were performed in CBI beneficiary countries, or both. To the extent that the operating expenses to which you referred do not consist of such material or processing costs, they are not includable towards satisfaction of the CBI 35 percent requirement.

You also stated that the cigar scrap tobacco produced in the Dominican Republic will be imported into Puerto Rico and various ports of the United States. The CBI requires that these importations be made directly from a CBI beneficiary country. If such direct importations are made and the cigar scrap tobacco can be shown to meet the CBI 35 percent value-content requirement, your products will be eligible for duty-free entry into the United States upon compliance with the Customs Regulations.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

Enclosure

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26 FEB 1986

CLA-2 CO:R:CV:V
553831 MR

Area Director of Customs
J. F. K. Airport
Seaboard World Airlines, Bldg. 178
Jamaica, New York 11430

Dear Sir:

This is in response to your decision on Application for Further Review of Protest No. 1001-5-002543, dated February 27, 1985, contesting your classification of certain telephone mouthpieces from Taiwan. The entry, No. 84-864742-1, was liquidated on November 30, 1984.

FACTS:

The imported merchandise, identified as a "Phone-Guard," is a cone-shaped article, approximately one and one-quarter inches high, with a diameter of approximately two and three-eighth inches at its base and roughly one and thirteen-sixteenth inches along its top surface. The assembly consists of a telephone transmitter and a printed circuit board to which serveral wires, connectors, a battery, and various electronic components are connected, all housed in a transparent plastic case. There is a circular pattern of tiny holes in the top of the subject device, and a larger hole in the side out of which an adjustment knob protrudes. The base is hollowed out and the inner rim is threaded so that it may be screwed into the handset of a standard two-piece telephone in place of the phone's mouthpiece.

When attached to a telephone, the Phone-Guard alerts the user when another person is listening to the user's conversation, whether by means of another extension or an external electronic "bugging" device. The user is alerted by an illuminated red light-emitting diode which is visible

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through the top. The illumination occurs upon an intrusion on the phone line during a conversation by the user, and stops when the instrusion ceases. The Phone-Guard does not have any effect on normal telephone operation and otherwise operates as a telephone mouthpiece.

The article was classified and the entry was liquidated under the provision for telephonic apparatus and instruments and parts thereof in item 684.62, Tariff Schedules of the United States (TSUS) (1984), (now item 684.58). The importer/protestant maintains that the proper classification is under the provision for other visual signalling apparatus, which are electrical, in item 685.75, TSUS (1984) (now item 685.70).

553831

ISSUE:

Whether the Phone-Guard is properly classifiable as telephonic apparatus and instruments and parts thereof in item 684.62, TSUS (1984), or more specifically provided for in item 685.75, TSUS (1984), as other visual signalling apparatus, which are electrical.

LAW AND ANALYSIS:

The subject article is a telephone mouthpiece which has a light which notifies the telephone user of an eavesdropper or eavesdropping device on his telephone line. The signalling function does not exist in and of itself; the diode's illumination occurs only within the parameters of telephone usage. Moreover, the subject article contains a telephone transmitter, necessary to the normal functioning of a telephone, and is used chiefly, if not solely, with telephones. When used, it is an operating component of the telephone.

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Accordingly, the device is more than a visual signalling apparatus. It is more specifically described and provided for under the tariff provision for telephone sets and other terminal equipment and parts thereof.

HOLDING:

The Phone-Guard is properly classifiable under the tariff provision for telephone sets and other terminal equipment and parts thereof, in item 684.62, TSUS (1984) (now 684.58).

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to satisfy the notice requirements of section 174.30(a), Customs Regulations, as amended by T.D. 80-271.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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5 MAR 1986

CLA-2 CO:R:CV:V
553850 HS
815044 NY

James A. Resti, Esq.
Mandell, Resti, Pollack and Borakove
Two World Trade Center
Suite 2238
New York, New York 10048-0654

Dear Mr. Resti:

In your letter of August 7, 1985, addressed to the New York region and your letter of November 14, 1985, addressed to Headquarters, you request a ruling regarding the eligibility for duty-free treatment under GSP for paint brushes made of components from the People's Republic of China (PRC) and elsewhere that are assembled in Panama.

Bristles from the PRC will be inserted into PRC - produced tin ferrules by the application of epoxy resin in China and then shipped to Panama. In Panama, the bristles will be combed and cleaned. Loose hairs will be removed and the bristle ends will be trimmed into a chisel shape or evenly, based upon the design specifications and final use of the brush. The appropriate information will be metal stamped into the ferrule, the ferrule will be polished and inspected for adherence to specifications.

Handles that will either be manufactured in the U.S. from raw material from the PRC, the U.S., or a Central American country other than Panama will be shipped to Panama in cut-to-shape condition. In Panama, the handles will be cleaned and polished, have all identifying information die-stamped on the lower part, and trimmed as necessary for insertion into the ferrule. The handle will then be inserted into the ferrule and machine nailed to complete the finished brush. The brushes will then be inspected, and then individually packed into poly bags and boxed for shipment to the United States.

To be considered a product of Panama and eligible for duty-free treatment under GSP, the handles and paint brush heads must undergo substantial processing in Panama and emerge as new and different articles of commerce with new names, characters or uses.

It is our view that the operations that occur in Panama involve a simple assembly operation (insertion of the handle into the ferrule), various finishing operations (combing, cleaning, trimming, polishing, die-stamping) as well as inspection and packaging. While each of these types of operations would not individually qualify as a substantial processing operation the combination of these operations may qualify as substantial processing. However, we do not have to reach a conclusion on this issue, as it is also our view, that the paint brushes are not new and

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different articles than the ferrules within which the bristles have been cemented. In our view, the articles imported into Panama are essentially unfinished paint brushes. The essential character of the paint brushes is established once the bristles are blended, cut, flagged and cemented into the ferrules. The addition of the handles does not substantially change the fact that the brush heads are dedicated for use as paint brushes.

Accordingly, we conclude that the finished paint brushes do not qualify for duty-free treatment under GSP.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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(T.D. 86-7)

This notice limits the decision in Appeal No. 85-670, decided June 14, 1985, holding that certain sewing machine needles may be entered free of duty under the Generalized System of Preferences.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS
WASHINGTON, D.C.,

In The Torrington Co. v. United States, ___ CAFC ___, No. 85-670 (Fed. Cir. June 14, 1985), the Court of Appeals for the Federal Circuit affirmed a Court of International Trade decision holding that certain industrial sewing machine needles made in Portugal are entitled to duty-free entry under the Generalized System of Preferences. The court held that the raw material imported into Portugal, wire, was substantially transformed into new and different articles of commerce, swaged needle blanks, and that the swaged needle blanks were then substantially transformed into other new and different articles of commerce, sewing machine needles. As a result, the value of the swaged needle blanks was includable in the value of the materials produced in the beneficiary developing country (Portugal) for purposes of section 503(a)(2) of the Trade Act of 1974, 19 U.S.C. 2463(a)(2). Since the sum of the value of the materials produced in Portugal plus the direct costs of processing operations performed in Portugal therefore amounted to more than 35 percent of the appraised value of the imported sewing machine needles, duty-free treatment was applied.

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The United States Customs Service disagrees with the court's determination that the process whereby sewing machine needles were produced from the swaged needle blanks constituted a substantial transformation into new and different articles of commerce. The parties to the case stipulated that in the form of swaged needle blanks, the articles were already dedicated for use solely as sewing machine needles with a predetermined blade diameter, and that in the majority of cases, a particular type of swaged needle blank became only a single particular type of needle. Slip op. at 16. Thus, the articles already possessed their inherent character and use as swaged needle blanks; they did not acquire those qualities as a result of the simple refinements made to them once they were in blank form. Therefore, no substantial transformation occurred, so the value of the swaged needle blanks should not have been includable in the value of the materials produced in Portugal for purposes of meeting the 35 percent value-content requirement of the Generalized System of Preferences.

Accordingly, the Torrington decision shall be applied only in those instances in which the factual situation conforms to the one on which the decision is based.

Commissioner of Customs

553889

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FEB 11 1986

CLA-2 CO:R:CV:V
553893 EM

District Director of Customs
U.S. Customs Service
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2528

Dear Sir:

This ruling is in response to the Application for Further Review of Protest No. 3802-4-000035 dated February 16, 1984. The protest was filed against the decision in the liquidation of Entry Nos. 83-123362 & 63 of February 23, 1983 and 83-123915 of March 16, 1983, at Port Huron. The entries were liquidated on November 18, 1983.

ISSUE:

The questions raised concern the tariff classification as well as the eligibility of certain process control systems under item 807.00, Tariff Schedules of the United States (TSUS).

FACTS:

The imported merchandise is described as Sentry Process Control Systems and related component equipment for the pulp and paper industry and for controlling coating weight measurement for the metals industry. The Sentry 300 SG System is described as a process control for the pulp and paper industry and consists of a precision scanner/sensor, sensor and process control modules, and a computer operator station and printer. The Sentry 8500 Battery Paste Measurement and Control system consists of a gammagauge sensor/scanner, paste weight digital meter, an operator's station, and a systems printer.

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With respect to documentation accompanying the entries, it is stated that the importer (Sentrol Systems Ltd., Downsview, Ont., Canada) generally enters merchandise on invoices using estimated costs. A written request was made for corrected commercial invoices, showing corrected engineering costs for each entry as well as a sales contract or purchase order and proof of payment, in order to establish the true value of the imported merchandise.

Instead of submitting corrected invoices, revised pro forma invoices were submitted with the protest, showing a cost that was $20,203 lower for the Sentry 300 SG system than that shown originally and $30,542 lower than that shown upon entry of the MDSA 8500 battery system. Other articles, such as a BG source and detector head and a process interface module, listed at $5,819, and $15,738, respectively, were on revised invoices but omitted on the original invoices. Other articles such as a system cable were listed on the original but omitted on a revised invoice. All are listed in Canadian currency and a process control station was listed at $42,585 on a revised invoice but omitted entirely on the original invoice.

Further, assembler's declarations submitted in support of item 807.00 allowances were incomplete in failing to show the port from which the materials claimed to be of United States origin were exported and the date of exportation.

The importer claims that the process control stations should be classified under the provision for parts of machines for making paper and paper-making machinery in item 668.06, TSUS, while the district director's position is that the articles should be classified as parts for electrical

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measuring, checking, analyzing, or automatically controlling instruments and apparatus in item 712.49, TSUS, and that allowances under item 807.00, TSUS, should be denied on the basis of incomplete documentation.

LAW AND ANALYSIS:

The protestant claims that the costs for the process control stations and detector heads were included in the original estimated invoices but were shown as break-out or separated items on corrected invoices for all three entries and, therefore, the process control stations and detector heads should be classifiable under items 668.06 and 709.66, TSUS, respectively, on the basis of a previous ruling letter dated May 15, 1981, 055820. This ruling concerned the classification of a process control station primarily used for the control of papermaking under item 668.06, TSUS, but whose sensory function depended upon the use of radioactive emissions.

With respect to the classification of the listed parts making up the Sentry 300 SG Control system, the precision sensor/scanner and sensor control modules are primarily used as parts of electrical measuring instruments and as such are separately classifiable under the provision therefor in item 712.49, TSUS, whether or not imported with the remaining parts of the system. With respect to the classification of the remaining parts of the 300 SG system, the component process control module is a general process interface module that can be programmed for any specific application and is appropriately classifiable under the provision for electrical articles, not specially provided for, in item 688.43, TSUS. The component computer control station is classifiable as a control panel under item 685.90, TSUS, and the printer, assuming it to be of the free

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standing line type for making hard copies, is classifiable under the provision for office machines, not specially provided for, in item 676.30, TSUS. See letter dated July 10, 1984, 071481.

On the other hand, the gammagauge sensor/scanner component of the Sentry 8500 Battery Paste Measurement and Control System depends on gamma radiation particles to produce a current digital signal which is displayed on a paste weight meter and relayed to the operator's station. Operation of the sensor detector heads depends on a microprocessor which uses gamma transmission to measure accurately paste weight after separating out other variables. This is the basis for automatic control of the paste application. From this view, the gammagauge sensor/scanner is classifiable under the provision for apparatus based on the use of radiations from radioactive substances, and parts thereof, in item 709.66, TSUS.

The computer operator's station is classifiable as a control panel under item 685.90, TSUS, and the printer, if of the free standing line type, is classifiable under the provision for office machines, not specially provided for, in item 676.30, TSUS. If the printer is a teleprinter or teletypewriting machine, it is classifiable under the provision therefor in item 684.65, TSUS. However, in either case, if the printer is a product of United States origin and has not been advanced in value or improved in condition by any means while abroad, it may be entered free of duty as American goods returned under item 800.00, TSUS, upon compliance with the regulations.

With respect to the failure to submit complete proper documentation in support of item 807.00 claims and the invoice values raised in the protest, an importer may take advantage of the late filing of supporting

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documents under Sec. 10.112 of the regulations only when the failure to file in a timely manner was not due to willful negligence or fraudulent intent. Upon a request for additional documentation through the medium of a notice of action covering contemplated appraisement and disallowances of item 807.00 claims, the importer submitted revised invoices with the protest, showing lower values for the imported merchandise and lower engineering charges, with no substantiating documents. Here, the failure to list the port and date of export from the United States on the Assembler's Declaration, data that is necessary to show the United States origin of the goods for which allowances are claimed under item 807.00, TSUS, in compliance with the regulations, as well as the revised invoices submitted with the protest that show a break-out of components subject to lower rates of duty and lower engineering costs, all appear to be self-serving submissions tendered without proper support. There were no reasons offered to explain the discrepancies or the resulting confusion of lower revised values and omissions. Corrected commercial invoices were called for but not submitted. In these circumstances, the importer may not take advantage of the late-filing privileges of the regulations.

CONCLUSION:

On the basis of the above, appraisement of the entered merchandise should be at the higher submitted invoice values and engineering costs and at rates of duty in accordance with the foregoing classifications and you should deny the protest for item 807.00 tariff relief on the ground of

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insubstantial compliance with the regulations and the importer's failure to submit adequate satisfactory documentation. A copy of this decision should be attached to your Form 19 Notice of Action to be sent the protestant.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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27 MAR 1986

CLA-2 CO:R:CV:V
553903 MR

District Director of Customs
San Francisco, California 94126

Dear Sir:

This is our decision on Application for Further Review of Protest No. 2809-5-000817, dated June 3, 1985. The protest concerns entry 84-224594-2, dated December 16, 1983, and liquidated April 26, 1985. The merchandise involved is Commodore color television monitors from Japan.

FACTS:

The color monitor, designated by the importer/protestant as the C1702, provides color video capabilities to a Commodore computer. Measured diagonally, the monitor's "picture" screen is 13 inches. It has a built-in audio amplifier and speaker, and allows control of color, tint, brightness, contrast, vertical hold, and horizontal hold, as well as volume. It can accept composite video and audio input signals from video cassette recorders which have an output level of 1 volt peak to peak, at 75 ohms.

The entry for the monitor was liquidated under the provision for complete television receivers, in item 685.11, Tariff Schedules of the United States (TSUS), (1984, now 684.92). The importer/protestant maintains that the proper classification of the article is under the provision for other television apparatus and parts thereof, other, in item 685.22, TSUS (1984, now 685.08). In the alternative, he asserts that the proper classification would be in item 676.30, TSUS, as office machines, not specially provided for.

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ISSUE:

Whether the subject color monitors are complete television receivers, or are properly classifiable as either other television apparatus and parts thereof, or office machines not specially provided for.

LAW AND ANALYSIS:

We have consistently determined that a television receiver is a particular type of radio receiver. See Customs Rulings 553048 (Aug. 21, 1984); 553020 (Nov. 15, 1984). Moreover, we have held that, for an article to be a complete television receiver for tariff purposes, it is not enough that it has the capability to detect and amplify a baseband video signal input from another source such as a video cassette recorder. In our ruling 553373 (Feb. 7, 1986), which concerned a video projector device with essentially the same input compatibility, it was held that the absence of a selectivity function (i.e., the ability to separate a desired signal frequency from other signal frequencies as in the reception of television signals), precluded classification under the provision for complete television receivers in item 685.11, TSUS (1984; now 684.92).

While the subject color monitor does accept certain types of electrical signals and reproduce pictures therefrom, such as a baseband signal from a video cassette recorder, it does not have the capability to accept and ferret out any particular signal or signals from the many radio signals in the atmosphere. Accordingly, it is not classifiable under the provision for complete television receivers in item 685.11, TSUS (1984; now 684.92).

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The importer asserts that the monitor is properly classifiable under the provision for other television apparatus and parts thereof, other, in item 685.22, TSUS (1984, now 685.08), or, alternatively, under the provision for office machines not specially provided for, in item 676.30, TSUS. Inasmuch as the former provision is more specific than the latter, it must be shown that the monitor does not fall within the scope of television apparatus before classification under item 676.30, TSUS, can be considered.

Although the monitor is not a complete television receiver because of its inability to select and separate signal frequencies, it can reproduce visual images by accepting certain types of video signals with a signal level of 1 volt peak to peak, which is standard television transmission. It is, therefore, television reception apparatus. See Customs Ruling 071263 (October 9, 1985).

HOLDING:

The Commodore color monitor, C1702, is classifiable as other television apparatus and parts thereof, other, in item 685.22, TSUS (1984, now 685.08). The protest should be allowed. A copy of this decision should be attached to the Form 19 Notice of Action to satisfy the notice requirement of section 174.30(a), Customs Regulations, as amended by T.D. 80-271.

Sincerely,

(Signed) RUSSELL ARNOLD

3/1 Russell Arnold
Chief, Value and Special
Classification Branch

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CORRESPONDENCE APPROVAL AND CLEARANCE Form

553903

MAR 12 198

CLA-2 CO:R:CV:V
553930 MR
813692 NY

Mr. Dave Corry
Director of Logistics
ISOETEC
6 Thorndal Circle
Darien, Connecticut 06820

Dear Mr. Corry:

This is in reply to your letter, dated May 3, 1985, to the Regional Commissioner of Customs, New York, in which you requested a ruling concerning the tariff classification of key telephone stations from Korea.

The key telephone station is a device which is used to make and receive telephone calls. It functions in the same manner as a standard telephone instrument. When connected with a key system unit, or other certain telephone switching apparatus, access can be provided to multiple lines and other capabilities can be made available.

You state that the key telephone station you import should be classified under item 684.57, Tariff Schedules of the United States (TSUS), as telephone switching apparatus, rather than under item 684.58, TSUS, as a telephone set. You assert that your key telephone station can be used only with your telephone switching apparatus, and cannot be connected directly through the telephone lines. You, therefore, believe it should be classified as a part of a telephone switching system.

Pursuant to General Headnote 10(ij), TSUS, a tariff provision "for 'parts' covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part." Accordingly, the question presented is whether item 684.58, TSUS, "more definitely describes the article" as a telephone set, thereby prevailing over item 684.57, TSUS, which would provide for the article as telephonic switching apparatus, parts. United States v. Penbrant Electronics, Inc., 64 CCPA 1, 6, C.A.D. 1175 (1976).

The requirement that the subject article can only be used in conjunction with your key telephone switching apparatus, rather than through direct connection to outside telephone lines, does not change its identity, character, or use as a telephone set. The provision for telephone sets, item 684.58, TSUS, is not limited to instruments which can be directly connected to an outside line. More important, even though the device can only be used in conjunction with your key telephone switching apparatus, its identity, character, and use as a telephone set is not altered.

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The key telephone station is accurately described by the classification which recognizes its chief use as a telephone set. Consequently, General Headnote 10(ij) precludes classification as a part of a telephone switching apparatus under item 684.57, TSUS, and it must be classified under the specific provision for a telephone set in item 684.58, TSUS.

Sincerely,

(Signed) RUSSELL J. ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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5 MAR 1986

CLA-2 CO:R:CV:V
553945 EM

S. Richard Shostak, Esq.
Stein Shostak Shostak & O'Hara
3580 Wilshire Boulevard, Suite 1240
Los Angeles, California 90010-2597

Dear Mr. Shostak

In your letter of December 12, 1985, on behalf of Rockwell International, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain foreign-made microelectronic circuits, filters, resistors, transistors, diodes, and capacitors, that are inserted into printed circuit boards in the United States by an automatic (auto) process and exported to Mexico as subassemblies for further assembly into lightwave and microwave transmission systems, which are returned to the United States.

It is stated that the components to be inserted by the auto process will be in kit form, referred to as kit No. 0674, and the subassembly, along with other components exported to Mexico will also be in kit form No. 0648. Large quantities of components will be auto inserted in the United States on printed circuit boards and exported to Mexico along with other components for final assembly.

In Mexico, the exported components will be wave and hand soldered and inspected after final burn-in testing. Auto insertion is defined as a manufacturing process consisting of automated mechanical placement, positioning of leads, inserting, and cutting and clinching of electronic components of various configurations into printed circuit boards. During the auto insertion cycle, the placement and insertion of components takes place in a series of steps designed to feed the parts to the auto inserter equipment. Printed circuit boards are positioned and held in place on a movable worktable which travels along an X and Y axis at right angles to each other. As the component positioning takes place, the drivers insert the component into the board in a downward movement while the leads pass downward into the cut-and-clinch units of the machine and are cut to specified length and clinched to the board. Upon completion of the cycle, the components are said to be permanently inserted and dedicated to the board and are ready for wave and hand soldering when exported to Mexico. Basic guidelines are designed for the blank boards to achieve maximum efficiency of the automatic process.

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It is stated that about 80 percent of the discrete electronic components, or about 400 selected components of both foreign and domestic origin will be inserted into domestically made board blanks in the United States. Approximately 100 or so components will be exported and manually stuffed and welded to the boards during the final assembly. Final steps consist of cleaning the boards to remove contaminants and testing and final burn-in as a quality control measure to screen out defective and marginally defective components. Acceptable assemblies will be returned to the United States.

With respect to a foreign assembly, item 807.00, TSUS, provides for exported United States components that are designed to be fitted with other components in an assembly process, with no operations performed thereon except for attachment of the components to form the imported merchandise and operations incidental thereto.

In order for an article to be considered substantially transformed into a new product, it must undergo a manufacturing operation that results in the emergence of a new and different article having a distinct name, character, or use, different from that previously possessed by the originally imported article. In this respect, we agree that the auto insertion of some 400 components of mixed origin into circuit board blanks, with a substantial degree of permanence and dedication attached to the overall integrated pattern, would amount to such a conversion that results in a new and different article of commerce. The identity of each component is lost and becomes subordinated and merged into a new identity with a new name, character, and use.

Since the interim operations done in the United States appear sufficient to have transformed the foreign components into a domestic product, the printed circuit board, allowances may be made for their value under item 807.00, TSUS, upon compliance with the regulations.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15)

553945

MAR 10 1986

CLA-2 CO:R:CV:V
553975 MR
815552 NY

Leonard M. Fertman, Esq.
2049 Century Park East, Suite 1800
Los Angeles, California 90067

Dear Mr. Fertman:

In your letter dated September 6, 1985, you requested a ruling on behalf of your client, Phone-Mate, Inc., concerning the classification of certain telephone devices identified as Phone-Mate Model No. 8050 and Phone-Mate Model No. 9750. Both are manufactured in Japan.

Both Phone-Mate Models at issue consist of a telephone, telephone answering/recording mechanism with remote activation/playback capability, and digital display clock. You state that the Model 9750 also has "2 lines, 3-way conferencing and capability of multiple greetings."

In your letter, you assert that the Phone-Mate should be classified under item 678.50, Tariff Schedules of the United States (TSUS), as a machine not specially provided for; or a combination machine containing a tape player. In the alternative, you assert the proper classification would be under item 676.30, TSUS, as an office machine not specially provided for.

You state that the subject article is more than telephone apparatus, thereby precluding classification under item 684.58, TSUS. Specifically, you believe that the subject article's clock, beeperless remote capability, and recording capability for use as dictating machine involve significant non-subsidiary functions which are not included in the definition of telephone apparatus.

Item 684.58, TSUS, specifically provides for telephone sets and other terminal equipment and parts thereof. The question presented is whether the subject article is, in character or function, something other than telephone apparatus as described by this provision - either more limited or more diversified. If the difference is significant, classification is precluded. However, if the difference is in the nature of improvement or amplification, and the essential character of the article is preserved or only incidentally altered, the applicable rule is that an ec nomine statutory designation includes all forms of the article in the absence of a contrary legislative intent or commercial designation. Robert Bosch Corp. v. United States, 63 Cust. Ct. 96, 103-104, C.D. 3881 (1969).

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The presence of the digital display clock is incidental to the function of the subject article. Moreover, the physical joinder of a telephone answering/recording function to a telephone does not in and of itself render the subject article excluded from its normal provision as a telephone set. The recorder function, remote playback, and multiple lines capability all relate primarily and directly to the function of the Phone-Mate as a telephone set; they contribute only to a certain improvement and amplification of telephone function in a subsidiary and auxiliary manner, by allowing automatic telephone answering and telephonic message receiving.

The capability of receiving and transcribing dictation is nothing more than incidental to the presence of a recording function in the telepone set. It is a "feature" rather than a co-equal function. It does not alter the subject article's essential character as a telephone set more than incidentally. Most important, it does not approach contributing as much as the telephone function does to the identity of the Phone-Mate as anything other than a telephone set.

Consequently, the Phone-Mate, Models No. 8050 and No. 9750, are specifically described and are properly classified as telephone sets under item 684.54, TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD
Russell Arnold
Chief, Value and Special
Classification Branch

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MAR 10 1986

CLA-2 CO:R:CV:V
553981 EM

Luis Chavez, Esq.
Kemp, Smith, Duncan & Hammond
Attorneys at Law
Post Office Drawer 2800
El Paso, Texas 79999-2800

Dear Mr. Chavez:

Re: LC No. 86-0003

In your letter of January 21, 1986, on behalf of Seamless Hospital Products Company, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain articles identified as dry jar humidifiers and nebulizers which are proposed for assembly in Mexico from components of United States origin.

Samples, photographs, and an assembly process description were submitted. Humidifiers and nebulizers are described as medical devices for maintaining humidity and reducing a medical solution to a fine spray, respectively. Both are sold in case quantities to hospitals, nursing homes, and similar health care facilities, and will be sterilized after importation into the United States. The units are assembled in a product capacity range from 250 ml. for humidifiers to 500 ml. for nebulizers.

The components are listed as injection molded plastic jars, brass poppets, humidifier jar cap and poppet assemblies, cap and nut assemblies for both products. Polybags, cartons, and polyethylene film in rollstock, are also exported from the United States.

In the assembly process, the exported plastic jars are first conveyed through a gas flame to removes all oils and residues as a preparation for subsequent screen printing of such data as product and lot number, identification as humidifier or nebulizer, and jar capacity. The remaining operations consist of staking brass poppets to the cap assemblies, joining tubing to diffusers, and mounting the stem assemblies on the respective product jars. Final steps consist of packaging the units by means of a Bodolay bagging machine which draws sheets of exported polyethylene film from a roll, seals three sides to form a bag and seals the fourth side to enclose the packaged jar units within. They are then packed, some 50 packaged units to a shipping carton which is labeled and sealed for return to the United States.

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With respect to a foreign assembly, item 807.00, TSUS, provides for the assembly of American components that are exported in condition ready for assembly without further fabrication.

On the basis of the samples, photographs, and descriptive literature, allowances may be made under item 807.00, TSUS, for all component parts making up the completed articles, upon compliance with regulations. This would include the bags that are made from sheets of polyethylene film exported on a roll, cut and sealed on three sides to form the pouches. Removing oils and other contaminants and printing identifying data on the jars are considered incidental to the overall assembly.

Shipping cartons and labels as a part of packaging materials may be returned free of duty under the provisions of General Headnote 6(b)(i), TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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MAR 1 1986

CLA-2 CO:R:CV:V
553982 EM

Luis Chavez, Esq.
Kemp, Smith, Duncan & Hammond
Attorneys at Law
Post Office Drawer 2800
El Paso, Texas 79999-2800

Dear Mr. Chavez:

Re: LC No. 86-0004

In your letter of January 21, 1986, on behalf of Seamless Hospital Products Company, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to Bubbler H/O humidifiers, Product Nos. 300-20033800 and 300-20033500, that are proposed for assembly in Mexico from components of United States origin.

Samples, photographs, and a description of the assembly process were submitted. The humidifiers are medical devices generally used in hospitals, nursing homes and similar health care facilities, for maintaining humidity.

The components are listed as brass poppets, plastic molded poppet housings and whistle chambers, cap and nut assemblies, diffusers, plastic tubes ranging in length from about 4 1/2 to 6 3/4 inches, port caps, and polybags. The assembly operations merely consist of combining all the exported components together, first by aligning the brass poppets and whistle chambers into the poppet housings, and fitting the poppet assembly into cap housings, all carried out in an assembly fixture conveyor system. The tubes and diffusers are joined, port caps are fitted over airflow outlets, and the tubes are inserted within the underside of the cap assemblies. Some assembled humidifiers (No. 300-20033800) are placed in mylar pouches and the open end is sealed in a Chaffee sealing machine using heat and pressure. The remaining humidifiers are bagged in Bodolay machines, which draw sheets of polyethylene film exported in rollstock form. Two sheets are used to make a bag by first sealing three sides with the humidifier inserted within and sealing the open end closed. Some bagged units are packed 128 to a shipping carton while others are packed 228 to a carton. Lot numbers are stamped on shipping labels which are attached to sealed cartons for return to the United States.

With respect to assembly operations, item 807.00, TSUS, provides for the assembly of American components that are exported in condition ready for assembly without further fabrication.

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On the basis of the sample products, photographs, and description of the assembly operations, allowances may be made for the value of the exported components, including the paper and mylar rollstock materials, that are merely joined in an assembly abroad. Cutting the rollstock material is considered incidental to its assembly into pouches enclosing the assembled humidifiers within, after the pouches are made from sheets of film pulled from the exported rolls.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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DATE: 28 FEB 1986

FILE: CLA-2 CC:R:CV:V
553986 EM

TO : Area Director of Customs
New York Seaport
New York, New York 10048

FROM : Chief, Value and Special Classification Branch

SUBJECT: Further Reconsideration PFR 0901-3-000413 Buffalo - Wall Covering Material

This has reference to your memorandum dated January 10, 1986, requesting a further review of a partial denial of item 807.00, Tariff Schedules of the United States (TSUS), to polyester/cotton scrim material that is exported in long material lengths and laminated abroad with foreign vinyl material. This was the subject of a previous ruling dated May 20, 1985, 553617, and memorandum dated November 26, 1985, 553787.

Scrim fabric substrate material was exported to Canada in continuous rolls measuring about 62 1/2 inches wide and laminated abroad with foreign-made vinyl material by means of a calendering process. The 62 1/2 inches wide laminate was trimmed on each side to 54 in. widths. The wall covering material was then returned to the United States in commercial rolls measuring 54 in. wide x 30 yd. long, the laminated continuous rolls having been cut to 30 yd. lengths. Or, the material may be returned in retail size rolls measuring 27 in. wide x 5 1/3 or 10 2/3 yd. long, making up single and double rolls, respectively. During the take-up process, the laminated material was also slit down the middle by introducing a third knife in order to form two 27 in. widths. The imported laminated materials are regarded as piece goods and will be cut to size and shape after importation.

The claim is made in the present memorandum that item 807.00, TSUS, should be equally applicable to both commercial (54 in. x 30 yd. long) and retail sizes (27 in. wide x 5 1/3 or 10 2/3 yd. long), on the ground that there is no further fabrication of the already laminated materials, except for the addition of a third knife which slits the 54 in. wide material into two 27 in. rolls.

Notwithstanding whether or not the imported materials may be classifiable under Schedules 3 or 7, TSUS, we remain of the position that exported uncut fabric materials that are cut according to a pattern or shape

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abroad are not regarded as fabricated components at the time of exportation from the United States under item 807.00, TSUS. See sec. 10.14 et seq. of the regulations for fabricated components that are subject to the tariff exemption distinguished from those that are not. Cutting continuous rolls of material both as to length (5 1/3 and 10 2/3 yd.) and width (54 in. slit to form two 27 in. widths) is regarded as making fabricated components from material exported in continuous roll form. Fabricating components abroad from exported material lengths is not within the contemplation of item 807.00, TSUS.

As stated in E. Dillingham, Inc. v. United States, C.A.D. 1078 (1972), the correct starting point for the application of item 807.00, TSUS, is the condition of the components as exported from the United States.

Further, the scrim fabric exported in long continuous length rolls was returned after lamination in both retail and commercial sizes ready for sale and distribution. Fabrications (cutting to both length and width) performed on exported component materials either before, during, or after assembly, merely show that the components were not in condition ready for assembly at the time of exportation from the United States. See Zwicker Knitting Mills v. United States, C.A.D. 1240 (1980), where knitted glove shells were exported in an open-fingered state and sewing the finger tips closed after assembly with leather palms was regarded as a further fabrication of the exported glove shells.

Accordingly, upon further review of the information submitted, it still remains our position that trimming the laminated rolls to 54 in. widths and cutting to 30 yd. lengths are operations considered incidental to the assembly. On the other hand, cutting the laminated rolls to length and width, 5 1/3 or 10 2/3 yd., and 27 in., respectively, would constitute a fabrication of the exported scrim material, contrary to the requirements of item 807.00, TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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FEB 6 1986

CLA-2 CO:R:CV:V
553998 EM

Mr. Phillip A. Aronoff
President
Intercontinental Steel Corp.
Post Office Box 24534
Houston, Texas 77029

Dear Mr. Aronoff:

In your letter of January 22, 1986, you asked about the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to steel scrap that you propose to export to Mexico for conversion into pipes and tubes and which in turn will be returned to the United States for further processing.

You explained that the exported steel scrap would be melted down, poured into ingots, and extruded into pipes and tubes. The ends of the returned pipes and tubes would be threaded and fitted with couplings in the United States.

With respect to duty allowances for articles of metal made abroad from United States-made base metal, item 806.30, TSUS, requires further processing to be performed on exported articles both in the foreign country and again upon return to the United States. In order to meet the requirements of "further processing," some operations must be applied to the metal articles that will change their shape or form or impart new and different characteristics that did not exist before and which become an integral part of the metal itself.

On the basis that steel scrap of United States origin is exported and converted into pipes and tubes which are returned for further processing by threading, and cutting when necessary, it appears that both the foreign and domestic segments of the processing cycles are met.

However, only steel scrap resulting from articles of United States manufacture (as distinguished from articles of foreign manufacture) is a metal article of United States manufacture for purposes of item 806.30, TSUS. Mere purchase of scrap material in the United States is not conclusive proof that it is of United States manufacture. Accordingly, unless satisfactory proof is supplied to show that the scrap articles were made in this country and not imported from abroad, the Mexican-made tubular products would not be eligible for item 806.30, TSUS, treatment.

Sincerely,

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(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

[redacted]	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
CODE AND DATE			(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME					

DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

☆U.S. GPO: 1984-719-979

DATE: 20 FEB 1986

FILE: CLA-2 CO:R:CV:V
554002 MR

TO : District Director of Customs
El Paso, Texas 79985

FROM : Chief, Value and Special Classification Branch

SUBJECT: Internal Advice Request No. 24/85, Concerning the Tariff Treatment of Electronic Capacitors Returned to the United States After Being Sent Abroad for Cleaning, Testing, and Sorting

In your memorandum of January 17, 1985, you requested internal advice concerning the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to capacitors reimported after cleaning, testing, and sorting.

FACTS:

The capacitors are made in Finland. Some of the capacitors are exported to Mexico, where they are placed in a cleaning tub which contains a mixture of detergent and water. They are washed, rinsed, and dried. The capacitors are then inspected mechanically and bent leads are straightened. The latter is required by approximately 20 percent of the capacitors.

The capacitors are tested and sorted according to electrical properties. This results in a separation of the capacitors into 10 to 14 separate lots, which, after a sample inspection, are packaged in boxes, usually by the hundred. The packages are marked with the tolerance and "Finland," the country of origin.

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You recommend a classification of the capacitors under item 806.20, TSUS, because the cleaning operation prior to testing, inspecting, and sorting the capacitors constitutes an alteration.

ISSUE:

Whether the operations performed on the capacitors in Mexico constitute an alteration within the meaning of item 806.20, TSUS.

LAW AND ANALYSIS:

The application of item 806.20, TSUS, is provided for "Articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means." In our response of August 17, 1978, to I.A. 60/78, file No. 055153, concerning the classification of potentiometers imported into the United States after being exported for testing and separation in El Salvador, this office stated that the testing and separation did not advance the potentiometers in value or improve them in condition by repair or alteration. Thus, classification under item 806.20, TSUS, was precluded. However, it was noted that subjecting the potentiometers to a cleaning operation would be considered sufficient to constitute an alteration, thereby permitting application of item 806.20, TSUS.

Upon being exported to Mexico, the capacitors in question undergo a cleaning operation, as well as a testing and sorting operation. Although the entire inventory of the capacitors undergoes the cleaning operation, the procedure does not result in a change in the electrical properties or identity of the capacitors; rather, their physical condition is somewhat improved. Likewise, the sorting of the capacitors results in the improvement of approximately 20 percent of the capacitors, through the sorting

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and also straightening of bent leads. Accordingly, the work performed on the capacitors is sufficient to constitute an alteration, and make item 806.20, TSUS, applicable.

Concerning the question of marking the capacitors, 19 U.S.C. 1304 provides that every article of foreign origin imported into the United States be marked to indicate the country of origin. Pursuant to section 134.32(d), Customs Regulations, an exception to this requirement may be authorized if the district director is satisfied that the procedure for repackaging the merchandise will sufficiently indicate to the original equipment manufacturer the English name of the country of origin, "Finland," and if the district director is satisfied the marked unopened package will reach the original equipment manufacturer, as outlined by the importer. However, because of information concerning the final purchaser, apparently an original equipment manufacturer, is incomplete, we cannot render an opinion.

554002

HOLDING:

The merchandise at issue is classifiable under item 806.20, TSUS, upon compliance with the regulations.

Sincerely,

(Signed) RUSSELL ARNOLD

[redacted]2/14
Russell Arnold
Chief, Value and Special
Classification Branch

D6

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

2 APR 1986

CLA-2 CO:R:CV:V
554005 MR

Steven P. Kersner, Esq.
Brownstein Zeidman and Schomer
1401 New York Avenue, NW.
Washington, D.C. 20005

Dear Mr. Kersner:

This is in regard to your letter and memorandum of August 14 and October 8, 1985, wherein you requested a ruling on behalf of Olympus Corporation that the Olympus VX-402 VHS Movie System is properly classified under the tariff provision for television cameras in item 684.90, Tariff Schedules of the United States (TSUS), or, alternatively, under the provision for electrical articles not specially provided for — other; other; in item 688.42, TSUS.

You state that the subject article is properly classifiable as a television camera under item 684.90, TSUS, because you believe the VX-402 is much "less than" a VCR which would be sold for use in the home; specifically, you believe the recording function of the VX-402 is incidental, subordinate, and secondary to the subject article's primary function as a television camera. Finally, you state that if the subject article is determined to be "more than" a television camera, it is properly classifiable as an electrical article not specially provided for — other, in item 688.42, rather than as a combination tape recorder television camera in item 685.49, TSUS.

The combination, commonly known as a "camcorder," consists of a VHS format video camera and video tape recorder incorporated into a single hand-held device. Through such features as a power zoom lens, unidirectional microphone, and electronic viewfinder, it can make audio/visual recordings of live scenes. Also, it may be used to view prerecorded video tapes, either on the device's built-in electronic viewfinder, or through direct connection to a television set. The VX-402 can record directly from another video source such as television with A/V output, or transmit taped video signals to a video cassette recorder for editing, dubbing, and duplication as desired.

Item 684.90, TSUS, provides for television cameras and parts thereof. A television camera is defined as "[a]n electrooptical [sic] system used to pick up and convert a visual image or scene into an electrical signal called video." McGraw-Hill Encyclopedia of Electronics and Computers 833 (S. Parker ed. 1984). The subject article contains such an electro-optical system. However, as is outlined in promotional material concerning the VX-402, its capabilities exceed that of a television camera.

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The "camcorder" not only picks up and converts visual (and audio) scenes into video/audio signals, it can store those signals on magnetic media and reconvert those recorded signals into electrical signals for purposes of showing the recorded scene. The latter function can be used to show a recorded scene on either the view finder screen or, upon direct connection, on a television screen. It can also record upon direct connection to either a television or a video recorder, rather than through the electro-optical system. Accordingly, it can be used as either a television camera or video tape recorder.

Where an article is, in character or function, something other than as described by a specific statutory provision — either more limited or more diversified, and the difference is significant, it cannot find classification within such provision. Dan-Dee Imports, Inc. v. United States, 7 C.I.T. ____ Slip Op. 84-49 (Apr. 30, 1984); Robert Bosch Corp. v. United States, 63 Cust. Ct. 96, 103, C.D. 3881 (1969). However, where the difference is in the nature of improvement or amplification and the essential character of the article is preserved or only incidentally altered, the applicable rule is that an unlimited eo nomine statutory designation includes all forms of the article in the absence of a contrary legislative intent or commercial designation. Dan-Dee Imports, supra; Robert Bosch, 63 Cust. Ct. at 104.

In determining whether the subject article is more than a television camera, it is necessary to look to the functions of the recorder, which broadens the status of the device. See United States v. Milton Diamond and Massee-Barnett Co., Inc., 42 CCPA 9, C.A.D. 561 (1954). In V. Alexander & Co. Inc. v. United States, 59 Cust. Ct. 510, C.D. 3212, the court, in holding a combination phonograph and radio not to be a phonograph, stated:

> An article will be excluded from its normal provision when, by virtue of joinder with another article, it becomes an inseparable part of a multifunction entity. That is to say, when the change undergone is no longer merely an evolutionary advance or the addition of a subsidiary auxiliary part, the changed article becomes more than it formerly was. Id. at 514

The "camcorder" at issue incorporates into one integral unit the separate function of both a television camera and video tape recorder. The recorder function exceeds mere facilitation of the television camera function. Specifically, the capability to record directly off a television set or another video recorder is not a function inherent in a television camera, it does not relate primarily or directly to the function of a television camera. Accordingly, even though the recorder

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portion is designed for some use in conjunction with the function of the television camera, it does not make the recorder a part of the camera. See United States v. Willoughby Camera Stores, Inc., 21 CCPA 322, T.D. 4685 (1933); Garrard Sales Corp. v. United States, 35 CCPA 39, C.A.D. (1947).

The inability of the recorder portion to record more than two hours and the absence of "time shifting capabilities" pertain to ancillary features of a video tape recorder, and do not render the recording function subordinate to the television camera function of the subject article. The recorder and the television camera functions are equal in that they are both essential in giving the subject "camcorder" its unique character. Each contributes as much to the identity of the complete multifunction unit as the other. See Sherriff-Guerringue v. United States, 62 Cust. Ct. 711 C.D. 3852 (1969). The subject article is therefore more than a television camera, and classification as such in item 684.90, TSUS, is precluded.

The VX-402 "camcorder" is a combination television camera and video tape recorder. The relevant superior heading, immediately preceding item 684.90, TSUS, is unambiguous in referring to "Radiotelegraphic and radiotelephonic transmission and reception apparatus... and television cameras ... tape recorders..., all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus...."

Consequently, the subject "camcorder" is specifically described and provided for as an entirety, and is properly classified as a combination tape recorder television camera under item 685.49, TSUS.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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FEB 18 1986

CLA-2 CO:R:CV:V
554006 EM

Paul E. Linet, Esq.
Sandler & Travis, P.A.
Attorneys at Law
Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

Dear Mr. Linet:

In your letter of November 22, 1985, on behalf of GTE Products Corporation, you asked about the classification and the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain Tru-Beam reflector base lamp assemblies used for projection equipment, produced in Mexico from components of United States origin.

Photographs of the foreign operations were submitted. The finished lamp product results from combining both mounted coil and reflector-base sub-assemblies. The exported components are listed as a halogen lamp capsule-clip welded together, reflector base, base pins and RTV cement, in addition to packaging materials.

The foreign process consists of joining the lamp capsule-clip assembly to the reflector base assembly and welding the clip/lamp capsule to the inner surface of the reflector base after proper focus of the lamp is obtained. The lamp base is etched with identifying specifications and the lamp lead wires are welded to the base pin wires. Final operations consist of testing the lamp assembly for continuity and arcing and packing the assembled products for return to the United States.

With respect to a foreign assembly, item 807.00, TSUS, applies to United States components that are designed to be fitted with other components in an assembly process, with no operations performed thereon except the attachment of the components to form the imported merchandise and operations incidental thereto.

On the basis of the information submitted, allowances may be made under item 807.00, TSUS, for those exported components of United States origin, that enter into the foreign assembly process without further fabrication. Since only assembly operations appear to take place, allowances may be made under the tariff provision for all exported fabricated components, upon compliance with the regulations.

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With respect to classification, the imported merchandise is described as halogen lamps and if imported complete with the basic operating capsule, as described, they would be classifiable under the provision therefor, in item 686.90, TSUS.

Generally, packaging materials of United States origin that are not advanced in value or improved in condition while abroad may be entered free of duty under the provisions of General Headnote 6(b)(i), TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD
Russell Arnold
Chief, Value and Special
Classification Branch

554006

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9 APR 1986

CLA-2 CO:R:CV:V
554009 MR
816906 NY

Mr. G. J. Muller
Black & Decker, Inc.
U.S. Household Products Group
6 Armstrong Road
Shelton, Connecticut 06484

Dear Mr. Muller:

In your letter of January 15, 1986, you requested a ruling on the classification of an electronic control assembly which you propose to import into the United States. The device would be incorporated into a drip coffeemaker.

You believe the subject article is properly classifiable under item 684.55, Tariff Schedules of the United States (TSUS), as parts of coffeemakers, rather than under 685.90, TSUS, as control panels or electric switches. You state that the design and function of the electronic control assembly makes the subject article more than a simple device to control electricity. You indicate that it is purchased and shipped as an entirety and manufactured only for use in a drip coffeemaker. You also state that the chief use of the subject article is not as "a simple switch device" to activate a drip coffeemaker, but rather "to select a brewing starter cycle." You believe that because of the multi-function character and design of the subject article, classification of electric switches does not describe or define the article.

The electronic control assembly is described as being comprised of a controller module, which contains signal lights, an AM/PM indicator light, and time set buttons, affixed to a power relay module. The latter provides the AC power to the controller module. These components, with two printed circuit boards, are mounted on a plastic adapter plate.

Pursuant to General Headnote 10(ij), TSUS, a tariff provision "for 'parts' covers a product solely or chiefly used as a part of such articles but does not prevail over a specific provision for such part." The subject unit is specifically designed for use in a drip coffeemaker, thereby coming under the first portion of General Headnote 10(ij), TSUS. However, the essential use of the subject unit is for electrical control of the drip coffeemaker. Although the subject unit permits certain functions to be performed automatically, it does so only at the direction of the operator.

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The sole purpose of the assembly is to permit the operator to control the starting of brewing by the coffeemaker. Neither the sophistication of the components of the subject article nor the "twenty-four hour control" transforms the subject article into something more than a device which, at the direction of the operator, electrically controls the drip coffeemaker.

The subject article is recognizable as an entirety and is specifically provided for as a control panel in item 685.90, TSUS. Consequently, General Headnote 10(ij) precludes its classification as a part of a coffeemaker under item 684.55; the electronic control assembly in question would be classified under the provision for a control panel in item 685.90, TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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8 APR 1986

CLA-2 CO:R:CV:V
554010 MR

Mr. Donald Harrison
Miller and Chevalier
Metropolitan Square
655 Fifteenth Street, NW.
Washington, D.C. 20005

Dear Mr. Harrison:

In your letter of January 24, 1986, you requested a ruling on the classification of "microprocessor/oven control/timer units" which Motorola will import for use in the manufacture of microwave ovens. In the memorandum in support of your request, you describe the unit as a microprocessor programming device that comprises a substantial portion of the operating part of a microwave oven, including a probe thermostat function, a timer function, and a clock function.

You believe the subject unit is properly classifiable under item 684.28, Tariff Schedules of the United States (TSUS), as parts of microwave ovens, rather than under item 685.90, TSUS, as control panels or apparatus for making or breaking electrical circuits.

You contend that the term "control panel" is limited to a "simple" manual combination of switches and related components and does not cover a "sophisticated" product which includes a microprocessor, thermostat, and other operating parts of a microwave oven. In support, you have cited the definitions of control panel in the Brussels Tariff Nomenclature, contending that they cover an assembly of "simple" electrical apparatus rather than a unit having as its principal component a "complex" microprocessor which controls timer, clock, and other functions automatically. Moreover, you state it is understood that a control panel contains switches which may be controlled manually by an operator, and is limited to power circuits with limited functions.

According to descriptive literature submitted by you, the merchandise in question is a unit which is used to operate a microwave oven. You state that it consists of a metal chassis with a plastic front surface containing "touch pads" used to activate various functions of the unit. By activating one or more of the "touch pads," one can control all functions of the microwave oven, including the time and temperature of cooking. A digital clock is at the top of the panel. The subject device also emits an audible signal.

Pursuant to General Headnote 10(ij), TSUS, a tariff provision "for 'parts' covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part." It is not disputed that the subject units are specifically designed for use in

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microwave ovens, thereby coming under the first portion of General Headnote 10(ij), TSUS. However, the question remains, under the second portion of General Headnote 10(ij), whether item 684.28, TSUS, "more definitely describes the article" as a control panel, thereby prevailing over item 684.28, TSUS, which covers parts of microwave ovens. United States v. Rembrandt Electronics, Inc., 64 CCPA 1, 6, C.A.D. 1175.

The Explanatory Notes to the Brussels Tariff Nomenclature provide guidance concerning the term "control panels." Specifically, Section XVI, Chapter 85.19 provides, in pertinent part:

> These consist of an assembly of apparatus of the kind referred to above (e.g., switches, fuses and rheostats) on a board, panel, framework, etc. or mounted in a cabinet, desk, etc. They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, or voltage regulators or luminous circuit diagrams. They are classified here provided their essential use is for electrical control purposes (i.e., provided that they do not incorporate any substantial proportion of the operating part of the machine or installation controlled).

The essential use of the subject merchandise is for electrical control of the microwave oven. Its principal components are a "programmable microprocessor," "beeper/annunciator," "quad comparator," "heat sinked triac," and "vacuum fluorescent display," all of which work to the same end, which is electrical control of the microwave oven. There is nothing, explicit or implicit, within the above-cited Explanatory Notes concerning a control panel which suggests a need to consider whether the subject merchandise requires continuous operator supervision. Indeed, while the subject item permits certain functions to be performed automatically, it does so only at the direction of the operator. The "temperature probe" cycle and "timed cook" cycle occur only after the components have been programmed by the operator. The sole purpose of the device is to permit the operator to control the quantity of heat produced by the oven for a given period of time. Although the components are apparently more sophisticated than those given by the Brussels Nomenclature as some examples of the apparatus within an assembly, they do no more than simply permit operations that are fundamental to a control panel.

As articulated by the court in All Channel Products Corp. v. United States, 1 C.I.T. 128 (1981), the question presented is whether the subject article "possesses a distinct and significant part whose function is inconsistent" with classification as a control panel. Id. at 130. Neither the sophistication of the components, nor the incidental timer and time-of-day clock functions transforms the article into something other than a device which, at the direction of the operator, electrically controls the oven.

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The manner in which the components of the subject article function towards electrical control of the microwave oven is not of particular importance because the complexity of the components does not make the subject article recognizable in a classification more specific than control panel. Harper - Wyman Company v. United States, 1 C.I.T. 108 (1981).

The subject article is accurately described as an entirety by the classification which recognizes its chief use as a control panel. Consequently, General Headnote 10(ij) precludes classification of the subject article as a part of a microwave oven under item 684.28, TSUS, and it must be classified under the specific provision for a control panel in item 685.90, TSUS.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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PUBLIC _____

554010

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21 FEB 1986

CLA-2 CO:R:CV:V
554011 EM

Mr. J. T. Greitzer
Greitzer Brokers
Customs Clearance
Post Office Box 3997
San Ysidro, California 92073

Dear Mr. Greitzer:

In your letter of November 29, 1985, and the followup of February 6, 1986, on behalf of MONSA, you asked about the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to automobile wheel rims that are proposed for export to Mexico for processing and returned for further processing.

You explained that wheel rim outers and centers will be exported to Mexico for plating, polishing, and drilling a valve stem hole through the metal. Upon return to the United States, the outer rims and centers will be inspected and ground as a preparation for welding the parts together to form complete wheels.

Item 806.30, TSUS, requires the processing of metal articles both abroad and again upon return to the United States. The term "further processing" means that some operations will be applied to the metal articles that will change their shape or form significantly or impart new and different properties and characteristics to the metal itself that did not exist before the processing.

With respect to the foreign processing of the outer rims and centers, the combined operations of plating and drilling valve-stem holes through the metal would appear to constitute a significant treatment of the metal to comply with the foreign segment of item 806.30, TSUS. However, the main operation performed on the rims and centers upon return to the United States consists of merely welding the parts together to form wheels. Grinding the centers and rims is a preparation for the subsequent welding of the parts together. As the finishing step in the manufacture of wheels, assembling the parts together does not constitute further processing within the meaning of item 806.30, TSUS. In these circumstances, the requirements of "further processing" in the United States are not complied with and the rims and centers are not entitled to item 806.30 tariff relief upon return to the United States.

Sincerely,

(Signed) RUSSELL J. ARNOLD

[redacted]
Russell Arnold
Chief, Value and Special
Classification Branch

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CE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

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26 FEB 1986

CLA-2 CO:R:CV:V
554013 EM

Mr. Phillip A. Aronoff
President
International Steel Corporation
Portway Plaza, Suite 400
1717 East Loop
Houston, Texas 77029

Dear Mr. Aronoff:

In your letter of February 10, 1986, you asked that we reconsider the status of steel scrap under item 806.30, Tariff Schedules of the United States (TSUS), which you intend to export to Mexico for conversion into pipes and tubes, and in turn will be returned to the United States for further processing. This was the subject of a previous letter dated February 6, 1986, 553998.

The term "waste and scrap" is defined in the Tariff Schedules as materials and articles of metal which are second-hand or waste or refuse, or are obsolete, defective or damaged, and which are fit only for the recovery of the metal content or for use in the manufacture of chemicals, and does not include metal in unwrought form or metal-bearing materials.

The Customs Service has consistently adhered to the tenet over long years that item 806.30, as well as its predecessor tariff provision, is inapplicable with respect to metal scrap resulting from the processing of metal of foreign origin, because such scrap is not regarded as "metal manufactured in the United States"; nor is the scrap an article of metal subjected to a process of manufacture in the United States. In order to remain eligible under the statute where foreign metal is involved, the scrap must be obtained from processing metal initially obtained from processing the foreign metal in the United States.

In view of this, if the steel scrap is obtained from foreign-made metal, such as that obtained from reducing foreign automobiles, the scrap would not qualify for item 806.30 tariff treatment when exported.

Sincerely,

(Signed) RUSSELL J. ARNOLD

[redacted]

Russell Arnold
Chief, Value and Special
Classification Branch

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26 FEB 1986

CLA-2 CO:R:CV:V
554014 EM

R. Ross Hempstead
President
Technology Transfer International, Inc.
3100 NE. 49th Street
Fort Lauderdale, Florida 33308

Dear Mr. Hempstead:

In your letter of January 23, 1986, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain articles described as thermal insulation wrappers or coverings, that will be made in Jamaica from component materials of United States origin.

Samples were submitted, including an insulated carrying vinyl case with the logo "Miller High Life" printed on the cover. It is explained that all materials, including polyurethane foam, vinyl materials making up the outer surface and inner liners, drawstrings, velcro closings, and nylon carrying straps, will be cut to component size-and-pattern shape before being exported to Jamaica. The foreign operations merely consist of sewing the component pieces together to form the finished vinyl products. The container products will be returned to the United States for sale and distribution and will be used to convey beer cans, among others, and used as outer liners for such unit devices as hot water heaters, and other similar articles requiring insulated covers.

With respect to foreign assembly operations, item 807.00, TSUS, applies to United States components that are designed to be fitted with other components in an assembly process, with no operations performed thereon except the attachment of the components to form the imported merchandise and operations incidental thereto.

On the basis of the samples and information submitted, allowances may be made under item 807.00, TSUS, for those exported components of United States origin, that enter into the assembly process without further fabrication. Since only assembly operations appear to take place abroad, as described, allowances may be made under the tariff provision for all exported fabricated components, upon compliance with the regulations.

Further, merchandise entering the United States under item 807.00, TSUS, is regarded as foreign made for tariff purposes and as such, is subject to all the country of origin marking requirements and quota

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restraints pertaining thereto. In this respect, it is suggested that you communicate with local Customs officials for the procedures that obtain in entering such merchandise.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

554014

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26 FEB 1986

CLA-2 CO:R:CV:V
554012 HS

John S. Rode, Esq.
Rode and Qualey
295 Madison Avendue
New York, New York 10017

Dear Mr. Rode:

In your letter of March 14, 1985, you requested on behalf of Federated Metals Corporation, a ruling regarding the GSP eligibility of sacrificial anodes of various alloys and in various configurations that are manufactured in Mexico. The anodes cathodically protect from corrosion pipelines and other metal structures located in environments containing water.

The galvanic anodes are made from Galvalum I and III, magnesium alloys and zinc alloys. All the materials for the production of the metal alloys come from Mexico. Pure aluminum ingot, which is used for making the anodes of Galvalum I and III pure zinc ingot and magnesium scrap are sourced outside Mexico.

In ruling 075858 dated May 22, 1985, Customs ruled that all the possible alternatives discussed in your submission are GSP-eligible item numbers for Mexican products. Accordingly, if the described galvanic anodes are considered products of Mexico they would be entitled to duty-free treatment. To be considered a product of Mexico, it must be shown that through a substantial processing operation, a new and different article of commerce emerges in Mexico with a new name, character or use. Duty-free entry may be accorded to an article only if the sum of the cost or value of the material produced in a beneficiary developing country plus the direct cost of processing operations performed in the beneficiary developing country is not less than 35 percent of the appraised value of the article at the time it is entered.

The first step in the making of all the anodes in Mexico with the exception of one type is the alloying process. In ruling 071341, Customs ruled that the alloying of aluminum is a substantial transformation because aluminum alloy has different characteristics and uses from non-alloy aluminum and is recognized in the trade as a different product. Following this precedent, it is our view that the manufacture of the metal alloys in Mexico from aluminum ingot, zinc ingot and magnesium alloy scrap is a substantial transformation. It should be pointed out that the magnesium alloys, after being properly manufactured to specification have electrical and chemical characteristics significantly different from magnesium alloy scrap.

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The second step in the making of the galvanic anodes involves similar, but not exactly the same operation for each particular type of anode. An example of the operation needed to make the galvanic anodes from the alloys is as follows:

To make anodes from Galvalum I and III, molten alloy is either poured directly from the tilt furnace or is ladled into the anode mold. As the anode begins to cool, it will shrink and additional alloy must be added to the mold. Prior to pouring the alloy into the mold, a specially designed steel core must be carefully and precisely positioned in the mold using gigs and fixtures. The steel cores, which are made in Mexico, are manufactured from steel which meets ASTM specifications. These cores must be carefully produced to ensure that there is no electrical resistance between the core and the anode material. The core must be located precisely in the mold and the casting must be done carefully; otherwise, the anode will be subject to catastrophic failure. After the cast rough anode has cooled, it is removed from the mold and subjected to a number of finishing operations and testing. Excess alloy is trimmed and flash burrs are removed. Some anodes will have copper cables welded to the steel core and others may receive some form of coating.

We are of the opinion that this second operation making galvanic anodes from the various alloys creates a new and different article of commerce. The finished galvanic anodes have distinct characteristics and uses from bulk alloy and are recognized commercially as new and different articles of commerce.

Accordingly, we conclude that the galvanic anodes are products of Mexico for purposes of GSP and that the costs of all materials sourced in Mexico, all direct costs of processing operations undertaken in Mexico including such items as labor and fuel, and the costs of the alloys that are used in the making of the finished galvanic anodes may be included within the 35 percent value-added requirement.

Sincerely,

(Signed) RUSSELL ARNOLD

[redacted] Russell Arnold
Chief, Value and Special
Classification Branch

354012

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

28 MAR 1986

CLA-2 CO:R:CV:V
554018 EM

John P. Tebeau, Esq.
Heron, Burchette, Ruckert
& Rothwell
Suite 700
1025 Thomas Jefferson Street, NW.
Washington, D.C. 20007

Dear Mr. Tebeau:

In your letter of February 8, 1986, on behalf of Nizetich and Company of San Pedro, California, you asked about the applicability of item 800.00, Tariff Schedules of the United States (TSUS), to certain cooked tuna that is intended for exportation to Mexico for canning and return to the United States. This was the subject of a similar letter dated November 26, 1985, 553900.

It is explained that raw frozen tuna would be cleaned, head and tail removed, and cooked and cooled, and subsequently exported to Mexico in refrigerated trucks for canning. In Mexico, the skin would be removed and the tuna would be passed through a mechanical process. The tuna would first be sized according to a solid, chunk, or flake style preparation, and packed in cans with either water, oil, or broth. The cans would be hermetically sealed in the ongoing process and the canned tuna would then be "retorted" by sterilizing in heated ovens at a high (280° F.) temperature for about 20 minutes.

Final operations consist of labeling the cans and packing the canned tuna in standard lot quantities for shipment to the United States. Cans, labels, and cartons and other ingredients added to the tuna, except water, during the foreign processing, are of United States origin.

As stated previously with respect to the canned tuna, item 800.00, TSUS, applies to products of the United States which are returned free of duty after having been exported without having been advanced in value or improved in condition by any means while abroad. The test specified is whether the merchandise of American origin has itself been the object of an advance in value or improvement in condition while abroad.

For the reasons that whole tuna is exported, the skin removed, and the tuna subjected to proper sizing during the processing and finally, after canning, subjected to the retorting process, cumulatively these processes amount to an advance in value and improvement in condition of the exported tuna, contrary to the requirements of the tariff provision. In the circumstances, the canned tuna is not entitled to the free entry provision of item 800.00, TSUS.

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Further, item 807.00, TSUS, mentioned as a possible classification, does not cover a situation in which containers of American origin are assembled and into which merchandise is packed. The tariff treatment of containers is more appropriately governed by the provisions of General Headnote 6(b)(i), TSUS. See Van Camp Sea Food Co. v. United States, C.D. 4551 (1974).

Nor does item 806.20, TSUS, appear to be available in the circumstances. This tariff provision applies to articles that are exported for repairs or alterations. However, the application of this provision is precluded where a foreign process goes beyond the meaning of a repair or alteration performed on exported articles. We are of the opinion that the foreign processing of the exported whole tuna is too extensive to be considered an alteration under item 806.20, TSUS.

Accordingly, the described imported canned tuna would be subject to duty on total value and quantity under the appropriate provisions of the tariff schedules. However, the exported cans and lids may be returned free of duty under the provisions of General Headnote 6(b)(i), TSUS, as the usual type of containers or holders ordinarily sold at retail with their contents. This would also include the labels and shipping cartons of United States origin.

With respect to the classification of the remaining ingredients, since an article is classifiable in that provision of the tariff schedules which most specifically describes it, and imported canned tuna is classifiable as an entirety, there can be no constructive segregation of the American preservative products, as the oil, broth, or protein, for different tariff treatment. These added ingredients cannot be separated out for different classification and their American origin becomes merged in the imported entity, the canned tuna.

Sincerely,

HS ~~TSUS~~
9804.00.1010 = 800.00
9802.00.8010 = 800.00
9802.00.8020 = 800.00

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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554018

MAR 12 1986

CLA-2 CO:R:CV:V
555024 MR

District Director of Customs
San Francisco, California 94126

Dear Sir:

This is our decision on Application for Further Review of Protest No. 2809-4-000898, concerning entry 84-409615-7, dated January 23, 1984, and liquidated May 11, 1984. The merchandise involved is laminated plastic sheet material from Japan.

FACTS:

The subject merchandise, described by the protestant/importer as "polarizer," is composed of a layer of polyethylene terephthalate plastic united with a layer of polyvinyl acetate-polyethylene copolymer plastic. The subject material has polarizing properties and is used in the manufacture of liquid crystal displays. The subject material was entered under the tariff provision for cellulosic plastic materials, of cellulose acetate, in item 771.20, Tariff Schedules of the United States (TSUS). The entry was liquidated, however, under the provision for polarizing material, in item 540.67, TSUS.

ISSUE:

Whether the subject merchandise is polarizing material for tariff purposes and, therefore, more specifically provided for in item 540.67, TSUS, rather than in item 771.20, TSUS.

LAW AND ANALYSIS:

Protestant contends that the subject merchandise should be classified under the provision for cellulose acetate material, in item 771.20, TSUS. In the alternative, he argues that the proper classification would be under a provision for parts of liquid crystal displays, although no specific tariff provision was cited.

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Item 540.67, TSUS, provides for "polarizing material, in plates or sheets, not cut to shape or mounted for use as polarizing optical elements." There is no limitation as to the type of material. Indeed, according to the Tariff Classification Study Explanatory Materials (1964), item 540.67, TSUS, covers polarizing material of any substance, imported for "other uses" besides the manufacture of optical instruments and spectacles.

It is well established that the more specific tariff provision will prevail. The protestant refers to the subject material as "polarizer," and states that its sole use is as polarizing material in a liquid crystal display. The provision which most narrowly describes the subject sheets of polarizing material, not cut to shape, is item 540.67, TSUS.

Concerning the protestant's alternative contention, that the subject material should be properly classified as parts of liquid crystal displays, attention is directed to General Headnote 10(ij). Although the protestant cited no specific provision, such "parts" provision would not prevail over item 540.67, TSUS, which is a specific provision for polarizing material. Moreover, it is noted that before the material becomes a "part" of the liquid crystal display, it must be cut to shape. The latter does not take place until after the polarizer is imported.

HOLDING:

The subject material is properly classifiable under the tariff provision for polarizing material, in item 540.67, TSUS.

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The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to satisfy the notice requirements of section 174.30(a), Customs Regulations, as amended by T.D. 80-271.

Sincerely,

(Signed) Harvey B. Fox
Harvey B. Fox
Director, Classification
and Value Division

554024

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E13

24 MAR 1986

CLA-2 CO:R:CV:V
554034 EM

Frederick L. Ikenson, P.C.
1875 Connecticut Avenue, NW.
Washington, D.C. 20009

Dear Mr. Ikenson:

In your letter of February 4, 1986, on behalf of Zenith Electronics Corporation, you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to monochrome projection television tubes that are proposed for assembly in Mexico from component parts of United States origin.

A component parts list and a description of the foreign assembly process were submitted. The exported listed parts of United States origin include an electron gun, getter legs and base, housing with a glass window, silicon spacers separating the window from the housing and ryton spacers separating the tube face from the glass window, a film protector covering the glass window, an anode lead subassembly attached to the picture tube, and packing materials listed as corrugated caps, inserts, and liners for transporting the tubes set face-down within the case inserts, and finally, double-banding nine cases with ten tubes to a case on a skid for the return trip to the United States.

The foreign process consists of first treating the foreign-made glass bulb with various chemicals and a color screen and aluminizing the inner surface in order to prepare the screened aluminized glass bulb to receive the electron gun assembly sealed within. The television projection tube is inserted within a housing and heated to cure the various adhesive bonds around the window, between the tube and housing, and the plastic base protecting the pin connectors from damage.

The tube is tested for required electrical specifications and four small mounting holes are made in the housing to ensure proper alignment for the tube when mounted. Finally, the anode lead subassembly is bonded to the tube and the connection is electrically tested. The completed projection tubes are packed in cases and in turn banded to skids for return to the United States.

With respect to foreign assembly operations, item 807.00, TSUS, applies to United States components that are designed to be fitted with other components in an assembly process, with no operations performed thereon except the attachment of the components to form the imported merchandise and operations incidental thereto.

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From the descriptions submitted, allowances may be made under item 807.00, TSUS, for the listed components of United States origin, that are exported in condition ready for assembly without further fabrication, which are marked with an asterisk in Exhibit 1. Drilling the four holes in the housing component appears necessary for alignment and as such, is considered incidental to assembly. No allowances can be made under the tariff provision for adhesives used in the assembly since they are regarded as having lost their identity in the assembly by a change in form or substance; nor can allowances be made for liquids, as the listed silicon oil.

Containers or holders and packaging materials of United States origin may be returned free of duty under the provisions of General Headnote 6(b)(i), TSUS, as the usual type unreusable containers ordinarily sold with their contents.

Sincerely,

(Signed) RUSSELL J. ARNOLD
(Signed) [redacted]

Russell Arnold
Chief, Value and Special
Classification Branch

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25 MAR 1986

CLA-2 CO:R:CV:V
554036 MR

District Director of Customs
Chicago, Illinois 60607

Dear Sir:

This is our decision on Application for Further Review of Protest No. 3901-5-000920, dated June 27, 1985, concerning entries 84-77807, dated September 18, 1984, and 84-778338, dated July 11, 1984. The entries were liquidated, respectively, on March 29, 1985, and April 5, 1985. At issue is the classification of certain kitchen timers. A brief from counsel representing the importer/protestant has been submitted.

FACTS:

The subject article is a kitchen timer, designated by the importer as a Pelouze Electrohorn Timer, Model MT-60. According to descriptive literature, it is a wedge-shaped article 4 inches deep, 6 1/2 inches wide, and 7 inches high. It has a handle on its top, and a dial with numerals on the front. The device can be set for any period of time up to 60 minutes; at the expiration of the selected time period an audio signal sounds and a red light blinks on and off. The signal and the blinking continue until a stop button is depressed.

The entries covering the Model MT-60 Timers were liquidated under the provision for "Apparatus with watch or clock movements... for measuring recording, or otherwise indicating intervals of time," other, in item 715.51, Tariff Schedules of the United States (TSUS). The importer/protestant maintains that the proper classification is under the provision for rubber or plastic household goods not specially provided for, other, in item 772.15, TSUS.

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ISSUE:

Whether the MT-60 kitchen timer is properly classifiable as apparatus with watch or clock movements for measuring or indicating intervals of time or as households articles of rubber or plastic, other.

LAW AND ANALYSIS:

The timing function is mechanical and the device contains a geartrain which, at a predetermined time, activates the battery-operated sound and light signals. Such kitchen timers have consistently been held to be provided for as apparatus with watch or clock movement for measuring or indicating intervals of time. See 046185 (July 23, 1976); 067390 (August 7, 1981). The importer/protestant argues that the signalling function of the MT-60 is separate and distinct from the timing function, due to their unique character, thereby rendering the article "more than" a time measuring device. Specifically, it is contended that the electronic horn and blinking light are far removed from an ordinary ringing of a bell or "similar innocuous indication" that signals the end of a time interval.

The loudness of the electronic horn signal feature and the blinking light signal feature relate primarily and directly to the function of the subject article as a kitchen timer. They do not represent a separate function that alters the article's character or function as a kitchen timer. At most, the allegedly unique signal features only contribute to an improvement of the article's function as a kitchen timer, which does not render the MT-60 more than an apparatus for measuring or indicating intervals of time. Consequently, it is classifiable as such.

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HOLDING:

The MT-60 kitchen timer is properly classifiable under the tariff provision for apparatus with watch or clock movements for measuring, recording, or otherwise indicating intervals of time, other, in item 715.51, TSUS.

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to satisfy the notice requirements of section 174.30(a), Customs Regulations, as amended by T.D. 80-271.

Sincerely,

(Signed) RUSSELL J. ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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20 MAR 1986

CLA-2 CO:R:CV:V
554038 MBH

Leonard L. Rosenberg
Sandler and Travis, P.A.
444 Brickell Avenue
Miami, Florida 33131

Dear Mr. Rosenberg:

Your letter of February 10, 1986, on behalf of Allied Ethanol Ltd., requests a ruling, pursuant to Part 177, Customs Regulations, with respect to the eligibility for duty-free entry under the Caribbean Basin Recovery Act of motor fuel grade ethanol.

According to your submission, beverage grade ethanol will be imported into a beneficiary country. The beverage grade ethanol, which will be between 150 and 190 proof, may be the product of a CBI country or may be the product of a non-beneficiary country. The beverage grade ethanol will be processed into motor fuel grade ethanol in the CBI using a two stage distillation process. The first stage will distill the product to 190 proof using a standard distillation column. The second stage will process the ethanol through an azeotropic distillation column which will distill the ethanol to 199.5 proof. After distillation, the motor fuel grade ethanol will be denatured by adding gasoline which will be produced in a CBI country or the United States.

You first ask whether the motor fuel grade ethanol which has been produced in the beneficiary country constitutes a product or manufacture of that country for CBI purposes. It is the position of the Customs Service that the azeotropic distillation of beverage grade ethanol to fuel grade ethanol (199 proof) in a beneficiary country constitutes a substantial transformation which renders the ethanol a product of the beneficiary country for CBI purposes. See Headquarters Ruling 553849, dated November 19, 1985.

You next ask whether the cost of the gasoline used as a denaturant may be includable in the 35 percent value computation. Assuming that the gasoline is itself produced in the beneficiary country, its cost would be includable. At your request, we shall defer issuance of a ruling on the effect of using gasoline from the United States as a denaturant.

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Your third question is whether the cost of transportation of the beverage grade ethanol to the distillation plant, including customs brokerage and related costs for bringing the goods into the CBI country may be part of the cost of that component. If the beverage grade ethanol is produced in a beneficiary country, section 10.196 (c)(ii), Customs Regulations, permits inclusion of costs incurred in transporting the material to the manufacturer's plant when not included in the manufacturer's actual cost for the material.

Finally, you ask whether the actual cost of waste from the beverage grade ethanol, less recoverable "scrap" may be considered part of the 35 percent value content requirement. The actual cost of waste less the value of recoverable scrap may be included in the calculation of the 35 percent value content requirement only if the beverage ethanol is produced in a beneficiary country. See section 10.196(c)(iii), Customs Regulations

Sincerely,

(Signed) Harvey B. Fox
Harvey B. Fox
Director, Classification
and Value Division

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25 MAR 1986

CLA-2 CO:R:CV:V
554049 EM

Mr. Pierre J. Quintana
Vice President
Cotraco, Inc.
Three Landmark Square, Suite 400
Stamford, Connecticut 06901

Dear Mr. Quintana:

In your letter of March 5, 1986, you inquired about the possible tariff treatment under item 806.30, Tariff Schedules of the United States (TSUS), for certain wire products made in Mexico from domestic wire rod.

This provision of law covers base metal articles processed abroad and then further processed when returned to this country. It does not apply to articles which are finished items when imported and ready for use by assembly or similar operations.

It appears from the description given in your letter that the upholstery spring wire, tire bead wire, and concrete wire are in a finished condition and ready for use without further operations except cutting to length.

On this basis, the imported wire would not be eligible for tariff treatment under item 806.30, TSUS.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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APR 7 1986

CLA-2 CO:R:CV:V
554056 EM
C145960

The Honorable
Mike DeWine
Member of Congress
Post Office Building
150 N. Limestone
Springfield, Ohio 45501

Dear Mr. DeWine:

Thank you for your letter of March 19, 1986, enclosing correspondence from Mr. Robert E. Schwartz of Eastern Coated Papers, Inc., Springfield, Ohio, concerning the status under the Tariff Schedules of the United States (TSUS), of certain cloth that is exported to Canada for the application of a coat of glue to one side, and returned to the United States for further processing.

Mr. Schwartz indicates that the gummed cloth has previously been returned to the United States on the basis of "value added" under tariff item 806.20, TSUS, but that the last shipment was based on the "full value" under item 807.00, TSUS. It is suggested that applying glue to one side of cloth is in fact an alteration and rates of duty should be assessed only on the "value added" under item 806.20, TSUS.

Item 806.20, TSUS, which provides for a duty to be assessed on the value of repairs or alterations made on articles exported for that purpose, does not appear to be applicable in the circumstances for the reason that the coating adds new characteristics to unfinished cloth material. Repairs or alterations can only be made to finished materials. The described foreign process is neither a repair nor an alteration but a step in the manufacturing process since the cloth is returned to the United States for further processing. In these circumstances, the foreign gluing would exceed the meaning of the term "alterations" and preclude the application of item 806.20, TSUS.

On the other hand, item 807.00, TSUS, applies to fabricated United States components that are designed to be fitted with other components in an assembly process, with no operations performed thereon except the attachment of the components to form the imported merchandise.

Allowances cannot be made under item 807.00, TSUS, in the absence of a genuine assembly of components as required by the statute. If the foreign operation consists of applying a coating of glue over exported cloth, without more, as stated in the

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correspondence, there is no assembly of parts since coating exported cloth with glue does not result in an acceptable assembly of solid components.

As currently written, the tariff laws provide reduced duty or duty-free treatment for articles returned after having been exported from the United States only in specified circumstances, such as those set out above. The extension of such treatment to the described imported gummed cloth can be authorized only by Congressional legislation.

If we can furnish additional information or be of further assistance, please let us know.

Sincerely,

John Simpson

FOR Michael H. Lane
Assistant Commissioner
Office of Commerical Operations

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9 APR 1986

CLA-2 CO:R:CV:V
554059 EM

Mr. S. Richard Shostak
Stein Shostak Shostak & O'Hara
3580 Wilshire Boulevard, Suite 1240
Los Angeles, California 90010-2597

Dear Mr. Shostak:

You have requested a clarification of our ruling 071716 of September 5, 1984, with respect to the free entry of certain United States-made glass shelves imported together with foreign components for a stereo cabinet.

In that decision we concluded that the glass panels could not be separately classified under item 800.00, Tariff Schedules of the United States (TSUS), because the merchandise consisted of an unassembled single entity. To constructively segregate portions of the imported entity and accord a separate classification would be contrary to the provisions of General Headnote 10(h), TSUS, and inconsistent with the legislative intent in the Tariff Classification Study with respect to constructive segregation under Schedule 8, TSUS.

You contend tht the provisions of Schedule 8, TSUS, are not governed by the general rules of classification and that mere packaging of a domestic product with foreign merchandise should not preclude an exception provided for in that schedule. While Headnote 1, Schedule 8, TSUS, states that the rule of relative specificity in General Interpretative Rule 10(c), TSUS, may not apply to Schedule 8 provisions, this headnote does not affect General Interpretative Rule 10(h), TSUS, which provides that a tariff description covers an article whether or not finished or assembled. Accordingly, the unassembled stereo cabinet must be treated as a single entity and the artificial separation of the individual components for classification purposes would be illogical and inconsistent with Congressional intent.

In support of your claim that constructive segregation of an imported entity should be permitted, you cite The Carrington Co., United Geophysical Corp. v. United States, 70 Cust. Ct. 105 (1973); aff'd, 61 CCPA 77, C.A.D. 1126 (1974). In that case it was held that a tracked motor vehicle imported with a drill, assembled or unassembled, was classifiable as an entirety under the provision for motor vehicles specially constructed to perform special services in item 692.16, TSUS. While the court held that the fact that the drill portion had been admitted free under either item 800.00 or 807.00, did not permit the imported unit to be split up for classification purposes, it did not pass upon the free entry question involved in the subject case. Accordingly, we

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do not consider the Carrington case to be controlling in cases involving constructive segregation in order to obtain free entry under item 800.00, TSUS.

More in point is our ruling of December 17, 1985, 553920 EM, copy enclosed, which involved the classification of plastic sedimentation racks of United States origin imported with 200 glass tubes of foreign origin. We held that the American origin of the racks was merged in the imported entity and, since there could be no separation of components making up the entirety, the item 800.00, TSUS, exemption for the domestic racks was foreclosed.

In view of the foregoing, we remain of the opinion that the ruling in our decision of September 5, 1984, holding glass shelves of United States manufacture could not be constructively segregated for classification purposes from the remainder of the stereo cabinets, is correct.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

Enclosure

554059

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WD

MAY 31 1977

ENF 4-02.2 R:E:P
605397 C

605397

Area Director of Customs
New York Seaport
New, New York 10048

Dear Sir:

We have considered petitions submitted by counsel for [redacted] for relief from a claim for forfeiture value of $76,304 assessed for violation of title 19, United States Code, section 1592. There is no loss of revenue.

The petitions were filed in your Penalty Case No. 75-1001-35491, and were forwarded with letters from your office dated October 9 and November 3, 1975 (ENF-4-CO RT). The statute of limitations in this case will run on July 30, 1977.

After careful consideration of the facts in the record, and in agreement with the recommendation of your office, the claim is mitigated to $25,000.

Please notify counsel of our decision.

Sincerely yours,

S/ Harvey B. Fox
for Leonard Lehman
Assistant Commissioner
Regulations and Rulings

[redacted]

[redacted]

F12

PUBLIC ... TO THE

WD

JUN 21 1977

ENF 4-02.2 R:E:P
606457 S

606457

District Director of Customs
San Diego, California 92101

Dear Sir:

Your letter dated May 26, 1976 (Case No. 76-2503-50067), forwarded the petition of [redacted] requesting relief from a claim for forfeiture value of $4,928,139, assessed under title 19, United States Code, section 1592.

After careful review and consideration of the evidence, the claim is cancelled. This determination is based upon a decision dated June 21, 1976, by the Director, Classification and Value Division, on applications for further Review of Protest Nos. 23044000217 and 23044000218, and upon our finding that there was no violation in the instant case.

Please advise petitioner through counsel of this decision.

Sincerely yours,

/S/ H. B. FOX
for Leonard Lehman
Assistant Commissioner
Regulations and Rulings

[redacted]

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PUBLIC ... ED TO THE

19 FEB 1981

ENF 4-02.2 CO:R:E:C
651993 GOB
X Ref. 652315

Area Director of Customs
New York, New York 10048

Dear Sir:

A letter from your office dated December 20, 1979, forwarded a petition submitted by counsel on behalf of [redacted], requesting relief from a claim for monetary penalty of $2,195,914 assessed against [redacted] for violation of title 19, United States Code, section 1592, as amended by Public Law 95-410 (Customs Procedural Reform and Simplification Act of 1978). New York Seaport Area Case No. 79-1001-52713 is involved.

The liability was incurred because [redacted] entered needle roller wire into the commerce of the United States under cover of 105 entries filed between January 1972 and October 1976, by means of false invoices. The invoices are alleged to be false in that they did not reflect the true value of the imported merchandise and in that certain additional payments made for currency fluctuations were not declared. There is a recomputed actual loss of revenue of $6,441.12 and a recomputed potential loss of revenue of $20,437.48, for a total loss of revenue of $26,878.60. A tentative determination of fraud has been made with respect to the degree of culpability.

[redacted] claims that [redacted] sold and shipped the merchandise at issue to it, [redacted] in New York; and that it in turn sold and shipped the product to [redacted] the ultimate purchaser. [redacted] states that it negotiated the receipt of the merchandise, including Customs clearance and duty details, with [redacted] [redacted] maintains that it negotiated with [redacted] for its business, including specifications, quantities, prices and payment conditions. [redacted] contends that [redacted] as its customer, chose to have it, [redacted] handle the importation itself, including the risks associated therewith, Customs entry and the payment of duty. [redacted] claims that there were no commercial transactions between [redacted] and [redacted]

[redacted] claims that the proper basis of appraisement is export value, as represented by the invoice price from [redacted] to [redacted] It contends that it was not a selling agent of [redacted] and that the transactions between it and [redacted] were bona fide sales.

With respect to Customs allegation regarding the failure to declare payments for currency fluctuations, [redacted] states that, during the period from November 1974 through April 1975, when [redacted] was invoiced by [redacted]

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and [redacted] was invoiced by [redacted] provision was made for the adjustment of price contingent upon the fluctuation of the rate of exchange of the two currencies up to the date of payment. [redacted] contends that these additional payments, which were uncertain as to their existence or amounts at the time of entry, had nothing to do with the price of the merchandise, but related to the credit feature of the transactions.

[redacted] denies that it ever engaged in false invoicing and further denies that it would have ever committed an act of fraud with the U.S. Customs Service or with any governmental or private entity or person.

[redacted] claims that the proper basis for appraisement is export value as represented by invoice price from [redacted] to [redacted] and that the transactions between it and [redacted] were bona fide sales have been examined by the Classification and Value Division at Customs Headquarters.

The export value of imported merchandise as defined in section 402(b), Tariff Act of 1930, as amended, is the price at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation... (Emphasis supplied.) The term "freely sold," as defined in section 402(f)(1), means sold or, in the absence of sales, offered for sale to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise. (Emphasis supplied.)

Before adopting the price between [redacted] and [redacted] as establishing statutory export value, it must be determined whether the transactions between these related parties constitute sales within the meaning of section 402(b), and, if the transactions constitute sales, whether the price fairly reflects the market value of the merchandise within the meaning of section 402(f)(1)(b). (We note that in this particular case the evidence does not indicate sales of such or similar merchandise for exportation to the United States.)

In J.L. Wood v. United States, 62 C.C.P.A. 25, C.A.D. 1139 (1974), the court held that for the purposes of section 402(b) and section 402(f), the term "sale" should be given its ordinary meaning, i.e., a transfer of property from one party to another for a consideration.

In this regard, review of the evidence in the instant case indicates that [redacted] is a viable corporate entity, separate and distinct from [redacted]. The record also reflects that although the imported wire was shipped directly to [redacted] from [redacted], [redacted] was the seller of the merchandise as indicated on the commercial invoices. In addition, it appears that [redacted] reimbursed [redacted] for the imported items, and that [redacted]

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contracted with and made payment to [redacted]. In short, we are satisfied that the transactions between [redacted] and [redacted] constitute bona fide sales for Customs purposes.

We must now consider whether the purchase price between these related parties, [redacted] and [redacted] fairly reflects the market value within the meaning of section 402(f)(1)(b). In this regard, the question arises as to what evidence should be viewed as acceptable or determinative in arriving at the conclusion that a given transaction price between related parties does or does not fairly reflect the market value of the imported merchandise. There is no hard and fast rule as to the proof needed to establish that a price to a selected purchaser fairly reflects market value. Factors which have been considered by the courts are the bona fides of the transaction, whether or not the transaction was at arm's length, the practices of others engaged in the same class of trade, whether there is evidence sufficiently accounting for any differences in price or costs, and sales to unrelated customers in the United States at comparable prices. On the other hand, references to cost of production, home market sales and third country sales have been held to be improper in establishing statutory export value. See D. H. Baldwin Co and Koeller Strauss Co. v. United States 65 C.C.P.A. 67, C.A.D. 1208 (1978).

In this case, we find that the evidence of record regarding the circumstances of sale and the relative markups of [redacted] and [redacted] is sufficient to establish that the prices between those two parties fairly reflect the market value of the subject merchandise. [redacted] has provided representative invoices and trade acceptences issued by [redacted] as well as representative invoices and trade acceptences issued by [redacted] to [redacted]. In accordance with T.D. 78-344, we find that the sale transactions were at arm's length. We note that the evidence in the file does not indicate that the prices charged by [redacted] were arrived at by collusion between it and [redacted].

Based upon the determinations that the transactions between [redacted] and [redacted] constitute bona fide sales for Customs purposes and that the prices between [redacted] and [redacted] fairly reflect the market value of the subject merchandise, we find that the proper basis for appraisement is export value as represented by the invoice price from [redacted] to [redacted]. Accordingly, we find the allegation of the Notice of Penalty that the invoices did not reflect the true value of the imported merchandise to be unsubstantiated.

The issue of the non-declaration of the payments made for currency fluctuations has also been examined by the Classification and Value Division at Customs Headquarters. It has been determined that the currency fluctuation payments have no bearing on the export transfer price and that they are not includable in the dutiable value of the imported merchandise.

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[redacted]

Accordingly, we find that the failure to declare the currency fluctuation payments does not constitute a material omission within the meaning of title 19, United States Code, section 1592, and that Customs allegation of a violation in that regard is not supported.

Based upon our findings, the claim for monetary penalty is cancelled. Please advise counsel for [redacted] of this decision and enclose a copy of this letter with your notification.

Sincerely,
(Signed) Anthony L. Piazza

Salvatore E. Caramagno
Entry, Procedures and
Penalties Division

[redacted]

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

26 MAR 1981

ENF 4-02.2 CO:R:E:C
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District Director of Customs
San Francisco, California 94126

Dear Sir:

Your memorandum of September 2, 1980, forwards a petition filed by counsel on behalf of [redacted] and [redacted] in connection with San Francisco District Case No. 79-2809-51042. The petition requests relief from a claim for forfeiture value of $2,986,653.00 assessed jointly and severally against [redacted] and [redacted] for violation of 19 U.S.C. 1592.

Twenty-one consumption entries filed between October 1974 and March 1975 were accompanied by invoices which provided false value breakdowns of the component materials of arctic clothing manufactured in Taiwan by [redacted] for the United States importer [redacted]); the invoices undervalued the cost of materials provided free of charge to [redacted] by [redacted] (Nomex fabric, Nomex thread, and fur strips), and failed to include the cost of assists (pattern development costs). The false value breakdowns of component material altered the classification of the garments by manipulating component material of chief value. The actual loss of revenue was $347,392.41 and the potential loss was $18,937.06 (total: $366,329.47).

The false invoices were prepared by [redacted] with values supplied by the importer, [redacted], which is now bankrupt. Although garment components were supplied free of charge, [redacted] and [redacted] agreed to assign certain values to the components inasmuch as Taiwanese law restricted the shipment of components to Taiwan on a consignment basis. The values assigned to the components had a two-fold purpose. The values would ostensibly be the basis of a price charged for the components in order to circumvent Taiwanese law for [redacted] benefit; and the same values would also be presented to U. S. Customs in such a way as to incur a lower rate of duty when the assembled garments were imported by [redacted]

[redacted] claims that it did not possess actual knowledge that the values supplied by [redacted] were inaccurate. [redacted] also contends that Customs could not reasonably expect [redacted] to be on notice that the components were undervalued. We agree. No evidence in the record suggests that [redacted] actually knew the values were false. Furthermore, we cannot impute to [redacted] in Taiwan knowledge of the cost of particular components in the United States, knowledge which could have provided [redacted] with a basis for challenging the values as supplied.

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The notice of penalty also refers to the failure to declare the cost of assists, i.e., pattern development costs. Special Customs invoices (CF 5515) in the record which are signed by [redacted] do not contain a check mark in either the box marked "yes" or "no" in answer to the question whether assists were provided. It has been Customs policy to accept special Customs invoices with the question on assists left unanswered. C.S.D. 79-69. Consequently, we have declined to find a violation of 19 U.S.C. 1592 where assists have been provided to the manufacturer who does not answer the question on assists on CF 5515.

The notice of penalty also names [redacted] related to [redacted] insofar as there is a common shareholder of more than 5 percent of the stock of each company. [redacted] however, was incorporated in February 1978, nearly three years after the last entry in question was made. The record offers no evidence that [redacted] is related to the subject transactions in any way.

In view of the foregoing, the claim for forfeiture value against both [redacted] and [redacted] is cancelled. Please notify the petitioners, through counsel, of our decision in this case, enclosing a copy with your letter of notification.

Sincerely,

Salvatore E. Caramagno

Donald W. Lewis
Director, Office of
Regulations and Rulings

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

14 DEC 1982

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ENF 4-02.2 CO:R:E:C
653149 MPH

Dear Sir:

Your memorandum of October 21, 1982, forwarded a petition submitted by counsel on behalf of [redacted] (petitioner), seeking relief from a claim for a monetary penalty of $63,950.08, assessed pursuant to title 19, United States Code, section 1592, in Newark Case No. 81-4601-50698.

The liability was incurred because petitioner entered twenty-three drums of dillweed oil into the commerce of the United States under cover of an entry dated January 29, 1981, by means of false statements on invoices submitted to the Customs Service. The invoices were false in that they stated that the dillweed oil was a product of Italy when in fact the merchandise was a product of Bulgaria. As a result of petitioner's actions, the United States has suffered an actual loss of revenue of $15,987.52.

Petitioner concedes the falsity of the invoices. Petitioner claims, however, that at the time it filed the documents associated with the instant entry, it reasonably believed that the merchandise was a product of Italy. Accordingly, petitioner argues that it exercised due care in entering the merchandise and that it did not violate section 1592.

Alternatively, petitioner argues that the false statement as to country of origin was the result of a clerical error or mistake of fact not amounting to a pattern of negligent conduct within the meaning of title 19, United States Code, section 1592(a)(2).

Petitioner presents a rather detailed recital of the commercial transaction which gave rise to the instant importation. Because of its obvious relevance to the question of petitioner's culpability, we will summarize the background as presented by petitioner.

Petitioner purchased the instant merchandise from [redacted], manufacturers and dealers in essential oils and related products. [redacted] received twenty-six drums of Italian dillweed oil on September 15, 1980. This merchandise was offered to petitioner through [redacted]. United States representatives of [redacted] Samples of the dillweed oil were forwarded to petitioner for testing. Negotiations between petitioner and [redacted] led to a purchase and sale agreement which was executed on December 9, 1980, specifying that the product was to be shipped from Italy.

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At the time of the arrival of the merchandise, petitioner had not received either the respective Special Customs Invoice or the commercial invoice. Entry by petitioner's broker was made via a pro forma invoice. The declaration of Italy as the country of origin was in conformity with petitioner's understanding in negotiations with [redacted]

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To buttress its contention that it exercised due care, petitioner offers an explanation for the false statements on the entry documents.

According to a letter submitted by [redacted] its freight forwarder mistakenly shipped Bulgarian dillweed oil in place of the Italian oil which petitioner had ordered. The oil which was originally intended for petitioner was mistakenly shipped to another customer in Zurich.

As your memorandum suggests, the record does not establish that petitioner had actual knowledge of the country of origin of the merchandise. It remains to consider whether petitioner's actions constitute negligence.

Title 19, United States Code, section 1592(c)(4) states that if the penalty claim is based on negligence, the Government's burden is simply to show that act or omission constituting the violation and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

Petitioner has presented a reasoned explanation for the falsity of the entry documents supported by statements from the various parties. The record does not contain any evidence inconsistent with petitioner's version of the events. Accordingly, petitioner has satisfied its burden of proof.

Based upon our consideration of the record, the monetary penalty is cancelled.

Please inform petitioner, through counsel, of this decision and enclose a copy of this letter with your notification.

Sincerely,

(Signed) Anthony L. Piazza

(for) Donald H. Lewis
Director, Entry Procedures
and Penalties Division

Area Director of Customs
Newark, New Jersey 07114

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[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 160 (11-15-73)

06 JAN 1983

ENF 4-02.2 CO:R:E:C
653172 MBH

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Dear Sir:

Your memorandum of April 1, 1981, forwarded a petition submitted by counsel on behalf of [redacted] seeking relief from a claim for a monetary penalty of $768,872, assessed pursuant to title 19, United States Code, section 1592, in Seattle District Case No. 81-3004-50022.

The liability was incurred in connection with the entry of certain lighting fixtures into the commerce of the United States under cover of 131 entries filed during the period from June 30, 1976, to September 29, 1980. It is alleged that the entries contained false statements. As recited in the penalty notice of December 16, 1980, the statements were allegedly false in that

(1) The consignee, [redacted] ceased to be a viable entity during 1975 and exists in name only.

(2) The unit prices failed to reflect the increases in actual costs to [redacted] or increases in the United States net price.

(3) Certain components declared as United States components under TSUS Code 807.00 were actually of Mexican origin.

In addition, the record indicates that certain components entered under item 807 were advanced in value or improved in condition by means other than assembly.

The total loss of revenue is reported to be $192,218.12. Of this amount, all but $3,817.48 is allegedly attributable to the undervaluation violation.

Because of the nature of the undervaluation violation, a discussion of the import transactions which gave rise to this penalty case is appropriate.

[redacted] is a company incorporated under the laws of British Columbia, Canada. In May 1970, a wholly owned American subsidiary, [redacted]), was formed and acted as importer of record. By 1972, [redacted] was used as an assembly facility. By 1975, however, the assembly operation was discontinued. Subsequent importations of lighting fixtures were in assembled condition.

According to the investigative record, with respect to the instant transactions, orders from American purchasers were solicited by sales representatives who were paid on a commission basis. These orders were sent to a post office box in Seattle where they were periodically collected and delivered to [redacted] The assembled fixtures were shipped by [redacted] via its terminal in Seattle and were reshipped directly to the customers. [redacted] was the importer of record for the subject merchandise.

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Invoices bearing the name "[redacted]" were prepared by personnel of [redacted]. The invoices were forwarded to a factoring company in Canada which credited [redacted] on its bank accounts.

According to your memorandum, the basis for the undervaluation violation is that the true commercial transaction was a sale from [redacted] to its American customers rather than from [redacted] to [redacted]. Therefore, you reason that the entered value should have reflected the price at which the merchandise was sold to the American customers.

Petitioner claims that [redacted] was a viable legal entity during the relevant period, responsible for paying all charges incurred in the United States, that title passed upon shipment to [redacted] and that its use of the transfer price for the entered value was proper.

It is clear that the existence of the instant violation and the calculation of the loss of revenue depend upon whether a bona fide sale occurred between the Canadian parent and the American subsidiary. If a sale is deemed to have taken place, use of the purchase price cannot be regarded as violative conduct. See title 19 United States Code, section 1481(5).

The "sale" issue was referred to Headquarters Value Branch which has analyzed the instant case under the applicable legal standard J. L. Wood v. United States, 62 CCPA 25, CAD 1139 (1974).* In pertinent part, the Value Branch concluded as follows:

> "The facts in the instant case closely parallel the facts in the J. L. Wood case in nearly all respects. In fact, it is our view that of the few pertinent differences which do exist between the fact patterns of the two cases, none are of sufficient importance to justify our reaching a conclusion at variance with the decision of the court in J. L. Wood in regard to whether there were actual sales. Consequently, after a careful review of the evidence in this case, we conclude, in the light of the facts and holding in J. L. Wood, that the subsidiary was a viable corporate entity during the period in question and that the transactions between the parent and subsidiary represented bona fide sales."

In our view, the foregoing reasoning is dispositive of the valuation issues. It remains to consider the 807 violation.

*In J.L. Wood, the court held that the related nature of the companies did not preclude a conclusion that a bona fide sale had taken place.

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Petitioner acknowledges that some of the components claimed as American under item 807.00 TSUS were in fact products of Mexico. Petitioner explains that since the components were imported from the United States, they were regarded by petitioner as being American. Petitioner also states that in 1978 it was told by an import specialist and a special agent that certain components were not products of the United States for Customs purposes. From then on, petitioner avers that it tried to avoid claiming free entry for the Mexican components. Petitioner asserts that the amount of duties on the Mexican components is not large.

Your transmittal of November 24, 1982, states that the loss of revenue attributable to the false claims under item 807.00 is $3,817.48. In our view, petitioner, aware that some of its components were of Mexican origin, had an obligation as a reasonable and prudent importer to inquire whether these components were eligible under item 807.00. Petitioner's initial failure to ascertain its obligations under the statute and subsequent failure to make certain that no false claims were made constitute negligence in violation of title 19, United States Code, section 1592.

In view of these findings and based upon our consideration of the record, the monetary penalty is mitigated to $7,634.

Please inform petitioner, through counsel, of this decision, informing him that compliance with its terms must be effected by February 7, 1983. Enclose a copy of this letter with your notification.

Sincerely,

(Signed)

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

District Director of Customs
Seattle, Washington 98174

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[redacted]

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U. S. CUSTOMS SERVICE
OFFICE OF REGULATIONS AND RULINGS
WASHINGTON, D. C.

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10 JAN 1983

UNCLASSIFIED
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1/6/83

MICHAEL K. TOMENGA

8317

AREA DIRECTOR OF CUSTOMS
NEW YORK SEAPORT
NEW YORK, NEW YORK

(PRIORITY) RE: YOUR MEMORANDUM OF DECEMBER 14, 1982, FORWARDING PETITION OF [redacted] FOR RELIEF OF CLAIM FOR DOMESTIC VALUE FOR $174,389, ASSESSED FOR VIOLATIONS OF 19 U.S.C. 1592 IN YOUR CASE NO. 78-1001-52040.

THE CLAIM AROSE BECAUSE PETITIONER ENTERED OR CAUSED TO BE ENTERED LADIES' VINYL GARMENTS BY MEANS OF TWO FALSE CONSUMPTION ENTRIES (C.E.) FILED IN THE NEW YORK SEAPORT AREA. THE ENTRIES, C.E. NOS. 237637 AND 323354, DATED OCTOBER 31, 1973, AND JANUARY 21, 1974, RESPECTIVELY, WERE FALSE IN THAT THEY STATED A PURCHASE PRICE LOWER THAN THE ACTUAL PURCHASE PRICE. A POTENTIAL LOSS OF REVENUE OF $3,476.25 RESULTED.

COUNSEL DENIES THE EXISTENCE OF A VIOLATION. COUNSEL CLAIMS THE DECLARED VALUES PROPERLY REPRESENTED THE SALE PRICE FROM THE EXPORTER, [redacted], TO ITS PARTIALLY OWNED SUBSIDIARY, [redacted]. [redacted] THEN ALLEGEDLY RESOLD THE GARMENTS TO PETITIONER WHICH MADE ENTRY AS IMPORTER OF RECORD. THE RESALE PRICES WERE NOT DECLARED ON THE ENTRY, BUT WERE DISCLOSED BY PETITIONER ON MAY 20, 1974, IN ITS RESPONSES TO TWO RELATIONSHIP QUESTIONNAIRES (II-RC-270) SENT BY CUSTOMS.

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BASED ON PETITIONER'S ADMISSIONS IN ITS RESPONSES TO THE QUESTIONNAIRES; A SALES CONTRACT DIRECTLY BETWEEN [redacted] AND PETITIONER, WHICH HAS PRICES, QUANTITIES, AND STYLES THAT CORRESPOND TO THE ALLEGED RESALE INVOICE FOR TWO OF THE GARMENT STYLES ON ENTRY 323354; AND THE ABSENCE OF COMMERCIAL INVOICES, RECORDS OF PAYMENT, OR OTHER EVIDENCE THAT A SALE BETWEEN [redacted] OCCURRED AT THE PRICES DECLARED; WE FIND THAT [redacted] ACTED AS A SALES AGENT IN THESE TRANSACTIONS. THE SALES CONTRACT SHOWS THAT PETITIONER HAD ACTUAL KNOWLEDGE OF THE AGENT STATUS OF [redacted] AND THE ACTUAL PURCHASE PRICES.

WE CONCLUDE THAT PETITIONER FALSELY DECLARED LOWER PURCHASE PRICES THAN WERE ACTUALLY PAID IN VIOLATION OF 19 U.S.C. 1592 AND THAT THE VIOLATION RESULTED FROM GROSS NEGLIGENCE. WE ALSO CONCLUDE THAT PETITIONER'S RESPONSES TO THE RELATIONSHIP QUESTIONNAIRES CONSTITUTED A VOLUNTARY DISCLOSURE OF THE VIOLATIONS. OUR POLICY HAS BEEN THAT A PARTY MUST TENDER AN ACTUAL LOSS OF REVENUE TO OBTAIN VOLUNTARY DISCLOSURE TREATMENT. THIS POLICY HAS BEEN CONTINUED IN THE CURRENT PRIOR DISCLOSURE REGULATIONS AND IS STATED IN SECTION 162.74(A), CUSTOMS REGULATIONS. SINCE THE LOSS OF REVENUE IN THIS CASE IS ALL POTENTIAL, NO TENDER IS REQUIRED.

IN CONSIDERATION OF THE VOLUNTARY DISCLOSURE, PETITIONER'S PRIOR GOOD RECORD, AND THE SMALL LOSS OF REVENUE COMPARED TO THE FORFEITURE VALUE OF THE MERCHANDISE, WE MITIGATE THE CLAIM FOR FORFEITURE VALUE FROM $174,389 TO $1,738.13, PROVIDED THAT $3,476.25 IS COLLECTED UPON LIQUIDATION OF THE ENTRIES.

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[redacted]

PLEASE ADVISE PETITIONER OF THIS DECISION BY TELEPHONE. PAYMENT OF THE MITIGATED AMOUNT WILL BE DEEMED COMPLIANCE. IF PETITIONER DOES NOT COMPLY WITH THE DECISION BY JANUARY 19, 1983, THE CASE SHOULD BE REFERRED TO THE DEPARTMENT OF JUSTICE FOR APPROPRIATE ACTION. PRELIMINARY STEPS SHOULD BE TAKEN TO PREPARE THE CASE FOR REFERRAL IN THE EVENT THAT PETITIONER DOES NOT COMPLY.

(Signed) DONALD W. LEWIS

DONALD W. LEWIS
DIRECTOR, ENTRY PROCEDURES
AND PENALTIES DIVISION

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

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U. S. CUSTOMS SERVICE
OFFICE OF REGULATIONS AND RULINGS
WASHINGTON, D. C.

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UNCLASSIFIED

6/5/81

BARBARA GRAHAM

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DISTRICT DIRECTOR OF CUSTOMS
BOSTON, MASSACHUSETTS

YOUR MEMORANDA, DATED MAY 26, 1981, FORWARDED THE PETITIONS OF FADED GLORY BY [redacted] AND [redacted] REQUESTING RELIEF RELIEF FROM MONETARY PENALTY CLAIMS EACH IN THE AMOUNT OF $77,787,784 ASSESSED FOR VIOLATION OF 19 U.S.C. 1592, AS AMENDED BY P.L. 95-410 (CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978). (BOSTON DISTRICT CASE NOS. 81-0401-50022/1 AND 81-0401-50022/2).

THE CLAIMS WERE ASSESSED BECAUSE PETITIONERS FILED OR CAUSED TO BE FILLD ENTRIES DATED FROM JANUARY 12, 1976, THROUGH AUGUST 31, 1978, WITHOUT FULLY REPORTING AND INCLUDING WITHIN DUTIABLE VALUE OF THE ENTERED MERCHANDISE, A QUOTA CHARGE OF $3,493,689 WHICH WAS INVOICED AND PAID SEPARATELY. AS A RESULT, THERE IS A REPORTED POTENTIAL LOSS OF REVENUE OF $84,064 AND AN ACTUAL LOSS OF REVENUE OF $596,211 FOR A

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TOTAL OF $680,275. THE CLAIM FOR $77,787,784 ASSESSED AGAINST EACH PETITIONER WAS BASED ON THE PRELIMINARY DETERMINATION THAT THE VIOLATIONS WERE THE RESULT OF FRAUD.

PETITIONERS CLAIM THAT THEY HAVE BEEN DENIED THEIR STATUTORY RIGHTS TO MAKE A MEANINGFUL RESPONSE TO CUSTOMS ALLEGATIONS UNDER 19 U.S.C. 1618 AND HAVE BEEN DENIED THEIR STATUTORY RIGHTS TO BE INFORMED OF THE SPECIFIC CIRCUMSTANCES LEADING TO THE ALLEGED VIOLATIONS UNDER 19 U.S.C. 1592 IN THAT THE PREPENALTY NOTICE CONTAINS NO DETAILS AND NO ALLEGATIONS OF MATERIAL FACTS WITH REGARD TO THE ALLEGED VIOLATIONS.

CONTRARY TO PETITIONERS' ALLEGATIONS, WE FIND THAT THE NOTICES ISSUED SET FORTH THE NECESSARY DETAILS AND FACTS WHICH ARE REQUIRED UNDER SECTION 1592(b) AND PROVIDE PETITIONERS WITH SUFFICIENT INFORMATION TO PREPARE A MEANINGFUL RESPONSE.

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PETITIONERS CLAIM THAT THEY WERE NOT REQUIRED TO DISCLOSE QUOTA CHARGES ON THE ENTRY PAPERS IF THEY HAD REASONABLE CAUSE TO BELIEVE THAT THE CHARGES WERE NOT DUTIABLE. PETITIONERS ASSERT THAT 19 U.S.C. 1481 DOES NOT CONTAIN A REQUIREMENT THAT QUOTA CHARGES BE LISTED ON THE INVOICES. PETITIONERS CONTEND THAT BECAUSE QUOTA CHARGES HAVE BEEN HELD TO BE NONDUTIABLE CHARGES IT IS QUITE REASONABLE FOR AN IMPORTER TO ATTACH NO SIGNIFICANCE TO THE INCURRENCE OF QUOTA CHARGES. PETITIONERS FURTHER CLAIM THAT IT IS NOT INCUMBENT UPON THE IMPORTER TO INCLUDE A CHARGE OF WHICH CUSTOMS IS APPRISED AND WHICH SAID IMPORTER BELIEVES TO BE NONDUTIABLE; THAT THE IMPORTER WAS NOT INFORMED THAT THE QUOTA CHARGES WERE DUTIABLE AND THAT THE IMPORTER IS NOT REQUIRED TO DETERMINE THE DUTIABILITY OF THE MERCHANDISE.

WE DISAGREE WITH PETITIONERS' CONTENTION THAT THEY WERE NOT REQUIRED TO REPORT THE QUOTA CHARGES ON THE ENTRY PAPERS. SECTION 1481(3) REQUIRES THAT INVOICES SET FORTH ALL CHARGES UPON THE MERCHANDISE. THE STATUTE DOES NOT DISTINGUISH BETWEEN DUTIABLE OR NONDUTIABLE

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CHARGES. THE EVIDENCE IN THE FILE SHOWS THAT QUOTA CHARGES WERE CHARGED AND SEPARATELY BILLED TO [redacted] AND THAT THESE CHARGES WERE NOT SET FORTH ON THE INVOICES PRESENTED TO CUSTOMS.

WE AGREE WITH PETITIONERS THAT IT IS NOT THE OBLIGATION OF THE IMPORTER TO DETERMINE THE DUTIABILITY OF THE MERCHANDISE; THE IMPORTER'S OBLIGATION IS TO DISCLOSE THE TRANSACTIONS PURSUANT TO THE STATUTE AND THE REGULATIONS. IN THIS CASE PETITIONERS FAILED TO DISCLOSE THE CHARGES TO CUSTOMS CLAIMING THAT THE REASON FOR THIS FAILURE WAS BECAUSE OF THEIR BELIEF THAT THE CHARGES WERE NOT DUTIABLE. PETITIONERS APPARENTLY TOOK UPON THEMSELVES THE OBLIGATION TO DETERMINE THE DUTIABILITY OF THE CHARGES, AN OBLIGATION WHICH THEY CORRECTLY STATE IS THAT OF CUSTOMS. IT IS INCUMBENT UPON THE IMPORTER TO DISCLOSE THE CHARGES TO CUSTOMS SO THAT CUSTOMS MAY MAKE THE DETERMINATION AS TO THEIR DUTIABILITY. CUSTOMS CANNOT INFORM THE IMPORTER THAT THE CHARGES ARE DUTIABLE IF CUSTOMS IS UNAWARE OF THEIR EXISTENCE.

PETITIONERS CLAIM THAT CUSTOMS CANNOT IMPUTE FRAUD TO THE IMPORTER WHEN CUSTOMS WAS AWARE OF THE QUOTA CHARGES. HOWEVER, PETITIONERS FAIL TO PROVIDE ANY DETAILS REGARDING THIS DISCLOSURE. THE FILE REFLECTS THAT CUSTOMS WAS NOT APPRISED OF THE SEPARATE QUOTA CHARGES UNTIL AUGUST 1978 SUBSEQUENT TO THE ENTRIES INVOLVED IN THIS CASE. PETITIONERS ALLUDE TO CORRESPONDENCE WITH CUSTOMS WHICH MENTIONS QUOTA CHARGES AND CITES CORRESPONDENCE BETWEEN [redacted] IN 1976. HOWEVER, THE CORRESPONDENCE INCLUDED IN THE FILE RELATES TO AN INQUIRY FROM THE IMPORT SPECIALIST RELATING TO AN ENTRY OF MERCHANDISE FROM TAIWAN. IN A LETTER, DATED FEBRUARY 12, 1976, [redacted] ADMITTED THAT AN ADDITIONAL 10 PERCENT FOR HANDLING EXPENSES WAS PAID. THIS CORRESPONDENCE RELATES TO CHARGES UPON MERCHANDISE FROM TAIWAN AND DOES NOT REFER TO QUOTA CHARGES ON MERCHANDISE FROM HONG KONG WHICH ARE THE SUBJECT OF THE INSTANT CASE. WHAT IS RELEVANT TO THE CASE AT HAND IS THE CF 29 WHICH THE IMPORT SPECIALIST SENT AFTER RECEIPT

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OF THE LETTER FROM [redacted] THE CF 29 CONTAINED THE FOLLOWING COMMENT AND INSTRUCTIONS:

> WHY WASN'T THIS INVOICE PRESENTED TO CUSTOMS AT TIME OF ENTRY? OUR INVOICING REQUIREMENTS MAKE SUBMISSION OF ALL DOCUMENTS RELATING TO IMPORTED MERCHANDISE MANDATORY. WE NEED TO KNOW ALL SUMS THAT YOU REMIT AND THEN WILL MAKE THE DECISION AS TO THEIR DUTIABILITY. WITHOUT THIS INVOICE, WE DID NOT HAVE FULL DETAILS REGARDING THIS TRANSACTION. WE TRUST THAT THIS IS AN ISOLATED INSTANCE.

THUS [redacted] WAS CLEARLY ADVISED ON FEBRUARY 24, 1976, THAT IT WAS THE IMPORTER'S RESPONSIBILITY TO DISCLOSE ALL COSTS AT TIME OF ENTRY. EVEN WITH THE WRITTEN INSTRUCTION, PETITIONERS FAILED TO DISCLOSE THE QUOTA CHARGES WITH RESPECT TO THE HONG KONG CONSUMPTION ENTRIES.

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THE EVIDENCE SHOWS THAT PETITIONERS WERE AWARE OF THE QUOTA CHARGES WHICH WERE SEPARATELY INVOICED ON THE SUBJECT MERCHANDISE AND WERE AWARE OF THEIR OBLIGATION TO REPORT SUCH CHARGES TO CUSTOMS. BASED ON A REVIEW OF THE EVIDENCE OF RECORD, WE FIND THAT THE FAILURE TO REPORT THE QUOTA CHARGES ON THE ENTRY PAPERS IS ATTRIBUTABLE TO GROSS NEGLIGENCE ON THE PART OF THE PETITIONERS IN THAT THEY ACTED WITH WANTON DISREGARD FOR THE RELEVANT FACTS AND INDIFFERENCE OR DISREGARD FOR THEIR OBLIGATIONS UNDER THE STATUTE.

PETITIONER [redacted] CLAIMS THAT HE HAD NO RESPONSIBILITY FOR OR KNOWLEDGE OF NOR DID HE PARTICIPATE IN CUSTOMS MATTERS. THE EVIDENCE IN THE FILE SHOWS THAT [redacted] WHO WAS A CORPORATE OFFICER DURING THE TIME IN QUESTION HAD PERSONALLY ORDERED MERCHANDISE FROM THE FOREIGN SUPPLIER. [redacted] HAD FULL KNOWLEDGE OF THE TRANSACTIONS AS WELL AS CUSTOMS REQUIREMENTS. HE WAS ACTIVELY INVOLVED IN THE SUBJECT TRANSACTIONS, WAS AWARE OF ALL COSTS INCURRED INCLUDING THE SEPARATELY INVOICED QUOTA CHARGES AND FAILED

[illegible] TO THE

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TO REPORT SAME TO CUSTOMS. ACCORDINGLY, WE FIND THAT [redacted] IS PERSONALLY LIABLE UNDER THE STATUTE AND HIS FAILURE TO REPORT QUOTA CHARGES IS ATTRIBUTABLE TO GROSS NEGLIGENCE.

PETITIONERS CLAIM THAT THE QUOTA CHARGES ARE NOT DUTIABLE. PETITIONERS CITE THE DECISION OF UNITED STATES V. GETZ BROS. & CO. ET AL., 55 CCPA 11, C.A.D. (1967) WHERE THE COURT FOUND THAT THE QUOTA CHARGES WERE NOT DUTIABLE. CHARGES WHICH WERE INCLUDED AS PART OF THE TOTAL INVOICE PRICE AND NOT DISTINCTLY SEGREGATED, BEING A MERE ADDITION TO THE PROFIT OF THE MANUFACTURERS, WERE DUTIABLE. PETITIONERS CLAIM HERE SPECIFIC AMOUNTS ARE CHARGED FOR THE QUOTA ALLOCATIONS USED TO EXPORT THE PRODUCTS PURCHASED BY [redacted]

THE EVIDENCE IN THE FILE SHOWS THAT THE SELLER, [redacted] HAD FREE QUOTA AS WELL AS PURCHASED QUOTA. IT SOLD THE MERCHANDISE AT A UNIFORM RATE WHETHER FREE OR PURCHASED QUOTA WAS USED. THE AMOUNT

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SAVED USING ITS OWN QUOTA CONSTITUTES PART OF PROFIT OF THE MANUFACTURER AND THE ONLY FREELY OFFERED PRICE WAS THE PRICE INCLUDING THE UNIFORM RATE FOR QUOTA. ACCORDINGLY, WE FIND THAT THE QUOTA CHARGES ARE DUTIABLE.

BECAUSE THE STATUTE OF LIMITATIONS HAS ALREADY RUN WITH RESPECT TO SEVERAL ENTRIES CITED IN THE NOTICES, THE LOSS OF REVENUE FOR DETERMINING THE MITIGATED AMOUNTS HAS BEEN REDUCED AS FOLLOWS: ACTUAL LOSS OF REVENUE $548,708; THE POTENTIAL LOSS OF REVENUE THE SAME AT $84,064, THE TOTAL LOSS $632,772. UNDER AUTHORITY OF 1592(d) CUSTOMS IS CONDITIONING MITIGATION UPON DEPOSIT OF THE TOTAL AMOUNT OF ACTUAL LOSS OF REVENUE AS ORIGINALLY CALCULATED.

BASED ON A FINDING OF GROSS NEGLIGENCE WITH RESPECT TO [redacted] THE MONETARY PENALTY CLAIM IS MITIGATED TO $2,531,088, PROVIDED THAT THE ACTUAL LOSS OF REVENUE OF $596,211 IS DEPOSITED. BASED ON A FINDING OF GROSS NEGLIGENCE WITH RESPECT TO [redacted], THE CLAIM AGAINST HIM IS MITIGATED TO $2,531,088.

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NOTIFY PETITIONERS IMMEDIATELY WITH ADVICE THAT PAYMENT MUST BE RECEIVED BY JUNE 12, 1980, OR CASE WILL BE FORWARDED TO JUSTICE DEPARTMENT. INTERIM STEPS TO BE TAKEN TO PREPARE CASE FOR REFERRAL. ENCLOSE COPY OF THIS DECISION IN NOTIFICATION TO PETITIONERS.

(Signed) DONALD W. LEWIS

DONALD W. LEWIS
DIRECTOR, OFFICE OF
REGULATIONS AND RULINGS

[redacted]

[redacted]

652698/652699

A12

29 JUL 1983

INF 4-02.2 R:E:C
653371 BLS

653371

District Director of Customs
Duluth, Minnesota 55802

Re: Case No. 83-3601-50008; [redacted]

Dear Sir:

This is in response to your memorandum dated June 30, 1983, (INF-4-02-DC TGB), forwarding the petition of [redacted] requesting relief from a monetary penalty of $83,500, assessed under title 19, United States Code, section 1592, for entering merchandise into the United States by means of false values.

The merchandise consists of fifty truckloads of precast concrete planks entered through the use of special Customs invoices on July 6, 1982. While the total declared value for all of the truckloads was $29,111 (U.S.), the actual contract price between the Canadian shipper and United States purchaser was $83,500 (U.S.) F.O.B. job site, Duluth. This is established by a copy of the contract between the parties, dated March 30, 1982. Under the agreement the Canadian shipper was responsible for payment of Customs duties.

Petitioner attributes the violation to inexperience in exporting, and to information provided by its broker, who advised that the value per truck load for Customs purposes was based on the direct cost (to petitioner) and not on the selling price.

In response thereto, the involved broker states that no such advice was given to petitioner, but rather petitioner was advised to submit to Customs a copy of the commercial invoice with petitioner's United States customer, as is customary on all commodities where the duty is based on the value.

You advise that in your experience, the broker has exhibited over the years a willingness to cooperate with Customs and a comprehensive knowledge of Customs laws and regulations. As a result, based on the broker's statements and other evidence in the record, you believe that the violation was of an intentional nature. Therefore, in accordance with normal disposition in cases involving fraudulent violations, you recommend that the penalty be mitigated to $16,216.40, an amount equal to eight (8) times the loss of revenue.

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We concur with your recommendation. Under the circumstances, the penalty of $83,500 is mitigated to $16,216.40. Please advise petitioner of our decision and include a copy thereof with your notice.

Sincerely,

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

A14

03 MAY 1984

ENF 4-02.2 CO:R:E:C
653435 SLG

District Director of Customs
Baltimore, Maryland 21202

Dear Sir:

This is in reference to the petition of [redacted] ("petitioner"), seeking relief from a penalty assessed in the amount of $27,500, and from the seizure of one 1982 300 D Mercedes Benz vehicle, incurred for violation of title 19, United States Code, section 1592 (Baltimore District Case No. 83-1303-00017).

Petitioner on November 29, 1982, attempted to enter the above vehicle into the commerce of the United States by means of the false statements that the vehicle complied with all Department of Transportation (DOT) safety standards and that it was covered by a certificate of conformity issued by the Environmental Protection Agency (EPA). In addition, petitioner falsely declared that the vehicle bore a DOT certification label affixed by its original manufacturer and that it bore an EPA certification label or tag.

The subject vehicle, however, was not manufactured in conformity with DOT standards nor was it covered by an EPA certificate of conformity. Instead, the seized Mercedes Benz vehicle had been modified in Germany under petitioner's direction. The DOT certification label affixed to the vehicle, however, did not reflect petitioner or anyone else as the modifier of the vehicle. Although DOT regulations do not preclude the modifier of a vehicle from affixing the certification label or tag to the modified vehicle, it is required that the certification label indicate the name of the person affixing the label. (See 49 CFR 567.4(g)(1)).

The above false statements, which allegedly resulted from petitioner's fraud, were material in that they had the potential to alter the status of admission of the vehicle. If the vehicle had been allowed admission into the United States on the basis of petitioner's false claims described above, its entry into the United States would have been allowed on an unrestricted basis; Customs release of petitioner's bond filed with the entry would not have been conditioned upon the production of a letter or declaration from DOT and EPA, stating that the vehicle had been brought into or was in conformity with all United States safety and emission standards. (See 19 CFR 12.73(c) 12.80(e).) Thus,

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although the false claims did not result in a loss of duties, they did have the potential of circumventing the Customs entry procedures for ensuring that all non-exempt imported vehicles complied with EPA and DOT standards.

As background, petitioner has claimed that the entry of the vehicle would have been made in the name of the purchaser of the vehicle, [redacted] but for the fact that the broker, [redacted] mistakenly prepared the entry documents in the name of [redacted] In this regard, petitioner submits a statement by its employee, [redacted] who signed the EPA and DOT forms involved in this case, [redacted] claims that she did not instruct the broker, [redacted] on how to complete any of the entry documentation for the subject vehicle. The manager of [redacted] however, claims in a statement to Customs (sent through petitioner) dated February 13, 1984, that [redacted] of [redacted]

> "had us indicate the importer as [redacted] and show on both EPA and DOT forms that the car complied".

Despite the foregoing inconsistencies regarding who instructed whom on the completion of the entry documents, both of the above parties represented petitioner in the subject transaction.

As importer of record, however, petitioner had ultimate responsibility for the accuracy of any statements made on its behalf to Customs. In this regard, petitioner primarily claims that the false statements on the EPA and DOT forms resulted from a miscommunication between the various parties regarding the nature of the vehicle. Petitioner submits that a confusion in completing the above forms arose from the fact that the vehicle had been modified for EPA and DOT compliance purposes, in Germany instead of in the United States.

In connection with the foregoing claims, however, the fact that petitioner also was the exporter of the subject vehicle also must be considered. Moreover, petitioner admittedly directed the affixation of the labels to the vehicle indicating that it had been manufactured in compliance with DOT standards and had been certified by EPA. Thus, even if [redacted] had been the importer of record of the subject vehicle, petitioner still would have been responsible for his actions with respect to the false DOT and EPA certification labels, since such actions would have constituted aiding and abetting the making of the false claims in violation of section 1592 (19 U.S.C. 1592 (a)(1)(B)).

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Petitioner has claimed that the labels were affixed to the vehicle by him after consulting with a DOT official and that since he modified the vehicle to conform with EPA and DOT standards, he believed that he could affix the labels. In our view, however, the very fact that it was petitioner who also attempted to import the vehicle by means of false claims, comporting with the false certification labels, negates a conclusion that these claims resulted from confusion.

On July 27, 1983, the subject seized vehicle was inspected by a DOT inspector who reported that the vehicle in fact was not in compliance with DOT safety standards. We, subsequently, have been advised further by the Department of Transportation that in addition to the vehicle not conforming with the agency's standards, the photographs forwarded by petitioner to DOT, for purposes of receiving a letter of approval from DOT, were <u>not taken of the vehicle which was inspected and attempted to be imported by petitioner.</u>

In light of the foregoing, we find that petitioners actions in this case resulted from culpability not less than fraud. Collectively, the false claims on the EPA and DOT forms, the false EPA and DOT labels affixed to the vehicle, and the submisson of false photographs to DOT, demonstrate that petitioner acted with specific intent to import the subject vehicle without complying with EPA and DOT emission and safety standards.

In accordance with our determinations above, the instant penalty claim and seizure are remitted upon payment of $14,850, plus storage charges; <u>provided</u>, however, that if imported, the corrected EPA and DOT forms are completed. Otherwise, the vehicle may be exported under Customs supervision upon payment of the above mitigated penalty.

Please advise petitioner of this decision and enclose a copy of this letter with your notification.

Sincerely,

/S/ Donald W. Lewis

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Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted] B3

653135

ENF 4-02.2 CO:R:E:C
653495 BLS

JUN 28 1985

Re: Petition on behalf of [redacted] for relief from a claim for monetary penalty of $16,096,510, assessed under title 19, United States Code, section 1592. St. Louis Case No. 80-4501-50175 PF

653495

Dear Sir:

This is in reference to your Memorandum dated January 12, 1984, in regard to the above-captioned matter.

The penalty was assessed for the reason that during the period between October 1974 through October 1977, [redacted] entered merchandise through Kansas City and identified a 5 percent charge paid to [redacted] as a non-dutiable buying commission. Various manufacturers were also identified on the entry documents as sellers of the imported merchandise. In some cases, it was found that the F.O.B. unit prices reflected on the entry documents and remitted to [redacted] were not the prices charged by the manufacturer, but rather represented [redacted] prices as a reseller of the merchandise. [redacted] also engaged in other activities and practices which reflected that it was acting as a seller, and not a buying agent.

During the entry period, [redacted] became aware that the transactions were not in accordance with the buying agency agreement filed with Customs, and that the entry documents were false. However, [redacted] continued to file these documents and did not advise Customs of these facts.

You report an actual loss of revenue of $1,458.91 and a potential loss of $133,979.67. Total loss of revenue is $135,438.58.

Initially, petitioner contends that the commission was bona fide and therefore the 5 percent fee paid to [redacted] was not dutiable. In the alternative, petitioner argues that under the principles of United States v. Getz Bros. (55 CCPA 11 (1967)), the 5 percent charge would not constitute part of the dutiable value of the goods.

These issues were the subject of petitioner's Protest No. 4501-2-000045, dated November 10, 1983. In a Headquarters decision dated December 27, 1984, we found through detailed analysis that [redacted] was a reseller of the goods and not a buying commissionaire, and that the Getz case was inapplicable to the facts herein involved. Accordingly, we held that the 5 percent charge was dutiable. Petitioner has received notification of this decision through your office.

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Apart from the appraisement issues, petitioner claims that at no time did [redacted] have any knowledge or reasonable cause to believe that [redacted] was acting other than as a bona fide buying agent. Petitioner points to the services performed by [redacted] e.g., arranging for inspection, shipping and packing of the merchandise, acting as the intermediary in meetings between [redacted] and the manufacturers, etc., all of the usual types of services of a buying agent. Specifically, [redacted] contends that it had no knowledge of [redacted] alleged profiteering, since if [redacted] was aware of these practices, it would have discontinued the relationship.

The record does show that in 1976 petitioner amended the original buying agency agreement between the parties in an attempt to avoid a repetition of the difficulties with Customs that had occurred in prior years resulting in violations of title 19, United States Code, section 1592. In each of the violations, the "agent" and the factory were related, and as a result Customs found that the claimed agency relationship was not bona fide.

In the amended agreement, executed on April 29, 1976, [redacted] certified that "...it has no ownership interest in, or any control of, or any financial interest in any of the factories...; that it does not on its own account sell raw materials to the factories...; and that the factories have no control of, interest in, or any ownership interest in the agent. [redacted] further certified that "...it would accept no remuneration for its services rendered under this agreement other than the commissions paid hereunder by the Buyer,...". Further, that "all documents, including Commercial and Customs Invoices must be an exact reflection of the purchase...".

While at this time it appears that petitioner may have reasonably assumed that [redacted] would act in accordance with its agreement, that situation soon changed. Thus, in an interview on February 9, 1980, [redacted] president at the time, [redacted] advised the Customs agent that in the summer of 1976, he was told by one [redacted] a competitor of [redacted], at a meeting in Kansas City, that [redacted] had been overcharging [redacted]. According to [redacted] who had been employed by [redacted] provided documentation in support of this allegation. However, [redacted] advised the Agent that at the time he was satisfied with [redacted] performance and did nothing to terminate the latter's employment. ([redacted] statements were subsequently confirmed by one [redacted] of [redacted] (a buying agent) who was at the meeting, and advised that it took place in August or September 1976.)

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[redacted] further advised that he subsequently became disenchanted with [redacted] performance, and began looking around for a replacement. At that time, in March of 1977, he was advised by [redacted] one of [redacted] suppliers, that [redacted] had been overcharging [redacted] and the supplier produced documentation in support of such claim. The documents showed that [redacted] had sold a product to [redacted] at $67 whereas [redacted] sold the same item to [redacted] at $69.50. Additional information in the record confirms [redacted] knowledge of [redacted] activities, at least during the early part of 1977, and also reflects that other [redacted] officials were aware of [redacted] profiteering. It appears from the evidence that [redacted] continued to deal with [redacted] since its prices even with the overcharges were competitive, and because [redacted] was too involved with [redacted] at the time to abruptly halt their business transactions.

In summary, the evidence clearly shows that in August or September, 1976, [redacted] became aware or at least had reasonable cause to believe that [redacted] was in violation of the Buying Agency Agreement and was defrauding [redacted] As a result of its importing experience, particularly in view of its prior violations, it is also evident that [redacted] knew that Customs relied upon the accuracy of the submitted agreement in determining the dutiable status of the 5 percent fees paid to [redacted] and that [redacted] knew or should have known that [redacted] violations of the agreement were of a material nature.

Based on these facts, regardless of any business decision made to retain [redacted] [redacted] obligation was to advise Customs that it knew or had reason to believe that the submitted Buying Agency Agreement was not accurate, and to permit Customs to determine the bona fides of the agency relationship based on accurate, and not false or misleading, information. Petitioner's failure to take any affirmative action in this regard, when it knew or had reasonable cause to believe that the entered values and other information on the entry documents were false, reflects an indifference or disregard for its obligations under the statute.

Petitioner [redacted] believes that if any penalty is assessed, Customs should consider the fact that the present owner [redacted] had no interest in or relationship to [redacted] during the entry period. Further, with the exception of [redacted] who functions as [redacted] consultant, the other [redacted] employees who were involved with the transactions are no longer employed with [redacted]

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The evidence shows that [redacted] was intimately involved with the transactions and the violation. Therefore, we find little reason to consider this claim as a factor in mitigation.

In conclusion, we find that for shipments entered after September 30, 1976, [redacted] knew or at least had reasonable cause to believe that the entry documents were false but continued to file these documents with Customs. This belief was confirmed in March of 1977, when [redacted] met with [redacted] as heretofore described. As a result, we find ordinary negligence with respect to entries filed between September 30, 1976, and March 31, 1977, and gross negligence with regard to entries filed subsequent to March 31, 1977. Petitioner's failure to advise Customs officials after the meeting with [redacted] reflects a wanton disregard for Customs requirements.

Under the circumstances, the claim against [redacted] is mitigated to $127,935, an amount equal to 2 times the loss of revenue applicable to entries filed between September 30, 1976, and (including) March 31, 1977; and 4 times the loss of revenue with regard to entries filed after March 31, 1977. This decision is conditioned upon payment of the actual loss of revenue by either of the violators.

Please advise petitioner promptly that compliance with this decision must be effected within 30 days from the date of this letter, or the matter will be referred to the Department of Justice, and provide a copy of the decision with your notice.

Sincerely,

(Signed) Edward T. Stevenson

John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

[redacted]

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 101

653495

28 AUG 1984

ENF 4-02.2 CO:R:E:C
653639 SLG

653639

District Director of Customs
New Orleans, Louisiana 70130

Dear Sir:

This is in response to your memorandum dated August 1, 1984, whereby you forwarded the supplemental petition of [redacted] (petitioner). Further relief is sought from the claim for monetary penalty assessed in the amount of $316,244, and from the seizure of gambling devices consisting of 46 slot machines and one iron claw machine for violation of title 19, United States Code, section 1592 (New Orleans District Case Nos. 81-2002-00157, 00166, 00088).

Petitioner's liability for the penalty and seizure was incurred because during the period of July 18, 1980, through July 22, 1981, he, allegedly as a result of fraud, entered shipments of various items of bric-a-brac (e.g., antiques, pianos, and slot machines) into the commerce of the United States under cover of eleven consumption entries, by means of material false descriptions (the gambling devices were described as sewing machine parts) and false prices that were less than the prices actually paid for the goods. There is a reported actual loss of revenue of $2,856.67, a reported potential loss of revenue of $4,159.65, for a total loss of revenue of $7,016.32. Inasmuch as the importation of the gambling devices was restricted under title 15, United States Code, section 1173, seizure of these goods was authorized under section 1592.

By decision dated February 7, 1984, Headquarters upheld the allegation that the false descriptions and values resulted from fraud, but in considering petitioner's age and diminished physical and mental health as mitigating factors, the penalty and seizure were remitted upon payment by petitioner of the amount of $42,100. This remission also was conditioned upon petitioner's payment of the actual loss of revenue amount of $4,159.65.

On supplemental, however, petitioner claims that you have decided that the slot machines cannot be released because of the restrictions under section 1177, and that such decision is in error. Petitioner advises that seizures of gambling devices may be remitted as provided under section 1177 and under title 28, Code of Federal Regulations, sections 3.6 and 9.1 et seq. If Customs is not willing to release the gambling

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devices, petitioner requests that in the alternative, they be forfeited and full credit be granted against the mitigated penalty and loss of revenue amounts in the instant case. In this regard, petitioner claims that the value of the seized slot machines and iron claw machine ($22,700 noted in seizure notice) has doubled since the dates of seizure (July and August 1981), and that consequently, such value now exceeds the mitigated penalty and loss of revenue amounts.

First, it must be stated for the record that Customs seizure of the gambling devices in this case was not made pursuant to title 15, United States Code, section 1177. These goods were seized pursuant to section 1592 only. The mitigated penalty in our decision dated February 7, 1984, represented the amount that petitioner must pay in order to obtain remission of both the seizure and penalty claim for $316,244, incurred for his violation of section 1592 alone. Thus, the terms for remission of the penalty and seizure under section 1592, is not relevant to the question of whether petitioner complied with the requirements under section 1173, regarding the importation of the gambling devices into the United States. Once the penalty and seizure under section 1592, are remitted, however, the requirements under section 1173, then will be relevant, but only with respect to Customs continued detention of the goods.

Upon careful review of this case, we find that petitioner already has been granted substantial mitigation of the penalty and seizure under section 1592. Notwithstanding petitioner's criminal conviction under title 18, United States Code, section 542, on the same entries involved in this case,* by our decision dated February 7, 1984, the personal penalty of $316,244, assessed against petitioner as well as the seizure of the gambling devices were remitted upon payment by petitioner of the amount of $42,100, plus the actual loss of revenue. The fact that petitioner's conduct may have resulted in violations of another law is no reason, in itself, for us to grant further mitigation of the penalty and seizure incurred under section 1592. Therefore, our initial decision in this case is affirmed.

Moreover, the penalty assessed against petitioner under section 1592 represents a personal claim for monetary penalty, while the goods under seizure represent security for collection of that personal penalty. At this stage, Customs has not

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*As discussed in our February 7, 1984 decision, petitioner's plea of guilty to the criminal count under section 542 is res judicata on the issue of whether petitioner "knowingly and willfully" provided material false values to Customs.

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attempted collection (either administratively or judicially) of the penalty assessed in this case. As discussed below, any collection action would be made for the original penalty amount and not the mitigated penalty provided in the administrative decisions. Thus, we also deny petitioner's request that the goods be forfeited and credit therefor be granted toward the mitigated penalty amount.

The gambling devices have not been seized by Customs under section 1177, and can only be seized under that statute by the FBI. Therefore, petitioner's claims regarding the applicability of the provisions under title 15, United States Code, section 1177 and title 28, Code of Federal Regulations, parts 3 and 9, for remission of the seizures not only are premature, but also are not addressed to the proper government agency.

Once the mitigated section 1592 penalty is paid, the seizure of the gambling devices will be remitted. Thereafter, in accordance with the agreement between the Federal Bureau of Investigation (FBI) and Customs (Customs Directive 3257-01), however, the slot machines still must be detained until the FBI provides instructions as to their release from Customs. Petitioner should present his claims supporting the remission of seizures under section 1177, to the the local FBI office, with the request for permission to comply with registration requirements of the Gambling Devices Act. This may facilitate FBI authorization for Customs to release the gambling devices to petitioner.

On the other hand, however, petitioner should be aware that the FBI may decide to seize the gambling devices under section 1177, after Customs has remitted the seizure under section 1592. In this regard, title 28, Code of Federal Regulations, section 3.6, provides that the power to authorize remission or mitigation of seizures of gambling devices under section 1177, "shall be exercised only by the Attorney General, the Deputy Attorney General, or the Assistant Attorney General in charge of the Criminal Division."

If, however, the mitigated penalty in this case is not paid within the time prescribed by your office, petitioner should be advised that the case will be referred to the Department of Justice immediately, for judicial enforcement of the original penalty claim ($316,244), with the request that the gambling devices be forfeited as part of the government's prayer for relief.

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Please advise petitioner, through counsel, of this decision and enclose a copy of this letter with your notification.

Sincerely,

/S/ John P. Simpson

John P. Simpson
Director, Office
of Regulations and Rulings

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CODE AND DATE			(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER	
SURNAME							

DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

• U.S. GPO: 1983-417-788

DATE: 08 FEB 1985

FILE: ENF 4-02.2 CO:R:E:C
653793 SLG

653793

TO : Regional Counsel of Customs
Houston, Texas 77057

FROM : Director, Entry Procedures and Penalties Division

SUBJECT: Proposed Settlement Agreement by [redacted]
in El Paso District Case No. 83-2402-50087

We have reviewed the proposed settlement agreement in the above-entitled case. Additional information forwarded for our review reflects that on April 15, 1983, a notice of penalty was issued for an unspecified amount of interest on an estimated loss of duties of $112,952. During the period of April 12, 1978, through December 31, 1978, [redacted] is alleged to have entered or attempted to enter various television apparatus into the United States by means of material false statements or material omissions. In reporting actual costs for the 1978 entries, certain components and materials were declared as being of United States origin when in fact they were either of foreign origin or could not be verified by certificates from United States vendors as to their United States origin.

Prior to the issuance of the penalty notice, by letter dated February 10, 1982, counsel for [redacted] disclosed that [redacted] had discovered inadvertent errors in the declaration of materials in its 1979 entries and tendered the amount of $160,375.44, in additional duties. At that time counsel for [redacted] also advised Customs that it would be reviewing prior years (1973 through 1978), for purposes of determining whether additional duties were owed with respect thereto. By letter dated March 28, 1984, counsel for [redacted] advised that an audit of prior year reconciliation records could not be made primarily because of [redacted] sale of the [redacted] to [redacted] on January 21, 1981. Consequently, [redacted] offered to pay the entire amount of estimated duties for 1978 that was cited in the penalty notice, plus interest in the amount of $5,048, in full satisfaction of all prior year liabilities.

[redacted] already has tendered the amount of $85,043.09, as the amount on 1978 importations for which it believed the statute of limitations period had not yet expired. In the settlement

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agreement [redacted] proposes to pay the balance of the total amount cited by Customs ($112,952) as the loss of duties for the 1978 importations $27,908.91, plus, the interest in the amount of $5,048.

We are advised that Customs on its own volition has not conducted its own audit or investigation of the violations or of the amount of duty underpayment for the 1973-1978 entries by [redacted] Moreover, even the estimated loss of duty amount cited in the penalty notice can be established only by an extrapolation of the 1979 duty reconciliation. In view of the foregoing and the other factors cited in your January 17, 1985, memorandum to the District Director, El Paso, we agree that the proposed settlement offer is in the best interest of the government.

In view of the fact that the terms of the settlement agreement requires that Customs forego the issuance of claims for penalty and/or duties, this matter represents an offer of compromise under section 1617. The District Director, El Paso, however, is hereby authorized to sign the subject settlement agreement on behalf of the Customs Service.

(S/) Donald W. Lewis

Donald W. Lewis

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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653793

20 MAY 1985

ENF 4-02.2 CO:R:E:C
653887 BLS

653887

Regional Commissioner of Customs
Boston, Massachusetts 02110

Re: Further Review of Buffalo Protests 0901-2-000519/520, dated November 10, 1982

Dear Sir:

This is in response to a letter dated April 5, 1985, from the Deputy Assistant Regional Commissioner (Classification and Value) regarding the above-captioned matter.

In its Application for Further Review and supporting memorandum, [redacted] ("Protestant") makes the following claims:

(1) Protestant is not liable for the additional Customs duties resulting from the liquidation and/or reliquidation of the subject entries since there is no properly executed Customs bond which obligates Protestant as surety for these additional duties;

(2) Assuming there is a properly executed bond listing Protestant as surety for the importer, such bond does not obligate Protestant for payment of the additional duties since the obligation to pay such duties resulting from reliquidation of Customs entries on account of fraud is not covered by the terms of the Customs bond;

(3) The increased duty bills resulting from liquidation and/or reliquidation are not due and owing since in accordance with the amended Judgment and Order of the United States District Court for the Western District of New York in United States v. Tiler, et al, the Government has been made whole by [redacted]

(4) The reliquidations are illegal, null and void since such reliquidations occurred more than two (2) years from the date of liquidation in violation of title 19, United States Code, section 1521.

Our findings in this matter, as reflected below, establish that there is a properly executed Customs bond obligating Protestant as surety to pay the additional duties; that the terms

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of the bond cover the additional duties resulting from reliquidation on account of fraud; that the deposit of $100,000 by [redacted] was in payment of a mitigated Customs penalty and did not cover payment of Customs duties; and that the reliquidations were timely, i.e., within two years from the dates of the previous liquidations.

(1) Properly Executed Bond. The subject standard bond, CF 7553, for Immediate Delivery and consumption, was executed with appropriate certifications on February 4, 1976, by [redacted] as principal, and Protestant as surety. The bond provisions obligate Protestant, as surety, to insure the payment of duties, to a maximum of $70,000, incurred by [redacted] for the period between July 1, 1976, through June 30, 1977. (The subject entries were filed during this period.)

Based on a review of this document, we fail to find any impropriety in its execution, as claimed by Protestant. We note in this regard that Protestant has failed to specify in what manner the execution of this document was allegedly improper.

(2) Coverage of Bond-Duties Resulting from Reliquidation. The duties resulting from reliquidation of the entries, whether or not on account of fraud, are nevertheless still Customs duties. We find no exclusion under the terms of the bond for additional duties found to be due and owing after reliquidation for fraud. Rather, the bond provisions merely bind the principal "to pay any and all such duties and taxes found to be due on each entry in question...". There is no basis for the surety to avoid liability under this claim.

(3) Payment of "Duties" Made by [redacted] Pursuant to this argument, Protestant claims that in the criminal case against [redacted] the District Court and Court of Appeals characterized the payment of $100,000 made by [redacted] to Customs (in the administrative penalty case) as payment for additional duties lost as a result of the criminal offense. Since these funds satisfy the outstanding duty bill of $65,407.58, Protestant claims that this alleged liability should be cancelled.

It is clear that Protestant has seized upon some rather loosely worded language of the District Court in order to present an argument that at best is interesting, but has no basis in fact.

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The record establishes beyond doubt that the Customs Service never intended that the $100,000 payment made by [redacted] serve to reduce the duty liability of the importer. On July 6, 1978, a claim for forfeiture value assessed against [redacted] and [redacted] jointly and severally, was mitigated only against [redacted] to $100,000. In a letter to [redacted] counsel, dated June 5, 1979, Headquarters advised that the payment by [redacted] "...is not considered by the Customs Service as a payment of duties". This was confirmed by Headquarters letter dated October 4, 1979. (In a subsequent decision, the claim for forfeiture value against [redacted] was mitigated to $2,443,577.63, on condition the actual loss of revenue of $517,909.47 was paid as withheld duties. The mitigated amount represented a reduction from the assessed monetary claim of $100,000, to take into account that sum paid by [redacted] as a mitigated penalty.)

As further evidence of the nature of this payment, the Regional Director, Financial Management Division, advised Protestant's counsel in a letter dated October 28, 1982, that the $100,000 payment was placed in a Customs account designated as "Fines, Penalties and Forfeitures, Customs, Commerce and Anti-Trust Laws". This is a different account than the account that would have been used had the monies been directed toward the payment of duties. In addition, as the Regional Director also pointed out, even if we assumed that the [redacted] payment was intended to be applied to make the Government whole as far as lost revenues, the District Court's language did not limit the payment to reduce only the potential loss of revenue. Therefore, if used to reduce the actual loss of revenue ($517,909.74), the potential loss of revenue ($65,407.58) would still remain, along with the surety's liability.

(4) Dates of Reliquidation. In regard to this claim, the following schedule establishes that all of the reliquidated entries were reliquidated within two (2) years from the dates of liquidation:

Consumption Entry	Date of Liquidation	Date of Reliquidation
223327	2/18/77	9/11/78
327627	10/22/76	"
200935	10/29/76	"
326552	9/24/76	"
324533	9/22/76	"
325600	9/22/76	"

C2

This Document [illegible] to the Public

onsumption Entry	Date of Liquidation	Date of Reliquidation
235560	2/25/77	"
320789	1/14/77	"
222564	1/7/77	"

Under these circumstances, we find no merit in the arguments advanced by Protestant. Accordingly, you are directed to deny the protests.

Sincerely,

(s/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

653887

C3

[redacted]

30 NOV 1976

MAR-2-05-R:E:R
707002 JB

[redacted]

Dear [redacted]

This is in reply to your letter of October 18, 1976, concerning the country of origin marking requirements applicable to electrical junction boxes imported from Japan.

You state that the junction boxes presently being imported by [redacted] are marked with a ¼" large "JAPAN" on the inside of each box, which is visible to the ultimate purchaser through the carton. You state that it is your belief that this manner of marking the country of origin on the junction boxes satisfies the requirement imposed by section 304 of the Tariff Act of 1930 and, therefore, you should not be required to mark the country of origin on the outside of each junction box, as you are instructed to do in a letter dated October 5, 1976, from the District Director in Philadelphia.

It is the opinion of the Customs Service that the method of marking presently employed by [redacted] does, in fact, comply with the requirements imposed by section 304, since the marking will be readily visible to an ultimate purchaser at the time of purchase, and will also be visible after installation of the boxes.

The letter you received dated October 5, 1976, from the District Director in Philadelphia was the result of a letter from Headquarters to the District Director requesting him to take action to assure that boxes of the kind you previously imported for the account of [redacted] were properly marked to indicate the country of origin. You have assured us that the last of those boxes entered into consumption in the United States in June of 1974, and, accordingly, that matter is now closed.

Sincerely yours,

[redacted]

(Signed) E. J. DOYLE

E. J. Doyle, Acting Director
Entry Procedures & Penalties Division

707002

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c4

6 DEC 1977

MAR-2-05-R:E:R
708213 O

[redacted]

Dear [redacted]

In your letter of August 23, 1977, you asked if the Customs Service would have any objection to an additional marking on imported goods manufactured abroad, so long as the country of origin of the goods is clearly stated. We understand that prior to January 1, 1978, Company A will ship merchandise to Company B marked "Manufactured for Company C" or "Distributed by Company C." On or after January 1, 1978, Company A will ship merchandise from Germany to Company C marked "Manufactured for Company B" or "Distributed by Company B." In both examples, Company C is owned by Companies A and B and will not go into operation until January 1, 1978.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that all articles of foreign origin imported into the United States are required to be marked legibly, conspicuously and permanently, to indicate the country of origin to an ultimate purchaser in the United States. In addition, we note that the packaging and labeling requirements of some 35 States require that the company importing merchandise into the United States qualify the company name and place of business by a phrase such as, "Imported by _____," or "Manufactured for _____," to reflect the fact that the company importing the goods is not the manufacturer.

Accordingly, the U.S. Customs Service would have no objection to the use of the marking you propose, so long as the English name of the country of origin appears legibly and permanently on the imported article, preceded by "Made in," "Product of," or other words of similar meaning.

Sincerely yours,

[redacted]

(Signed) D. D. KAST

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

cs

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SEP 27 1979

ENT-1-01 R:E:E
711264 HS

[redacted]

Dear [redacted]

This is in response to your letter of August 30, 1979, suggesting that the United States Customs Service reevaluate the value figure that determines whether a shipment requires a formal Customs entry.

The $250 value limitation on informal entries is a requirement of statutory laws, rather than regulations. Sections 484 and 485 of the Tariff Act of 1930, as amended (19 U.S.C. 1484 and 1485), set forth the usual entry and declaration requirements which are commonly referred to as the formal entry requirements. Section 498(a)(1) Tariff Act of 1930, as amended (19 U.S.C. 1498(a)(1)) liberalizes the above requirements when the aggregate value of the shipment does not exceed $250, by authorizing the Secretary of the Treasury to prescribe rules and regulations for the declaration and entry of these shipments. Any further increase in the dollar amount under which informal entry is permitted would require an amendment of section 498(a)(1) of the Tariff Act and is, therefore, properly a matter for legislative consideration and action by Congress.

In the last several sessions of Congress, various bills have been introduced containing provisions for raising the dollar value limitation on informal entries, but none of these provisions have been enacted into law. For example, section 211(a) of H.R. 8149, which was introduced in the last session of Congress, provided for raising the dollar value of merchandise eligible for informal entry from $250 to $600. However, prior to enacting this bill, section 211(a) was deleted. It is our understanding that a bill will be before Congress again this session proposing to raise the dollar value limitation on informal entry.

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If we can provide additional information or be of further assistance, please feel free to call on us.

Sincerely,

M. Morrison

for Harvey B. Fox
Director, Entry Procedures
and Penalties Division

711264

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

[redacted]

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CODE AND DATE	[redacted]						
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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

SEP 22 1982

MAR 2-05 CO:R:E:E
717802 FBO

Dear [redacted]

This is in response to your letter of September 24, 1981, concerning questions on the country of origin marking requirements for analog devices. It is your opinion that one of two devices is substantially changed in the United States.

The devices, AD562JD, are marked since they are assembled in the Philippines and must continue to be so marked, but PHIL is unacceptable and the entire country name must be spelled out.

In the "Laser Trimming" process, the partially assembled device is placed in a fixture that contains a series of needle-like probes which have been positioned to match exactly the configuration of the chip. The probes are wired to a computerized test station-permitting a very rapid series of tests to be performed on the die. The parameter of interest is measured to determine the magnitude of the error. If the error is excessive, the laser is aimed at the thin film resistor to be modified and is fired. This removes a portion of the element causing a change in the error. This measure trim cycle is repeated until the error is reduced to acceptable limits. Depending on the complexity of the device, a dozen or more different errors, each with its own thin film resistor, may be reduced in the manner to produce a useable part.

These particular devices are then transferred to the sealing area so that a lid may be welded/soldered in place. They are then tested, branded, and shipped to the customer.

The process described above is performed on AD515JH devices which the importer proposes to bring into the U.S.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

Section 134.1(d)(1) of the Customs Regulations (19 CFR 134.1(d)(1)), holds the manufacturer to be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation, changing the character and use of the imported article which loses its identity in the manufacturing process. Substantial transformation means that the manufacturing process is performed on an item so that the item loses its identity and becomes an integral part of a new article with a new name, character and use (United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267, C.A.D. 98).

717802

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

In this case, the "Laser Trimming" process in the U.S. does not result in a substantial transformation.

We are of the opinion that the testing, adjusting by the laser trimming process, and capping are not sufficient operations to substantially transform the imported semiconductor chips. In their imported condition, they constitute unfinished articles and are not transformed into new and different articles by the testing, adjusting, and capping processes, therefore must be individually marked with the country of origin.

Sincerely,

Signed Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

917802

[redacted]

CODE AND DATE	[redacted]					C9
SURNAME	[redacted]					
CODE AND DATE						
SURNAME						

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEC 16 1983

MAR 2-05 CO:R:E:E
720898 FBO

This ruling concerns knocked-down wood furniture and cabinets, unfinished from Denmark.

ISSUE:

Whether unfinished pieces need to be marked with the country of origin.

FACTS:

Certain knocked-down wood furniture and cabinets are imported unfinished from Denmark. None of the wood pieces are marked, but the carrying package for each individual furniture item is marked. According to the importer, the packaged form is intended for the ultimate purchaser and has the instructions printed thereon. Also, the importer says the expense and quality of the immediate container becomes a significant part of the retail value of the product.

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin (or their containers) imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

In this case, if the individual containers are marked. It will be acceptable.

720898

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HOLDING:

To satisfy 19 U.S.C. 1304, the containers of the furniture items may be marked in lieu of marking the individual items.

(Signed) DONALD W. LEWIS

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

720898

C11

CODE AND DATE	[redacted]						(7) REVIEWER
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CODE AND DATE			(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JAN 27 1983

ENT-1-01 CO:R:E:E
721242 M

Dear Sir:

This concerns Protest No. 2605-1-000003 dated July 23, 1981, concerning aircraft engine parts shipped to the United States for assembly into aircraft engines, which are to be subsequently exported to be incorporated into aircraft which are to be ultimately used by the U.S. Coast Guard.

You note that two issues were raised in this protest. The issues raised are the following:

(1) whether these engine parts are duty-free when ultimate use was to be in an aircraft of the Coast Guard, and

(2) whether a claim for duty free treatment under the Civil Aircraft Agreement is valid when made after the filing of the entry summary.

In regard to the second issue, since the claim for free entry was not made at the time of the filing of the entry summary and there is no showing that such failure was due to a clerical error, mistake of fact, or inadvertence within the meaning of section 520(c)(1), as amended, the protest should be denied in full on the basis of ORR Ruling 7167812 M dated October 27, 1981. We have likewise denied two other protests on the basis of ORR Ruling 716812 M. (See enclosed copies of ORR Rulings 718524 M dated March 4, 1982, and 719826 dated July 21, 1982.)

In regard to the first issue raised, it would appear from the excerpt of the agreement between the buyer and seller that the buyer has the intent to enter into a contract of sale with the U.S. Coast Guard. Schedule 6, Part 6c, Headnote 3(b), Tariff Schedules of the United States (TSUS), defines the term "civil aircraft" as "all aircraft other than aircraft purchased for use by the Department of Defense or the United States Coast Guard". Based on the scanty information submitted by the protestant (the excerpt of the agreement), it appears to us that there was an intent at the time of entry for the Coast Guard to be the ultimate purchaser and user of the completed product (the aircraft engines), and therefore, in our opinion, the imported aircraft parts do not qualify as parts for civil aircraft within the meaning of the Civil Aircraft Agreement. The protest should

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likewise be denied on this basis. However, as a point of interest, we wish to note that there are occasions due to the limited scope of an agreement whereby the Coast Guard or a military department might be a temporary beneficiary and the aircraft or aircraft part involved would qualify for duty free entry under the Civil Aircraft Agreement. For example, see ORR Ruling 070689 JAS dated November 2, 1982.

Sincerely,

(Signed) DONALD W. LEWIS

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

District Director of Customs
Nogales, Arizona 85621

Enclosures

721242

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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CODE AND DATE	[redacted]	[redacted]	[redacted]	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME							
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

JUN 11 1984

TMK-3 CO:R:E:E
721335 SO

This ruling concerns whether or not the prohibition set forth in 15 U.S.C. 1124 against the entry at any customhouse of the United States of articles of imported merchandise which shall copy or simulate a U.S. registered trademark would be applicable to two imported handbags.

ISSUE:

Would the entry of two handbags infringe the rights of Gucci Shops, Inc., which has recorded their registered trademarks for repeating facing non-interlocking "GG" and "GUCCI" with Customs for import protection.

FACTS:

A shipment of 27 ladies canvas and leather handbags arrived at the Port of Honolulu, Hawaii. Our Honolulu district office submitted a sample of one of the handbags and a color photograph of another to Customs Headquarters for consideration of the question of whether or not the marks on the bags infringe the registered trademarks of Gucci Shops, Inc., referred to above. The importer claims that they were appointed as the exclusive distributor of the handbags in Hawaii, Guam and the Fiji Islands by Dodo Mark 1 S.r.l., and that Dodo Mark 1 S.r.l. was authorized to make such an appointment pursuant to a license granted by Gucci Parfums S.P.A. of Florence, Italy.

The sample canvas handbag bears a pattern of repeating facing non-interlocking "GG"'s which would be identical to the protected trademark of Gucci Shops, Inc., except that the word "PLUS" runs through every one of the "GG"'s. The "PLUS" mark is inverted in alternate "GG"'s. Other marks on the handbag in question are a "P" superimposed over a "G" stamped in brass to form the circular closure device in the center of the bag, and the mark "GUCCI" engraved on a metal plate attached to the zipper pocket inside the bag. In addition, the word "plus," in script, and a "P" superimposed over a "G" are embossed in gold leaf on the inside pocket directly over the metal plate engraved with the "GUCCI" mark. The color photograph of the second canvas handbag shows a pattern of repeating "P" superimposed over a "G" marks. This mark is also stamped in brass on the closure device.

C14

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LAW AND ANALYSIS:

Section 42 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 440, 15 U.S.C. 1124) prohibits the entry at any customhouse of the United States of articles of imported merchandise which shall copy or simulate a U.S. registered trademark, provided a copy of such trademark registration is filed with the Secretary of the Treasury and recorded in the manner provided by regulations (19 CFR 133.1 - 133.7). A "counterfeit trademark" is a spurious trademark which is identical with, or substantially indistinguishable from, a registered trademark (19 CFR 133.23a(a)).

Infringement of federally registered trademarks is governed by the test of whether defendant's use is likely to cause confusion, or to cause mistake, or to deceive. When comparing conflicting marks to determine whether or not they are confusingly similar, it is important to consider the impression the marks as a whole create on the average reasonably prudent purchaser.

We contacted the Washington, D.C., counsel for Gucci Shops, Inc., to get his reaction to the importer's claim that they have been appointed by Dodo Mark as the exclusive distributor of "GUCCI PLUS" products in Hawaii. Counsel for the trademark owner provided us with a copy of an opinion and order of the U.S. District Court for the Southern District of New York dated May 3, 1984, in the case of Gucci Shops, Inc. v. Dodo Mark 1 S.r.l., et al., 84 Civ. 2089(RO), which enjoins Dodo Mark from selling "GUCCI PLUS" products in the United States during the pendancy of the proceedings. The court will decide the validity of the license between Gucci Parfums and Dodo Mark which purportedly granted Dodo Mark the right to manufacture and distribute "GUCCI PLUS" products in the U.S.

In his opinion, Judge Owen mentions the fact that Dodo Mark does not deny that its "GUCCI PLUS" products closely resemble the "Gucci Accessories Collection" in virtually every respect. Dodo Mark is relying on its license with Gucci Parfums to establish that it is entitled to use the widely recognized Gucci trademarks of interlocking G's and red and green stripes. Judge Owen also mentions Plaintiff's assertion that Paolo Gucci is embroiled in a struggle of some sort with other members of the Gucci family and has begun issuing licenses, such as the license to Dodo Mark, without their consent. Judge Owen has enjoined the sale of "GUCCI PLUS" products in the United States upon consideration of the possible irreperable harm to Gucci Shops, Inc., their probable success on the merits, and a balance of hardships tipping decidedly in their favor. Therefore, in our opinion, the importer's claim that the handbags in question are noninfringing because their importation and sale in the United States is licensed by Dodo Mark, is not valid.

721335

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The unauthorized use of the "GUCCI PLUS" marks on the sample handbags as described above, in all likelihood, would cause confusion or mistake, or would deceive purchasers into believing they were purchasing genuine Gucci handbags. The addition of the word "PLUS" running through every "GG," in our opinion, would not eliminate the confusion. The use of the repeating facing non-interlocking "GG's" appears to us to be a deliberate attempt to come as close as possible to the protected trademark without duplicating it exactly. While the "GUCCI PLUS" marks used on the sample handbag are confusingly similar to the trademarks of Gucci Shops, Inc., they can be distinguished from the appearance of the genuine mark by the word "PLUS" running through each "GG" and embossed in gold leaf above the "GUCCI" mark inside the handbag. As stated above, a "counterfeit trademark" is a spurious trademark which is identical with or substantially indistinguishable from a registered trademark. In view of the distinguishing feature referred to above, the Customs regulations applicable to counterfeit trademark violations would not apply in this case.

Furthermore, we are of the opinion that the use of the "P" sumerimposed over a "G" mark as a repeating pattern on the canvas portion of the handbag shown in the color photograph and on the closure device of this handbag, would not infringe any of the Gucci trademarks protected by Customs.

HOLDING:

The sample handbags would be prohibited entry into the United States as infringing the registered trademarks of Gucci Shops, Inc. These handbags should be detained pursuant to 19 CFR 133.22. Articles detained pursuant to 19 CFR 133.22 may be released to the importer if any of the circumstances allowing exemption from trademark restrictions set forth in 19 CFR 133.21(c) are established. Alternatively, pursuant to 19 CFR 133.51(b)(1), they may be exported or destroyed under Customs supervision and at no expense to the Government. Since the marks on the handbags shown in the color photograph do not infringe any of the trademarks of Gucci Shops, Inc., they may be imported in unlimited quantities without restriction.

A copy of this decision may be furnished to all concerned parties.

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Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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CODE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME							
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

721335

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

SEP 4 1984

REFER TO
TMK-3 CO:R:E:E
721398 SO

Gentlemen:

This is in response to your letters of February 4 and February 9, 1983, on behalf of concerning a notice of redelivery issued by the Customs Service for a shipment of handbags which was originally released to your client. The notice was issued because the bags allegedly infringed the registered trademarks of Gucci Shops, Inc., a New York corporation (Gucci). A representative of Gucci visited your client's premesis and confirmed that the handbags were legitimate Gucci bags, manufactured in Italy. You subsequently spoke to an attorney for Gucci who stated that his firm is, in fact, a subsidiary of the Italian company, Guccio Gucci, S.R.L. Therefore, you informed Customs at LAX that this was a "Grey Market" or "parallel import" situation where the trademark owner was not entitled to import protection for genuine trademarked articles.

subsequently denied having made the statement you attribute to him regarding the relationship between Gucci and the Italian firm mentioned above. You asked us to look into the possibility that a relationship exists which would substantially change the protection to be extended to Gucci. In view of statement, and because the provisions of 19 CFR 133.2 require trademark owners to disclose the identity of any parent or subsidiary company or other foreign company under common ownership or control, you feel that Customs should require Gucci Shops, Inc., to present evidence which would establish conclusively that there is no relationship between their firm and an Italian Gucci firm which would preclude the Customs Service from prohibiting the importation of genuine Gucci products.

We asked Gucci Shops, Inc., to furnish complete information concerning the ownership of their firm and authorized foreign distributors of Gucci products, if any. We learned that there are many foreign authorized distributors of merchan-

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dise bearing Gucci owned trademarks and that members of the Gucci family share common ownership and control of both Gucci Parfums, S.p.a., in Italy and Gucci Shops, Inc., in New York. We have enclosed a copy of the notice issued to Customs field offices on August 9, 1984, to inform them of the change in import protection applicable to genuine goods manufactured abroad bearing "Gucci" trademarks. As of that date, Customs will permit the unrestricted importation of genuine merchandise manufactured abroad bearing Gucci trademarks, and will release all such goods currently in Customs custody to the importers.

Sincerely,

Samuel A. Biondolillo

for Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

Enclosure

721398

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MAY 11 1983

MAR 2-05 CO:R:E:E
721814 FBO

This ruling concerns the country of origin marking of imported electrical conductors.

ISSUE:

Whether the marking of the individual boxes of electrical conductors would meet the country of origin marking requirements of 19 U.S.C. 1304.

FACTS:

The importer is the manufacturer and importer of certain electrical conductors. The intention of the importer is that these conductors will eventually be made in the United States. Presently some are imported from England, some from West Germany and other from Haiti. The ones from Haiti have components made in Germany, but assembled into the conductors in Haiti. The imported products are packed in cardboard boxes abroad and marked by stamping the boxes "Made in England," Made in West Germany," or "Components made in West Germany, Assembled in Haiti." After importation, the importer sells the products direct to manufacturers who use the conductors in further manufacturing operations, or sell through distributors who sell to manufacturers. The importer intends to give notice to distributors that any break down of the boxes into lesser amounts and repackaged must be marked also. The importer is supplying plastic marked bags to all distributors to cover this eventually.

721814

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DS

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin (or their container) imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

Section 134.1(d) Customs Regulations (19 CFR 124.1(d)) states that the ultimate purchaser is generally the last person in the United States to receive the articles in the form in which it was imported.

In this case, the ultimate purchaser is the manufacturer who uses the conductor in further manufacturing operations. The method of marking the conductors would be acceptable including supplying marked bags to the distributor in case the boxes are broken down to smaller numbers, which the importer says is unlikely to happen.

HOLDING:

The marking of individual boxes of electrical conductors with the country of origin meets the requirement of 19 U.S.C. 1304.

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

721814

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CODE AND DATE	[redacted]						
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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

OCT 20 1983

MAR-2-05 CO:R:E:E
723258 FBC

This ruling concerns a proposed marking designator for Haiti.

ISSUE:

Whether the designation "Hand-Tied in Haiti" would be acceptable for purposes of 19 U.S.C. 1304.

FACTS:

The importer will send ribbon from the U.S. along with tying and packaging materials to Haiti where the bows are tied, mounted on a backing card, and sealed in a clear plastic bag. Merchandising information is preprinted on the cards along with the company name and the U.S. address. The importer would like to use the marking designator "Hand-Tied in Haiti" instead of "Made in Haiti" or "Product of Haiti."

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended, (19 U.S.C. 1304), provides generally that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

The marking designation "Hand Tied in Haiti" is acceptable as long as all the requirements of 19 U.S.C. 1304 are met. The merchandising information must not be displayed in such a way to give any indications to the ultimate purchaser that the product is other than Haitian.

723258

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HOLDING:

The marking designation "Hand-Tied in Haiti is acceptable for 19 U.S.C. 1304.

(Signed) Darrell D. Kast
Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

D8

CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

MAR 2-05 CO:R:E:E
723780 HL

NOV 21 1983

ISSUE:

Whether the domestic processing of imported frame castings into C-Clamps is a substantial transformation so as to exempt the castings from country of origin marking requirements under 19 U.S.C. 1304.

FACTS:

An American manufacturer of C-Clamps imports iron frame castings into the United States. In their condition as imported, the frame castings are rough, having already been broken from the mould by the foreign producer. They have burrs and moulding lines which run along the edges of the frame as well as over the seat and anvil (which will become the working surface of the tool). The frame casting must be drilled (to create a hole in the seat opposite the anvil) as well as threaded (for insertion of the mainscrew and button which forms the working edge of the clamp, being screwed up and down to hold various items against the anvil). The casting must be deburred, subjected to grinding, and painted. The finished frame is assembled into a C-Clamp with three other parts, the mainscrew, crosspin, and button, which are all of American origin. Generally, the subject manufacturer will process the American parts (mainscrew, crosspin, and button) himself, but may purchase already threaded mainscrews in some cases. In either case, the cost of the imported frame casting is about one-fourth the total cost of the finished C-Clamp.

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides in general that, unless exempted, all articles of foreign origin imported into the United States must be legibly and conspicuously marked to

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indicate the English name of the country of origin to the ultimate purchaser in the United States.

The ultimate purchaser is generally the last person in the United States who will receive the article in the form in which it was imported. 19 CFR 134.1(d). If the American company processing the imported frame castings into finished C-Clamps "substantially transforms" the castings into new and different articles, then such company will be considered the "ultimate purchaser" and we will exempt the frame castings from country of origin marking under 19 U.S.C. 1304(a)(3)(D). 19 CFR 134.35; United States v. Gibson-Thomsen, 27 C.C.P.A. 267, C.A.D. 98 (1940).

723780

In their condition as imported, the frame castings are not fully machined, and cannot be used as C-Clamps until additional and crucial machining is performed. The castings must be drilled and threaded for insertion of the mainscrew, button, and crosspin, which are three additional parts of U.S. origin necessary to make the C-Clamp a working tool. Indeed, three-quarters of the total cost of manufacture of the C-Clamp is incurred in the United States. See Uniroyal Inc. v. United States, 542 F. Supp. 1026 (C.I.T. 1982).

It is our position that the subject American manufacturer substantially transforms the frame castings into C-Clamps and, therefore, is the ultimate purchaser of the castings which may be exempted from individual marking under 19 U.S.C. 1304(a)(3)(D) provided: (1) the containers in which the frame castings are imported are legibly and conspicuously marked to indicate the country of origin; (2) Customs officers at the port of entry are satisfied that the castings will reach

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D10

the subject company in the original marked containers in which imported; and (3) the castings will be used only in the manufacture of the C-Clamps described herein and not otherwise sold. Statements or affidavits to this effect must be submitted for each entry for which this exception is requested.

HOLDING:

Imported frame castings, processed into C-Clamps by further machining such as drilling and threading for the insertion of mainscrew, button, and crosspin, are substantially transformed by the American processor who is deemed to be the "ultimate purchaser" of the castings which are thereby excepted from individual country of origin marking under 19 U.S.C. 1304(a)(3)(D).

723780

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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D11

NOV 15 1984

THK-3 CO:R:E:E
725248 TL

Area Director of Customs Service
6 World Trade Center
New York, New York 10048

Dear Sir:

This letter is in response to a request for Internal Advice (IA 47/84) concerning the importation of handbags which may infringe upon a trademark owned by Gucci Shops of New York.

The question concerns whether the decoration on the imported handbags is a simulation of the trademark recorded with Customs in Registration Numbers 1,216,708; 1,223,400; and 1,220,263.

The trademark recorded with Customs is a series of two Gs; the one on the left is right side up, the one on the right is upside down. Each G has a 'tail,' a horizontal mark which distinguishes a G from a C. The tails face each other and are parallel to each other. Four double Gs are arranged at each of four points of intersection of lines connecting the Gs to form a diamond; the four double Gs represent the four points on the diamond.

The allegedly infringing handbags also have symbols at the corners of each diamond in the series of diamonds, although only three of the four corners are formed by the symbol. The fourth corner of each diamond is formed by the near intersection of four, arrow-like, symbols. Each of the three symbols consist of a circle slightly larger than the diameter of a pencil. Measuring left to right, a third is cut from the circle, by removing the top and bottom third of the middle third of the circle, again measuring from left to right. A small bridge approximately a third of the height of the symbol remains to connect the remaining 'halves' of the circle. Because of the removal of the top and bottom portions from the middle of the circle, the width of the left and right hand portions of the symbol is noticeably less than half of the height of the symbol.

The denial of entry and forfeiture of articles, pursuant to section 133.21, Customs Regulations is appropriate when the articles simulate the trademark, that is, the design on the imported article is so similar to the recorded trademark as to be

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likely to confuse or deceive the public or cause the public to mistakenly think that the imported articles and recorded trademarked articles both share a common origin. E. I. Dupont de Nemours and Company v. Yoshida International, Inc., 393 F. Supp. 502, 509, (E.D.N.Y. 1975) In our opinion, the symbols on the imported articles will not confuse the public.

Several distinctions between the trademark and the imported article which should be apparent to the consumer or even the casual observer are readily apparent. The recorded trademark consists of two Gs, one normal, the other upside down, with the open side of the Gs facing each other. The Gs are slightly separated. The width of each G is at least one-half, possibly more, of the height of the G itself. Contrasted to this, the symbol on the imported articles does not appear as two separate figures; it is one symbol and the width of the right and left hand portions (sans the bridge spoken of earlier) is appreciably less than one-half the height of the symbol. Thus while the width to height ratio of the trademark is a plump G, the symbol on the questioned article is flatter, less round. As noted, supra, the halves are joined by a bridge. Contrasted to this the horizontal portion of the G of the trademark does not touch the other G or come close. Additionally, as noted above, each of the points of the diamond of the trademarked article is defined by the double G symbol; on the imported article only three of the corners are. Finally, the double G of the trademark are joined by dots; on the imported article lines join the symbols.

Since the imported article does not simulate the trademarks recorded with Customs, the denial of entry and forfeiture provided for in section 133.21, Customs Regulations, is improper. The handbags should be released to the importer.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

D13

JUN 12 1984

MAR 2-05 CO:R:E:E
725526 HL

[redacted]

Dear [redacted]

This is in reply to your letter of June 1, 1984, requesting approval for a proposed country of origin marking of sweet meats from West Germany.

The wrappers of the subject imported sweet meats will indicate the address of the manufacturer and no other address. The address that does appear will indicate "West Germany" as part of the address. You inquire whether this marking will satisfy the country of origin marking requirements.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, unless excepted, every article of foreign origin or its container must be legibly, permanently and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

In this case, the product wrapping (container) will reach the ultimate purchaser in the United States. The wrapping will contain the country of origin, West Germany, as part of the foreign manufacturer's address. This country of origin appears to be legible, permanent and conspicuous. It is not lost in the foreign street address, but rather appears on a separate line.

We believe that the subject marking reasonably indicates the country of origin to an ultimate purchaser in the United States. We therefore find such marking to satisfy the requirements of 19 U.S.C. 1304.

Sincerely,

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAR 18 1986

FILE: ENT-1 CO:R:E:E
725570 JL

TO : District Director of Customs
Detroit, Michigan

FROM : Chief, Entry, Licensing and
Restricted Merchandise Branch

SUBJECT: Protest and Application for Further Review No. 3802-3000321, November 23, 1983, F.W. Meyers & Company Inc.

This protest is to the refusal of the port director at Port Huron to allow reliquidation of a consumption entry pursuant to 19 U.S.C. 1520(c)(1). The protestant, a broker acting as importer of record for the account of an export company in Brownsville, Texas, claims that due to a clerical error a consumption entry was filed when in fact the shipment was immediately destined to Mexico and should have been entered under a transportation and exportation entry. The submitted evidence consists of a copy of an actual factory invoice from the shipper which shows the destination of the merchandise as a company in Mexico and a copy of a Mexican railway bill of lading which references the Mexican landing certificate and registration certificate.

Your office's Customs Form 6445 forwarded with the file states that your position is "failure to file a T&E entry at the time of release was an error on the part of the broker." A memorandum in the file from the port director to the Regional Protest Review officer states as follows:

> This merchandise was cleared and released from Customs custody and controlled at the time of entry. The broker failed to request that a T&E entry be made at the time of release. It is impossible to account for this merchandise after its release from Customs control. A refund of duty cannot be allowed on the alleged basis that it should have been a T&E entry originally. Note also that the date of release is June 14, 1983. The first 520 request is dated September 16, 1983. A period of over 2 months passed before correction of the alleged error was requested.

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The Regional Protest Reviewer made reference to Customs Directive No. 3280-01 of November 25, 1983, noting that the directive states that "penalty action will still be taken for any breach of bond." The C.I.E. neglected to comment on the protest.

In those cases where goods which were intended to be entered under a T&E entry are mistakenly or inadvertently entered under a consumption entry, the Customs policy of granting relief under section 520(c)(1) of the Tariff Act in appropriate cases is well established, even though the goods were not exported under Customs supervision or other technical requirements pertaining to T&E entries were not complied with. We note that in the body of the protest Customs Form 19 reference is made to an error on the part of a Grand Trunk Line Railroad employee "who mistakenly requested release against our bond and the U.S. Customs inspecting officer whom (sic.) released the shipment looked closer at the proforma invoice accompanying the merchandise." We think it clear from the documentation submitted with the protest that it was intended that the merchandise be immediately transported to Mexico under a T&E entry instead of a consumption entry having been filed. 19 U.S.C. 1520(c)(1) allows for the correction of an error in a Customs transaction provided it is manifest from the record and is not an error in the construction of a law. Inasmuch as neither the port director nor any reviewing officer had any problem with the documentation submitted in support of the protest, it is our opinion that the petition for relief should have been allowed.

The remarks of the port director in his memorandum of January 11, 1984, require additional comment. The port director noted that a period of over two months had passed before correction of the error was requested under section 1520(c)(1). We are amazed by this observation inasmuch as the statute specifically allows a petition for relief to be filed as many as 12 months from the date of liquidation of the entry. The port director also stated that it was "impossible to account for this merchandise after its release from Customs control." It is difficult to imagine any use of section 1520 being made by the importing public if Customs requires that all errors be corrected when the merchandise is in Customs custody.

You are hereby directed to allow the protest in full.

Steven I. Pinter

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725570

AUG 10 1984

TMK-2 CO:R:E:E
725639 L

Dear Miss

This concerns the recordation with the U.S. Customs Service of the trademark "GUCCI," No. 1,007,216, in the name of Gucci Shops, Inc.

The trademark was recorded with Customs in error because we overlooked the fact that the trademark is registered in the United States Patent and Trademark Office on the Supplemental Register.

Section 1096, title 15, United States Code (section 28 of the Tariff Act of 1946) provides that "Registration on the Supplemental Register...shall not be filed in the Department of the Treasury or be used to stop importations."

A refund of the $190 fee submitted with your letter of application of February 7, 1980, is returned.

Sincerely,

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

Enclosure

[redacted]

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CODE AND DATE		(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME							
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SURNAME							

DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11 15 72)
(Previous editions may be used)

* U.S. GPO: 1981-417-786

OCT 0 1 1984

MAR 2-05 CO:R:E:E
726321 III.

[redacted]

Dear [redacted]

This is in reply to your letter of August 31, 1984, concerning the country of origin marking requirements applicable to a soccer ball hand-stitched in either Mexico or Brazil from pre-cut synthetic leather material from either Denmark or Germany.

According to your letter, pre-cut components for a soccer ball will originate in either Denmark or Germany. The bladder for the soccer ball will also originate in Europe. The assembly, however, will be accomplished in either Mexico or Brazil and will represent between 20-30 percent of the total value of the product.

In the absence of more precise information, we are unable to give you definite advice. However, you should note that Customs has recently taken the position that, in the case of textile products, the assembly or sewing together of otherwise completed component parts does not substantially transform those parts for the purposes of determining the country of origin. See section 12.130, Customs Regulations (interim), published in the Federal Register on August 3, 1984 (49 FR 31248) (copy enclosed). Country of origin marking requirements under 19 U.S.C. 1304 will likewise be affected. Therefore, in the case of textiles, the country of origin of a finished garment may not be the country where the component parts are assembled or sewn together, but rather the country from which the component parts are sourced.

Applying the foregoing principles at the case at hand, it is possible that the country of origin of the finished soccer ball will not be either Mexico or Brazil (where the assembly takes place), but rather the country from which the completed components are produced. If all the completed components, including the bladder, are produced in Denmark and merely assembled in Mexico, then it is likely that the country of origin of the finished soccer ball will be considered to be Denmark for marking purposes under 19 U.S.C. 1304. Under these circumstances, the soccer ball may be marked "Made in Denmark." Using the enclosed regulations as a guide, we recommend that you contact local Customs officials at the prospective port of entry and submit more precise cost information and sourcing data.

Sincerely,

E4

CODE AND DATE	[redacted]					
SURNAME			Steven T. Pinter			
CODE AND DATE			Steven T. Pinter Chief, Entry, Licensing and			
SURNAME			Restricted Merchandise Branch			

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE · CORRESPONDENCE APPROVAL AND CLEARANCE · Form 100 (11-15-73)

726321

APR 10 1985

MAR-2 CO:R:E:E
727139 TL

[redacted]

Dear [redacted]

Your December 18, 1984 letter, and February 20, 1985 supplement, concerned the application of the country of origin marking requirements to furniture components imported into the United States.

According to your letter, the components are purchased from suppliers in various countries. Each is packaged in a box which is marked with the country in which the component was manufactured. Each component remains in the box until it is purchased, taken home by the purchaser, and assembled with other components to form a piece of furniture.

When the potential purchaser goes to the retail outlet, he views a finished model which shows how the piece of furniture looks once it is assembled from the components which are removed from their boxes. These boxes are on the same floor as the model and will be brought to the purchaser prior to completion of the purchase. They are illustrated with a representation of the component and the piece of furniture which is formed by the combination of that component with others. According to your letter, the placement of these boxes on the same floor as the model and the presentation of them to the purchaser prior to completion of the sale accords the purchaser the country of origin notice required by the statute. This method, according to your letter, is necessary to avoid confusing the customer, which could violate requirements enforced by the Federal Trade Commission.

19 U.S.C. 1304 states in part, that, "...every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit...." Subsection b, entitled, "Marking of containers" applies to articles which are excepted from individual marking by 19 U.S.C. 1304

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(a)(3). 19 U.S.C. 1304 (a)(3) lists several instances in which an exception from individual country of origin marking of an article may be granted. You have referred to exception (a)(3)(D). This exception is for articles in which "The marking of a container of such article will reasonably indicate the origin of such article".

19 U.S.C. 1304 is intended to inform the ultimate purchaser of the country of origin of the article. In this way the purchaser has the opportunity to make an informed decision as to whether to purchase United States articles or articles produced in a foreign country.

We believe that the marking of the individual containers which house each component informs the ultimate purchaser as to the country of origin of that component, and this information is provided to the ultimate purchaser early enough to allow the purchaser to make an informed decision. For that reason, the display article does not have to be marked.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

727139

[redacted]

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CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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SURNAME							

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JAN 22 1985

MAR-2 CO:R:E:E
727222 TL

The Honorable
Solomon P. Ortiz
Member of Congress
3649 Leopard
Corpus Christi, Texas 78408

Dear Mr. Ortiz:

A copy of your letter to [redacted] has been referred to us by [redacted] because it concerns country of origin marking pursuant to 19 U.S.C. 1304. Your letter on behalf of the [redacted] raised the issue of the proper marking of shrimp which has been imported, frozen, and packed in containers which have not been marked to indicate that the shrimp is a product of Mexico.

We have informed the District Director in Laredo, Texas that the freezing of this shrimp does not make the shrimp a product of the United States. The container in which the shrimp is packaged and sold to the retail purchaser must be marked so as to indicate that the shrimp is a product of Mexico.

We trust that this is satisfactory to you. If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

(Signed) John Simpson

FOR Robert P. Schaffer
Assistant Commissioner
(Commercial Operations)

[redacted]

727222

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APR 29 1985

ENT-1 CO:R:E:E
727961 JL

[redacted]

Dear [redacted]

This refers to your letter of September 20, 1984, to the Area Director of Customs in New York concerning the importation of steel products into the United States under item 832.00, Tariff Schedules of the United States (TSUS) for the Department of Defense. Your letter was referred to this office for reply by the Area Director, New York Seaport.

You asked whether items sold to the Department of Defense can be imported duty-free under item 832.00 as long as the tariff number is specified in the Department of Defense contract or purchase order. This is correct as long as certain special additional procedures are complied with by importers, which for the most part consist of the importer submitting the original shipping documents to the Defense Contract Administration Services Region in New York (DCASR) which will issue a duty-free certificate if the importation qualifies under the contract. The importer then has 6-months to submit to Customs the original duty-free entry certificate. Detailed instructions can be obtained from Customs at the port of importation.

You next asked if the supplemental Presidential duty, such as is now as being imposed on stainless sheet and strip, would also be applied to importations under item 832.00 TSUS. The supplemental duties imposed under Presidential Proclamation 5074 on certain stainless or alloyed tool steel or round wire of high speed tool steel would be applicable to importations under item 832.00 TSUS.

You asked whether dumping duties would apply on these products if imported under item 832.00 TSUS. Countervailing and/or antidumping duties are not collected on entries made under 832.00 TSUS, provided all applicable procedures are complied with and the duty-free certificate is timely-furnished.

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Regarding the applicability of the [redacted] arrangement for certain steel products which generally provide for the production of an [redacted] certificate upon entry, the International Trade Administration advises that the certificate would not be required provided the entry is sustained under item 832.00 TSUS.

You asked if other "quota's such as those imposed by the President for stainless bars and rods would apply to purchases for the Department of Defense."

The aforementioned stainless bars and rods are, pursuant to Presidential Proclamation 5074, subject to quantitative limitations on their importation into the United States when entered under item 832.00 TSUS. However, it is not possible to categorically state that all importations under item 832.00 TSUS will be subject to quota limitations because each quota, whether it be promulgated by Presidential Proclamation or tariff schedule enactment by the Congress, is a unique provision often varying in its terms from other quota provisions, even covering the same merchandise.

Any further information should be requested from the Area Director of Customs office, New York Seaport, which is being provided with a copy of this letter.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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727961

APR 29 1985

ENT-1 CO:R:E:E
727962 JL

727962

APR 29 1985

Harvey A. Isaacs, Esq.
Customs Counsel
National Customs Brokers & Forwarders
Associaton of America, Inc.
One World Trade Center
New York, N.Y. 10048

Dear Mr. Isaacs:

This refers to your letter of April 1, 1985, concerning Customhouse Brokers pipeline No. 82-3 issued by the District Director of Customs in Chicago on the subject of petitions submitted to Customs pursuant to section 520 of the Tariff Act of 1930.

The pipeline stated that effective December 15, 1984, petitions submitted to Customs to correct a clerical error, mistake of fact, or other inadvertence will not be accepted if they are submitted prior to liquidation. You state that it is your belief that the document is as a matter of law erroneous in certain respects and contrary to sound Customs policy and should be revoked or amended.

Your first point is that the pipeline does not take into account 19 U.S.C. 1520(a)(4) which was added by section 210(7)(B) of the Trade and Tariff Act of 1984, Public Law 98-573. Your second point is that an importer or broker should be free to communicate with Customs on any matter pertaining to an entry prior to its liquidation, and that responsible Customs officials have a legal duty to ensure that a liquidation accords with the true facts and circumstances.

Regarding your first point, we agree that the amendment to 19 U.S.C. 1520 effected by Public Law 98-573 authorizes a refund of duties when a clerical error, mistake of fact, inadvertence etc., is brought to Customs attention prior to liquidation of an entry. Regarding your second point, it has been Customs policy for more than 20 years that a clerical

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error called to our attention prior to liquidation should be corrected in liquidation. If the error is overlooked in liquidation, then it will be corrected pursuant to 19 U.S.C. 1520 on the strength of the notice given before liquidation.

We are today furnishing a copy of this letter to the District Director of Customs at Chicago for appropriate action.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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CODE AND DATE	[redacted]	(3) REVIEWER	(5) REVIEWER	(6) REVIEWER	(8) REVIEWER	(9) REVIEWER	(7) REVIEWER
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SURNAME							

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

*U.S. GPO: 1984-719-979

MAR-1 CO:R:E:E
728112 LR

JUN 05 1985

Mr. Douglas Chan
Gerber Systems (USA) Inc.
Post Office Box 431
Honolulu, Hawaii 96809

Dear Mr. Chan:

This is in reply to your letter dated April 25, 1985, concerning country of origin marking on certain foreign made guest room amenities which you supply to various hotels. You request advice on whether it would be acceptable to mark the inner carton and shipping carton rather than the product itself. You state that the hotels feel that the country of origin marking detracts from the design of the products.

The products in question include bottle openers, cotton swabs, playing cards, soap, and numerous other guest room amenities. The hotels provide these items within their rooms for the convenience of the guest. You state that none of the items are sold at retail. A few samples and photographs have been submitted.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that all articles of foreign origin imported into the United States are required to be legibly, conspicuously, and permanently marked to indicate the country of origin <u>to an ultimate purchaser in the United States</u> (emphasis added). The ultimate purchaser is generally the last person in the United States who will receive the article in the form in which it was imported. 19 CFR 134.1(d). If the imported article is distributed as a gift the recipient is the ultimate purchaser. 19 CFR 134.1(d)(4).

In accordance with the above provisions, we find that the ultimate purchaser in this case is the hotel guest. Your proposed method of marking would not indicate the country of origin to the ultimate purchaser and is therefore not acceptable. In order to satisfy the statutory requirements, each of the items in question must be individually marked with the country of origin. To avoid damage to the finish of the leather caused by a gummed label, the leather case may be permanently engraved with country of origin marking at the time of manufacture.

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C11827

In summary, due to the fact that the hotel guest rather than the hotel is the ultimate purchaser, we cannot grant an exemption from individually marking each of the imported items.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

728112

E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 05 1985

REFER TO

MAR-3 CO:R:E:E
728693 LR

This ruling concerns the country of origin marking requirements applicable to imported rough forge fittings of carbon steel which will be further processed in the United States.

ISSUES:

1. Does the placement of the country of origin at the edge of the article in such manner that it will be removed during manufacture satisfy the requirements of 19 U.S.C. 1304, as amended?

2. Are the country of origin markings on the subject forgings legible and conspicuous enough to satisfy the requirements of 19 U.S.C. 1304, as amended?

FACTS:

A company imports rough forged fittings of carbon steel ("forgings") and further processes them into finished pipe fittings ("fittings") in the form of elbows or tees. (Elbows are two outlet fittings with a 90 degree bend in the pipe, and tees are T-shaped fittings with three outlets.) The further processing includes:

(1) Shot blasting - Rough forgings are cleaned of oxidation and mill scale from the exterior and interior surfaces;

(2) Machine bevelling, boring and tapering - Edges of forgings are cut off, ends are bevelled to ANSI B16.9 length dimensions and inside diameters are bored and tapered to ANSI B16.9 tolerances;

(3) Grinding - Machined forgings are ground to remove surface imperfections resulting from forging or machining processes, per ASTM A234 specifications;

(4) Die stamping - Processed forgings are stamped with an identification of each heat lot number, parent material, size and wall thickness, per ASTM 234 specifications;

728693

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(5) Inspecting - Processed forgings are inspected for forging and machining flaws and surface defects, as well as thickness, length dimensions and inside and outside diameter tolerances per ASTM A234 and ANSI B16.9 specifications;

(6) Painting - Processed forgings are painted in a dip tank with an emulsion dipping primer as a protective coating;

(7) Certain elbows also undergo a hot forming process prior to bevelling which involves heating the rough forgings and compressing one end to reduce its size and diameter.

The word "Japan" is die stamped close to the edge of the forgings in letters approximately 1/16 inch tall. The clarity and distinctiveness of the letters varies. The processing performed by the importer will substantially or completely obliterate the country of origin markings.

LAW AND ANALYSIS:

I

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that all articles of foreign origin imported into the United States are required to be legibly, conspicuously, and permanently marked in such manner so as to indicate the country of origin to an ultimate purchaser in the United States (emphasis added).

The ultimate purchaser is generally the last person in the United States who will receive the article in the form in which it was imported. 19 CFR 134.1(d). If an imported article will be used in manufacture, the manufacturer may be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation of the article; however, if the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article after the processing, will be regarded as the "ultimate purchaser." 19 CFR 134.1(d)(1)&(2).

Under the above principles, if the manufacturer/importer is the ultimate purchaser of an imported article which is legibly and conspicuously marked at the time of importation, the article will be found to be legally marked even if such marking will be removed during the subsequent manufacture.

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In Midwood Industries, Inc. v. United States, 64 Cust. Ct. 499, C.D. 4026, 313 F. Supp. 951 (1970) the United States Customs Court considered the legal sufficiency of the country of origin marking on certain imported forgings subject to further processing. (the edges are cut off, the ends are bored, tapered and bevelled, die lines and other surface imperfections are removed, and the fitting is cleaned for the removal of oxidation and mill scale from the outer surface). Although the edges of the forgings were legibly and conspicuously marked at the time of importation, such marking would be obliterated or destroyed during the course of this processing. The Court found that the marking was sufficient because the processing substantially transformed the imported forgings making the processor the ultimate purchaser of the imported merchandise.

In this case, the imported forgings are processed in the same manner as the imported forgings in Midwood. As such, we find that the processing in this case similarly constitutes a substantial transformation and that the importer/processor is the ultimate purchaser of the imported merchandise. The question remains, however, whether the conclusion reached in Midwood i.e. that the imported steel forgings were properly marked, is controlling in light of the recent amendment to the marking statute pertaining to the marking of steel pipe fittings. Section 207 of the Tariff and Trade Act of 1984 (19 U.S.C. 1304(c)) states:

> No exception may be made under subsection (a)(3) of this section with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, or engraving (emphasis added).

We are of the opinion that the recent amendment would not effect the outcome in Midwood. The new law states only that no exception may be made under subsection (a)(3) of this section, i.e. 19 U.S.C. 1304(a)(3). 1/ It does not alter the statutory

1/This provision allows the Secretary of the Treasury in particular circumstances to authorize an exception from the requirements of marking. For example, 19 U.S.C. 1304(a)(3)(D) states that an exception may be authorized if the marking of the container will reasonably indicate the origin; (a)(3)(H) states that an exception may be authorized if an ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin.

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requirement that the imported article be marked to indicate the country of origin to the ultimate purchaser. In Midwood, the Court did not apply an (a)(3) exception to reach the conclusion that the marking on the outer edge of the forging was sufficient. It based its determination on the finding that the manufacturer rather than the consumer was the ultimate purchaser of the imported articles. Therefore, the case is still controlling.

Based on Midwood, we conclude that the marking of the forgings on their outer edge is sufficient provided that such marking is legible and conspicuous.

II

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C 1304), requires that every article of foreign origin be marked legibly, permanently, and conspicuously to indicate the name of the country of origin to the ultimate purchaser in the United States (emphasis added). Section 134.41(b) of the Customs Regulations (19 CFR 134.41(b) interprets these requirements to mean that the ultimate purchaser in the United States must be able to find the marking easily and read it without strain.

In this case, four representative sample forgings were submitted. Each one is die-stamped "JAPAN" in letters measuring approximately 1/16 inches tall marked near an outer edge. The samples include three 90 degree elbows (the outer diameters measuring 1-5/16 inches; 2-3/8 inches; and 2-7/16 inches) and one tee (2-3/8 inches outer diameter). The elbows have a fairly smooth dark finish whereas the finish on the tee is lighter and rougher.

We find that the placement of the country of origin marking at the edge of each of the samples is conspicuous. This is the same location of the country of origin marking on the forgings in Midwood which the court approved.

Counsel argues that legibility cannot be an issue in connection with imports by an ultimate purchaser if the underlying intent of the marking statute (i.e. to inform an ultimate purchaser of origin) is given proper consideration. In the alternative, counsel argues that if legibly marking is required, the standard of legibility should be relaxed. The basis for this argument is that importer/ultimate purchaser of the forgings would be more discerning of country of origin markings than an ordinary purchaser.

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We disagree with counsel's contention that legibility cannot be at issue here. Section 19 U.S.C. 1304(a) requires legible marking and no exceptions are authorized. Therefore, where an article is required to be marked, such marking must be legible. As a practical matter, legibility is not usually an issue where the importer is the ultimate purchaser because in such cases an exception from marking is often applicable. In the case of the subject merchandise, however, the new law permits no exceptions from marking. This includes situations where the importer is the ultimate purchaser. Accordingly, we conclude that the country of origin marking must be legible.

We also do not agree with counsel's suggestion that legibility standards should be less strict in cases where the importer is the ultimate purchaser. As indicated above, the basic test to determine legibility is whether the ultimate purchaser can read the country of origin marking without strain. If any lesser standard was applied, the legibility requirement would be meaningless.

Upon examination of the samples, we find that only two of the samples (the tee and the largest elbow) are legibly marked with the country of origin. Both of these items are marked with distinct, well-formed letters. In addition, the letters on the tee are somewhat larger that the letters on the other samples. We believe that the ultimate purchaser would be able to read the country of origin on both these articles without strain. This is not true in the case of the two smaller elbows. Although these articles are marked in the same size letters as the largest elbow, the letters are not as distinct or well-formed. They readily blend in with the background and are hard to decipher. They cannot be considered legible.

HOLDING:

1. The imported forgings may be marked with the country of origin on an outer edge of the forging even though the marking will be obliterated during further manufacture.

2. Two of the submitted samples, the tee and the largest elbow are legibly marked with the country of origin within the meaning of section 1304 and 19 CFR 134.41(b). The other two samples are not.

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

728693

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 10 1986

MAR-[illegible]R:E:E
728700 LR

J. Sircy
President
Simko International Inc.
P.O. Box 1218
Liburn, Georgia 30247

Dear Mr. Sircy:

This is in response to your letter concerning the importation of canned grapefruit sections from Israel. You would like to bring in unlabeled cans which are stamped only with the manufacturer's code numbers and date and apply labels with country of origin, ingredients, weight, etc. in the United States. The cans would be imported either in bulk in cases or on pallets.

The above procedures would not satisfy the requirements of section 304 of the Tariff Act of 1930, as amended, which generally requires that imported merchandise be marked with its country of origin at the time of importation. The requirements of this statute would be met if the cans were individually stamped with the country of origin prior to importation and the labels (with country of origin) were applied after importation. We suggest that you contact the Food and Drug Administration to ascertain whether these procedures are in conformity with other food labeling laws.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

FS

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 24 1986

REFER TO

TMK-3 CO:R:E:E
728805 KM

District Commercial Fraud Team
U.S. Customs Service
P.O. Box 2112
Old San Juan, Puerto Rico 00903

Dear Sir:

This is in response to your inquiry regarding possible trademark and copyright infringement in the importation of certain video cassette tapes.

The items under consideration are video cassette tapes entitled "LOS PITUFOS", which means "THE SMURFS" in English, and bearing a stylized design of a "W".

Warner Communications, Inc., a Delaware corporation located at 75 Rockefeller Plaza, New York, New York, 10019, is the owner of a trademark (Registration No. 1,061,551) in the form of a "W" logo for phonograph records and prerecorded tapes. The mark has been recorded with Customs for import protection against infringing goods.

It is clear that the "W" design, as applied to the goods so resembles the recorded "W" logo, as to be likely to cause confusion, or mistake, or to deceive as to the origin or source of the goods. The marks are similar in meaning and appearance: both comprise the single letter "W" in only slightly differing forms. As for the goods, it is obvious that a close relationship exists between video cassette tapes and phonograph records on the one hand, and prerecorded tapes on the other. These goods are used together in the display and dissemination of information and they may be purchased together at department stores and home entertainment centers. Indeed, they are merely different mediums of communication.

The importation of the items in question constitutes an infringement on the rights of the trademark owner, Warner Communications, Inc., subject to the restrictions of sections 133.21 through 133.23 of the Customs regulations, and should be detained.

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P[illegible]

Pierre Culliford d/b/a Peyo, located in Brussels, Belgium, is the owner of several copyright registrations (Nos. VA 21-052, VA 28-528, VA 34-464, VA 58-046, VA 69-524, and VA 76-267) for dolls, commonly called "SMURFS." All of these registrations have been recorded with Customs for import protection.

Examination of the subject matter of the imported cassette tapes reveals a substantial similarity to the copyrighted "SMURF" dolls. It is obvious that the characters depicted in the imported tapes are merely the "SMURFS" in animated form. The characters bear all of the essential features of the protected items such as the wide eyes, prominant bulbous nose, large smile, protruding ears and the other unique facial features, the oversized peaked hat, and the contrasting colors employed on the face, hat and clothing of each doll.

The right to copy embraces not only the work as a whole, but also its copyrightable contents. This right extends to imitations and reproductions in other forms of media. A doll copied from a cartoon may be deemed an infringing copy. See Fleischer Studios Inc. v. Freundlich Inc., 73 F.2d 276 (2d Cir. 1934).

It appears that the importer has merely transformed the copyrighted work, a three-dimensional character in the form of a doll, into another medium, a two-dimensional video tape. As such, the imported items constitute an infringement upon the rights of the copyright owner.

Therefore, the imported items are infringing importations and subject to seizure and forfeiture under 17 U.S.C. 603 and sections 133.42, 133.51 and 133.52 of the Customs Regulations. This office has no objection to the exportation of the items under 17 U.S.C. 603(c).

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing, and
Restricted Merchandise Branch

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13 DEC

ENT-1 CO:R:E:E
728811 JL

Richard M. Belanger, Esq.
Sharretts, Paley, Carter & Blauvelt, P.C.
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Belanger:

This refers to your request for a ruling dated August 16, 1985, on behalf of your client, Kenner Products Company.

Your request is that merchandise shipped from a beneficiary developing country in bond to Mexico for repacking under the Maquiladora program and then exported into the United States would be considered "Imported into the Customs territory of the United States directly from" the beneficiary developing country for purposes of the Generalized System of Preferences (GSP).

Initially your firm requested this ruling in letters dated February 24, and March 3, 1983 (Case No. 722632). On November 1, 1984, the request was withdrawn pursuant to section 177.6, Customs Regulations.

We understand the facts to be that Kenner Products will import certain goods (probably toys or games) into the United States from a designated beneficiary developing country under the GSP program. We understand that the merchandise will not be entered for consumption but will be transported in Customs bond to Mexico for repacking and subsequent return to the United States. While in Mexico the goods will be under bond pursuant to the Maquiladora program which allows them to be imported free of duty for processing and exportation. It is your position that your client's goods handled in this fashion should be considered as having been imported directly from the beneficiary country pursuant to section 10.175, Customs Regulations.

Section 10.175, Customs Regulations, entitled "Imported Directly Defined", states in subsection (c) as follows:

> If shipped from a beneficiary developing country to the U.S. through a free trade zone and beneiciary developing country, the merchandise shall not enter into the commerce of the country maintaining the free trade zone, and (1) the eligible articles must not undergo operations other than:

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(i) sorting, grading, or testing

(ii) packing, unpacking, changes of packing, decanting or repacking into other containers, ...

Subsection (4) states the certifying authority of a designated beneficiary developing country maintaining the free trade zone shall issue a certificate of origin form A, declaring what operations were performed within the zone and that the original certificate issued in the beneficiary developing country of origin shall be retained by the designated authority in the country maintaining the free trade zone, with a copy being furnished to the U.S. importer. Subsection (5) provides as follows:

> For the purposes of this section, a free trade zone is a predetermined area or region declared and secured by or under governmental authority, where certain operations may be performed with respect to articles, without such articles having entered into the commerce of the country maintaining the free trade zone;...

It is your position that the handling of goods under the Maquiladora program constitutes a free trade zone within the meaning of subsection (c)(5) of section 10.175 of the Customs Regulations. In support of this proposition you have furnished a copy of an official letter dated March 26, 1985, issued by the federal delegation in the state of Baja California of the Ministry of Commerce and Industrial Development of the Government of Mexico and a translation of the sections of the decree for the development and operation for Maquiladora industry for exportation. Also furnished with your first request for ruling of July 12, 1983, was a document entitled, "Mexico: Inbond Industry," which explains the system.

Under the Maquiladora program approved manufacturing or processing plants are set up within specific geographical zones. Materials, goods, and machinery in these plants are not subject to Customs duties by the Mexican authorities. The bonds secure the government against unauthorized entry into Mexican commerce of the above described items as well as the imported merchandise which is to be processed for exportation. Goods produced in these plants may be entered into consumption in Mexico upon payment of duties and taxes under certain conditions. Imported raw materials, parts, or components must be exported after 6 months, but this may be extended to 12 months.

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Machinery and equipment imported to be used in the plants are allowed to stay as long as the program for which they were approved is in effect. No taxes or duties are paid on the "temporary importations" but the bond that is given must ensure their exportation. Among the various restrictions placed upon the products of these plants is that they cannot be withdrawn for consumption if they compete with similar products manufactured in Mexico.

After careful consideration of all the materials presented, we are of the opinion that the in bond plants maintained under Mexican law as the Maquiladora program qualify as free trade zones within the meaning of section 10.175 (c), Customs Regulations. We are also of the opinion under the factual situation presented, that is, that the goods are shipped to the United States directly from a designated beneficiary developing country, are never released from Customs custody, are entered for transportation in bond and exportation to Mexico for repacking in an in bond plant under the Maquiladora program, and are subsequently imported into the United States, the goods will be considered as being imported directly from the designated beneficiary developing country of origin. Of course this treatment will be dependent upon proper documentation being provided to the district director of Customs at the port of entry.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER F10
SURNAME							
CODE AND DATE		(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73) Previous editions may be used

U.S. GPO: 1984-719-471

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 12 1986

REFER TO

CPR-3 CO:R:E:E
728861 KM

District Director of Customs
909 First Avenue
Seattle, Washington 98174

Dear Sir:

This is in response to your request for an advisory opinion on possible copyright infringement regarding imported clip-on dolls (District Case No. 85-3001-00236).

Original Appalachian Artworks, Inc., the owner of a registered copyright entitled "THE LITTLE PEOPLE SOFT SCULPTURE-STYLE BALD," (Reg. VA 35-804), commonly called "CABBAGE PATCH DOLLS," has recorded its registration with U.S. Customs for import protection.

The items under consideration for alleged copyright infringement are 1,920 dozen "LITTLE CUTIE" clip-on dolls, approximately 3 3/8 inches in height. The goods are manufactured in Taiwan and imported by Pay'n Save Corporation. The clip-on dolls appear to be made of plastic, some having yarn hair while others are bald. They are dressed in typical children's clothing such as dresses and pants with suspenders. The dolls have plastic molded faces and arms which extend in front with palms together to allow the dolls to be clipped onto various things.

These "LITTLE CUTIE" clip-on dolls are believed to be substantially similar to the protected CABBAGE PATCH DOLLS. The fact that the imported items are smaller than the CABBAGE PATCH DOLLS or have other slight variations in construction and style, do not obviate against a conclusion of copying. There is still a substantial similarity to the unique facial features which are present in the CABBAGE PATCH DOLL, in particular, the tri-partite nose, the receding chin, and the contours of the mouth and cheeks. All of these features which appear on the imported items capture the essence of the CABBAGE PATCH DOLL.

The test for substantial similarity of copyrighted items is whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same, Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F. 2d 487 (1960), or

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whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work, Ideal Toy Corp. v. Fab-Lu Ltd., 360 F.2d 1022 (1966).

Therefore, the imported items are infringing importations and subject to seizure and forfeiture under 17 U.S.C. 603 and sections 133.42, 133.51 and 133.52 of the Customs Regulations. This office has no objection to the exportation of the clip-on dolls under 17 U.S.C. 603(c).

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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FEB 18 1986

MAR-1 CO:R:E:E
729131 LR

S. M. Mims, Esq.
Texas Instruments Inc.
Box 225474
Dallas, Texas 75265

Dear Mr. Mims:

This is in response to your letter dated October 29, 1985, regarding the country of origin marking of integrated circuits from the Philippines. Specifically, you ask whether the marking on the submitted samples satisfies the requirements of 19 U.S.C. 1304.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin be marked legibly, permanently, and conspicuously to indicate the name of the country of origin to the ultimate purchaser in the United States. The marking will be considered legible if the ultimate purchaser in the United States is able to read it without strain. See Section 134.41(b), Customs Regulations.

In this case, the flat surface of the encapsulated portion of the submitted integrated circuit measures approximately 3/4 inches by 1/4 inches. Each sample is marked "Philippines" in small black letters on the shiny circular area in the center of the flat surface. The circumference of the circular area is approximately 1/8 inch and the word "Philippines" appears in a circular fashion around the inside portion of the circle. You indicate that the letters are produced by the "knock-out" punches used to separate the molded integrated circuits from a mold and die after the plastic encapsulation operations.

In this case, the country of origin marking cannot be considered legible. First, notwithstanding that the letters of the word "Philippines" are well-formed, they cannot be read without strain (in order to fit within the circular area, they are very small; they readily blend into the black background; and, the samples must be held up to the light in order to decipher the marking). Moreover, the flat surface of the encapsulated portion of each integrated circuit is sufficiently large to accommodate more legible marking. In such circumstances, we find that the marking on the submitted samples is not legible.

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Based on our determination that the marking of the samples is not easy to read and that the size of the articles is sufficiently large to accommodate more legible marking, we are of the opinion that the samples do not meet the requirements of 19 U.S.C. 1304.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAR 21 1986

FILE: ENT-1 CO:R:E:E
729155 JL

TO : Chief, Customs Information Exchange
New York, New York 11430

FROM : Director, Entry Procedures and Penalties Division

SUBJECT: Difference of Opinion on Custom Form 6431, Blaine, Washington, dated August 6, 1985, Entry No. 85-227579-5

The report was submitted to this office for resolution in accordance with Manual Supplement No. 2126-01(D)(3).

The merchandise involved was a Deluxe Travel Trailer sold by a U.S. company to a resident in Seattle. The resident drove to Canada to pick up the trailer. One Customs officer would apply the lower rate of 4.4 percent to the entire value of the importation, whereas the other Customs officer would apply the flat rate of 10% on the first 2 thousand dollars of the value of the merchandise pursuant to item 869.00 TSUS on the authority of Headquarters ruling 720164.

Item 869.00 TSUS provides for a flat rate of duty of 10% of the fair retail value of articles for personal or household use, or as bona fide gifts, not imported for the account of another person valued in the aggregate at not over $1,000 fair retail value in the country of acquisition , "if the person claiming the benefit of items 869.00 or 869.10, or both, has not received the benefits thereof within the 30 days immediately preceding his arrival; ...". Item 869.10 TSUS provides for a 5 percent flat rate of duty on the fair retail value of such articles, with some slight differences, when acquired in certain insular possessions. The headnote to Part 6, Schedule 8, TSUS, provides as follows:

> For the purposes of this part the rates of duty for articles provided in this part shall be assessed in lieu of any other rates of duty except free rates of duty on such articles, unless the Secretary of the Treasury or his delegate determines, in accordance with regulations, that the application of the rate of duty provided in this part to any article in lieu of the rate of duty otherwise applicable thereto adversely affects the economic interest of the United States.

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The procedure for excluding articles from the flat rate of duty is set out in section 148.105, Customs Regulations, and the list of excluded articles is provided in section 148.106. As of this date, no articles have been found to affect the economic interest of the United States adversely so as to be excluded from the application of the flat rate of duty provisions.

Headquarters ruling 720164 revoked ruling 717605 and concluded, among other things, that "the application of the flat rate of duty provision is mandatory." In ruling 720164 an importer travelled to Canada solely for the purpose of taking delivery of a yacht. When he imported it into the United States the 10 percent flat rate of duty was applied to the first 600 dollars of the purchase price. The importer contended that the yacht should have been dutiable upon its entire value at 4.1 percent pursuant to item 696.10 TSUS. On page 3 of the ruling there is a discussion of the legislative history and the statement is made that item 869.00 was enacted "... to reduce delays and bottlenecks in clearance of travelers at ports of entry." Statement was made that the provision was not instituted to provide a lower rate of duty for goods accompanying a traveler and that the benefit accorded to the traveler was the expedited clearance of his goods "without having to wait for the Customs inspector to calculate the various duty rates for the different items acquired." From this the conclusion was reached that," therefore, this provision is mandatory, not discretionary."

Section 148.101, Customs Regulations, applies the flat rate of duty provisions and gives examples. It states that "each person, ..., arriving in the United States who enters articles for his personal or household use, ..., valued in the aggregate at not over $600 fair retail value in the country of acquisition, shall be assessed a flat rate of duty on the articles,..". It also states that "except as provided in section 148.105, the flat rate of duty shall be assessed in place of rates of duty other than free rates of duty." It further states "if the dutiable amount of the article(s) is over $600 fair retail value, the flat rate of duty provisions shall apply to the amount not over $600 fair retail value, and the excess amount shall be valued under section 402 or 402(a), tariff act of 1930, as amended ... ." Next it states that "the article(s) shall be classified under the appropriate item number of the tariff schedules.

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Two examples of the application of the subpart are set forth in section 148.101 and in both cases the merchandise acquired by the traveler had a fair retail value exceeding the traveler's personal exemption, even after the non-dutiable items were eliminated. The technique employed in calculating the duty involves first separating the amount of the personal exemption, next taking out articles which carry a free rate of duty, then applying the 10 percent flat rate of duty to the personal exemption amount, and finally subjecting the balance of the articles to duty at rates other than the flat rate. The problem with this calculation insofar as it relates to the facts of the instant case and those in ruling 720164 is that if the purpose of the flat rate of duty calculation is to reduce the number of calculations that the Customs inspector makes in processing the entry of merchandise by a traveler, the procedure in section 148.101 of the regulations and that condoned in ruling 720164 result in the calculation of two rates of duty on one article. Further, since the purpose of the enactment of item 869.00 TSUS is not to raise additional revenue for the Government, the application of the flat rate in those cases where the dutiable value of a single imported article exceeds the traveler's personal exemption clearly is an unwarranted taking of money. The same would hold true in a case where a number of articles were imported but the dutiable value of all but one of the articles falls well within the traveler's personal exemption. To follow the conclusion in ruling 720164 and to slavishly apply the examples given in section 148.101 of the regulations would result again in three duty calculations by the inspector (a flat 10 percent rate on the value of all the articles except one, a 10 percent rate on the value of the remaining article up to the traveler's personal exemption, and a duty rate calculation for the dutiable value of the article in excess of the dutiable value computed at 10 percent).

The inquiry which resulted in ruling 720164 was a request for internal advice from the District Director at Seattle in which he pointed out that the holding in Headquarters ruling 717605 was that in similar circumstances duties should be assessed on the entire item at the normal rate. That ruling was based upon ruling 717430 which held that the taking of an automobile of American manufacture to another country specifically for repair or painting would not give rise to the application of item 869.00 because the article (the automobile) "was not acquired abroad but was merely improved." The improvements was held to be dutiable under item 806.20.

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The title of part 6 of schedule 8 TSUS is "non commercial importations of limited value". General Interpretive Rule 10(b) TSUS states that the titles of the various schedules, parts, and subparts are intended for convenience and reference only and have no legal or interpretive significance. Yet in the second paragraph on page 3 of ruling 720164 the meaning of the title is discussed and the conclusion is reached that while the term "limited value" is neither defined nor explained by legislative history, it "does not refer to a monetary limitation, but instead is used in connection with the requirement that the assessment of the flat rate of duty provision on the imported article would not adversely affect the economic interest of the United States." Inasmuch as the interpretive headnote specifically directs that such titles have no legal or interpretive significance an opinion should not have been given on its meaning in connection with the administration of item 869.00 TSUS. Suffice it to say however, the conclusion reached on its meaning is questionable.

Insofar as the legislative history is concerned, it does state that the reason for the enactment of item 869.00 was to reduce delays and bottlenecks in clearance of travelers at ports of entry. However, the description of the legislation in the history in both the summary and general explanation is as follows:

> A 10 percent rate of duty would be applied to articles brought to the United States by individuals if the importation is not commercial and the goods are for the traveler's personal use <u>and their value does not exceed $600</u>. The application of tariff classification procedures on merchandise imported by travelers requires an inordinate amount of processing time, compared to the amount of duty collected, and creates a bottleneck in processing of persons entering the country. The bill would largely eliminate the bottleneck without adversely affecting Customs revenue collections. House Conference Report No. 95-1517, August 17, 1978, page 3. (Emphasis supplied)

We think it abundantly clear from the above that the 10 percent flat rate was not meant to apply to merchandise accompanying a traveler which exceeded his personal exemption (then $600). It follows that entitling part 6 of schedule 8 "non commercial importations of limited value" is accurately descriptive, not-

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withstanding the fact that it has no legal or interpretive significance.

HOLDING

When an article is imported which exceeds a traveler's personal exemption, the rate of duty applied should be computed based upon the usual provision in the Tariff Schedules, without utilization of the flat rate specified in item 869.00 TSUS. In this case the trailer should have been dutiable at 4.4 percent of its entire value pursuant to item 692.60 TSUS.

Effect on other rulings:

Headquarters ruling 720164 is hereby revoked insofar as it conflicts with this holding.

Donald W. Lewis

Donald W. Lewis

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 11 1986

REFER TO

MAR-1 CO:R:E:E
729166 LR

Mr. William I. Phelan
Timex Corporation
Waterbury, Connecticut 06720

Dear Mr. Phelan:

This is in response to your letter requesting a binding ruling on the acceptability of proposed country-of-origin marking on watch straps which will be imported attached to watches designed to commemorate the anniversary of the Statue of Liberty. You indicate that the sale of these commemorative watches will be an integral element of a Timex fund raising effort on behalf of the French-American Committee for the restoration of the Statue of Liberty. Samples of the straps with the contemplated markings have been submitted.

You indicate that the straps will be manufactured in Switzerland and that the watch movements and watchheads will be assembled in France. The straps in question, which are made of a black plastic material, are marked "France 1886" in small black letters on one of the top surfaces of the strap near the watch dial; they are marked "1986 USA" on the other top surface near the watch dial. They are marked "Swiss Made" in comparable size letters on the back of the watch strap.

The issue to be decided in this case is whether the country-origin of the Swiss strap must be marked in close proximity to the words "France" and "USA" on the front. Section 134.46 of the Customs Regulations provides that if the words "United States", the letters "USA", or the name of a foreign country other than the country in which the article was manufactured appear on an imported article or container, there shall appear, legibly and permanently, in close proximity to such words or letters in at least a comparable size, the name of the country of origin. The close proximity requirement, which has been interpreted to mean the same surface, does not apply where the location other than the country of origin appears as part of a trademark or trade name or as part of a souvenir marking. See Section 134.47, Customs Regulations.

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In this case, we are of the opinion that the words "France" and "USA" appear as part of a souvenir marking. We believe that they clearly are in connection with the commemorative nature of the watch and the efforts of the French-American Committee to raise money for the restoration of the Statue of liberty. The logo of the French-American Committee, which will appear on the watch dials, is further evidence that words "France" and "USA" are part of a souvenir marking. Accordingly, we find that the country-of-origin marking need not appear on the top surface of the watch strap and is, therefore, acceptable.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

729166

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PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DEC 26 1985

REFER TO

TMK-3 CO:R:E:E

729212 SO

This ruling concerns the prohibitions set forth in 19 U.S.C. 1526(e) and 15 U.S.C. 1124 against the importation and subsequent entry at any customhouse of the United States of articles manufactured abroad bearing counterfeit trademarks.

ISSUE:

Would the entry of several handbags bearing marks which are suspected of being confusingly similar, identical with or substantially indistinguishable from registered trademarks of Gucci Shops, Inc., be prohibited.

FACTS:

A shipment of handbags was entered at our Los Angeles, California, office and were detained by Customs officers as infringing the registered trademarks of Gucci Shops, Inc., for a pattern of repeating facing non-interlocking "GG" and a stripe containing three distinct bands of colors, the colors being green, red then green. All of the handbags were constructed of PVC material bearing a diamond like pattern of circular marks which appear to be fanciful versions of the letters "NFE" (the initials of the importer) and also had marks attached which appear to be a larger brass version of the same circular mark and a three colored stripe design. The stripe design marks on two of the bags are blue, red, and blue. However, the stripe design mark on one of the imported handbags was green, red and green and was suspected of being imported in violation of the Customs "counterfeit" trademark law (19 U.S. 1526(e)). A Los Angeles Customs officer submitted three sample handbags from this shipment to Customs Headquarters and asked us to confirm that the marks on the handbags are infringing, noting that the registered trademarks referred to above have been recorded with Customs for import protection.

LAW AND ANALYSIS:

Section 526(e) of the Tariff Act of 1930, as amended (19 U.S.C 1526(e)) provides for the seizure and forfeiture of merchandise bearing a counterfeit mark (within the meaning of section 1127 of Title 15) imported in violation of the provisions of section 1124 of Title 15. A "counterfeit" is a

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spurious mark which is identical with or substantially indistinguishable from, a registered mark (15 U.S.C. 1127; 19 CFR 133.23a(a)).

Section 42 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 440, 15 U.S.C. 1124) prohibits the entry at any customhouse of the United States of articles of imported merchandise which shall copy or simulate a U.S. registered trademark, provided a copy of such trademark registration is filed with the Secretary of the Treasury and recorded in the manner provided by regulations (19 CFR 133.1 - 133.7). Infringement of federally registered trademarks is governed by the test of whether defendant's use is likely to cause confusion, or to cause mistake, or to deceive.

When comparing conflicting marks to determine whether or not they are "counterfeit," we must first determine that the marks are "spurious." The term "spurious" refers to marks that are applied to goods without authorization of the trademark owner. Therefore, genuine trademarked articles could not fall within the definition of the term "counterfeit."

It is also important to compare the accused mark with the protected mark as it appears on the trademark owner's merchandise, and that the comparison be made from the perspective of an average purchaser rather than an expert. If, upon examination of the marks as they appear on the imported merchandise, an average purchaser would find them to be "the spitting image" of, or "substantially indistinguishable" from the trademark owners' merchandise, then a "counterfeit" trademark violation is established. See Montres Rolex, S.A., Plaintiff-Appellee, against Dennis Snyder, Regional Commissioner, U.S. Customs Service et al., U.S. Court of Appeals for the Second Circuit, 718 F.2d 524; 220 U.S.P.Q. 10. This was an appeal from a judgement of the U.S. District Court for the Southern District of New York, Vincent L. Broderick, Judge, declaring imported gold watch bracelets to be counterfeits and therefore subject to forfeiture under 19 U.S.C. 1526(e), and directing defendant U.S. Customs Service to dispose of the merchandise.

We are of the opinion that the pattern of circular "NFE" marks on the imported handbags are not confusingly similar to the repeating facing non-interlocking "GG" trademark of Gucci Shops, Inc. The larger brass "NFE" mark and the blue, red, blue stripe design are also non-infringing in our opinion. However, upon comparison of the green, red, green stripe design mark which appears on one of the sample handbags using the test as set forth by the Court of Appeals in the Rolex case, we have no difficulty in concluding that this handbag bears a "counterfeit" mark. The presence of other marks which are non-infringing makes no difference in our decision and, in fact, may serve to increase the likelihood of confusion.

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HOLDING:

The imported handbags in question, except for the one bearing the green, red, green stripe design may be released to the importer as non-infringing. The handbags bearing the green, red, green stripe design are subject to seizure and forfeiture as bearing a mark which is a "counterfeit" of the Customs protected trademark of Gucci Shops, Inc., for a stripe containing three distinct bands of color, the colors being green, red then green. The owner of the trademark shall be notified of the seizure and the quantity of the articles seized. Unless the trademark owner, within 30 days of notification, provides written consent to the importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of (after removal or obliteration of the "counterfeit" marks) as follows: (19 CFR 133.23a)

(1) By delivery to federal, state or local government agencies which have a need for them, or

(2) By gift to charitable institutions which have a need for them, or

(3) By sale at public auction, after 1 year from forfeiture, after first determining that no federal, state or local government agency or charity has a need for them, or

(4) By destruction, if they are unsafe or a health hazard.

Please note that there is no preference stated in the law or regulations (19 U.S.C. 1526(e) and 19 CFR 133.52(c)) between options (1) and (2) above, and that option (3) cannot be used unless the district director is satisfied that no government agency or charitable institution needs the goods.

While it would appear that 19 U.S.C. 1526(e) authorizes Customs to dispose of forfeited articles with the "counterfeit" marks still in place in cases where it is not "feasible" to remove or obliterate the marks, we are no longer interpreting the law in that manner. We note that the Trademark Counterfeiting Act of 1984 (Public Law 98-473, 18 U.S.C. 2320) imposes criminal sanctions for trafficking in counterfeit goods. If Customs were to sell or give away forfeited articles bearing counterfeit marks, Customs would be acting contrary to the intent of Congress in enacting the Trademark Counterfeiting Act. Customs activities in enforcing the provisions of the Trademark Counterfeiting Act of 1984 should be coordinated with the FBI and the U.S. Attorney.

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Therefore, articles forfeited to the Government bearing "counterfeit" marks shall no longer be given away or sold pursuant to options (1), (2) or (3) above unless the counterfeit marks are removed or obliterated. In cases where removal or obliteration of the marks is not feasible (the articles would be defaced, or obliteration would be disproportionately expensive considering the value of the articles), the articles shall be destroyed (19 U.S.C. 1611). However, before destroying a shipment of articles which would be useful to a government agency or charity, you may invite the trademark owner or a potential donee agency or charitable institution to assist in removing or obliterating the "counterfeit" marks.

Copies of this decision will be circulated to all Customs officers for their guidance.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

MAR 12 1986

REFER TO
ENT-1 CO:R:E:E
729258 JL

Mr. Robert G. Slaughter
Director, Federal Affairs
Pacific Resources, Inc.
2501 M Street, N.W.
Washington, D.C. 20037

Dear Mr. Slaughter:

This refers to your letter of May 23, 1985, requesting a ruling that your subsidiary, Hawaiian Independent Refinery, Inc., be permitted to domesticate bonded bunker fuel under 19 CFR 10.62 when your company's domestic bunker fuel supply has been depleted.

Section 10.62, Customs Regulations, is concerned with the withdrawal under 19 USC 1309 of bunker fuel oil from Customs bonded tanks. 19 USC 1309 provides for the duty-free withdrawal from Customs bond of articles for use on qualifying vessels and aircraft.

You state that certain marketing possibilities sometime arise when your company's supply of domestic bunker fuel is depleted and you wish to domesticate bonded bunker fuel pursuant to section 10.62(e), Customs Regulations, with appropriate duty being paid prior to withdrawal. You state that the District Director of Customs in Honolulu reads section 10.62(e) to infer that the bonded fuel may be domesticated only in isolated emergency instances. Part 177 of the Customs Regulations forbids the issuance of a binding ruling when the request is the subject of an ongoing transaction at a Customs field office. Therefore, this letter is being issued as an "information letter."

Section 10.62(e), Customs Regulations, states that if a vessel not entitled to duty-free withdrawal of articles from Customs bond under section 1309 should be supplied with bunker fuel because of an emergency, a duty paid withdrawal shall be filed on the first day that the customhouse is open for the general transaction of business following the withdrawal. 19 USC 1557(a) provides in part that merchandise in Customs bonded warehouses may be withdrawn, at any time within 5 years from the date of importation, for consumption upon payment of the duties and charges accruing thereon and at the rate of duty imposed by law upon such merchandise at the date of withdrawal.

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The procedure in section 10.62 of the Customs Regulations is one that was specifically set up so that when withdrawals were made the presence of a Customs officer would not be required. It is for this reason that section 10.62(e) was necessary because until recently (within the last 10 years) withdrawals from ordinary Customs bonded warehouses had to be supervised by a Customs warehouse officer. The procedure that would be followed for a duty-paid withdrawal from a Customs bonded tank ordinarily set up for the withdrawal of bunker fuel free of duty under 19 USC 1309 and section 10.62 of the Customs Regulations is governed by part 144 of the Customs Regulations, which is entitled "warehouse and rewarehouse entries and withdrawals." In other words a withdrawal from your bonded tank for domestic consumption is not a withdrawal under section 1309. Therefore, part 144 of the Customs Regulations will apply instead of section 10.62. Emergency withdrawals, of course, continue to be governed by section 10.62(e).

A copy of this letter is being furnished to the District Director of Customs in Honolulu.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 4 1986

REFER TO

MAR-2-05 CO:R:E:E
729321 SO

Mr. Sheldon Parker
W.M.R. Watch Case Corporation
1140 Broadway
New York, New York 10001

Dear Mr. Parker:

This is in response to your letter of January 10, 1986, addressed to our New York office, concerning the country of origin marking requirements applicable to skeleton watch bracelets which will be manufactured in Hong Kong and imported into the United States where they will be processed into finished watch bracelets. The further processing will include the addition of two metal spring tube cartridges and no less than 37 top shells (made of either stainless steel or rolled gold plate). You asked if the further processing described above would qualify the skeleton bracelets for the marking exception set forth in Section 134.35 of the Customs Regulations (19 CFR 134.35) for articles used in the United States in manufacture which results in articles having a name, character, or use differing from that of the imported article.

We are of the opinion that the additional processing referred to above to be performed by your firm in the United States amounts to a substantial transformation of the imported skeleton watch bracelets by a process of manufacture which results in articles having a name, character and use differing from that of the imported articles. Accordingly, the imported skeleton watch bracelets may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D), if the containers in which they are imported are legibly and conspicuously marked to indicate the country of origin, and Customs officers at the port of entry are satisfied that the skeleton bracelets will reach the ultimate purchaser in the United States in the original marked containers in which imported, and will be used only in the manufacture of finished bracelets and not otherwise sold. You should be prepared to furnish statements or affidavits to this effect for each entry for which this exception is sought.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAR 18 1986

REFER TO
CO:R:E:E 729333

A.N. Deringer, Inc.,
30 West Service Road
Champlain, New York

Your Ref:Letter
2/7/1986
CanPlast, Ltd.

Mr.Columbe,

In response to your recent inquiry,

the following information is provided:

This is to confirm our previous advice regarding wood veneer and metallic products made in Germany and Italy. The mere slitting of the finished wood veneer product or metallic product does not constitute substantial transformation. "Made in Canada" is unacceptable. Slit rolls must be marked to indicate Germany or Italy as the country of origin.

The application of adhesives or primer to the back of the otherwise finished product does not result in a new and different article having a new name, character, or use The operations is Canada do not constitute a substantial transformation.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 10 1986

REFER TO
MAR-1 CO:R:E:E
729341 LR

Mr. David L. Brown
Bluefield Manufacturing, Inc.
Bluefield Industrial Park
P.O. Box 1010
Bluefield, Virginia 24605

Dear Mr. Brown:

This is in response to your letter dated February 7, 1986, concerning the country-of-origin marking requirements of imported PVC electrical tape. You indicate that the tape is imported in log roll form and that after importation each log is slit into 64 individual rolls of tape.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) generally requires that every article of foreign origin be marked to indicate the name of the country of origin to the ultimate purchaser in the United States. The ultimate purchaser is the last person in the United States who will receive the article in the form in which it was imported. This requirement would apply to imported electrical tape. We cannot consider your company to be the ultimate purchaser in this case since the slitting of the tape from log roll form into individual rolls does not substantially transform the tape into a new and different article of commerce. Accordingly, each individual roll must be marked so that the ultimate purchaser, the user of the tape, is advised of the country of origin. The logs must be marked at the time of importation in a manner which will accomplish this (e.g. marking the country of origin on the log at appropriate intervals) unless the district director, in accordance with the procedures outlined in 19 C.F.R. 134.34, permits the marking of the individual rolls to be accomplished after importation.

You also ask whether you are required to label a small roll of tape (valued at 11¢) that forms part of a cable splice kit manufactured by your company that sells from $8 to $25. All of the other items used in these kits are made in the United States.

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In our view, the tape used in this manner loses its separate identity and becomes an integral part of the cable splice kit. As such, your company would be considered the ultimate purchaser of this tape. Accordingly, we will except the tape from individual country of origin marking under 19 U.S.C. 1304(a)(3)(d) provided: (1) the outermost containers in which the tape is imported are legibly and conspicuously marked to indicate the country of origin; (2) Customs officers at the port of entry are satisfied that the tape will reach your company in the original marked containers in which imported; and (3) the tape will be sold only at part of the cable splice kits. Statements or affidavits to this effect must be submitted for each entry for which this exception is requested.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DATE: MAR 10 1986

CONTROL NUMBER: CPR-CO:R:E:E 729345 A
YOUR REF: Letter of February 6, 1986

COPYRIGHT ADVISORY OPINION

TO: Martin R. Greenstein, Esq.
Baker & McKenzie
Prudential Plaza
Chicago, Illinois 60601

COPYRIGHT OWNER: International Business Machines Corp. (IBM)
COPYRIGHT REGISTRATION NO: TX 1-171-911
DATE OF FIRST PUBLICATION: August 9, 1984
PROTECTED Article (description):

Computer Program Basic Input/Output Systems ("IBM BIOS")

IMPORTED ARTICLE (description):

Computer program basic input/output system: sample consisting of a 2764 EPROM labeled "Evergo 1985 PC BIOS 2.04;" a 5 1/4" disk; a source code listing; an object code listing and a function flow chart. We understand that your client, Evergo Computers Ltd, has changed its name to Ergo Electronics Company. Despite the EPROM's "PC BIOS 2.04" label, the extracted and printed contents of the EPROM titled "EVERGO BIOS V 2.0."

DIFFERENCES AND SIMILARITIES NOTED:

Both the IBM BIOS and the Evergo BIOS V 2.0 are basic input/output systems in computer programs. Laboratory analysis L.R. 86-10007-008) shows the Evergo BIOS 2.0 to compare with IBM BIOS at levels of 7.60 in place and 19.36 overall. The most substantial similarity (approximately 200 bytes) occurs in the Keyboard I/O routine.

SUBSTANTIAL SIMILARITY TEST: Whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same; Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F.2d 487 (1960). Whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work; Ideal Toy Corp. v. Fab-Lu Ltd., 360 F.2d 1022 (1966). There must have been access to the copyrighted work, as well as substantial similarity not only of the general ideas but the expression of those ideas as well.

OPINION: ☐ Infringing - Imported articles subject to seizure, forfeiture and destruction; return to country of export may be permitted by district director if satisfied that importer had no reasonable grounds for believing that his acts constituted a violation of law; bond of copyright owner (if any) returned. (17 U.S.C. 602(b), 603(c); 19 CFR 133.42, 133.44)

☒ Non-infringing - Imported articles and bond of copyright owner (if any) released to importer. Verification of the program in the condition as imported may be expected.

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Steven I. Pinter
Chief, Entry, Licensing and Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 24 1986

REFER TO
CPR-1 CO:R:E:E
729356 SO

Mr. Mark D. Taylor
Tyndale House Publishers
336 Gundersen Drive
Box 80
Wheaton, Illinois 60189

Dear Mr. Taylor:

This is in response to your letter of February 13, 1986, concerning the publication of an art book entitled DOORPOSTS. The book will be made up of Bible passages rendered in calligraphy, an art form using hand-lettering. The book will consist preponderantly of this artwork. The Bible passages are from THE LIVING BIBLE, a modern translation of the Bible which is protected by U.S. copyright. You believe that the pages done in calligraphy should be considered to be pictorial or graphic rather than as literary material for purposes of determining if the "manufacturing clause" of the Copyright Law applies. You submitted several sample pages of calligraphy and asked if the book would be subject to the manufacturing restrictions if imported bearing the notice of copyright.

In general, the "manufacturing clause" of the Copyright Revision Act of 1976 (17 U.S.C. 601) prohibits the importation and public distribution in the United States of a work authored by a U.S. National or domiciliary consisting preponderantly of nondramatic literary material that is in the English language and protected by copyright, unless the portions consisting of such material have been manufactured in the United States or Canada. However, the manufacturing restrictions would not extend to dramatic, musical, pictorial, or graphic works; foreign-language works; or public domain material. In cases such as this, where the work consists partially of text and partially of calligraphy, the test is whether the work, taken as a whole, consists, "Preponderantly of nondramatic literary material that is in the English language."

The legislative history of the Copyright Revision Act of 1976 indicates that the manufacturing requirements of the law would apply if the English language nondramatic literary text exceeds the pictorial or other exempt material in importance. However, as you may know, the test that Customs officers use to determine if an imported work is "preponderantly" nondramatic

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literary material subject to the manufacturing requirement is found in Stonehill Communications, Inc. v. John Martuge, New York Area Director of United States Customs Service, 512 F. Supp. 349 (S.D.N.Y. 1981). That decision states that the test according to the legislative history, is a mechanical one. You measure the surface area of the text and pictures (or other exempt material), exclusive of margins, respectively. If there are more square inches of text than pictures, the book is "preponderantly" text and is subject to the manufacturing restrictions. Otherwise, it is not.

We would agree that the pages of calligraphy which you submitted constitute artwork, so that these pages would be considered pictorial rather than literary material for purposes of determining if the manufacturing restrictions apply. When you are ready to enter the book into the United States, we suggest that you provide Customs officers at the port(s) of entry with an exact measurement of the text and pictorial parts, following the guidelines set forth in the Stonehill decision. Assuming the measurements follow the Stonehill guidelines and confirm your statement that the book consists preponderantly of this artwork (calligraphy), the book would be found to be "preponderantly" pictorial and not subject to the import restrictions of the "manufacturing clause." Accordingly, you would be able to import an unlimited number of copies, bearing the notice of copyright, without restriction.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 1 1 1990

REFER TO
CPR-3 CO:R:E:E
729375 SO

This ruling concerns whether or not sample 3" clip on stuffed animals are infringing importations pursuant to Sec. 602 of the Copyright Revision Act of 1976 (17 U.S.C. 602).

ISSUE:

Would the importation of two types of clip on stuffed dogs infringe the copyright registrations of United Features Syndicate, Inc., for "UNITED FEATURE COMICS," which includes the "Peanuts" comic strip character "Snoopy;" and would a clip on stuffed bear infringe the copyright registrations of American Greetings Corporation for "CARE BEARS" and "CARE BEARS MANUAL?" The copyrights referred to above have been recorded with the Customs Service for import protection.

FACTS:

A prospective importer asked for our advice as to whether two types of clip on stuffed dogs and a stuffed bear would infringe the copyrights for the "Peanuts" comic strip character "Snoopy" and the "CARE BEARS." The heads of the dogs are white with elongated snouts, button noses, small black eyes and large floppy black ears. One of the sample dogs submitted by the importer is wearing a brown cowboy hat and a green cape with a red ribbon. The sample clip on bear is posed in the seated position and has a small snout, drooping eyes, ears set high on the forehead, and bright red hearts on the extreme ends of the snout and both hind paws.

LAW AND ANALYSIS:

The basic test for determining whether there has been an infringement of a copyright is whether substantial similarity exists between two works. The appropriate test for determining whether substantial similarity is present is whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work, Ideal Toy Corp. v. Fab-Lu Ltd., 360 F.2d 1022 (1966). Another statement of the test is whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same, Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F.2d 487 (1960). The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by deliberately making trivial or insignificant variations in specific features of the copyrighted work.

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Two steps are involved in the test for infringement. There must be access to the copyrighted work and substantial similarity not only of the general ideas but the expression of those ideas as well. United Features Syndicate obtained its copyright registrations for the "Peanuts" comic strip in 1958. American Greetings Corporation obtained their copyrights in 1983. It is apparant that the party that made the sample dolls in Korea had ample opportunity to view the copyrighted works. Even without direct evidence of access to the copyrighted works, the substantial similarity between the works may be so striking as to preclude the possibility that the works were arrived at independently.

Section 602(b) of the Copyright Law (17 U.S.C. 602(b)) provides that, "In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited." Section 603(c) of the Copyright Law (17 U.S.C. 603(c)) provides that, "Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the Customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer has no reasonble grounds for believing that his or her acts constituted a violation of law."

We compared the imported articles with the copyright protected work. Our comparison leaves no doubt that the heads of the sample clip on stuffed dogs are substantial copies of "Snoopy," noting the distinctive shape of the snout and the set of the long black floppy ears. The insignificant differences we noted in the shapes of the bodies and tails, appears to us to constitute a deliberate attempt to make minor variations in the appearance of the imported items while preserving a similar aesthetic appeal to the ordinary purchaser. The fact that one of the imported dogs is clothed in a cowboy hat and cape, and the other has a black bushy tail uncharacteristic of "Snoopy," in our opinion, represents a deliberate attempt to produce non-infringing articles. However, the substantial similarity of the heads of the imported clip on dogs with "Snoopy" rules out coincidence and independent creation.

With regard to the imported stuffed clip on bear, we note a strong resemblance to one or more of the "CARE BEARS" depicted in the "CARE BEAR MANUAL," particularly the yellow bear on the cover of the Manual, noting the shape of the face, the seated body position, and the set of the ears on the forehead. However, the strongest evidence of copying is the appearance of the bright red hearts on the tip of the nose and

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the soles of the hind paws on the imported bear. We note that all of the "CARE BEARS" have the hearts at these locations. We are of the opinion that the imported bear is substantially similar to the copyright protected works of American Greetings.

The fact that clip on stuffed dogs and bears manufactured in Korea from the same patterns may have been permitted to enter the U.S. previously without restriction is not significant. Apparent lapses in Customs enforcement of copyright restrictions applicable to particular items arriving in the United States in the past does not create a practice that is binding on the Customs Service with regard to future shipments.

HOLDING:

We are of the opinion that the imported articles would be prohibited entry into the United States as infringing on the rights of the copyright owners. The merchandise, if imported, would be subject to seizure and forfeiture (17 U.S.C. 603). However, the district director of Customs may grant relief from forfeiture upon consideration of a petition submitted pursuant to 19 CFR 133.51(a). If the district director is satisfied that the importer had no reasonable grounds for believing that his acts constituted a violation of law, exportation of seized merchandise back to the country of export may be permitted.

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO
ENT-1 CO:R:E:E
729387 JL

MAR - 4 1986

Maureen M. Dockery
Roquette Corporation
645 Fifth Avenue
New York, New York 10022

Dear Ms. Dockery:

This refers to your letter of February 10, 1986, addressed to the Director, Office of Regulations and Rulings concerning your company's request for the reliquidation of an entry of merchandise which was denied by Customs in New York.

You state that your "protest" was filed on September 20, 1985, and was denied on December 31, 1985. You forwarded a copy of your letter of September 16, 1985, addressed to the Protest and Control Unit of Customs at the World Trade Center in New York and a copy of the denial. The denial was issued because your claim of September 20 was filed more than one year from the date of liquidation, which is stated to be November 5, 1982. You state that the commodity team leader in New York notified you that after checking with the Customs computer the liquidation date of the entry was actually October 30, 1983.

Your letter of September 16 was properly treated by New York Customs as being a petition for relief under 19 U.S.C. 1520(c)(1) rather than a protest. That provison of law requires that any request for relief thereunder must be filed within 12 months of the date of liquidation of the entry sought to be reliquidated. A protest, on the other hand, must be filed within 90 days of the liquidation. In other words, Customs is prevented from taking any remedial action on your entry if it was liquidated prior to September 20, 1984.

Customs entries are liquidated pursuant to law and regulation by posting a bulletin notice of liquidation at the customhouse in the port where the merchandise was entered. Accordingly, the Area Director's office at the New York

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Seaport has available for your examination, upon request, the bulletin notice which will disclose the actual date of liquidation. If the bulletin notice discloses that your entry was indeed liquidated less than 12 months before your petition for relief was filed on September 16, 1985, the area director's office should be contacted in order to remedy the situation. If you still believe that the petition for relief was incorrectly denied, or the area director will not reliquidate the entry upon your notification that the petition was incorrectly denied, you may file a protest on Customs Form 19 to the denial of December 31, 1985, but it must be accomplished within 90 days of the denial.

Sincerely,

Steven I. Pinter
Chief, Entry, LIcensing and
Restricted Merchandise Branch

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A13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

ENT-1 CO:R:E:E
729390 JL

Director, Office of Foreign Missions
Department of State
Washington, D.C. 20520

Dear Sir:

This refers to your transmission of February 20, 1986, of a request for refund of duty paid on mail entry No. Z 886355 at JFK Airport by Mr. S.A. Asamoah of the Guana Mission to the United Nations on May 3, 1985.

As you are aware, Customs has no authority to reliquidate an entry unless a protest is filed within 90 days of the date of liquidation pursuant to 19 U.S.C. 1514. A one-year period is allowed for the filing of a petition for relief in the case of a mistake of fact, clerical error, or other inadvertence not amounting to a mistake in the construction of a law when the error is manifest from the record. Since nothing was forwarded except the request for Customs clearance of merchandise, we presume that the failure to claim duty-free entry was the result of either negligence or ignorance on the part of the importer, neither of which would qualify under 19 USC 1520(c)(1), the provision which would allow a reliquidation within 12 months. Accordingly, please inform Mr. Asamoah that his request is denied.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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A14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DATE: MAR 17 1986

CONTROL NUMBER: 729394 KM
YOUR REF: CPR 3:DD:CV:DA CT 5

DECISION ON DISPUTED CLAIM OF INFRINGEMENT

TO:
District Director of Customs
San Juan, Puerto Rico
ATTN:. Mr. E. Picon, Asst. District Director

COPYRIGHT OWNER: Original Appalachian Artworks, Inc.
COPYRIGHT REGISTRATION NO: VA 35-804
DATE OF FIRST PUBLICATION: February 18, 1983

PROTECTED Article (description):

"THE LITTLE PEOPLE SOFT SCULPTURE - STYLE BALD" (Customs Issuance 82-37), also known as "CABBAGE PATCH KIDS." A family of dolls having soft bodies, yarn hair and a distinctive nose and receding chin. Approximately ranging from 12 inches to 30 inches in height.

IMPORTED ARTICLE (description):

60 dozen "ANN AND BOB" stuffed dolls, a little boy doll approximately 7 inches in height, with a rubberized, molded face, yarn hair, and wearing blue overalls.

DIFFERENCES AND SIMILARITIES NOTED:

Although the imported items fit the same general description of the protected "CABBAGE PATCH" dolls, significant differences exist in their facial features, size and material composition. Among these differences are the lack of the unique upward bulging tri-partite nose, life-like feet, and cute "tush" ofthe "CABBAGE PATCH" dolls. By contrast, the imported items merely have rounded button-type noses and shapeless feet. The "CABBAGE PATCH" dolls are soft-bodied and are larger than the plastic imported items.

SUBSTANTIAL SIMILARITY TEST: Whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same; Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F.2d 487 (1960). Whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work; Ideal Toy Corp. v. Fab-Lu Ltd., 360 F.2d 1022 (1966). There must have been access to the copyrighted work, as well as substantial similarity not only of the general ideas but the expression of those ideas as well.

DECISION: [ ] Infringing - Imported articles subject to seizure, forfeiture and destruction; return to country of export may be permitted by district director if satisfied that importer had no reasonable grounds for believing that his acts constituted a violation of law; bond of copyright owner (if any) returned. (17 U.S.C. 602(b), 603(c); 19 CFR 133.42, 133.44)

[X] Non-infringing - Imported articles and bond of copyright owner (if any) released to importer.

Steven I. Pinter
Chief, Entry, Licensing and Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 31 1986

REFER TO

MAR-2-05 CO:R:E:E
729398 SO

Mr. Thomas E. Blanchard
Acting DARC (Classification & Value)
U.S. Customs Service
55 East Monroe Street
Chicago, Illinois 60603-5790

Re: Decision on Application for Further Review of Protest No. 3801-5-002676 of October 24, 1985.

The protest was filed by C.J. Tower & Sons of Buffalo on behalf of their client, Warner-Lambert Co., against the assessment of marking duties on a shipment of trade brochures printed in Canada. The Acting Assistant District Director (C&V) at Detroit, Michigan, did not consider the marking of country of origin to be conspicuous. The words "Printed in Canada" appear in tiny white letters oriented vertically along the right hand edge of the back page of the four page cardboard brochure, so that the words must be read from the bottom up. The tiny letters are hidden in a grid pattern of thin white lines which crisscross parts of every page of the brochure (except where the text or illustrations appear). Also appearing at the top of the same page in large black type against a plain grey background are the addresses in the United States and seven other countries of suppliers of the volumetric infusion pumps being promoted in the brochure.

A marking notice (CF-4647) was issued in order to allow the improter to correctly mark the brochures. The importer stated that the brochures had been distributed. Accordingly, additional marking duties (10 percent) were assessed. You accepted the importer's application for further review (CF-19) and submitted the matter to Customs Headquarters for decision. You concurred with the recommendation of the Acting Assistant District Director, that the protest should be denied and additional marking duties assessed for failure to mark.

We are of the opinion that the inconspicuous marking of country of origin on the brochure fails to meet the requirements of section 134.46 of the Customs Regulations, 19 CFR 134.46, which states that, "In any case in which the words 'U.S.,' or 'American,' the letters 'U.S.A.,' any variation of such words or letters, or the name of any city or locality in the U.S., or the name of any foreign country or locality in

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which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters or name and in at least a comparable size, the name of the country of origin preceded by 'Made in,' 'Product of,' or other words of similar meaning."

The argument submitted by the importer in support of his protest is that the marking "Printed in Canada" is sufficiently conspicuous and in close enough proximity to the importer's name. The importer submitted a copy of a 1971 decision concerning books which holds that the marking of country of origin may appear in a location other than the title page, even though the title page bears the name and address of the importer, consignee, or publisher in the United States. We are of the opinion that this ruling is not on point because the imported article is not a book and the location of the country of origin marking on other than the title page is not at issue. The controversy in this case centers on whether the marking is in a conspicuous place (as required by 19 U.S.C. 1304(a) and 19 CFR 134.46). Enclosed is a copy of a 1930 decision (T.D. 44370(18)) concerning boxes of safety matches on which the words "Made in Russia (U.S.S.R.)" were printed in an inconspicuous manner in black letters over slanting red and yellow lines, which is more on point. In that case, the additional marking duties (10 percent) were assessed pursuant to section 304(c) of the Tariff Act of 1930 (19 U.S.C. 1304(c)). Accordingly, the protest should be denied and marking duties assessed.

A copy of this decision may be furnished to all concerned parties. Your sample is returned herewith.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

Enclosures

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 14 1986

REFER TO
CPR-2 CO:R:E:E
729404 A

Mr. Quintin L. Villanueva, Jr.
Regional Commissioner of Customs
300 North Los Angeles Street
Los Angeles, California 90053-3379

Dear Mr. Villanueva:

Your memorandum of March 3, 1986 (CPR-1:L:D:IV, MO/jlc), discusses problems encountered in carrying out import protection for copyrighted IBM computer programs in "gray areas" of similarity.

The administrative difficulty is pointed up by 5 cases in your region involving between 30 to 36 percent similarity where IBM declined to post a bond and follow through under section 133.43(c) of the Customs Regulations. In each case, a Mr. Robert Liesegang of IBM authorized release of the suspect computer programs.

We have been involved in ongoing discussion with IBM for some time about developing meaningful guidelines which are workable for Customs and fair to all concerned. Upon receipt of your memorandum, we contacted IBM's "in house" attorney, Mr. Tomlin, who advised us that Mr. Liesegang's actions do not constitute an established policy which we may rely on for guidelines. Mr. Tomlin did agree, however, that we should work together to eliminate a situation which is frustrating Customs efforts on IBM's behalf.

Accordingly, we have arranged to specifically discuss the situation you point out during a Headquarters' conference with IBM representatives in April. This area is exceedingly complex because the business, technical and legal considerations do not always coincide nicely, but we intend to press for some more satisfactory solution. We will keep you advised of developments.

For now, Customs should continue to detain suspect computer programs in "gray" areas (including 30 to 36 percent) and follow the adversary procedures of section 133.43, C.R.

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As to the "Tomcat" 3200 Personal Computer case, we are resolving a question with IBM and expect to be issuing a decision in the very near future.

Sincerely,

John P. Simpson
Director, Office of
Regulations and Rulings

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 19 1986

REFER TO

MAR-3 CO:R:E:E
729410 LR

Lauren R. Howard, Esq.
Collier, Shannon, Rill & Scott
1055 Thomas Jefferson Street, NW.
Washington, D.C. 20007

Dear Ms. Howard:

This is in response to your letter dated March 11, 1986, on behalf of the National Juice Products Association, requesting a definitive statement of Customs position on several issues relating to compliance with C.S.D. 85-47, the ruling that orange juice products which contain imported concentrate must be marked to indicate the country of origin of that concentrate. The specific issues you raise will be addressed in turn.

1. Is it permissible for U.S. orange juice processors to list only their major suppliers of foreign manufacturing concentrate, so that processors will be able to adopt a standardized label format?

You indicate in your letter that according to data from the U.S. Department of Commerce, a single foreign country - Brazil - has accounted for the overwhelming majority of U.S. imports of manufacturing concentrate for each of the past six years. Between 1980 and 1985, Brazil accounted for between 92.4 and 97.7 percent of U.S. imports of this commodity. The second largest source in each year has been Mexico, which has accounted for an average of 3.6 percent of total imports in each year. Only in 1981 did a third country - Belize - account for more than one percent (i.e., 1.2 percent) of U.S. imports of manufacturing concentrate. You note that while U.S. processors do import manufacturing concentrate from as many as 15 other foreign countries, in almost all cases, this is done only on a sporadic basis because of short-term supply considerations.

In light of the above circumstances, we conclude that the that disclosure of only the major foreign sources of the imported product will adequately inform the ultimate purchaser of the country of origin and would constitute compliance with C.S.D. 85-47. It should be noted that the Customs Service previously approved this method of marking in connection with repackaged

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honey where it was similarly shown that most imports would likely be confined to a few major suppliers. See C.S.D. 84-44, October 14, 1983, as affirmed in C.S.D. 84-112, July 2, 1984. The "major supplier" rule applies for individual packers or processors; that is, processors or packers must indicate the major foreign sources of the imported concentrate they use in their own manufacturing process, whether or not that foreign source is a major one for the United States generally.

2. Is it permissible for orange juice processors using a blend of U.S. and foreign origin manufacturing concentrate to specify domestic, as well as foreign content?

We have no objection to showing that the orange juice is a blend of domestic and imported concentrate, if that in fact is the case. An example of an acceptable designation is: "Contains a blend of Florida and Brazilian concentrate."

3. In the case of frozen concentrated orange juice and orange juice from concentrate sold in cans, is the marking obligation satisfied if processors lithograph the lids of the cans with an appropriate designation of origin, even though the identification of the U.S. distributor is located on another surface of the can?

You indicate that cans are widely used as a form of packaging for frozen concentrated orange juice and orange juice from concentrate in the United States. These include composite cans (having a body composed of foil-lined cardboard) for frozen concentrate ranging from six ounces to 46 ounces in volume and all-metal cans between six and 32 ounces in volume for packaging single-strength orange juice from concentrate. In both cases, however, both the bottom and toplids are metal, and can be permanently and legibly marked using the lithography process.

In your opinion the mark placed on either lid of a can of frozen concentrate or the top lid of a can of orange juice from concentrate would be far more conspicuous than a mark placed in the text of a printed label. You also indicate that lithographing can ends would be a significantly less expensive method of marking for U.S. processors, at least until existing inventories of labels are exhausted.

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Section 134.46 of the Customs Regulations (19 CFR 134.46) requires that the country of origin marking appear in close proximity to and in at least comparable size letters to any U.S. address on the product. The close proximity requirement has been interpreted to mean the same side or surface. The purpose of the regulation is to prevent any confusion as to the country of origin that may be caused as a result of the U.S. address.

In this case, we find that the underlying purpose of section 134.46 would be satisfied if the country of origin appears on the lid provided the following two conditions are met: 1) the marking appears on the top of the can (i.e. the side that is to be opened by the consumer) and 2) the marking is legible and conspicuous and in at least comparable size letters to the U.S. address. In our view, so long as these conditions are met, a marking on the top of the can will fully inform the consumer of the country of origin. Our approval of this method of marking should allow for an earlier implementation date of C.S.D. 85-47 and should facilitate future compliance when there is a change in a processor's major suppliers of concentrate. Lithographing the top of the can is, however, optional and the country of origin may instead appear in a conspicuous location on the same side or surface as the U.S. address in accordance with the requirements of section 134.46.

The procedures approved above are for the purpose of facilitating compliance with the marking statute. Customs may disallow their use if they are utilized for a deceptive purpose.

Sincerely,

Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAR 26 1986

FILE: ENT-1 CO:R:E:E
729414 JL

TO : District Director of Customs
Portland, Maine

FROM : Chief, Entry, Licensing and
Restricted Merchandise Branch

SUBJECT: Your Request for a Ruling of March 5, 1986, BOR-4-02 DD

You asked whether or not the driver of a truck arriving in international traffic is considered to be a crewmember within the meaning of section 148.61, Customs Regulations. You state that it is your opinion that such persons are clearly connected with the operation of a vehicle engaged in international traffic, and as such are not entitled to the exemptions provided for in Schedule 8, Part 2, of the Tariff Schedules of the United States (TSUS).

Schedule 8, Part 2, Subpart A, Headnote 3, TSUS, provides that a person arriving in the United States "on duty as an employee of a vessel, vehicle, or aircraft, engaged in international traffic, or (b) from a trip during which he was so employed" is not entitled to the personal exemptions provided for in subpart A (with the exception of the exemption provided in item 814.00) unless he is permanently leaving employment without the intention of resuming it on the same or another carrier. Section 148.61, Customs Regulations, defines "crewmembers" as persons connected with the operation, navigation, ownership, or business of a vessel, vehicle, or aircraft engaged in international traffic. It follows, therefore, that the driver of a truck arriving in the United States in international traffic is a crewmember within the purview of section 148.61 of the Customs Regulations and is subject to the prohibition of Schedule 8, Part 2, Subpart A, Headnote 3, TSUS.

Steven I. Pinter

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAR 17 1986

FILE: ENT-1 CO:R:E:E
729418 JL

TO : District Director of Customs
Norfolk, Virginia

FROM : Chief, Entry, Licensing and
Restricted Merchandise Branch

SUBJECT: Protest No. 1401-5-000031, February 12, 1985, Roquette Corporation

The protest was made by the importer to your refusal to pay interest on overpayments of estimated antidumping duties at the rate required by the Trade and Tariff Act of 1984 on 21 entries which were liquidated on November 30, 1984.

The merchandise, sorbitol from France, was found by the Department of Commerce in a preliminary determination on November 30, 1981, as being sold at less than fair value. Consequently Customs was directed to suspend liquidation and to require deposits of estimated antidumping duties. On June 29, 1984, the Department of Commerce published a partial revocation of its antidumping duty order on sorbitol from France which was applicable to all unliquidated entries. The Duty Assessment Division at Headquarters then issued instruction No. 84-278 which stated in paragraph 6 as follows:

> The assessment of antidumping duties by the Customs Service is subject to the provisions of section 778 of the Tariff Act which requires interest on overpayments and underpayments of the amounts deposited as estimated duties. The rate at which such interest is payable is the rate in effect under section 6621 of the Internal Revenue Code of 1954 on the date of signature of the final results (March 12, 1984). That rate is 11% per annum. The interest shall be calculated from the date of payment of estimated duties through the date of liquidation, only for those entries made after January 1, 1980.

Paragraph 4 of the instruction states:

> C.I.E. supplements have been or are being issued with instructions for liquidation of entries. This telex constitutes the lifting of suspension

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of liquidation as of the date of issuance of the C.I.E.'s and authorization to proceed with appraisement of all entries covered by those appraisement instructions.

The telegram bears a handwritten date of October 9, 1984.

On October 30, 1984, the Trade and Tariff Act of 1984 (Public law 98-573) was passed. Section 621 of Public Law 98-573 amended 19 U.S.C. 1677g to specify that interest be paid on overpayments of estimated antidumping duties at the rates of interest established under section 6621 of the Internal Revenue Code of 1954 for the entire period.

Because the entries at issue in the protest were liquidated on November 30, 1984, the importer urges that the interest payable must be computed under the new law. The Customs Form 6445A prepared by your office merely states that the Customs position is that "interest is payable at 11% per annum", and that "telex 09987 dated 10-9-84" supports your position. The Regional Protest Reviewer and the C.I.E. agree with your position without addressing the issue raised by the protest.

Inasmuch as the effective date of section 621 of Public Law 98-573 is October 30, 1984, one month before the date on which the entries were liquidated, interest should have been computed and paid in accordance with the new law. You are therefore directed to allow the protest in full.

Steven I. Pinter

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OFFICE OF THE COMMISSIONER

ADDRESS REPLY TO
COMMISSIONER OF CUSTOMS

TREASURY DEPARTMENT

BUREAU OF CUSTOMS

WASHINGTON 25

July 22, 1960

799576

IN REPLY REFER TO
EV 363.2

YOUR FILE

BUREAU OF CUSTOMS
CIRCULAR LETTER NO.- 3138

SUBJECT: Frozen shrimp; marking of the name of the country of origin; section 304, Tariff Act of 1930, as amended.

There has been submitted to the Bureau the outer wrapping of a package of frozen shrimp imported from Mexico on which the marking of the country of origin is not as prominent and conspicuous as required by section 304, Tariff Act of 1930, as amended.

The words "Product of Mexico" appear on the wrapping under the heading

[redacted]

Ready to Fry
Frozen
Breaded Shrimp

in such small type that they are likely to be overlooked by many purchasers. This product is packed in Mexico for [redacted] Future importations of these packages are not to be released from customs custody unless the marking of the country of origin is sufficiently legible and conspicuous to be noticed on a casual examination of the package.

L B Hastings
Acting Commissioner of Customs

[redacted]

799576

B12

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President

FEB 25 1966

RM 363.2 K

T99604

[redacted]

Dear [redacted]

We have your letter of December 22, 1965, on behalf of your client, a New York company engaged in the importation, marketing, distribution and sale of seafood to super markets, hotels, and purveyors in the United States. You request rulings from this Bureau regarding the marking requirements of section 304, Tariff Act of 1930, as amended, to various seafood products under certain circumstances.

The products with which your letter is concerned are shrimp and spiny lobsters, and the processing involved in the situations below would be the removal of the heads from the shrimp, or, in the case of spiny lobsters, tearing the tail away from the balance of the crustacea. The Bureau's opinion as to the marking requirements in the situations outlined in your letter are set out below:

1. Where the product is caught in the coastal waters of Nigeria by Greek flag fishing trawlers and taken ashore for processing (deheading), grading, packaging, and freezing for ultimate shipment to the United States, the country of origin to be shown on the cartons would be the country where the processing is done, presumably Nigeria in this case.

2. Where the product is caught in international waters off the west coast of Africa and then taken ashore for processing (deheading), grading, packaging, freezing and ultimate shipment to the United States, the country of origin to be shown on the cartons would also be the country where the processing is done.

3. Where the product is caught in international waters off the west coast of Africa and processed (deheaded), graded, packaged, and frozen aboard a Greek flag fishing trawler, which product is then taken ashore for storage until placed aboard a carrier for export to the United States, the country of origin would be Greece.

B13

T99604

4. Where the product is caught in international waters off the west coast of Africa by fishing trawlers flying the Japanese flag and processed (deheaded), graded, packaged, and frozen aboard the trawler, and subsequently taken ashore in Nigeria for shipment to the United States, the country of origin would be Japan.

5. Where the product is caught in international waters by Japanese trawlers and processed on board as described in 4 above and transferred directly to carriers for shipment to the United States, the country of origin would also be Japan.*

6. Where the product is caught in the coastal waters situated on the border line between Nigeria and Dahomey by a Greek fishing trawler which catches the product while trolling on both sides of the border and dumps the product into the same bins aboard the trawler, the country of origin would be Greece if the product is processed on board in the manner described in the foregoing situations, or the country where the product is processed if the product is taken ashore for processing.

Sincerely yours,

(Signed) ROBERT V. McINTYRE

ROBERT V. McINTYRE
Assistant Commissioner
Office of Regulations and Rulings

Enclosure 23906

*Please note, however, the provisions of 46 U.S.C. 251 and section 4.96 of the Customs Regulations, copy enclosed.

B14

[redacted]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

APR 0 1 1983

REFER TO
CLA-2-07:S:C:D3:30-19
805031

[redacted]

Dear [redacted]

In your letters of January 17 and March 17, 1983, you requested on behalf of your client [redacted], the tariff classification of toy figures to be produced in Hong Kong.

The two pre-production samples submitted with your inquiry consist of stuffed or filled out figures that depict the Ewok village creatures appearing in the motion picture entitled "Return of the Jedi."

Both figures are constructed of soft plush fur material and stuffed with shredded textile wastes. Plastic eyes and nose are affixed to the head area. The larger Ewok, identified as Wicket W. Warrick, is about sixteen inches in height and comes with a removable cloak. The nine inch Ewok sample figure is similar in appearance but without a cloak. It is said to represent baby Ewok creature characters named Wiley and Nippet.

Headnote 3 of Schedule 7, Part 5, Subpart E states in part:

> For the purposes of the superior heading to items 737.47 and 737.49 and of item 737.51, "toy figures of inanimate objects" are only imaginary creatures that either-
>
> (i) do not possess features of human or other earthly creatures;
>
> (ii) possess both earthly and non-earthly features but are predominantly non-earthly in nature; or
>
> (iii) possess features which are a hybrid of features of more then one animate object.

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

APR 01 1983

The Ewok characters represent entirely imaginary extraterrestrial creatures and, in their entirety, depict little resemblance to any known earthly creature. Thus, the Ewok plush toy figures are classifiable under the provision for stuffed toy figures of inanimate objects, not having a spring mechanism in item 737.47, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 12.3 percent ad valorem. However, this merchandise is within the scope of item 912.34, TSUS, which provides for the temporary suspension of duty on stuffed or filled toy figures of inanimate objects not having a spring mechanism which are entered on or before December 31, 1985. See part 1B, Appendix to the Tariff Schedules and general headnotes 3(d) (ii).

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Hartuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 24 1983

REFER TO

CLA-2-04:S:C:D6:63-526
807323

[redacted]

Sirs:

In his letter of September 15, 1983, [redacted], requested that we advise you of the dutiable status of his newly formulated Rustroy rust destroying primer, a product of England.

Previously we had issued you an information letter on this subject, our reference number 805904 dated May 10, 1983.

The newly formulated Rustroy rust destroying primer is described as a blend of several alcohols, a benzenoid plastic material and acids. It acts as a combined rust-destroyer, rust prevention and primer.

The Rustroy rust destroying primer containing a benzenoid plastic material is classifiable as a benzenoid mixture, in item 413.51, Tariff Schedules of the United States, dutiable at the rate of 17.5 percent ad valorem, but not less than the highest rate applicable to any component material. At this time the highest rate is 17.5 percent.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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C3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 10 1983

REFER TO

CLA-2-01:S:C:D4:39-459
807564

[redacted]

Dear [redacted]

In a letter dated October 21, 1983, you inquired as to the dutiable status of a Lamequick aerating compound produced in West Germany.

Lamequick aerating concentrates, according to information you have provided, are spraydried, freeflowing powders which may be used as a base for a wide variety of whipped food products. These concentrates contain vegetable fat, emulsifier, protein, modified starch, and sugar. Individual types of Lamequick vary according to the emulsifier, protein, and vegetable fat used. You state that Lamequick C, the subject of this inquiry, contains hydrogenated coconut oil (46 percent by weight), dry glucose syrup (22.75 percent), lactated monodiglyceride (14 percent), sodium caseinate (9 percent), sucrose (8 percent), and sodium alginate (0.25 percent). Hydrogenated coconut oil is the ingredient in chief value for Lamequick C.

Lamequick C is classifiable under the provision for other edible preparations not specially provided for (including prepared meals individually packaged) in item 183.05, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Mantuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 07 1985

REFER TO

CLA-2-07:S:COM:N3G:346-497
811563

[redacted]

Dear [redacted]

Your letter of November 8, 1984, addressed to our Washington office requesting a tariff classification on men's athletic footwear, product of Taiwan, has been forwarded to our New York office for reply.

Inspection of the sample submitted with your inquiry indicates that this is a man's all plastic court shoe with a two-band plastic/velcro closure with metal D-rings, two curving lines of small perforations on both sides extending from the velcro back to the heel counter, vinyl inside padded collar and heel counter, tricot/foam lining, and fabric/sponge insole. The outsole is a two color injection molded rubber/plastic wedge type sole which overlaps the upper by approximately 1/4 inch and has the appearance of a foxing-like band. Since this is a simultaneous injection construction, not a unit molded sole attached to an upper, we do not consider it to be critical whether or not the overlap is over or under 1/4 inch.

As you are probably aware, a foxing is a strip of material applied or molded at the sole and overlapping the upper, e.g. rubber foxing tape as usually applied to traditional basketball shoes. However, since there was a good deal of confusion among the importers as to what constituted a foxing or foxing-like band, Customs Headquarters published certain guidelines during 1983 which included the following "Characteristics of a Foxing-like Band"

1. The term "foxing-like" applies to that which has the same, or nearly the same appearance, qualities, or characteristics as the foxing appearing on the traditional sneaker or tennis shoe.

2. A foxing-like band need not be a separate component.

3. A foxing-like band may or may not secure the joint between the sole and upper.

4. A foxing-like band must be applied or molded at the sole and must overlap the upper.

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5. A foxing-like band must encircle or substantially encircle the entire shoe.

6. A foxing-like band may be attached by any means.

Therefore, your sample meets the requirements for a foxing-like band and is properly classifiable under the provision for footwear which is over 50% by weight of rubber and plastic; which has a foxing-like band almost wholly or rubber or plastic applied or molded at the sole and overlapping the upper; which is not protective against water, oil, grease, or cold or inclement weather; and which is, we assume, valued for Customs purposes over $3.00 but not over $6.50 per pair, in item 700.6700, Tariff Schedules of the United States, and dutiable at the rate of 37½ percent ad valorem, plus 90¢ per pair.

In the event your sample is valued over $6.50 but not over $12.00 per pair, classification would be under item 700.6900, TSUS, and dutiable at the rate of 20 percent ad valorem, plus 90¢ per pair.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at each port at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

[redacted]

[redacted]

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 3 1985

REFER TO
CLA-2-05:S:COM:N2:227-1011
811979

Mr. John M. McKeown
P.O. Box 909
Laredo, TX 78040

Dear Mr. McKeown:

In your letter dated December 24, 1984, on behalf of your client, The Coleman Company, Inc., you inquired about the dutiable status of a glass part of a gas lantern from Mexico.

The engineering drawing submitted with your inquiry shows the item to be a article of glass rounded on two sides and measuring 4.5 inches by 4.18 inches. The item is to be used as part of a gas lantern.

You claim the part should be classified under item 653.39, Tariff Schedules of the United States, the provision for illuminating articles and parts thereof, of base metal. Your item, however, is not of base metal.

It is assumed the glass part will be a shield or covering placed about or over the light source in the lantern to confine, modify or deflect the light. As such the item is considered a shade for tariff classification purposes.

Glass shades are classifiable under the provision for illuminating articles and parts, of glass, globes and shades, in item 545.5300, Tariff Schedules of the United States Annotated, and dutiable at the rate of 14 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

c1

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 28 1985

REFER TO
CLA-2-05:S:COM:N2:226-12
812024

Mr. John E. Coyne
President
Coyne's Inc.
7400 Boone Avenue North
Brooklyn Park, MN 55428

Dear Mr. Coyne:

In your letter of January 2, 1985, you requested the tariff classification of mirrors from Taiwan.

Two samples were submitted with your inquiry. Sample #1 is an 8 inch square glass mirror sewn and glued into a lightly stuffed fabric frame, which is decorated with 6 stuffed fabric hearts. The overall dimensions are 10½ inches square. A rectangular metal ring is sewn to the top back to facilitate hanging. Sample #2 is made of fabric sewn into the shape of an upright, lightly stuffed duck, approximately 18 inches high by 13½ inches wide. Glued into the torso portion is an 8 inch round glass mirror. There is a plastic ring sewn to the top back portion to facilitate hanging. The predominant feature of both items is considered to be the mirror.

Both of these mirrors are classifiable under the provision for mirrors ... with or without frames or cases ... not over 1 square foot in reflecting area, in item 544.5100, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 10.2 percent ad valorem.

Articles classifiable under item 544.5100, TSUSA, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Your samples are being returned as you requested.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 0 1985

REFER TO

CLA-2-01:S:COM:N2:232-103
812325

Mr. William G. Bailes
Industrial Ingredients Inc.
1365 Wiley Road
Suite 156
Schaumberg, Illinois 60195

Dear Mr. Bailes:

In your letter dated January 29, 1985, you inquired about the dutiable status of a mixture of cane sugar and dextrose from Canada.

This mixture will consist of 93 percent by weight of granulated cane or beet sugar blended with 7 percent by weight granulated dextrose. The intended use of this product will be as an ingredient in the production of livestock feeds. This mixture will be imported in either 100 pound bags or one ton bulk containers. Your letter suggests that this mixture should be classified in item 155.4000, Tariff Schedules of the United States with duty at the rate of 0.12 cents per pound assessed upon the total sugars content of the product. The statutory wording of this provision reads as follows:

> Sugars, sirups, molasses, and mixtures thereof; all the foregoing derived from sugar cane or sugar beets and containing soluble non-sugar solids (excluding any foreign substance that may have been added or developed in the product) equal to over 6% by weight of the total soluble solids, if imported for use other than (a) the commercial extraction of sugar, or (b) human consumption.....

At a casual reading, it would appear that this tariff provision may be appropriate for the product in question. However, this is a conditional tariff provision with a clear set of criteria which must be met in order for a product to be classified therein.

While item 155.4000, TSUSA, allows for mixtures of sugars, syrups, and molasses, this provision clearly states that the components of the mixture must be entirely derived from sugar cane or sugar beets. Dextrose is not a cane or beet sugar and is generally produced from corn, although it is sometimes produced from other starch sources. Secondly, the product in question must contain a minimum of 6 percent by weight of soluble non-sugar (cane or beet) solids excluding any

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substances that may have been added to the product. The 7 percent dextrose has clearly been added and therefore cannot be considered in the 6 percent requirement for this product. The types of substances which can be considered in the 6 percent portion are gums, resins, and similar substances naturally found in the sugar cane or beet juice from which sugar is normally refined. It is these substances which give the product commonly known as molasses the strong flavor, aroma, and dark color normally associated with it. Therefore, classification of a mixture of 93 percent cane or beet sugar and 7 percent dextrose under item 155.4000, TSUS, would be clearly inappropriate.

This product will posses no valid commercial identity, other than that of a sugar mixture, at the time of importation. While the declared end use of this mixture is as an ingredient in animal feed it could be put to any number of general sweetener uses such as in soft drinks, baking mixes, and dessert preparations. Accordingly, this mixture is considered to be commingled merchandise for the purposes of General Headnote 7, TSUS. As commingled merchandise, the cane or beet portion of the mixture will be either constructively or physically segregated from the dextrose portion and separately classifiable under the Tariff Schedules. The fully refined cane or beet sugar would be classified under item 155.2025, TSUS, with duty at the current rate of 0.6625 cents per pound as crystalline cane or beet sugar in a form suitable for human consumption without further refining. Sugar classifiable under this provision is subject to an import quota as well as other restrictions. The dextrose portion of this mixture would be classifiable under item 155.6000, TSUSA, and would be dutiable at the rate of 1.6 cents per pound. This portion of the mixture is not currently subject to import quotas or any other restrictions at this time.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

812325

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 09 1985

REFER TO

CLA-2-07:S:COM:N3G:341-913
814130

Mr. Fred Goris
Fisher-Price
636 Girard Avenue
East Aurora, New York 14052-1885

Dear Mr. Goris:

Your letter of June 4, 1985 requested this office to rule upon the tariff classification of a net toy bag from Mexico.

Submitted with your request was a photograph of a bag which will be constructed from a net material which is in chief value of man-made fibers. The bag is approximately 18 inches by 12 inches and has two sewn-on handles. You state that the article is used for the storage of toys.

It is the opinion of this office that the bag is a tote bag used to carry toys. The presence of the two handles indicates that the bag was designed to contain personal effects - in this instance toys - during travel. Its use as a storage bag is subordinate to its design as a carrier.

The net bag is classifiable under the provision for luggage of other textile materials, in item 706.4152, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 20 percent ad valorem.

An article classifiable in item 706.4152, TSUSA, falls within textile category designation 670. As a product of Mexico, this merchandise is not currently subject to any visa or quota restraints based upon international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 26 1985

REFER TO

CLA-2-03:S:COM:N3:356-1014
814353

Mr. Lawrence D. Blume
Miller & Blume
1020 Commerce Tower
911 Main Street
Kansas City, Missouri 64105

Dear Mr. Blume:

Your letter of June 25, 1985, on behalf of Union Jacks, a Division of Gelhaar Uniform Company, requested this office to rule upon the tariff classification of baseball pants and a baseball sliding pad or pants from Thailand or Taiwan.

The knitted baseball pants are stated to be of fabric of 100 percent polyester, and to be designed for men and boys. Boys' wear implies sizes eight and larger.

On the boys' style tunnel belt loops are superimposed on the completely elasticized waistband, whereas on the men's style they are superimposed on the mostly elasticized waistband which snaps together above its zippered, fly-front opening.

The lower edge of each of the 3/4-length pant legs is elasticized. Extending downwards from each knee is a double layer of fabric which is sewn to the inside of the garment. One open pocket is located at one side of the back.

The baseball sliding pants, which extend only to the top of the thigh and are worn as undergarments, are made from a knit fabric that will be in either chief value of cotton or of polyester. The waist is elasticized. The foam rubber pads, which are approximately 13 1/2 inches long by 13 inches wide, are sewn in over the hip and upper portion of the buttocks on either side of the sliding pants.

You believe that these sliding pants are classifiable as other baseball equipment in item 734.56, TSUS, because they protect the player from injury. Since sliding into a base can actually cause such serious injury that the player will be taken out of the game and these pants protect against this type of injury, they are similar to the other named exemplars in Headnote 1(v) to Schedule 7, Part 5, Subpart D, TSUS. Accordingly, we agree that these sliding pants are within the meaning of other baseball equipment.

The baseball sliding pants, then, are clasifiable under the provision for other baseball equipment in item 734.5645, Tariff

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Schedules of the United States Annotated. The rate of duty is 4.1 percent ad valorem.

Articles classifiable under the provision for other baseball equipment in item 734.56, TSUS, which are the products of Thailand and Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

The men's baseball pants would be classifiable under the provision for other men's and boys' wearing apparel, not ornamented, of man-made fibers, knit, trousers and slacks, other, men's in item 379.8935, Tariff Schedules of the United States. The rate of duty is 8 cents per pound plus 30.8 percent ad valorem.

The boys' baseball pants would be classifiable under the provision for other men's and boys' wearing apparel, not ornamented, of man-made fibers, knit, trousers and slacks, other, boys' in item 379.8940, Tariff Schedules of the United States. The rate of duty is 8 cents per pound plus 30.8 percent ad valorem.

The United States currently has bilateral agreements and consultation mechanisms with many countries throughout the world, under which the importation of textiles and products thereof are controlled.

To administer these agreements, textile products are grouped under category numbers used in monitoring shipments. The category designations are derived from the item numbers under which the merchandise is classified in the Tariff Schedules of the United States Annotated (TSUSA).

The trousers fall within textile category designation 647. As a product of Thailand or Taiwan this merchandise is presently subject to quota restraints and a visa requirement based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Import restraints are administered by the U.S. Customs Service under directives of the Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, D.C. 20230. Further advice or information pertaining to those agreements may be obtained from the Chairman of that committee.

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814353

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roger J Schwartz

for John J. Martuge
Area Director
New York Seaport

814353

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 19 1985

REFER TO

CLA-2-01:S:COM:N2:228-866
814471

Hero Conserven Lenzburg
CH-5600 Lenzburg
Switzerland

Dear Sirs:

In your letter dated July 2, 1985, you inquired about the dutiable status of four products from Switzerland.

Strawberry glace, Apricot glace, Herogel red, and Herogel neutral are products that are applied to cakes and tarts. They are shipped in 12.5 kilogram pails.

The ingredients of the strawberry glace are sugar, strawberries, water, citric acid, fruit pectin, and various additives. This glace is spread on cakes and tarts as an overcoat. It can be applied cold from the pail.

The ingredients of the apricot glace are sugar, apricot, fruit pectin, citric acid, and various additives. This glace serves as an insulating layer between the dough and the actual exterior icing. The purpose of this glace is to prevent the dough from absorbing the moisture of the exterior icing. The apricot glace is applied cold from the pail.

The ingredients of the Herogel red and the Herogel neutral are sugar, lemon concentrate, water, fruit pectin, and various additives. Both gels are boiled with water and then applied to cakes or tarts as a gloss.

The Strawberry glace and the apricot glace are classifiable under the provision for edible preparations not specially provided for: other, in item 183.0520, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

The Herogel red and the Herogel neutral are classifiable under the provision for edible preparations not specially provided for: other, in item 183.0520 as modified by item 958.18, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem. The Herogel red and the Herogel neutral are subject to quota.

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

Roy K. Dewing

John J. Martuge
Area Director
New York Seaport

214471

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 24 1985

REFER TO

CLA-2-01:S:COM:N2:229-895
814516

Mr. Brent Evans
Evans International Inc.
10202 65th Avenue South
Seattle, WA 98178

Dear Mr. Evans:

In your letter dated July 11, 1985, you inquired about the dutiable status of imitation crabmeat from Japan.

The imitation crabmeat product is manufactured in three basic forms; sticks, one half inch chunks and shredded flakes. The items are manufactured from a fish protein base (surimi) which is steam cooked. After cooking, filament patterns are etched on and the product is rolled into sticks. Artifical red coloring is painted on the top and each stick is wrapped in cellophane and cooked again. Finally the sticks are either; packaged as they are, diagonally cut into chunks, or cut more finely into flakes.

The sticks would be classified under the provision for fish balls, cakes, puddings, pastes and sauces under item 113.08 Tariff Schedules of the United States, if in airtight containers not over 15 pounds, and would be free of duty. If not in airtight containers the sticks would be classified under item 113.11, TSUS and dutiable at the rate of 6 percent ad valorem. The sticks, if in immediate containers over 15 pounds would be classified under item 113.15 TSUS, and dutiable at the rate of 0.8 percent ad valorem.

The diagonally cut chunks and flakes would be classified under the provision for fish, prepared or preserved in any manner, not in oil, in airtight containers under item 112.14, TSUS and dutiable at the rate of 6 percent ad valorem. If not in airtight containers and in immediate containers over 15 pounds the chunks and flakes would be classified under provision for fish, prepared or preserved, under item 113.58 TSUS and free of duty. If the containers are not airtight and not over 15 pounds the flakes and chunks would be classified under the provision for fish, prepared or preserved, under item 113.60 TSUS and dutiable at the rate of 6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

814516

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 19 1985

REFER TO

CLA-2-01:S:COM:N2:228-906
814569

Mr. Clark D. Bien
Arbor Foods Inc.
P.O. Box 7686
Ann Arbor, Michigan 48107

Dear Mr. Bien:

In your letter dated June 11, 1985, you inquired about the dutiable status of an edible preparation from Canada. Your sample was consumed in analysis.

The edible preparation consists of 60 percent white refined granulated sugar and 40 percent desiccated coconut. The preparation, which is in a dry amorphous form, will be resold to industrial users in the confectionary industry.

Arbor Foods believes this product is classifiable as an edible preparation in item 183.0520, TSUS. Moreover, Arbor Foods does not believe this product is subject to the restrictions of item 958.18, TSUS, based on Presidential Proclamation no. 5340 of May 17, 1985.

We agree with Arbor Food's position that this product is classifiable as an edible preparation in item 183.0520, TSUS. However, this product is subject to the restrictions of item 958.18, TSUS, and it is subject to quota for the following reasons.

Presidential Proclamation no. 5340 states in pertinent part "except...finely ground or masticated coconut meat or juice thereof mixed with those sugars." This exception to the restrictions of item 958.18, TSUS, refers to masticated coconut mixed with sugar such as a cream of coconut product. Since your product is in a dry amorphous form, it is not exempt from the restrictions of item 958.18, TSUS.

The edible preparation consisting of 60 percent sugar and 40 percent coconut is classifiable under the provision for edible preparations not specially provided for: other, in item 183.0520, as modified by item 958.18, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem. This edible preparation is subject to quota.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is

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imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for Roy K. Duong Jr.

John J. Martuge
Area Director
New York Seaport

814569

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 19 1985

REFER TO

CLA-2-01:S:COM:N2:231-912
814582

Mr. Clark D. Bien
Arbor Foods, Incorporated
Post Office Box 7686
Ann Arbor, Michigan 48107

Dear Mr. Bien:

In your letter dated July 15, 1985, you inquired about the dutiable status of a mixture of sucrose (granulated cane or beet sugar) and fine ground corn that would be manufactured either in Canada or at the Arbor Foods' plant in Foreign Trade Zone No.8 in Toledo, Ohio. The sucrose portion of the product will be of foreign origin. The fine ground corn portion may be either of domestic or foreign origin.

The mixture will consist of 86 percent by weight of sucrose (granulated cane or beet sugar) blended with 14 percent by weight of fine ground corn. The intended use of this product will be as an ingredient in the production of livestock feeds. The mixture will be imported in either 50 or 100 pound bags or in bulk. We assume that no separation of the sugar and fine ground corn will occur and that they are present in their final proportions and that neither sugar nor fine ground corn will be added to the mixture after importation.

This surcrose/fine ground corn mixture would be classifiable under the provision for animal feeds and ingredients therefor, in item 184.8500, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roy K. Deming

for John J. Martuge
Area Director
New York Seaport

814582

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 04 1985

REFER TO

CLA-2-04:S:COM:N2:238-942
814668

Mr. Thomas B. Koch
Shipping/Warehousing
Raschig Corporation
5000 Osborne Turnpike (Route 5)
(Corner Orleans Street)
Richmond, VA 23231

Dear Mr. Koch:

In your letter dated July 18, 1985, you inquired about the dutiable status of a list of plastic resins and plastic articles from West Germany.

According to the descriptions given in your inquiry, the products, their classifications and duty rates are as follows:

Product	Tariff Item Number	Rate of Duty
Imprenal 3	409.0600	7.9 percent ad valorem
Imprenal 32	409.0600	7.9 percent ad valorem
Imprenal 35	409.0600	7.9 percent ad valorem
Imprenal 45	409.0600	7.9 percent ad valorem
Imprenal 75	409.0600	7.9 percent ad valorem
Imprenal 595	409.0600	7.9 percent ad valorem
Imprenal LV 21/983	409.0600	7.9 percent ad valorem
Imprenal LV 21/890	409.0600	7.9 percent ad valorem
Imprenal LV 23/33	409.0600	7.9 percent ad valorem
Imprenal LV 31/261A	409.0600	7.9 percent ad valorem

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Imprenal 21	409.0600	7.9 percent ad valorem
Imprenal K2 Aqueous	409.0600	7.9 percent ad valorem
Imprenal K2 Aqueous Alkali Free	409.0600	7.9 percent ad valorem
Imprenal 31A-Storable	409.0600	7.9 percent ad valorem
Imprenal 31A-Plasticized	409.0600	7.9 percent ad valorem
Imprenal 31A-Liquid	409.0600	7.9 percent ad valorem
Imprenal 9	409.0600	7.9 percent ad valorem
Imprenal 23	409.0600	7.9 percent ad valorem
Imprenal LV 21/479	409.0600	7.9 percent ad valorem
Imprenal 78	409.0600	7.9 percent ad valorem
Imprenal 93	409.0600	7.9 percent ad valorem
Imprenal LV 21/588	409.0600	7.9 percent ad valorem
Imprenal 98	409.0600	7.9 percent ad valorem
Imprenal 6	409.0600	7.9 percent ad valorem
Imprenal LV 21/687	409.0600	7.9 percent ad valorem
Imprenal LV 31/146A	409.0600	7.9 percent ad valorem
Imprenal 30 LVM 31/28	409.0600	7.9 percent ad valorem
Rapok 9	409.0600	7.9 percent ad valorem
Rapok LV 24/280	409.0600	7.9 percent ad valorem

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Resiplast 9	409.0600	7.9 percent ad valorem
Resiplast 54K	409.0600	7.9 percent ad valorem
Resiplast 54L	409.0600	7.9 percent ad valorem
Resiplast 59	409.0600	7.9 percent ad valorem
Resiplast LV 12/44	409.0600	7.9 percent ad valorem
Resiplast 59K	409.0600	7.9 percent ad valorem
Resiplast 68	409.0600	7.9 percent ad valorem
Resiplast LV 06/26	409.0600	7.9 percent ad valorem
Resiplast 2LVM 06/101	409.0600	7.9 percent ad valorem
Resiplast LV 06/30	409.0600	7.9 percent ad valorem
Resinol Type 31	409.0600	7.9 percent ad valorem
Resinol Type 31.5	409.0600	7.9 percent ad valorem
Resinol Type 83	409.0600	7.9 percent ad valorem
Resinol Type J2716/2	409.0600	7.9 percent ad valorem
Resinol Type J3035	409.0600	7.9 percent ad valorem
Resinol Type PFK 10	409.0600	7.9 percent ad valorem
Resinol Type PFK 20	409.0600	7.9 percent ad valorem
Resinol Type V107	409.0600	7.9 percent ad valorem
Resinol Type V332	409.0600	7.9 percent ad valorem

814668

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Resinol V120	409.0600	7.9 percent ad valorem
Fibresinol AG	409.0600	7.9 percent ad valorem
Rapok 49	445.5630	1 cent per pound plus 8.3 percent ad valorem
Fibresipol	409.1000	0.7 cent per pound plus 9 percent ad valorem
Resipol Type 802	409.10000	0.7 cent per pound plus 9 percent ad valorem
Resipol Type 804	409.1000	0.7 cent per pound plus 9 percent ad valorem
Resipol Type J5019	409.1000	0.7 cent per pound plus 9 percent ad valorem

Dekorit L,V, and M, Vigopas and Dekopas MP 110 in sheet form

when over 15 inches wide and over 18 inches long	771.5500	6.9 percent ad valorem
when not over 15 inches wide or not over 18 inches long	774.5595	6.1 percent ad valorem

Dekorit L,V, F and M and Vigopas in rod and tube forms

when over 15 inches long	771.5500	6.9 percent ad valorem
when not over 15 inches long	774.5595	6.1 percent ad valorem

Dekorit L,V, F and M and Vigopas in blocks
771.5500 6.9 percent ad valorem

For your benefit we have enclosed selected parts of the Tariff Schedules of the United States Annotated (1985).

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

899618

D13

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

The resins may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substance. You may contact them at 401 M Street, S.W., Washington, D.C., 20460, telephone number (800) 424-9085.

Sincerely,

John J. Martuge
New York Seaport

Enclosure

814668

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 0 3 1985

REFER TO

CLA-2-04:S:COM:N2:238-953
814689

Ms. L. Cavorti
Traffic Department
Centerchem, Inc.
660 White Plains Road
Tarrytown, New York 10591

Dear Ms. Cavorti:

In your letter dated July 8, 1985, you inquired about the dutiable status of wheat germ oil from Spain.

This wheat germ oil product is stated to be a mixture of wheat germ oil and a benzenoid surfactant. Technical literature indicates that the product contains 0.3 percent vitamin E and it is used in cosmetic preparations.

The wheat germ oil is a natural source of vitamin E and is considered to be a natural vitamin that has been artificially mixed with a surfactant.

Wheat germ oil is classifiable under the provision for natural vitamins, other in item 437.8600, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E1

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

814689

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 03 1985

REFER TO

CLA-2-04:S:COM:N2:238-863
814701

Ms. L. Cavorti
Traffic Department
Centerchem, Inc.
660 White Plains Road
Tarrytown, New York 10591

Dear Ms. Cavorti:

In your letter of July 8, 1985, you inquired about the dutiable status of four chemical products from Spain.

The products, their classifications and duty rates are as follows:

Biosulphur fluid and powder are mixtures consisting of sulfur and a nonbenzenoid surface-active agent. Both products are dermatological agents used in cosmetic preparations for controlling the secretion of the sebaceous glands. In addition, the fluid is used to treat dandruff and oily hair. The powder is also used to treat acne vulgaris, seborrhoeic dermatitis and eczema.

The biosulphur fluid and powder are classifiable under the provisions for non-benzenoid drugs in item 439.5070, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 3.7 percent ad valorem.

Antioxidant G-1 is a mixture composed in part of 2,6 di-T-butylcresol (as alkyl cresol) and ascorbyl palmitate that is used as an antioxidant in cosmetic products. Antioxidant G-1 is classifiable under the provision for benzenoid mixtures in whole or in part of any of the products provided for in Schedule 4, part 1, subpart B, in item 407.1610, TSUSA. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. None of the components of this product have a rate higher than the mixture rate.

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E3

The water soluble - egg extract is an aqueous mixture of amino acids and polypeptides. The product is to be used in cosmetic preparations for moisturizing, regenerating, repairing and protecting the skin and hair.

The water soluble - egg extract is classifiable under the provision for mixtures of two or more organic compounds in item 430.2040, TSUSA, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be the polypeptides classifiable under item 425.5290, TSUSA, and dutiable at the rate of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

The antioxidant G-1 and water soluble - egg extract products may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telephone number (800) 424-9085.

The biosulphur products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

214701

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 12 1985

REFER TO

CLA-2-04:S:COM:N2:240-966
814708

Ms. L. Cavorti
Centerchem, Inc.
660 White Plains Road
Tarrytown, NY 10591

Dear Ms. Cavorti:

Your letter of July 8, 1985, received in this office July 25, 1985, concerns the dutiable status of moisturizing factor and nucleic acids from Spain.

Samples and technical literature were submitted to this office.

The nucleic acid has been anlayzed by our laboratory. It is sodium deoxyribonucleate, a non-benzenoid nitrogenous compound. The nucleic acid is classifiable under the provision for nitrogenous compounds, other, in item 425.5290, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 7.9 percent ad valorem.

As you were advised by National Import Specialist R.A. Valdes, your inquiry did not provide sufficient information with respect to the moisturizing factor, and we are not able to issue a tariff classification ruling. Requests for rulings must be submitted in accordance with Part 177, Customs Regulations.

Please submit a complete breakdown for the moisturizing factor, including chemical abstract name, the structural formula and the use of this product.

With respect to the nucleic acid, this is a ruling being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for Loyd Duwenge

John J. Hartuge
Area Director
New York Seaport

ES

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 03 1985

REFER TO

CLA-2-04:S:COM:N2:238-979
814733

Ms. Kathleen McDonald
Manager Import Entry Department
Nettles and Company, Inc.
9801 W. Higgins Road
Rosemont, IL 60018

Dear Ms. McDonald:

In your letter dated July 23, 1985, on behalf of Central Soya of Fort Wayne, Indiana, you inquired about the dutiable status of "Kearex" from Holland.

"Kearex" is composed of a bitumen coating based on styrene butadiene styrene, modified thixotropic bitumen, inflammable solvent (dichloro methane and 1,1,1 trichloroethane) and organic fillers (calcium carbonate and calcium silicate). It is used as a roof coating and as a surface protection coating for concrete, stone, metal and other surfaces.

"Kearex" is classifiable under the provision for benzenoid mixtures in item 413.5100, Tariff Schedules of the United States Annotated (TSUSA) and dutiable at the rate of 13.7 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be 1,1,1 trichloroethane classifiable under item 429.4700, TSUSA, and dutiable at the rate of 18 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C., 20460, telephone number (800) 424-9085.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

E6

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 03 1985

REFER TO

CLA-2-04:S:COM:N2:238-1047
814885

Ms. Mary Ann Comstock
Corporate Secretary
W. Y. Moberty, Inc.
Box 164
Sweetgrass, Montana 59484

Dear Ms. Comstock:

In your letter dated July 30, 1985, on behalf of Mr. Bob Newswander, you inquired about the dutiable status of "Fumidyl B" from Canada.

"Fumidyl B" also known as Fumagillin, is described as a soluble powder containing bicyclohexylammonium fumagillin and appropriate phosphate buffers. The product is an antibiotic drug (antiamebic) that is also used as an antiprotozoal drug for the prevention of nosema in honey bees. The product may be manufactured from a benzenoid or a non-benzenoid source.

"Fumidyl B" soluble powder produced from a benzenoid source is classifiable under the provision for other, benzenoid antibiotics in item 411.7600, Tariff Schedules of the United States Annotated, and dutiable at the rate of 8.1 percent ad valorem.

"Fumidyl B" soluble powder produced from a non-benzenoid source is classifiable under the provision for other, non-benzenoid antibiotics in item 437.3250, Tariff Schedules of the United States Annotated, and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fisher Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

Sincerely,

John J. Mantuge

John J. Mantuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E7

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N Y

SEP 19 1985

REFER TO
CLA-2-07:S:COM:N2:224-1058
814925

Mr. Ned H. Marshak
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, NY 10004

Dear Mr. Marshak:

In a letter dated August 6, 1985, you inquired as to the dutiable status of inflatable articles on behalf of your client, Intex Recreation Corporation. The country of origin is Taiwan.

The articles, illustrated by actual samples and copies of catalog sheets, are described as follows:

1. "Care & Share" -- vinyl inflatable wading pool of shallow, circular construction designed for a toddler's recreational use.

2. "My Baby Sitter" -- consists of two circular shaped inflatable swim rings of different sizes that have been joined together. The inner ring is designed to hold the child, while the larger outer ring provides stability.

3. "River Rat" -- heavy duty inflatable swim ring about 48 inches in diameter. The product is equipped with an "all around" rope affixed to the tube.

4. "Ski Tube II -- heavy duty inflatable swim ring about 56 inches in diameter. Equipped with a tow harness that is "lock spliced" to the handles for added stability.

The inflatable articles are so substantially constructed as to be durable and capable of reasonable performance in recreational water activities and we conclude that they are classifiable under the provision for pneumatic mattresses and other inflatable articles not specially provided for, in item 790.39, Tariff Schedules of the United States, and dutiable at the rate of 4.2 percent ad valorem.

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for Roy K. Dwinell

John J. Hartuge
Area Director
New York Seaport

814925

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 11 1985

REFER TO

CLA-2-01:S:COM:N2E:232-1062
814939

Mr. Peter Nesbit
Burton Son & Sanders Ltd.
College Street
Ipswitch, IP4 1DE England

Dear Mr. Nesbit:

In your letter dated July 31, 1985, you inquired about the dutiable status of a variety of cake decoration and confectionery products from England.

There are three specific products involved here. The first item is described as mixed sugar strands, commonly known as sprinkles or vermicelli in the United States. These vermicelli are produced in a variety of pastel colors and take the form of short rods approximately one-quarter inch long by one-sixteenth of an inch thick. The composition of these vermicelli is approximately 81 percent by weight cane or beet sugar, 10.6 percent corn flour, 5 percent vegetable fat, with the balance composed of coloring and stabilizers.

The second item is described as orange jelly slices and closely resemble minature half circle slices of the orange fruit complete with the rind. These half circle slices are approximately one and one-quarter inches in diameter and three-sixteenths of an inch thick. The interior of these slices is a semi solid gel, while the exterior is entirely coated with sugar crystals. The approximate composition of this product is 66.6 percent by weight cane or beet sugar, 23.2 percent glucose or dextrose, with the balance composed of coloring, flavoring, and water.

The third product is referred to as piping jelly. In this case it is the neutral variety, being a clear colorless product with no discernable flavor other than that of sugar or sweetener. This is a thick jellied substance which does not flow at room temperature. It is composed of 40 percent by weight cane or beet sugar, 37 percent glucose, 0.9 percent agar (a seaweed derivative), with the balance composed of water. The end use of this product is as a cake decoration. While it is a solid at room temperature, it will become a thick fluid when heated. The product can then be used in a confectioner's piping bag to inscribe or decorate cakes and similar edible products.

Both the sugar strands and the piping jelly are classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States, and dutiable at

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the rate of 10 percent ad valorem. Ordinarily, products classifiable under this provision, which contain cane or beet sugar and are not prepared for sale at retail in the condition as imported, are subject to import quotas under a variety of recently enacted tariff provisions. However, Presidential Proclamation 5340 of May 17, 1985 specifically exempted a number of specialty products from these restrictions including cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections. Accordingly, sugar strands and piping gel are not subject to import quotas or restrictions at this time.

While the orange jelly slices are also destined for use as cake decorations, this is a traditional type of candy in the United States. Accordingly, since the orange jelly slices are of the class or kind of merchandise chiefly used as candy in the United States they are classifiable under the provision for candy or confectionery, not specially provided for, in item 157.1040, TSUS. This provision is currently subject to duty at the rate of 7 percent ad valorem and is not subject to any import quotas at this time.

814939

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 20 1985

REFER TO

CLA-2-04:S:COM:N2:235-1075
814985

Ms. S. Finn, Transportation Manager
Centerchem, Incorporated
660 White Plains Road
Tarrytown, New York 10591

Dear Ms. Finn:

In your letter dated July 8, 1985, you inquired about the dutiable status of various chemicals from Spain.

According to the literature received with the samples, these chemical mixtures will be used in cosmetics.

Keratine B. E. and Keratine 100% are classifiable under the provision for mixtures of two or more organic compounds in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component compound. The highest rate applicable is for the polypeptides classifiable under the provision for mixtures of two or more organic compounds in item 430.20/425.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem.

Your inquiry, however, does not provide enough information for us to give a classification ruling on I.S. Avocadate and I.P. Avocadate. Your request for a classification ruling should include a list of all chemical components using the Chemical Abstract Service terminology for each chemical in each product plus a 16 ounce sample of each product.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 04 1985

REFER TO

CLA-2-04:S:COM:N2:235-1080
815004

Dr. A. Plank
SKW Trostberg AKTIENGESELLSCHAFT
Postfach 1150/1160
D-8223 Trostberg, West Germany

Dear Dr. Plank:

In your letter dated July 24, 1985, received on August 14, 1985, you inquired about the dutiable status of sodium silicate, potassium silicate and a thickening agent from West Germany.

Sodium silicate is classifiable under the provision for sodium silicate in item 421.34, Tariff Schedules of the United States, and dutiable at the rate of 1.1 percent ad valorem.

Potassium silicate is classifiable under the provision for potassium compounds, other, in item 420.36, Tariff Schedules of the United States, and dutiable at the rate of 3.3 percent ad valorem.

However, your inquiry does not provide enough information for us to give a classification ruling on the thickening agent. Your request for a classification ruling should include the name of each chemical compound in the product by Chemical Abstract Service terminology.

With respect to sodium silicate and potassium silicate, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 05 1985

REFER TO

CLA-2-04:S:COM:N2:240-1079
815005

Mr. Al Kanetsky
Deputy General Manager
Mitsui and Co. (U.S.A.), Inc.
Cleveland Office
1100 Superior Avenue, N.E.
Cleveland, Ohio 44114

Dear Mr. Kanetsky:

In your letter dated August 8, 1985, you inquired regarding the classification of 2-methyl, 2-methyl acetic thiazolidine produced in Japan. Your letter included a diagram of the chemical structure of this product.

Based on its chemical structure, 2-methyl, 2-methyl acetic thiazolidine is classifiable under the provision for nitrogenous compounds: other: other in item 425.5290, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs offficer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 12 1985

REFER TO

CLA-2-04::S:COM:N2:240-1082
815015

Ms. Joan M. Stiefel, Marketing
Stiefel Laboratories, Inc.
2801 Ponce de Leon Blvd.
Coral Gables, Florida 33134-6988

Dear Ms. Stiefel:

In your letter dated August 13, 1985, you inquired regarding the tariff classification of Benoint, a product which is manufactured in the Cayman Islands. You described this product as a surface-active agent composed of propylene glycol monostearate, stearic acid, glyceryl monostearate and isopropyl palmitate.

A sample was submitted with your ruling request. This sample has been analyzed by the U.S. Customs Laboratory. According to our laboratory, the sample consists of fatty esters of polyhydric alcohols (ethylene glycol and propylene glycol types), a fatty ester of monohydric alcohol (not sulfonated or sulfated), and a fatty acid.

You suggest that this product should be classified under the provision for fatty acid esters, ethers and ether-esters of polyhydric alcohols: other in item 465.1000, Tariff Schedules of the United States Annotated (TSUSA). However, Benoint consists of more than the fatty acid esters, ethers and ether-esters of polyhydric alcohols covered by item 465.1000. Although Benoint contains fatty esters of polyhydric alcohols, it also contains a fatty ester of monohydric alcohol and a fatty acid. Since this product contains more than the chemicals described in item 465.1000, TSUSA, it cannot be classified under that provision.

Benoint is classifiable under the provision for surface-active agents in item 465.9550, TSUSA, and is dutiable at the rate of 4 percent ad valorem.

Merchandise classifiable in item 465.9550, TSUSA, which is the product of the Cayman Islands is subject to duty free treatment under the Generalized System of Preferences upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

If a ruling is received after the filing of such documents, it should be brought to the attention of the approprite Customs officer handling the transaction.

Sincerely,

Roy X. Dewright

John J. Martuge
Area Director
New York Seaport

815015

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 19 1985

REFER TO

CLA-2-01:S:COM:N2:231-1086
815022

Mr. David Fox
H.D. Fox Company, Inc.
3710 Commercial Avenue
Northbrook, IL 60062

Dear Mr. Fox:

In your letter dated August 9, 1985, you inquired about the dutiable status of a mixture of refined sugar and whey that would be manufactured in a foreign trade zone. The refined sugar portion of the product would be of foreign origin. The whey portion would be of domestic origin.

This mixture will consist of 85 percent by weight of refined sugar blended with 15 percent by weight of whey. The intended use of this product will be as an ingredient in the production of livestock feeds. Your letter suggests that this mixture should be classified as "Animal feeds, and ingredients therefor, not specially provided for: ...Other" in item 184.8500, Tariff Schedules of the United States, at the rate of 3 per cent ad valorem. The statutory headnote for this provision reads as follows:

a) The term "animal feeds, and ingredients therefor embraces products chiefly used as food for animals, or chiefly used as ingredients in such food, respectively, but such term does not include any product provided for in schedule 4 (except part 2E thereof) or schedule 5 (except part 1K thereof);

This product will possess no valid commercial identity, other than that of a sugar mixture, at the time of importation. While the declared end use of this mixture is as an ingredient in animal feed, it could be put to any number of general sweetener uses such as baking mixes, and dessert preparations. Accordingly, this mixture is considered to be commingled merchandise for purposes of General Headnote 7, TSUS. As commingled merchandise, the refined sugar portion of the mixture will be either constructively or physically segregated from the whey portion and separately classifiable under the Tariff Schedules. The fully refined cane or beet sugar would be classifiable under item 155.2025, TSUS, with duty at the current rate of 0.6625 cents per pound as crystalline cane or beet sugar in a form suitable for human consumption without further refining. Sugar classifiable under this provision is subject to an import quota as

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well as other restrictions. It is assumed that the whey portion is dried, if so, this portion of the mixture would be classifiable under item 118.0500, TSUS, with duty at the current rate of 1.5 cents per pound. Whey classifiable under this provision is subject to quota as well as other restrictions.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roy K. Dwinell

for John J. Martuge
Area Director
New York Seaport

815022

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 1 1985

REFER TO

CLA-2-04:S:COM:N238:2-1102
815055

Mr. Roberto Cueva Zambrano, Operations Director
Napko S.A. DE C.V.
Carr Monterrery Saltillo KM 338
Santa Catarina, N.L., Mexico 66350

Dear Mr. Zambrano:

In your letter of August 15, 1985, you inquired as to the dutiable status of four 2-part "NAPKO" industrial surface coatings from Mexico.

"NAPKO" 113-zinc rich epoxy primer is a zinc primer for general industrial and marine exposure that provides excellent galvanic protection and resistance to undercutting. It is composed of two parts, a base and a catalyst. The base contains epoxy resin (benzenoid), zinc, talc, solvents and additives, the catalyst contains polyamide (benzenoid), cellosolve (methyl ether of ethyleneglycol), solvents and additives. "NAPKO" 113 is used for fabrication shop applications as well as field new construction and field work. The base and catalyst are mixed on a 4 to 1 ratio by volume.

"NAPKO" 290 - series aliphatic polyurethane, is a chemically cured extremely durable high gloss interior and exterior finish coat. It may be used for both new construction and maintenance work over many types of surfaces in non-immersion chemical and marine environments. It is composed of two parts, a base and a catalyst. The base contains acrylic resin, titanium dioxide, solvents and additives. The catalizer contains polyisocyanate resin (benzenoid), solvents and additives. The base and catalyst are mixed on a 4 to 1 ratio by volume.

"NAPKO" 516 - polyamide epoxy primer is a chemically cured rust inhibitive steel primer that provides excellent corrosion resistance in severe industrial and marine environments. It is composed of a base and a catalyst. The base contains, polyamide (benzenoid), iron oxide, solvents and additives. The catalyst contains, epoxy resin (benzenoid), talc, solvents and additives. The base and catalyst are mixed on a 1 to 1 ratio by volume.

"NAPKO" 520 - series polyamide high build epoxy is a chemically cured high film build intermediate or finish coat for general use or primed steel in non-immersion chemical and marine environments. It is composed of a base and a catalyst. The base contains epoxy resin (benzenoid), titanium dioxide, solvents and additives. The catalyst contains polyamide (benzenoid), talc, solvents and additives. The base and catalyst are mixed on a 1 to 1 ratio by volume.

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The "NAPKO" products described above are classifiable under the provision for benzenoid paints in item 408.4800, Tariff Schedules of the United States (TSUSA). The rate of ~~duty~~ is 7 percent ad valorem.

Articles classifiable under item 408.4800., TSUSA, which are the products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Your question concerning the procedures to be followed when materials of Mexican origin used in your products are less than 35 percent, should be directed to the Office of Regulations and Rulings, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C., 20460, telephone number (800) 424-9085.

Sincerely,

For John A. Martuge
Area Director
New York Seaport

815055

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 18 1985

REFER TO

CLA-2-07:S:COM:N2:225-1101
815066

Mr. Bradley H. Shorser
Sears
Sears Tower Department 733X
Chicago, Illinois 60684

Dear Mr. Shorser:

In your letter dated August 19, 1985, you inquired about the dutiable status of wooden puzzle track tiles from Taiwan.

A sample of the wooden puzzle track tile set was submitted with your request and is being returned to you, as requested. The article consists of three different sizes of masonite track pieces. The pieces measure 8 1/2 inches by 8 inches, 7 1/2 inches by 2 1/4 inches and 9 1/2 inches by 2 1/4 inches. A track design is scored on the larger pieces, while the other two sizes are of a solid green color. The wooden inlaid puzzle track tiles are to be imported without the accessories that are to be sold with them in the U.S. The puzzle track tiles will be sold with several types of toy vehicles such as trains, trucks, etc.

It is your contention that the separately imported track tiles are puzzles at the time of importation and should be classifiable under the provison for puzzles in item 735.20, Tariff Schedules of the United States (TSUS).

This office disagrees. The merchandise, in its condition as imported, consists of unassembled track components. The interlocking connection feature permits various assemblages of track layout to be used with play vehicles. This activity of selecting configurations options, using a uniform interlocking feature, is not considered a true puzzle exercise which is defined as the solving of a problem representing contrivance which tests or demands ingenuity.

The wooden puzzle track tile set is classifiable under the provision for other toys in item 737.95, Tariff Schedules of the United States, and dutiable at the rate of 9.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is

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imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roy K. Dewing

for John J. Martuge
Area Director
New York Seaport

815066

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 1 1985

REFER TO

CLA-2-01:S:COM:N2:228-1110
815085

Mrs. Valerie L. Matthews
C. J. Tower & Sons
128 Dearbon Street
Buffalo, New York 14207

Dear Mrs. Matthews:

In your letter dated August 19, 1985, you inquired about the dutiable status of wet and frozen, muffin, cake, and cookie mixes from Canada. Your client is Tradition Fine Foods Ltd. of Ontario, Canada.

The wet and frozen muffin, cake, and cookie mixes are shipped in pails. These products have a sugar content ranging from 12 to 24 percent by weight. All of these products are homogeneously mixed into a uniform mass. After defrosting, the product is divided into portions, placed in baking trays, and baked without any modifications or additions. You have indicated that there is no way to mechanically separate the sugar that is included in these products, nor to use these products as a sweetener or sugar substitute.

You have attached two telexes from the Canadian Department of External Affairs with your request for a ruling. Based on these telexes you believe your products are exempt from the restrictions of item 958.17, TSUS. However, since your products are not specifically exempted by the language of item 958.17, TSUS, they remain subject to the restrictions. Enclosed is a photocopy of item 958.17, TSUS, for your reference.

The wet and frozen muffin, cake, and cookie mixes are classifiable under the provision for edible preparations not specially provided for: pancake flour and other flour mixes; refrigerated (including frozen) doughs, in item 183.0100 as modified by item 958.17, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem. Your products are subject to quota restrictions.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is

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imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roy R. Devonald

for John J. Martuge
Area Director
New York Seaport

Enclosure

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 20 1985

REFER TO

CLA-2-04:S:COM:N2:238-1112
815099

Mr. T.A. Schofield
A.N. Deringer Inc.
RD #1 - Box W - 432
Alexandria Bay, NY 13607-9798

Dear Mr. Schofield:

In your letter dated August 20, 1985, on behalf of your client Parke Davis, Canada Inc., you inquired about the dutiable status of "Capsolin" from Canada.

"Capsolin" is a rubbing ointment containing 1.2 percent oleoresin capsicum, 5.7 percent camphor, 9.5 percent oil turpentine and 2.5 percent oil cajuput in a petroleum base. It is used on the skin for relief of pain associated with neuralgia, neuritis, joint pain, rheumatism, lumbago, sciatica, sprains or other conditions in which counterirritants are used.

"Capsolin" is classifiable under the provision for non-benzenoid drugs, other, including synthetic drugs in item 439.3095, Tariff Schedules of the United States, and dutiable at the rate of 3.7 percent ad valorem.

This ruling is being issued under the provision of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 1 5 1985

REFER TO
CLA-2-07:S:COM:N3G:347-1369
815131

Mr. Marcos Chang
New Harbor Enterprises, Inc.
10 Penn Center
Philadelphia, PA 19103

Dear Mr. Chang:

In your letter dated August 22, 1985, you inquired about the dutiable status of a foot warmer from Taiwan. A sample was submitted and is being returned as you requested.

The item in question is a bootee approximately 10 inches high with an upper made from a cotton/polyester fabric and a filling of feathers and down. The upper has been elasticized below the topline for a snug fit around the lower calf. The fabric outsole has PVC dots applied to provide slip resistance. According to figures you supplied, this article is under 10% by weight of rubber or plastics, both in adult and in children's sizes. The upper is not in chief value of vegetable fibers.

This foot warmer is classifiable under the provision for other footwear which is not over 10% by weight of rubber or plastics, which has uppers of non-vegetable fibers and soles of a material other than leather, in item 700.80, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 12.5% ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Loyt Dwong

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

REFER TO

CLA-2-01:S:COM:N2E:232-1117
815141

NOV 15 1985

Mr. Doug McEwen
Champlain Industries Ltd.
6535 - 21 Millcreek Drive
Mississauga, Ontario
Canada L5N 2M2

Dear Mr. McEwen:

In your letter dated August 15, 1985, you inquired about the dutiable status of a cocoa product from Canada.

The cocoa product in which you have expressed interest is a brown amorphous powder which is stated to have the following composition by weight:

Granulated cane/beet sugar	64 percent
Cocoa liquor fat (cocoa butter)	18 percent
Cocoa powder	18 percent

While you have described this product as "Chocolate Flake" that term is usually applied in the chocolate or confectionery trade only to a specific type of milk chocolate bar product. Your product more closely resembles what is commonly known as "chocolate crumb", however, the composition of your product does not conform to that permitted for chocolate under the Tariff Schedules. Under the established parameters for chocolate, only chocolate liquor may be used, not cocoa powder, and the maximum sugar content in a chocolate may not exceed 60 percent by weight. This product would also not be considered as sweetened cocoa since cocoa butter is never added to that product.

This cocoa product is classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States Annotated, and dutiable at the rate of 10 percent ad valorem.

Products classifiable under this provision which contain in excess of ten percent by dry weight of cane or beet sugar and which are in a powdered or dry amorphous form are subject to an absolute quota under item 958.18, TSUS, as established by Presidential Proclamations 5294 and 5340. The current annual worldwide allocation under this quota is 84,000 short tons. It is suggested that you contact the United States Customs office at the intended port of entry regarding the current status of this quota prior to initiating any shipments.

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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715141

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 26 1985

REFER TO

CLA-2-04:S:COM:N2:240-1155
815228

D.C.W. Horlock
Marketing Executive
R.C. Treatt and Co., Ltd.
Northern Way
Bury St. Edmunds
Suffolk
England IP32 6NL

Dear Sir or Madam:

In your letter of August 28, 1985, you requested information regarding a very wide range of products (essential oils, odoriferous substances, animal oils, etc.) manufactured in the United Kingdom.

Your inquiry is much too general and does not provide sufficient information to allow us to issue a tariff classification ruling. We do not have the resources available to answer an inquiry covering a voluminous number of items. We do not have the resources available to correctly explain the numerous possible classifications and the many complex issues inherent in the broad range of products referred to in your letter.

Ruling requests must be submitted in accordance with Part 177, Customs Regulations. A ruling request should fully describe the specific products which you intend to import. Please limit your inquiry to five products only. Your inquiry should include a sample of each product, a complete breakdown of the ingredients in each product, and detailed information on the derivation and use of each item.

For your general information, we are enclosing copies of several pages from the Tariff Schedules of the United States Annotated (TSUSA). These pages cover:

1. Items 450.10 through 450.20, Schedule 4, Part 5, Subpart A, TSUSA (non-benzenoid flavoring extracts of vegetable origin, and fruit flavors, essences, esters and oils).

2. Items 452.02 through 452.80, Schedule 4, Part 5, Subpart B, TSUSA (essential oils).

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3. Items 460.05 through 460.90, Schedule 4, Part 7, Subpart A, TSUSA (non-benzenoid odoriferous substances).

4. Items 412.76 through 413.40, Schedule 4, Part 1, Subpart C, TSUSA (benzenoid odoriferous substances and flavors).

5. Items 177.02 through 177.72, Schedule 1, Part 14, Subpart C, TSUSA (animal oils).

Please be advised that classification decisions for these types of products are complex and may involve different sections of the TSUSA in addition to the pages which have been submitted to you. Therefore, the enclosed pages are for general information only. If you attempt to determine the classifications for specific products based on these pages, you could easily reach incorrect conclusions. As indicated above, it may be advisable for you to request a ruling regarding the specific products which you intend to import.

If you require further assistance regarding the requirements of Part 177, Customs Regulations, please contact Mr. Jacob Bunin, National Import Specialist Assistant, telephone number (212) 466-5742.

Sincerely,

John J. Martuge
Area Director
New York Seaport

Attachments

815228

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 19 1985

REFER TO
CLA-2-03:S:COM:N3G:345-1428
815270

Mr. M. Barry Levy
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, NY 10004

Dear Mr. Levy:

In your letter of September 5, 1985, you requested the tariff classification of adult masks from Taiwan. Your inquiry is on behalf of your client, Ben Cooper.

You have submitted two samples of adult half-masks, both stated to be in chief value of man-made fibers. They both have a plastic backing and are designed to cover only the upper portion of the face.

The first sample is a "feline" mask resembling a cat's face. It has plastic whiskers extending from its nose, pointed ears, clover shaped ornaments on its ears, and what you describe as a plastic heart-shaped ornament in the middle of its forehead. It is noted, however, the sample submitted does not contain said heart-shaped ornament but merely a clear circular plastic disc.

The second sample is a short mask that covers only the immediate eye area. It is trimmed with sequin ornaments around each eye insert. The sequin trim also extends along the top portion of the mask along the eye area. The bottom of the mask is smooth except for a nose identation.

The masks are classifiable under the provision for articles not specially provided for, of textile materials, ornamented, other, of man-made fibers, in item 386.1343, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 15 percent ad valorem.

Articles classifiable under item 386.1343, TSUSA, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Roy K. Dewing

John J. Martuge
Area Director
New York Seaport

815270

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 18 1985

REFER TO
CLA-2-01:S:COM:N1:228-1183
815296

Mr. Marco Gubelin
Max Felchlin Inc.
Main Street 63
CH 6430 Schwyz, Switzerland

Dear Mr. Gubelin:

In your letter dated September 4, 1985, you inquired about the dutiable status of Swiss Charm Chocolate and Swiss Charm "Cream Cheese" from Switzerland.

The Swiss Charm Chocolate (UE 21E) is composed, by weight, of the following ingredients:

Chocolate Powder	83 per cent
Dextrose	8 per cent
Gelatin	7 per cent
Corn Starch	2 per cent

The Swiss Charm "Cream Cheese" (UE 22E) is composed, by weight, of the following ingredients:

Sugar	33 per cent
Dextrose	33 per cent
Curd Powder	16 per cent
Gelatin	11 per cent
Corn Starch	6 per cent
Flavor	1 per cent

Also it should be noted that this item, Swiss Charm Cream Cheese, is in chief value of the gelatin. These items are to be imported in a powder form in both 4 kilogram and 5 kilogram size pails. They are intented for use as ingredients in cakes, doughnuts and similar items, as cream fillings.

The Swiss Charm Chocolate is classifiable under the provision for edible preparations in item 183.05, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem. This rate will also apply for 1986.

The Swiss Charm Cream Cheese is classifiable under the provision for edible preparations, of gelatin in item 182.90, Tariff Schedules of the United States, and dutiable at the rate of 6 percent ad valorem. This rate will also apply for 1986.

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Neither item is subject to import quotas as specified in Presidential Proclamation 5340 of May 17, 1985. Swiss Charm Chocolate, as indicated by your ingredients statement does not contain more than 10 percent by weight of cane or beet sugar and the Swiss Charm Cheese is classified under a TSUSA number not included in the quota restriction specified in the aforementioned Presidential Proclamation.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815548

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 12 1985

REFER TO

CLA-2-06:S:COM:N1:115-1361
815548

Mr. Paul G. Doucet
Saratoga Forwarding Co., Inc.
239 Prescott Street, P.O. Box 443
East Boston, Ma. 02128

Dear Mr. Doucet:

In your letter dated September 19, 1985, you inquired about the dutiable status of a shaft of a Lacrosse Stick from Canada. A sample and descriptive literature were submitted.

The shaft measures 32 inches in length. It is 100 percent aluminum, powder-coated white, and silk-screened.

It is noted that Tariff Item 735.1700, mentioned in your letter, is the provision for Lacrosse Sticks. This provision does not provide for parts of Lacrosse Sticks.

The Lacrosse Stick shaft is classifiable under the provision for articles of aluminum, not coated or plated with precious metal, in item 657.4080, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 6.7 percent ad valorem. (The 1986 rate is 6.2 percent ad valorem.)

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 3 1985

REFER TO

CLA-2-04:S:COM:N2:238-1288
815590

Mr. Lou Borghans
Borgon, Inc.
1903 Spring Creek Road
Algonquin, IL 60102

Dear Mr. Borghans:

In your letter dated September 26, 1985, you inquired about the dutiable status of six chemical products from the Netherlands.

	TSUSA	Rate
Houtrot Stop (dryrot stop)	409.0200	7.3 percent ad valorem
Houtrot Vuller (dryrot filler)	409.0200	7.3 percent ad valorem
Polyester plamuur (polyester filler)	409.1000	0.7 cent per pound plus 9 percent ad valorem
Spuitplamuur (spray primer)	409.1800	7.4 percent ad valorem
Instant Vulmiodel (instant filler)	445.4400	4.0 percent ad valorem
Auto Plamuur (car spackle)	445.4800	6.2 percent ad valorem

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telpehone number (800) 424-9086.

Sincerely,

John J Martuge

John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 27 1985

REFER TO
CLA-2-04:S:COM:N2:238-1302
815609

Mr. Vincent Buscaglia
W.R. Filbin & Company, Inc.
1010 Niagara Street
Buffalo, NY 14213

Dear Mr. Buscaglia:

In your letter dated September 26, 1985, on behalf of Genetrex, Incorporated, you inquired about the dutiable status of seven chemical cleaning products from Canada.

"Janex" multi-surface cleaner and polish; and "Janex" 200 and "Janex" germicidal cleaners are all formulated soap products, classifiable under the provision for other soap and soap powder (including all medicinal soap and soap powder) in item 466.2500, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 0.4 cent per pound, plus 3.2 percent ad valorem.

Optimex 1 is a benzenoid detergent that is used for the removal of all forms of graffiti from masonry and other construction materials. It is classifiable under the provision for benzenoid detergents in item 409.3060, TSUSA and dutiable at the rate of 10.1 percent ad valorem.

You state that the Optimex 11-A; and 111-P and IV products are non-benzenoid detergents that are used to remove graffitti and other forms of defacement. They are classifiable under the provision for non-benzenoid detergents in item 466.3000, TSUS and dutiable at the rate of 1.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaciton.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C., 20460, telephone number (800) 424-9085.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815609

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 3 1985

REFER TO

CLA-2-07:S:COM:N1:119-1239
815627

Mr. William J. Marston
Attorney In Fact
U.S. Carriage International, Inc.
11938j Waveland Avenue
Franklin Park, Illinois 60131

Dear Mr. Marston:

In your letter of September 27, 1985, written on behalf of COE Laboratories, Inc., you requested a tariff classification ruling on a Coe-Lite Polymerization unit, a dental restorative material in 5 gram and 20 gram jars, and a kit which includes jars of Occlusin and various accessories. All the articles are to be imported from the United Kingdom.

Occlusin is an organic resin containing a glass or quartz filler which is used as a tooth restorative material. It is classifiable under the provision for dental cements, in item 495.1500 Tariff Schedules of the United States, and dutiable at the rate of 3.3 percent ad valorem.

The Occlusin Kit to be imported consists of four 5 gram jars of Occlusin, a 5 ml bottle of bonding agent, a 5 ml bottle of acid etchant, two plastic brush handles, two packages of natural bristle brush heads and a few transfer pads.

When using Occlusin, the enamel margins of the tooth cavity must first be brushed with acid etchant and subsequently, after washing and drying the cavity, the bonding agent is applied to all the etched surfaces and margins of the cavity preparation. Since the Occlusin, the bonding agent, and the acid etchant are packaged together, imported together, and serve no function except when used in conjunction with one another, they are considered a tariff entity, classifiable under the provision for dental cements, in item 495.1500, TSUS, and dutiable at the rate of 3.3 percent ad valorem.

Each brush handle together with a brush head, and the balance of the brush heads are classifiable under the provision for other brushes in item 750.7090, TSUS, and dutiable at the rate of 7.7 percent ad valorem.

The transfer pads are made of approximately 50 sheets of paper bonded together and coated. They measure 2 inches by 2 1/4 inches and serve as mixing pads for the Occlusin just before use. The transfer pads are classifiable under the provision for articles of paper not

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specially provided for in item 256.9080, TSUS, and dutiable at the rate of 6.1 percent ad valorem.

The Coe-Lite Polymerization unit is an electrical apparatus that produces a visible ray of light used to polymerize the Occlusin. It consists of a table top component housing a tungsten halogen light source and a control/indicator panel, a fiber optic cable, and a handpiece with a 7 mm diameter optic tip. The Coe-Lite is classifiable under the provision for dental instruments in item 709.2540, TSUS, and dutiable at the rate of 5.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815627

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 18 1985

REFER TO

CLA-2-01:S:COM:N1:232-1338
815706

Mr. Clark D. Bien
Arbor Foods Incorporated
Post Office Box 7686
Ann Arbor, Michigan 48107

Dear Mr. Bien:

In your letter dated October 1, 1985, you inquired about the dutiable status of a chocolate product from Canada.

The product consists of 25 percent by weight chocolate liquor, 15 percent by weight cocoa butter and 60 percent by weight sugar. It will be imported in the form of blocks molded by 55 gallon drums and will weigh approximately 400 pounds each. The product will be sold to industrial users in the chocolate and confectionery industries.

A chocolate product with these ingredients is classifiable under the provision for chocolate, sweetened, in bars or blocks weighing 10 pounds or more each, in item 156.2500, Tariff Schedules of the United States Annotated, and dutiable at the rate of one-tenth of a cent (0.1¢) per pound. This rate will remain the same in 1986.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JAN 10 1986

REFER TO

CLA-2-01:S:COM:N1:232-1361
815786

Mr. Bernard Anthony Garcia
Compas Group Corporation
P.O. Box #16761
Plantation, FL 33318

Dear Mr. Garcia:

In your letter of October 9, 1985, you requested the tariff classification of certain alcoholic beverages from Colombia.

The alcoholic beverages consist of three brands of Aguardiente and one Pina Colada Cocktail. Two sample bottles were received and a third arrived completely broken. The beverages are bottled in 750 milliliter containers. According to information submitted by you, the Aguardientes are distilled spirits made from sugar cane which have an anisette aroma and flavor. Two brands, the Aguardiente Regal Ice Extra and the Aguardiente Leader, have a stated proof of 64 degrees. The third brand the Aguardiente Llanero, has a stated proof of 68 degrees. The Pina Colada Cocktail has a proof of 30 degrees and consists of rum, coconut juice, pineapple juice, cream, and eight percent sugar.

The three brands of Aguardiente are classifiable under the provision for other spirits, fit for use as beverages, in containers each holding not over 1 gallon, in item 169.4400 Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of $2.56 per proof gallon. The Pina Colada Cocktail is classifiable under the provision for cordials, liqueurs, kirschwasser, and ratafia, in containers each holding not over 1 gallon, in item 168.9600, TSUSA, and dutiable at the rate of 50 cents per proof gallon.

Articles classifiable under item 169.4400 and 168.9600, TSUSA, which are the products of Colombia are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. However, regardless of the country of origin, all distilled alcoholic beverages are subject to Federal Excise Tax (26 U.S.C. 5001) at the rate of $10.50 per proof gallon, and on proportionate parts of a proof gallon.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents

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have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815786

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 21 1985

REFER TO

CLA-2-07:S:COM:N3G:341-1676
815852

Ms. Margaret Hudson
Tex-Thai Impex
P.O. Box 79782
Houston, Texas 77279

Dear Ms. Hudson:

Your letter of October 22, 1985 requested this office to rule upon the tariff classification of nylon expandable travel bag from Thailand.

The sample submitted is a nylon double handle travel bag which measures 18" X 18" X 6". It has an expandable gusset, two outside snap pockets on the front and a full width zippered compartment on the back. The sample appears to be representative of a set of two bags.

The nylon expandable bag is classifiable under the provision for luggage and handbags, of other textile materials, other, in item 706.4152, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 20 percent ad valorem.

Tariff item number 706.4152 falls within textile category designation 670. As a product of Thailand, this merchandise is not currently subject to quota/visa restrictions based upon international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 2 1986

REFER TO

CLA-2-01:S:COM:N1:232-1398
815872

Mr. Oscar Succar
Simpex International Trading, Inc.
7630 Little River Turnpike
Suite 802
Annandale, VA 22003

Dear Mr. Succar:

In your letter of October 21, 1985, you requested the tariff classification of dehydrated bananas (Ref:001), Panela (Ref:002) and chocolate covered dehydrated bananas (Ref:003) from Colombia.

While no technical information was provided on the manufacturing process for the dehydrated bananas, it is obvious that they have been submitted to a drying process which removed most, but not all, of the moisture. The bananas were then cut into five long segments and sealed in cellophane. Each cellophane package contains ten pieces. The chocolate covered dehydrated bananas appear to be similar to the uncoated bananas except that they have been cut into pieces approximately one inch long prior to coating and packaging.

The submitted sample of panela takes the form of a dark brown solid block which measures one and one-half inches thick, by three and one-half inches wide, by four and one quarter inches long. Panela is produced by pressing sugar cane and cooking the extracted juice until a very thick consistency is achieved. This thick heated paste is cast into molds where it cools into solid blocks.

The dehydrated bananas are classifiable under the provision for bananas, prepared or preserved (dried) in item 146.4200, Tariff Schedules of the United States, and dutiable at the rate of 0.9 percent ad valorem. The chocolate covered bananas are classifiable as candy and other confectionery containing chocolate, not specially provided, for, in item 157.1045, TSUS, with duty at the rate of 7 percent ad valorem. Currently, there are no restrictions or quotas upon the importation of either of these items.

Panela is classifiable under the provision for sugar, derived from sugar cane, principally of crystalline structure or in dry amorphous form in item 155.2025, Tariff Schedules of the United States, and is dutiable at the rate of 0.6625 cent per pound. This duty rate is reduced

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by 0.009375 cent per pound for every degree of polarity, and proportionate parts of a degree, under 100 degrees polarity. In addition, sugar which is not subjected to additional refining or improvements in quality in the United States is subject to a supplemental agriculture fee of 1 cent per pound. This fee is assessed under item 956.05, TSUS. Under Presidential Proclamation 4941 of May 5, 1982, quotas were established upon sugar classifiable under items 155.20 and 155.30, TSUS. The current annual quota allocation for sugar from Colombia is 82,383,000 pounds.

All of the above described articles, which are the products of Colombia, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. However, there is no exemption for payment of the supplemental sugar fee assessed under item 956.05, TSUS.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

for Loy K. Deweese

John J. Martuge
Area Director
New York Seaport

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815872

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 06 1985

REFER TO
CLA-2-01:S:COM:N2:228-1415
815904

Ms. Anna Marie Calabria
J. Calabria Imports Inc.
P.O. Box 1914
Bloomfield, NJ 07003

Dear Ms. Calabria:

In your letter of October 21, 1985, you inquired about the quota status of Dulche de Leche from Uruguay.

Presidential Proclamation 5340 amended Presidential Proclamation 5294 to impose a quota on articles described in item 958.17, TSUS, covering "articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form that are prepared for marketing to the retail consumer in the identical form and package in which imported..." provided for in items 156.45, 183.01, 183.05, TSUS.

Since your item falls into the later category as not being in a dry amorphous form and prepared for marketing to the retail consumer no quota exists for this item as described. It should be noted that any change in this item may change the quota status. Therefore any change should be specified in a binding ruling request.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

for John J. Martuge

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

NOV 26 1985

REFER TO

CLA-2-04:S:COM:N2:235-1425
815923

Mr. R. D. Nordstrom, Assistant Manager
Norman G. Jensen Incorporated
P. O. Box 227
Ranier, Minnesota 56668

Dear Mr. Nordstrom:

In your letter dated October 24, 1985, you inquired about the dutiable status of 4-methyl pentene-1 from Canada.

4-Methyl pentene-1 also known as 1-isohexene when produced from petroleum, shale oil or natural gas is classifiable under the provision for hydrocarbons derived in whole or in part from petroleum, shale oil or natural gas, other, in item 429.54, Tariff Schedules of the United States, and dutiable at the rate of 5 percent ad valorem.

4-methyl pentene-1 also known as 1-isohexene when produced from sources other than those indicated in the previous paragraph is classifiable in item 429.56, Tariff Schedules of the United States and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 2 1985

REFER TO

CLA-2-04:S:COM:N2:238-1427
815935

Mr. Brian S. Goldstein
Tompkins and Davidson
One Whitehall Street
New York, N.Y. 10004

Dear Mr. Goldstein:

In your letter of October 28, 1985, on behalf of Glaxo, Inc., you inquired as to the dutiable status of an antibiotic drug, "Fortaz" from the United Kingdom. In addition, you ask if samples of this merchandise used to solicit orders would be classified in item 860.3000, Tariff Schedules of the United States Annotated (TSUSA).

Technical literature submitted with your inquiry indicates that "Fortaz" (ceftazidime for injection) is a semisynthetic benzenoid derived, broad-spectrum, beta-lactam antibiotic for parenteral administration. It is a sterile dry, powdered mixture of ceftazidime pentahydrate and sodium carbonate. The sodium carbonate has been admixed to facilitate dissolution. The product will be imported in injectible glass vials containing 500 mg., 1 gram, 2 gram and 6 gram quantities of "Fortaz".

"Fortaz" is classifiable under the provision for benzenoid antibiotics, other, in item 411.7600, TSUSA and dutiable at the rate of 8.1 percent ad valorem.

With regards to the samples that will be used to solicit orders, you state that they will be imported in injectible glass vials containing 1 gram of "Fortaz" that will be packaged in paper boxes that hold 25 vials. Each vial although valued over $1.00 will be marked in red "Professional Sample - Not For Sale", the paper boxes will also be so marked. The samples are to be distributed to doctors free of charge for the purpose of soliciting orders.

The sample and paper box you submitted have been examined and they are marked as described in the previous paragraph. Accordingly, we find that item 860.3000, TSUSA, provides for duty-free treatment of "any sample valued at $1.00 and under, and also provides similar treatment for samples marked so they are unsuitable for sale or for use otherwise than as samples...". However, the District Director at the port(s) of entry may require that an affadavit be attached to your entry, certifying that the conditions described in item 860.3000, TSUSA, have been met.

Please be advised that a copy of this ruling should be attached

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to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropirate Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815935

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 27 1985

REFER TO

CLA-2-04:S:COM:N1:235-1432
815946

Ms. Joyce Dugan, Import Department
Hensel, Bruckman and Lorbocher, Inc.
P.O. Box S - JFK Airport Station
Jamaica, NY 11430

Dear Ms. Dugan:

In your letter dated October 23, 1985, you inquired on behalf of your client Goemer International Corporation about the dutiable status of various seaweed extracts from Denmark.

According to your inquiry the samples submitted are all to be used as ingredients in cosmetics. Our laboratory has determined that Calendula C-571 is a mixture of Calendula plant extract and propylene glycol and that Glycolic extract A 464, DS 574, LS 520 contain seaweed extract and propylene glycol. Glycolic extract, FS 521 in addition to seaweed extract and propylene glycol also contains methyl alcohol. Lastly GYFA 15 was determined to be an aqueous solution of seaweed extract, consisting in part of polypeptides.

Based on this information Calendula C-571, A 464, glycolic extract DS 574 and LS 520 are classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be propylene glycol classifiable under item 428.30, Tariff Schedules of the United States, and dutiable at the rate of 11.5 percent ad valorem.

Glycolic extract FS-521 is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be methyl alcohol classifiable under item 427.97, Tariff Schedules of the United States, and dutiable at the rate of 18.4 percent ad valorem.

GYFA 15 is classifiable under the provision for mixtures, not specifically provided for in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be polypeptides classifiable under item 425.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem.

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815946

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 21 1985

REFER TO

CLA-2-04:S:COM:N1:235-1428
815950

Mr. J. Kruger
Manager, Customer Service
Caschem, Incorporated
40 Avenue A
Bayonne, N.J. 07002

Dear Mr. Kruger:

In your letter dated October 11, 1985, you inquired about the dutiable status of a blend of hydrogenated castor oil and hydroxystearamide from Brazil.

According to your letter this blend cannot be used in food but is designed for use as a rheological additive in paints.

Based on this information a blend of 75 percent hydrogenated castor oil and 25 percent hydroxystearamide is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be hydroxystearamide which is classifiable in item 465.15, Tariff Schedules of the United States, if derived from coconut, palm-kernel or palm oil and is dutiable at the rate of 1.1 cents per pound plus 5.3 percent ad valorem. If hydroxystearamide is derived from other sources, it is classifiable in item 465.20, TSUS, and dutiable at the rate of 1.2 cents per pound plus 5.3 percent ad valorem.

Articles classifiable in item 432.25 TSUS, which are the products of Brazil are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

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for John J. Martuge
Area Director
New York Seaport

A14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 10 1985

REFER TO

CLA-2-06:S:COM:N1:115-1335
816106

Mr. Amos N. Hoagland
Hoag-Co
1062 North Vinedo Avenue
Pasadena, CA 91107

Dear Mr. Hoagland:

In your letter dated October 29, 1985, you inquired about the dutiable status of components for tennis ball baskets from Taiwan. A sample was submitted.

The end product is a basket that is utilized in tennis for picking up tennis balls on the ground, and as a stand for storing tennis balls while practicing. The basket itself is divided into several compartments and components. You indicate that the top and bottom frames, the lids and the plastic handle grips are of United States origin. The imported parts consist of the steel handles, the end frames, and the side frames. After importation, these parts are integrated via welding with the United States components to form the final product. The baskets are used as an aid by coaches and others in practicing and in maintenance.

The steel tennis ball basket components are classifiable under the provision for articles of iron or steel, not coated or plated with precious metal, in item 657.2590, Tariff Schedules of the United States, and dutiable at the rate of 6.7 percent ad valorem. (The 1986 rate is 6.2 percent ad valorem.)

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 7 1986

REFER TO

CLA-2-04:S:COM:N1:240-1482
816113

Mr. John P. C. Matthews
East Europe Trade Associates
87 Lovers Lane
Princeton, NJ 08540

Dear Mr. Matthews:

In your letter dated October 25, 1985, you inquired about the dutiable status of extracts, concentrates and syrups from Hungary. Technical information was submitted for our review.

The products identified as Rose-hips syrup, Viroma syrup, Diviroma syrup, Morella syrup and Szamba syrup are classified as non-benzenoid drugs, other, in item 439.5095, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 3.7 percent ad valorem.

The Safflower concentrate and the Black Malva extract are substances that are used for coloring food stuffs, wines and medicines, among other similar type products.

The Safflower concentrate is classifiable under the provision for dyeing and tanning products, other, in item 470.1800, TSUSA, with duty at the rate of 3.2 percent ad valorem.

The Black Malva extract is classifiable under the provision for products of vegetable origin used chiefly for coloring or tanning, not specially provided for, other, in item 470.8500, TSUSA, dutiable at the rate of 3.2 percent ad valorem.

Regarding the Burdock, Horse Chestnut, Hazelnut and Sumac extracts, your inquiry does not provide sufficient information for us to issue a ruling for these products. Requests for rulings must be submitted in accordance with Part 177, Customs Regulations. Therefore, please submit the chemical name of each product, the percentage of each substance comprising each product, and the use of each substance in each product. If you have samples of these extracts, please forward them to this office.

With respect to the Rose-hips, Viroma, Diviroma and Morella syrups, and the Black Malva extract and Safflower concentrate, this is a ruling issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1).

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A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

216113

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 24 1986

REFER TO

CLA-2-04:S:COM:N1:238-1492
816129

Mr. Jay Lanius
Auth. Agent
W.Y. Moberty, Inc.
Port of Sweetgrass, Montana 59484

Dear Mr. Lanius:

In your letter dated November 4, 1985, on behalf of Premiere Livestock Supplies, Limited, you inquired about the dutiable status of "Aureo S700G", granular premix from Canada.

"Aureo S700G" is used in the manufacture of beef cattle feeds. It aids in the maintenance of weight gains and feed efficiency in cattle during periods of weaning, shipping or handling. The product is a granular premix containing chlortetracycline (a non-benzenoid antibiotic) and sulfamethazine (a benzenoid anti-infective agent) as the active ingredients which are blended with a carrier (calcium sulfate).

"Aureo S700G", granular premix is classifiable under the provision for benzenoid anti-infective agents, other, other in item 411.9600, Tariff Schedules of the United States, and dutiable at the rate of 8.1 percent ad valorem. In 1986 the rate is the same.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 18 1985

REFER TO

CLA-2-01:S:COM:N1:228-1476
816142

Mr. Glenn R. Levitt
Associated Customhouse Brokers, Inc.
P. O. Box 14296, Federal Station
Rochester, NY 14614-0296

Dear Mr. Levitt:

In your letter dated November 8, 1985, you inquired about the dutiable status of Aproten, Dietary Imitation Macaroni Products and Rusks from Italy.

The Aproten Dietary Imitation Macaroni Products are composed of; corn starch, tapioca starch, micro-crystalline cellulose, distilled monoglycerides and saffron. They are marketed in four varieties:

1) Rigatini
2) Ditalini
3) Tagliatelle
4) Anellini

The Rigatini and Ditalini varieties are a low protein imitation macaroni product in a long and short form similar in appearance to elbow macaroni. They can be eaten hot with melted butter, oil and herbs, sauces, and in casseroles, as well as eaten cold in aspic or waldorf salads. The Tagliatelle is a low protein wide variety imitation noodle similar in appearance to commonly known noodles and egg noodles. It can be eaten hot with a sauce or with butter and herbs and included in any typical recipe calling for noodles. The Anellini variety is also a low protein imitation macaroni product similar to vermicelli. It is intented for use in soups, broth, bouillon or in desserts to give the same effect as tapioca or rice. All the varieties are prepared in the same manner as any pasta product by adding them to boiling water, stirring frequently until tender for 8-11 minutes and then serving. They are intented for consumption as pasta or macaroni for people on a protein restricted diet. These items differ from macaroni or pasta only in that they are derived from corn and tapioca starches rather than wheat flour.

The Rusks are slices of low protein, yeast leavened starch bread which have been dried and toasted. They are marketed in wrapped sealed packets with a total of 24 slices per box weighing a total of 200 grams. These Rusks are a dietary substitute for bread for persons on a protein restricted diet.

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The imitation macaroni products are classifiable under the provision for macaroni, noodles, vermicelli, and similar alimentary pastes not containing egg or egg products in item 182.35, Tariff Schedules of the United States, and dutiable at the rate of 40 percent ad valorem.

The Rusks are classifiable under the provision for bread made with the use of yeast as the leavening substance in item 182.25, Tariff Schedules of the United States, and are free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

81614 2

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

B6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 10 1986

REFER TO

CLA-2-07:S:COM:N3:343-1908
816158

Ms. Carol A. Garrity
Sales Expeditor
Garrett Hewitt International, Inc.
901 N. Broadway/Suite 16
No. White Plains, NY 10603

Dear Ms. Garrity:

In your letter of November 11, 1985, you requested the tariff classification of a plastic eye mask from Hong Kong.

A sample of the plastic face mask was submitted with your request. The pink compress pack contains a liquid chemical which after insertion in hot/cold water provides a soothing relief for headaches or eye irritation. In your letter you indicate that the pink compress pack is in chief value of plastic.

This product is subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

The mask must be marked with the country of origin in a permanent, legible and conspicuous manner.

The plastic face mask is classifiable under the provision for household articles not specially provided for, of rubber or plastics, in item 772.1500, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4.7 percent ad valorem. The rate of duty for 1986 will be 4 percent ad valorem.

Articles classifiable under item 772.1500, TSUSA, which are the products of Hong Kong are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

851918

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B8

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 24 1986

REFER TO

CLA-2-07:S:COM:N3:221-1518
816194

Mr. Ned Marshak
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, NY 10004

Dear Mr. Marshak:

In your letter dated November 14, 1985, on behalf of Dason International, Inc., you inquired about the dutiable status of a "Wind and Sun Shade" from Taiwan.

A sample accompanied your letter and has been retained by this office. The article consists of an oval-shaped piece of nylon taffeta fabric, approximately 74 inches long and 69 inches wide, 18 fiberglass (i.e., fiberglass reinforced plastic) pole sections, four non-reinforced plastic stakes, and a 6 1/2 foot length of man-made fiber rope with an S-shaped metal fitting. The component material in chief value is said to be the fiberglass poles. The product is designed to be used at the beach where, when assembled, it forms a semi-circular awning and provides protection from the wind and sun.

The shade is imported and sold with a nylon "rucksack" carrying bag. The latter is manufactured of 420 denier nylon, and has a braided man-made fiber rope which forms both the shoulder sling and drawstring closure. It is similar in shape to a duffle bag or stuff bag. The bag is designed so that the user may carry the shade from place to place. A clear, polyvinyl chloride bag accompanying the sample appears to be the merchandising container as well as storage bag for the rucksack and shade, when purchased and kept at home.

The rucksack is not a container of the type usually sold at retail with a shade. It is like a "haversack" or "stuff bag" which is commonly used in outdoor sports. A haversack is defined in Webster's Dictionary as "a bag or case similar to a knapsack but usually worn over one shoulder."

The term "luggage" is defined in Headnote 2(a)(i), Schedule 7, Subpart 1D, Tariff Schedules of the United States (TSUS), to include "...travel goods such as ...travel bags...knapsacks...haversacks, duffle bags and like articles designed to contain...other personal effects during travel"(emphasis added). The instant nylon rucksack satisfies this definition in that it is designed to contain a personal effect during travel and is "like" a knapsack, haversack, traveling bag, or duffle bag. In United States v Standard Surplus Sales, Inc.,

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B9

69 CCPA 34, Appeal No. 81-13 (1981), the court held bags such as rucksacks and haversacks were luggage.

The sack would not be considered an entirety with the Wind and Sun Shade inasmuch as it performs no function in the actual use of the shade, but is merely an accessory for transporting it, much the same as any other pack. In this instance it is supplied to the user as a convenience. In addition, the shade and rucksack, when imported together, do not form a new entity. Each retains its individual indentity. The rucksack has a character and use much more than a mere storage bag. In fact, a separate vinyl bag is supplied for storage purposes.

The Wind and Sun Shade, consisting of the shade fabric, fiberglass poles, plastic stakes, and rope, is classifiable under the provision for articles not specially provided for, of rubber or plastics...other, in item 774.5595, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 5.7 percent ad valorem.

The "rucksack" carrying bag is classifiable under the provision for luggage of other textile materials, wholly or in part of braid, in item 706.3420, TSUSA, and dutiable at the rate of 10 percent ad valorem.

The rucksack falls within textile category designation 670. As a product of Taiwan this merchandise is subject to quota and visa restrictions based upon international textile trade agreements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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816194

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 3 1985

REFER TO

CLA-2-04:S:COM:N1:236-1531
816234

A. N. Deringer, Inc.
30 West Service Road
Champlain, New York 12919-9703

Gentlemen:

In your letter dated November 14, 1985, you inquired on behalf of your client, Modern Air Laboratories Inc. of Quebec, Canada about the dutiable status of a toilet bowl cleaner from Canada.

The toilet bowl cleaner consisting of a detergent, dye, and water is contained in a 350 ml (12 fl. oz.) plastic bottle having a metal clip designed to hold this plastic bottle upside down in the tank of a toilet. The toilet bowl cleaner is advertised as continuous action-automatic cleaner, cleaning and deodorizing with every flush.

Toilet bowl cleaners with this type container are classifiable under the provision for blackings, powders, liquids, and creams for polishing and cleaning, all the foregoing in immediate containers holding not over 10 pounds each in item 493.1000, Tariff Schedules of the United States, and dutiable at the rate of 2.6 percent ad valorem.

The sample submitted did not indicate the Country of Origin. It would be appropriate to mark "Made in Canada" in the same proximity and in the same letter size as the domestic (U.S.A.) name and address indicated on the label.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

B11

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 24 1985

REFER TO

CLA-2-04:S:COM:N1:238-1513
816251

Mr. Daniel Szymanski
Manager, Export and Distribution Planning
Searle Laboratories
1100 Kirk Street
Elk Groove, IL 60007

Dear Mr. Szymanski:

In your letter dated November 12, 1985, you inquired about the dutiable status of "Betaxolol Hcl/Chlorthalidone, U.S.P." from France.

"Betaxolol Hcl/Chlorthalidone, U.S.P., is a mixture composed of betaxolol hydrochloride and chlorthalidone, both of which are benzenoid drugs. Betaxolol hydrochloride is an autonomic drug (antihypertensive type) and chlorthalidone is a diuretic drug. In this mixture they are combined to form a cardiovascular drug (antihypertensive type).

"Betaxolol Hcl/Chlorthalidone, U.S.P. is classifiable under the provision for benzenoid cardiovascular drugs, other in item 412.1200, Tariff Schedules of the United States Annotated, and dutiable at the rate of 8.0 percent ad valorem. In 1986 the rate remains the same.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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B12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 21 1986

REFER TO

: CLA-2-07:S:COM:N3:221-1543
816266

Mr. F. B. Michels
President
Remtek Corporation
46107 Landing Parkway
Fremont, CA 94538-6471

Dear Mr. Michels:

In your letters dated November 14, 1985 and January 2, 1986, you inquired about the dutiable status of heat shrinkable sleeves from Switzerland.

Descriptive literature accompanied your second letter. The products are heat shrinkable, medium wall, seamless polyolefin plastic tubings imported in four foot lengths. They will be used to insulate, protect, and support electrical connections. Some tubings will be coated on the inside walls with a hot melt adhesive, which melts and flows during the shrinking process, filling voids and creating a waterproof seal. The coating operation is a separate process, occurring after the tubings have been formed.

In your letter, you suggested the merchandise be classified in item 773.3000, Tariff Schedules of the United States Annotated (TSUSA), the provision for electric insulators of plastic. The sleeves, imported in four foot lengths, are not electric insulators themselves, but rather material from which insulators may be fashioned. Moreover, it is clear from the product literature that the sleeves are intended to provide environmental protection and mechanical support, as well as insulation, to electrical connections. Item 773.3000, TSUSA, will therefore not apply.

A second tariff provision you referred to, item 771.5500, TSUSA, the provison for other seamless tubing, cannot apply to those tubings with the hot melt adhesive. Schedule 7, Part 12, Subpart B, Headnote 2(v), excludes from this provision tubing which has been made or cut into lengths measuring not over 15 inches, or which has been ground on the ends, drilled, milled, or otherwise processed (except surface processed). Since the sleeves have been subjected to a separate process to coat the inside walls with an adhesive, they have been "otherwise processed" within the meaning of this headnote, and are not classifiable in item 771.5500, TSUSA.

The heat shrinkable sleeves without adhesive are classifiable under the provision for seamless tubing, in item 771.5500, TSUSA and dutiable at the rate of 6.3 percent ad valorem.

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The heat shrinkable sleeves with hot melt adhesive are classifiable under the provision for articles not specially provided for, of rubber or plastics...other, in item 774.5595, TSUSA, and dutiable at the rate of 5.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816266

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B14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 13 1985

REFER TO

CLA-2-01:S:COM:N1:231-1549
816277

Mr. Peter Laternser
Max Felchlin Schwyz
Main Street 63
CH-6430 Schwyz/Switzerland

Dear Mr. Laternser:

In your letter dated October 11, 1985, you inquired about the dutiable status of "KK 42E Almond Paste" from Switzerland.

Your inquiry indicates that this almond paste is composed of 50 percent almonds and 50 percent sugar and will be shipped in bulk form (12 kg to a plastic pail).

Almond paste is classifiable under the provision for Other edible nuts, shelled, blanched, or otherwise prepared or preserved: Almonds: Other in item 145.4100, Tariff Schedules of the United States, and dutiable at the rate of 18.5 cents per pound.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 27 1985

REFER TO

CLA-2-04:S:COM:N2:238-1535
816287

Mr. Steve Harms
Division Manager, Protective Coatings
Sika Corporation
875 Valley Brook Avenue
Lyndhurst, NJ 07071

Dear Mr. Harms:

In your letter dated October 7, 1985, you inquired about the dutiable status of two liquid coating products from West Germany.

Icosit 200 is a two component epoxy coating. Component A is a mixture containing coal tar oil 19 WT%, cyclo-aliphatic amine 10 WT%, phenylphenol 5WT%, cationic treated clay 1WT%, amorphous carbon (carbon black) 2 WT%, calcium magnesium silicate 7 WT%, and barium sulfate 56 WT%. Component B is bisphenol A epoxy resin 100 WT.%. Component A and component B are to be mixed in a 4.3 to 1.0 ratio and applied by liquid spray.

Icosit 200 is classifiable under the provision for benzenoid epoxy resins in item 409.0200, Tariff Schedules of the United States Annotated, and dutiable at the rate of 7.3 percent ad valorem. In 1986, the rate will be 6.7 percent ad valorem.

Icosit 600 is a two component polyurethane based 100 percent solids coating. Component A is a mixture containing polyester polyol 31WT%, polyether polyol 12WT%, Amorphorus carbon (carbon black) 3WT% and calcium carbonate 54WT%. Component B is diphenylmethane diisocyanate (MDI) 100WT%. Component A and Component B are to be mixed in a 3.0 to 1.0 ratio and applied as a liquid spray.

Icosit 600 is classifiable under the provision for benzenoid polyurethane resins in item 409.1400, Tariff Schedules of the United States Annotated, and dutiable at the rate of 7.6 percent ad valorem. In 1986, the rate will be 7.0 percent ad valorem.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

The merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances.

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You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telephone number (800) 424-9085.

Sincerely,

J Margalit

for John J. Hartuge
Area Director
New York Seaport

816287

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JAN 10 1990
CLA-2-04:S:C04:N1:235-1662
816316

Mr. J. M. Cline, Vice President
John V. Carr & Sons, Incorporated
P.O. Box 479-A
Detroit, MI 48232-0479

Dear Mr. Cline:

In your letter dated November 19, 1989, on behalf of your client, Apico Incorporated, you inquired about the dutiable status of engine starting fluid from France.

According to your letter, the product is sprayed into the air intake units of either gasoline or diesel engines during cold weather.

Engine starting fluid containing acetone which is benzenoid derived is classifiable under the provision for mixtures, not specifically provided for in item 407.16, Tariff Schedules of the United States, and dutiable at the rate of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be benzenoid-derived acetone classifiable under item 406.64, Tariff Schedules of the United States, and dutiable at the rate of 0.3 cents per pound plus 18.7 percent ad valorem.

Engine starting fluid containing acetone which is not benzenoid derived is classifiable under the provision for mixture, not specifically provided for in item 430.10, Tariff Schedule of the United States, and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate aplicable to any component material. The component with the highest rate appears to be organic nitrate classifiable under item 425.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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C4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 31 1985

REFER TO

CLA-2-07:S:COM:N3-D-225:1896
816340

Mr. Bill McGehee
House of Lloyd, Inc.
11901 Grandview Road
Grandview, MO 64030

Dear Mr. McGehee:

In your letter dated November 22, 1985, you inquired about the dutiable status of a "Giant Clock" take-apart puzzle from Hong Kong.

A sample of the "Giant Clock" was submitted with your inquiry. The article is a plastic toy clock which can be dismantled by a child. The face of the clock has removable numbers in various shapes and colors. The words "minute" and "hour" are embossed on the removable hands. A clear plastic center reveals cams and gears of various sizes and colors. The face, numbers, bells, and cams are removable and easily put together again by a child. A clock work spring mechanism activates the clock movement.

You contend that the article is properly classifiable under the provision for puzzles in item 735.2020, TSUSA. In Fedtro, Inc. v. United States, CD 4548 (1974), the Customs Court stated:

> The principle is well settled that where an article is in character or function something other than as described by a specific statutory, provision either more limited or more diversified and the difference is significant, it cannot find classification within such provision. It is said to be more than the article described in the statute.

We believe that the clock hands and the corresponding hour and minute readings make the clock puzzle more than a puzzle for the purposes of tariff classification.

The "Giant Clock" is classifiable under the provision for other toys in item 737.9555, Tariff Schedules of the United States Annotated, and dutiable at the rate of 9.6 percent ad valorem. In 1986 the rate will be 8.3 percent ad valorem.

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for J Margalit

John J. Martuge
Area Director
New York Seaport

816340

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c6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

DEC 27 1985

REFER TO

CLA-2-04:S:COM:N2:238-1558
816346

Mr. Thomas Czubak
Administrator, Customs & Export
Warner-Lambert Company
P.O. Box 505
Morris Plains, NJ 07950

Dear Mr. Czubak:

In your letter dated November 15, 1985, you inquired about the dutiable status of zolazepam hydrochloride and tiletamine hydrochloride from The United Kingdom.

Zolazepam hydrochloride, a white powder, is a benzenoid sedative type drug. Tiletamine hydrochloride, a white crystalline powder, is used for its anesthetic properties, In addition, it also has anticonvulsive properties. After importation, the products will be blended together for vetinarian use as a general anesthetic.

Zolazepam hydrochloride is classifiable under the provision for benzenoid sedatives in item 412.2600, Tariff Schedules of the United States, and dutiable at the rate of 8.6 percent ad valorem. In 1986 the rate will be 7.8 percent ad valorem.

However, your inquiry does not provide enough information for us to give a classification ruling on tiletamine hydrochloride. Your request for a classification ruling should include its chief use in the United States. In addition, please document whether or not this product is used as an anticonvulsant drug.

Based upon the information you submitted, tiletamine hydrochloride would probably be classified under the provision for drugs primarily affecting the central nervous system, other, in item 412.4000, Tariff Schedules of the United States Annotated, with duty at the rate of 7.6 percent ad valorem. In 1986 the rate will be the same.

With respect to the zolazepam hydrochloride, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1 (d)(2)].

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A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

JMargalit

for John J. Martuge
Area Director
New York Seaport

816346

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

C8

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 2 1986

REFER TO

CLA-2-07:S:COM:N3G:347-1923
816378

Mr. Danny A. Sanchez
Castelazo & Associates
5420 West 104th Street
Los Angeles, CA 90045

Dear Mr. Sanchez:

In your letter dated November 26, 1985, on behalf of Stonewall Trading, you inquired about the dutiable status of a plastic sandal from Taiwan. A sample was submitted.

The item in question, style #3021, is an all-plastic sandal with a molded, unlined, low-wedge concave-shaped bottom and a Y-shaped one piece upper which is secured to the bottom with plugs. The bottom is roughly 1/4 - inch thick in the front and increases to about 5/8 - inch thick in the center of the heel, rising to about one inch thick at the outer edges.

You asked whether this item is classifiable under the tariff provision for zoris, item 700.54, TSUS.

Among the criteria used by Customs is classifying footwear as zoris is the requirement that such footwear have a flat sole or bottom of uniform thickness. Since the sole on this sandal is neither flat nor of uniform thickness, classification as a zori is precluded.

This sandal is classifiable under the provision for other footwear which is over 50 percent by weight of rubber or plastics having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper), in item 700.56, Tariff Schedules of the United States, and dutiable at the rate of 6% ad valorem.

We note that the sample is prominently marked on a label "Styled in Italy", while the country of origin is Taiwan. We believe that this marking would mislead the ultimate purchaser into believing that this item is a product of Italy. In accordance with Section 134.46, Customs Regulations, this item must be properly marked "Made in" or "Product of" Taiwan in close proximity to the "Styled in Italy" notation.

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816378

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

CIO

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JAN 13 1986

REFER TO

CLA-2-04:S:COM:N1:238-1940
816420

Mr. M. Suzuki
Sumitomo Corporation of America
345 Park Avenue
New York, NY 10154

Dear Mr. Suzuki:

In your letter dated December 2, 1985, you inquired about the dutiable status of Hytrel from Japan.

Hytrel is a polyester elastomer with properties that are similar to rubber. For the purposes of the tariff schedules the term rubber means a substance, whether natural or synthetic, in bale, crumb, powder, latex, or other crude form that can be vulcanized or otherwise cross-linked, and after cross-linking can be stretched at 68°F. to at least three times its original length and that, after having been stretched to twice its original length and the stress removed, returns within 5 minutes to less than 150 percent of its original length. Since Hytrel can not be vulcanized or otherwise cross-linked, it is not a rubber for tariff purposes. Hytrel is considered to be a benzenoid plastics materials.

Hytrel is classifiable under the provision for plastics materials: thermoplastic resins: polyester resins, saturated, in item 408.6800, Tariff Schedules of the United States, and dutiable at the rate of 1.4 cents per pound plus 9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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C11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
FEB 06 1986

REFER TO

CLA-2-07:S:COM:N3G:341-1951
816431

Ms. Roberta Witschger
Lebo
60 West Street
Bloomfield, N.J. 07003-4998

Dear Ms. Witschger:

In your letter dated December 3, 1985, you inquired about the dutiable status of a leatherette cassette carrying case from Taiwan.

You have submitted a sample of the carrying case in its finished and unfinished condition. The case is designed to hold 12 audio cassettes. It is designed so that the user may transport cassettes from one place to another. The case is an attache like design made of padded leatherette vinyl and is fitted with a molded plastic tray having 12 sections. The top flap is secured by a tuck lock and the case is carried by a molded plastic handle. The body of the case is formed by riveting of two end panels to one main panel. Each panel is formed by cutting sections of leatherette, foam and cardboard which are glued and stitched with PVC binding. You intend to affix the rivets, handle, tuck lock and tray after the body is imported. In a telephone interview you have advised this office that the hardware is of foreign origin.

In its condition as imported, the unfinished carrying case would be considered classifiable as a finished product as provided by General Headnote 10(h), Tariff Schedules of the United States (TSUS). This Headnote provides that a tariff provision covers an article whether assembled or unassembled, and whether finished or unfinished.

The cassette carry case, whether imported finished or unfinished is classifiable under the provision for luggage, of other materials, other in item 706.6245, Tariff Schedules of the United States, and dutiable at the rate of 20 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the

C12

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documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816431

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

C13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 30 1985

REFER TO

CLA-2-04:S:COM:N:236-1679
816433

Ms. Maria Reyes
P.O. Box 651555
Miami, FL 33265-1555

Dear Ms. Reyes:

In your letter of December 2, 1985, you requested the tariff classification of "Powerful" from Guatemala.

The prospective import, "Powerful" is a cleaner and deodorizer advertised to clean floors, kitchens, bathrooms, walls, toilet bowls, etcetera. The product will be imported in 16 and 32 ounce containers.

"Powerful" is classifiable under the provision for blackings, powders, liquids, and creams for polishing and cleaning, all the foregoing in immediate containers holding not over 10 pounds each in item 493.1000, Tariff Schedules of the United States, and dutiable at the rate of 2.6 percent ad valorem. Effective January 1986, the rate of duty is reduced to 2.5 percent ad valorem.

We note your label with country of origin indicated. We suggest that where a domestic (U.S.A.) address is shown, immediately following such an address, the country of origin (Made in Guatemala) be indicated in approximately the same size lettering.

Articles classifiable under item 493.1000, TSUS, which are the products of Guatemala are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

for Joyce Dewing

John J. Martuge
New York Seaport
Area Director

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C14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 14 1986

REFER TO

CLA-2-01:S:COM:N1:232-1687
816487

Mr. G. Maceikonis
Gilette Foods Inc.
31 Evans Terminal
Hillside, NJ 07205

Dear Mr. Maceikonis:

In your letter dated November 19, 1985, you inquired about the dutiable status of certain flavor compounds from West Germany.

These flavor compounds are destined to be used in the commercial production of a variety of food and drink products in the United States. Information was submitted on one variety of orange flavor compound (code 1196/20178) and three versions of caribic flavor compound (codes 1196/20155, 1196/20034, and code 102512). Samples of the four different varieties of flavor compounds were submitted along with your letter. These samples were referred to our laboratory for analysis. It was determined that the submitted samples were not characteristic of concentrated fruit juices, fruit essences, or fruit extracts. Analysis revealed these products to be mixtures containing small quantities of diluted fruit juices, water, invert sugars, and acidulants such as citric acid. While these mixtures contained less than 50 percent invert sugars, those sugars were determined to be typical of those generally produced from cane or beet sugar.

These flavor compounds are classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem. Products classifiable under the provision which contain in excess of 10 percent by dry weight of sugars derived from cane or beet sources and which are not prepared for sale to the retail consumer in the identical form and package in which imported are subject to a quota established by Presidential Proclamations 5294 and 5340. This quota is administered under item 958.18, TSUS, which restricts importations of such products to a total of 84,000 short tons each year commencing on the first day in October. Should these products be prepared by utilizing a sweetener not derived from cane or beet sources they would not be subject to this restriction.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

816487

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D2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 14 1986

REFER TO

CLA-2-07:S:COM:N3:224-1984
816488

Mr. Ellis C. Hall
D. Hauser, Inc.
One World Trade Center
Suite 1535
New York, NY 10048

Dear Mr. Hall:

In your letter dated November 26, 1985, on behalf of your client, Wholesale Supply Co., Inc., you inquired about the dutiable status of a "Fun Sled" from Taiwan.

The "Fun Sled", item number 32685LTT, illustrated in a photograph accompanying your inquiry is a 20 gauge polyvinyl chloride (P.V.C.) sheet shaped in the form of a sled. The item has two side handles and one double front handle. A valve is provided to inflate the vinyl with air. The sled is designed for multi-purpose recreational activities on snow covered surfaces.

The "Fun Sled", item number 32685 LTT, is classifiable under the provision for pneumatic mattresses and other inflatable articles not specially provided for in item 790.3900, Tariff Schedules of the United States Annotated, and dutiable at the rate of 4.2 percent ad valorem in 1985 and 1986.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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D3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

CLA-2-07:S:COM:N3:D-224-2004
816513

Mr. Ned H. Marshak
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, NY 10004

Dear Mr. Marshak:

In your letter of December 11, 1985, on behalf of your client, Amtoy, you requested the dutiable status of a plush toy animal figure produced in Taiwan.

A sample submitted with your inquiry consists of a 24 inch plush stuffed figure identified as "My Pet Monster." This fictional character features a large protruding snout, bulbous eyes, large fang-like teeth and horns that extend from its head. The monster's arms are connected by a simulated link chain made of felt material.

The pronounced fictional or non-earthly features of "My Pet Monster" give it the appearance of an inanimate object as that term is defined in headnote 3 of Schedule 7, Part 5, Subpart E of the tariff schedules.

Accordingly, "My Pet Monster" is classifiable under the provision for stuffed toy figure of inanimate objects, not having a spring mechanism in item 737.47, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 8.3 percent ad valorem.

Articles classifiable under item 737.47, TSUS, which are the product of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

The sample will be available for pick up upon your receipt of this letter.

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

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D4

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
DEC 24 1985

REFER TO

CLA-2-04:S:COM:N1:235-1695
816542

Mr. J. Reynolds, Vice President
John A. Steer Co.
28 South Second Street
Philadelphia, PA 19106

Dear Mr. Reynolds:

In your letter dated December 11, 1985, on behalf of your client Amspec Specialty Chemicals, you inquired about the dutiable status of 2,4 pentanedione from Japan or West Germany.

According to your inquiry pentanedione is also known as acetylacetone or diactylmethane.

Based upon this information, 2,4 pentanedione when produced from non-benzenoid sources is classifiable under the provision for Ketones: other in item 427.64, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem.

2,4 pentanedione when produced from benzenoid sources is classifiable under the provision for benzenoid derived compounds, other in item 407.06, Tariff Schedules of the United States, and dutiable at the rate of 13.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

DS

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN - 9 1986

REFER TO

CLA-2-04:S:COM:N1:238-1696
816544

Mr. Kevin A. Loftus
Border Brokers Inc.
Edmonton, Alberta
Canada T5J 3P4

Dear Mr. Loftus:

In your letter dated December 5, 1985, you inquired about the dutiable status of five bee pollen products from Canada. Your client is Alberta Apiary Products Ltd. of Canada.

Royal Jelly will be imported in 100mg. capsule form. The ingredients are 100 percent pure Royal Jelly.

Pollen/Lecithin will be imported in 250mg. capsule form. The ingredients are bee pollen, safflower oil, lecithin, and honey. The directions recommend taking one to two capsules each day.

Bee Pollen Tablets will be imported in tablet form. The ingredients are 500mg. bee pollen, 10mg. honey, and 5mg silicon dioxide.

Bee Pollen will be imported in 250 gram dose form. The ingredients are 100 percent raw bee pollen granules. The directions indicate if you suffer from allergies, consume 1/8 of a teaspoon once daily and then increase the amount taken slowly.

Honey with pollen and royal jelly added will be imported in an unspecified form. The ingredients are honey, pollen, and royal jelly.

Royal Jelly is classifiable under the provision for any of the products provided for in this subpart when imported in ampoules, capsules, jubes, lozenges, pills, tablets, troches, or similar forms, including powders put up in medicinal doses, in item 440.0000, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem.

Pollen/Lecithin and Bee Pollen Tablets are classifiable under the provision for edible preparations not specially provided for: other, in item 183.0520, Tariff Schedule of the United States, and dutiable at the rate 10 percent ad valorem.

Bee Pollen is classifiable under the provision for vegetable substances, crude, not specially provided for; other, in item 193.2560, Tariff Schedule of the United States, and is free of duty.

D6

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However, your inquiry does not provide enough information for us to give a classification ruling on honey with pollen and royal jelly added. Your request for a classification ruling should include a sample of the product, a list of the ingredients, and information on the use(s) of this product.

With respect to Royal Jelly, Pollen/Lecithin, Bee Pollen Tablets, and Bee Pollen, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

816544

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 21 1986

REFER TO

CLA-2-01:S:COM:N1:229-1697
816546

Mr. R. L. Giesler
Wilbur-Ellis Company
1 Dag Hammarskjold Plaza
New York, NY 10017

Dear Mr. Giesler:

In your letter dated December 11, 1985, you inquired about the dutiable status of Norse Fish Powder from Norway.

Norse Fish Powder is described as "a stable protein concentrate produced from whole fish with nearly all of the water and part of the oil removed." The product is manufactured by first heating the fish for 25 minutes at 70 to 90 degrees, then pressing the fish to produce a presscake of fish and a press liquid. The press liquid contains oil. some soluble proteins, and minerals. After removing the oil, the liquid is concentrated and added back to the presscake. The presscake is dried and then milled to its final powder form.

Norse Fish Powder is produced from any of four fish species. An average chemical composition for each species is provided as follows:

	Herring (percent)	Sprat (Percent)	Blue Whiting (percent)	Capelin (percent)
Protein	75	75	68	71
Fat	10	8	7	11.5
Moisture	6.5	7.5	7	6
Salt	2	1.3	3	1.8
Ash	11.5	10.8	18	10.7

This product is a brown powder with a fish taste and odor. It may be used as a cheap, protein-rich fish flavoring for dried fish soups, in snacks, in tablet form as a food supplement, or in pharmaceuticals. This powder will be imported in 3-layer laminated paper and plastic bags, in which the outer bag is closed by sewing and the inner bag by heat sealing. Each bag is designed to hold 25 kilograms of product. It is assumed that these bags are airtight containers for tariff purposes.

Norse Fish Powder is classifiable under the provision for "fish, prepared or preserved in any manner, not in oil, in airtight containers" in Part 3C of Schedule 1, Tariff Schedules of the United States Annotated (TSUSA). If produced from herring species (that is, from Clupea spratus or Clupea harengus), this product would be classified under the provision

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for other herring in item 112.1200, TSUSA, with duty at the rate of 0.1 percent ad valorem. Fish powder produced from Blue Whiting (Gadus poutassou) of Capelin (Mallotus villosus) is classifiable under the provision for other fish in item 112.3640, TSUSA, with duty at the rate of 6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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D9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 24 1986

REFER TO

CLA-2-01:S:COM:N1:232-1698
816547

Mr. Hayes E. Gahagan
U.S. Development Corporation
8900 Keystone Crossing
Suite 390
Indianapolis, Ind. 46240

Dear Mr. Gahagan:

In your letter dated December 9, 1985, you inquired about the dutiable status of a sweetener product from Canada.

This proposed sweetener product will be manufactured by combining approximately one part cane or beet sugar with three parts of high fructose corn syrup to produce a blended syrup with a moisture content of approximately 25 percent. The water portion of this syrup will be reduced by evaporation resulting in a dry solid mass which will be ground into a fine powder. Each individual granule of that powder will be an intimate blend of the constituent corn syrup solids and cane or beet sugar.

This sweetener product is classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

Products classifiable under item 183.0520, TSUS, which contain over 10 percent by dry weight of cane or beet sugar which are in a dry amorphous form such as a powder are currently subject to an absolute quota as established by Presidential Proclamations 5294 and 5340. This quota is administered under item 958.18, TSUS, which restricts annual worldwide importations of such products to 84,000 short tons commencing on the first day of October each year. Those products classifiable under item 183.0520, TSUS, which contain in excess of 65 percent by dry weight of cane or beet sugar, are currently completely prohibited from entry under the restriction of item 958.15, TSUS, which was established by Presidential Proclamation 5071 of June 28, 1983.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816547

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D11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN - 1986

REFER TO

CLA-2-07:S:COM:N3G:346-2039
816570

Mr. William A. Stevenson
Wolf D. Barth Co., Inc.
721 Chestnut Street
Philadelphia, Pa. 19106-2392

Dear Mr. Stevenson:

In your letter of December 9, 1985, you requested this office to rule on the tariff classification of a number of plastic boots manufactured by Dunlop in England on behalf of your client, Taftco, Inc.

Eight(8) sample boots were submitted with your inquiry in various styles and sizes for men, women, and children. You indicated in your letter that all of these boots, with the exception of Item No. 8840, were of molded PVC and Import Specialist James Sheridan recently received a telephone call from your office advising that you had been notified by Taftco, Inc., that all of the textile linings in these boots were PVC as well.

However, since the linings are a critical factor in the classification of these boots, we submitted four(4) samples to our Customs Laboratory here in New York and were advised of their findings as follows:

Nylon knit linings were found in Styles 8840, 6342, and 6258.

Polyester knit lining was found in Style 6258I.

In line with the above, all eight(8) of the styles submitted are classifiable under the provision for footwear which is over 50% by weight of rubber or plastics; the upper of which is of molded construction; which has soles and uppers of which over 90% of the exterior surface area is rubber or plastics; and which is protective against water, oil, grease, or cold or inclement weather, in item 700.5320, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 37.5 percent ad valorem.

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Please note that in order to be eligible for classification in item 700.5100, TSUSA, dutiable at 7.3 percent, these boots would have to have soles and uppers of which over 90% of the exterior surface area is polyvinyl chloride, and either be unlined, or else, lined with a polyvinyl choride material whether in a sheet or in a fibrous state.

As requested, your samples are being returned under separate cover.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

016570

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D13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 30 1986

REFER TO

CLA-2-07:S:COM:N3H:354-2057
816592

Mr. Jochen M. Witt
Zwicker Knitting Mills
489 Fifth Avenue
New York, NY 10017

Dear Mr. Witt:

Your letter of December 17, 1985 requested this office to rule upon the tariff classification of gloves from Taiwan.

Four pairs of glove/mittens were submitted with your inquiry -- styles 9335, 9336, 9337, and 9338. They are made from 100% acrylic knit fabric. On each of the four styles there is a full length thumb, but the other four fingers are cut off at the knuckles. Style 9338 contains thereon decorative embroidered stitches and applique. There are pouches sewn to each glove/mitten which can be folded over to cover the four exposed fingers. Sewn to the pouches of styles 9336, 9337, and 9338 are pompons. For tariff purposes, styles 9336, 9337, and 9338 are considered ornamented.

Styles 9336, 9337, and 9338 are classifiable under the provision for gloves of man-made fibers, made from pre-existing fabrics, ornamented, in item 704.3215, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 21.7 percent ad valorem.

Style 9335 is classifiable under the provision for gloves of man-made fibers, made from pre-existing fabrics, in item 704.8525, TSUSA. The rate of duty is 15 cents per pound, plus 19.7 percent ad valorem.

The subject glove/mittens all fall within textile category 631-W. As products of Taiwan, this merchandise is subject to quota restrctions and visa requirements.

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Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816592

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13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

CLA-2-04:S:COM:N1:240-1708
816611

Mr. A.N. Deringer
A.N. Deringer, Inc.
Rd. #1 - Box W 432
Alexandria Bay, New York 13607-9798

Dear Mr. Deringer:

In your letter dated December 12, 1985, you inquired on behalf of Insul/Crete Co., Inc. of Kingston, Ontario, Canada about the dutiable status of an Insul/Crete Exterior Insulation System from Canada.

You submitted descriptive literature and samples of some of the products which comprise the System.

The modifier for cement has been analyzed by our laboratory as an aqueous suspension of polybutyl acrylate, a non-benzenoid acrylic acid resin. This resin is classifiable under the provision for synthetic plastics material, acrylic and methacrylic acid resins, other, in item 445.0520, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 7.1 percent ad valorem.

The fiberglass reinforcing mesh is an open, leno woven textile fabric of man-made glass fiber yarns. The mesh is approximately 1/4 inch square, and has been lightly coated with an acrylic plastic substance which helps stabilize the mesh, protects the glass yarns from the alkalinity in the cement, and imparts a noticeable stiffness to the fabric. The fiberglass reinforcing mesh is classifiable under the provision for woven fabrics, of man-made fibers, coated with less than 70 percent by weight of rubber or plastics materials, in item 355.8220, TSUSA, dutiable at the rate of 2 cents a pound, plus 9.6 percent ad valorem.

The chopped fiberglass strands, 1/2 inch long, are added to the base coat material, sand and cement to impart strength to the base coat. The strands are treated for protection against alkalinity. These fiberglass strands are classifiable under the provision for glass in bulk, item 540.7100, TSUSA, dutiable at the rate of 6.8 percent ad valorem.

The zink (zinc) control joints are used in construction of the exterior insulation system employing stucco. The joints are 10 feet in length, are placed in intervals of no more than 20 lineal feet, and are used to prevent cracking in the panel that is normally associated with stucco. The zinc joints are classifiable as articles of zinc, not coated or plated with precious metal, in item 657.8000, TSUSA, dutiable at the rate of 6.2 percent ad valorem.

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The nylon or other plastic screws trade-named Fastacks, as well as individual plastic washers, are classifiable under the provision for articles not specially provided for, of rubber or plastics, other, in item 774.5595, TSUSA. The rate of duty is 5.7 percent ad valorem.

The rigid vinyl trim beads, in lengths of ten feet, and having slots, are classifiable under the provision for articles not specially provided for, of rubber or plastics, other, in item 774.5595, TSUSA, dutiable at the rate of 5.7 percent ad valorem. If this trim does not have slots, it is classifiable under the provision for film, strips....and other profile shapes...of plastics ...other, other, in item 771.5500, TSUSA. The rate of duty for this unslotted trim is 6.3 percent ad valorem.

The articles trade-named Fas'ners are nylon or other plastic expandable anchor shells with threaded nails which are used to permanently secure Styrofoam Rigid Insulation Board to substrates. The nails have slotted heads and have unthreaded, sharply pointed, tapered ends.

The Fas'ners, consisting of the plastic expandable anchor shell and threaded nail, constitute an entirety for tariff purposes when imported together, and are classifiable according to the component material of chief value. Thus, if the Fas'ners are in chief value of iron or steel, they are classifiable under the provision for other articles of iron or steel, not coated or plated with precious metal, in item 657.2590, TSUSA, dutiable at the rate of 6.2 percent ad valorem. If the Fas'ners are in chief value of the plastic, they are classifiable under the provision for articles not specially provided for, of rubber or plastics, other, in item 774.5595, TSUSA, dutiable at the rate of 5.7 percent ad valorem.

Regarding the Flex Float finish material, said to be a synthetic water based acrylic, and the Colour Choice Sealer, stated to be a generic acrylic enamel, your inquiry does not provide sufficient information for us to issue a ruling for these products. Requests for rulings must be submitted in accordance with Part 177, Customs Regulations. Therefore, please submit the chemical name of each product, and the percentage of each substance comprising each product. If samples of each are available, please send them to this office.

With the exception of the Flex Flat finish material and the Colour Choice Sealer, this is a ruling issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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816611

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO
CLA-2-04:S:COM:N1:235-1716
816653

Ms. H. Hessam
Goemar International Corporation
2856 Thornridge Drive
Atlanta, Georgia 30340

Dear Ms. Hessam:

In your letter dated December 19, 1985, you inquired about the dutiable status of a seaweed extract from Denmark.

Your letter requests that we review our ruling concerning your seaweed extract type GYFA 15. Specifically you believe that since the mixture containing polypeptides occurs naturally, that the product should not be classified as a mixture.

Headnote 3 of Schedule 4 of the Tariff Schedules of the United States, "The term mixtures as used in this schedule means substances consisting of two or more ingredients, whether occuring as such in nature." Since we have followed the headnote as previously stated we believe the ruling to be correct.

Seaweed extract GYFA 15 is classifiable under the provision for mixtures of two or more organic compounds in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem, but not less than the highest rate applicable to any component compound. The highest rate applicable is for polypeptides classifiable in item 435.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

E4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 28 1986

REFER TO

CLA-2-07:S:COM:N3G:341-2105
816669

Mr. J.A. Beck
Ringo Manufacturing Ltd.
23-7503 35th Street S.E.
Calgary, Alberta T2C 1V3
Canada

Dear Mr. Beck:

In your letter dated December 4, 1985, which was received in this office on December 26, 1985, you inquired about the dutiable status of audio cassette carrying cases from Canada. These cases were manufactured for Hartzell Manufacturing Inc., The Dynasound Organizer Division, of St. Paul, Minnesota.

Two sample cases, models 724 and VS24, were provided with the request. The attache styled cases are designed to carry audio cassette tapes and are constructed from leather-like padded vinyl over rigid wall panels. Model 724 has a luggage valance frame, two metal snap locks, bottom stud feet, and an interior plastic insert designed to organize 24 boxed tapes. Model VS24 consists of two end panels riveted to a larger one-piece panel which, when folded, creates the top, bottom, and two side panels. One metal snap closure secures the case which is equipped with an interior plastic insert capable of organizing 24 boxed or 51 unboxed cassettes.

The term "luggage", as used in the Tariff Schedules of the United States (TSUS), includes containers or cases which are designed to hold specific items and which are designed to be carried with the person. The subject articles are containers designed to both hold specific items, audio cassette tapes, and to be carried with the person. Accordingly, they are classifiable in the luggage provisions.

The models 724 and VS24 cassette carrying cases are classifiable under the provision for luggage, of other material, in item 706.6245, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 20 percent ad valorem.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

816669

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

EC

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

CLA-2-04:S:COM:N1:235-1720
816679

Mr. Luc C. Pamerleau
USA Marketing Division
Canadian Department of External Affairs
125 Sussex Drive
Lester B. Pearson Building
6th Floor, Tower "A"
Ottawa, Ontario, Canada K1A 0G2

Dear Mr. Pamerleau:

In your letter dated December 17, 1985, on behalf of Foxhead International, you inquired about the dutiable status of Extend-a-Wear from Canada.

According to your letter the product is aluminum sulfate and is supposed to extend wearing life of pantyhose.

Aluminum sulfate is classifiable under the provision for aluminum sulfate in item 417.16, Tariff Schedules of the United States, and dutiable at the rate of 0.2 percent ad valorem.

This ruling is being issued under the provision of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E7

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 28 1986

REFER TO

CLA-2-03:S:COM:N3G-345-2
816711

Mr. Joseph L. Harmon
7150 Penguin Place
Falls Church, VA 22043

Dear Mr. Harmon:

In your letter of December 30, 1985, you requested the tariff classification of a luffa scrubber from Guatemala.

You have submitted a sample of a luffa scrubber. It is an oval-shaped scrubber approximately 12½ inches long by 5 inches wide, with woven textile loops at each end for grasping. It has the luffa material on one side and a woven textile backing on the other side. The fiber content of the textile backing is not identified.

When in chief value of the luffa, the scrubber would be classifiable under the provision for Articles not specially provided for, of unspun fibrous vegetable material, other, in item 222.6400, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 3 percent ad valorem.

When in chief value of the woven textile material, and such material is cotton, the scrubber would be classifiable under the provision for Articles not specially provided for, of cotton, other in item 386.5300,(TSUSA), and dutiable at the rate of 8.2 percent ad valorem.

When in chief value of the woven textile material, and such material is man-made fibers, the scrubber would be classifiable under the provision for Articles not specially provided for, a man-made fibers, other, in item 389.6270, TSUSA, and dutiable at the rate of 4 cents per pound plus 10 percent ad valorem.

Articles classifiable under item 222.6400, TSUSA, which are the products of Guatemala are entitled to duty free treatment under the Caribbean Basin Economic Recovery Act (CBERA), upon compliance with all applicable regulations.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

116718

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

CLA-2-07:S:COM:N3C:346-8
816717

Mr. E. Ruiz, Jr.
Air Sea Customs Service, Inc.
1955 N.W. 72nd Avenue
Miami, Fla. 33126

Dear Mr. Ruiz:

In your letter of December 18, 1985, you requested this office to rule on the tariff classification of a moon boot, product of Italy, on behalf of Universe Shoe of Florida.

Inspection of the sample submitted with your inquiry, Style KB668395, indicates that this boot, which is approximately 11 inches high, has a 3 color non-molded foam backed plastic shaft double stitched to the top of a 2 color unit molded rubber/plastic bottom. This boot also has a removable foam liner that has a tricot fabric lining on the inside and a transparent plastic coating on the outside. This liner would be treated as an entirety if imported with the boot and is dutiable at the same rate as the boot.

It is noted that the unit molded light gray rubber/plastic bottom has a contrasting dark gray band completely encircling this bottom which is applied at the sole and overlaps the upper. According to trade information, contrasting color bands of this type are always injected in a separate step from the molding of the shell bottom. It is our opinion that this bottom possesses a foxing-like band because the band is separately molded, is at the sole, overlaps the upper, and resembles a foxing.

In view of the foregoing, a moon boot made with the sample bottom is classifiable under the provision for other footwear which is over 50% by weight of rubber or plastics; which has a foxing-like band applied or molded at the sole and overlapping the upper; and which is protective against water, oil, grease, or cold or inclement weather, in item 700.5700, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 37.5 percent ad valorem.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816717

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN [illegible] 1986

REFER TO

CLA-2-04:S:COM:N1:239-6
816730

Mr. E. Otrompke
W.R. Filbin and Co. Inc.
2436 Bagley Avenue
Detroit, MI 48216

Dear Mr. Otrompke:

In your letter of December 27, 1985, written on behalf of your client, Colortech Inc., you requested the tariff status of four color concentrates from Canada. Color concentrates are used to color plastic material.

Each of the color concentrates contains a linear low density polyethylene resin, calcium carbonate and titanium dioxide. In addition one contains lead chromate yellow and phthalocyanine blue; another contains phthalocyanine blue and an organic yellow pigment; and two contain an organic yellow pigment.

These color concentrates are classified under the provision for other benzenoid color lakes and toners in item 410.3400, Tariff Schedules of the United States Annotated. The rate of duty is 15 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JK Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
FEB 20 1986

REFER TO

CLA-2-01:S:COM:N1:232-13
816746

Mr. Terrance W. Connolly
Generichem Corporation
85 Main Street
P.O. Box J
Little Falls, N.J. 07424

Dear Mr. Connolly:

In your letter dated November 21, 1985, you inquired about the dutiable status of Comprima compressible sugar from the Netherlands. You have suggested consideration under the provision for edible preparations, not specially provided for, in item 183.05 of the Tariff Schedules.

The substance that you describe as compressible sugar has two potential formulations. The first variety will have a composition of 97 percent cane or beet sugar and 3 percent maltodextrin or starchdextrine. The other form of this substance will contain 85 percent cane or beet sugar with the balance made up of either maltodextrin or starchdextrine. The uses intended for this product are either as confectionery, after the addition of flavoring, coloring, and other ingredients, or as an ingredient in a pharmaceutical after the addition of an appropriate medicinal. The completed substance will then be compressed into the form of a pill or tablet.

Both forms of Comprima are classifiable under the provision for edible preparations, not specially provided for, in item 183.0520, Tariff Schedules of the United States, and dutiable at the rate of ten percent ad valorem.

Articles classifiable under item 183.0520, TSUS, which contain over 65 percent by dry weight of sugars derived from cane or beet sources, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and which are not marketed to the retail consumer in the identical form and package in which imported were placed under quota restraints by Presidential Proclamation 5071. Since the current quota quantity as expressed in item 958.15 of the Tariff Schedules is "none" for products of this type, both forms of Comprima are effectively prohibited from entry. A copy of Presidential Proclamation 5071 is enclosed for your information.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816746

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.
JAN 1986

REFER TO
CLA-2-07:S:COM:N3:D-225-32
816754

Ms. Deborah Ambrose
Eckstam, Fitzsimmons & Associates, Inc.
14276 23rd Avenue North
Plymouth, MN 55441

Dear Ms. Ambrose:

In your letter dated December 19, 1985, which was received in this office on January 7, 1986, you inquired about the dutiable status of soft bathtub foam blocks from Japan.

Four samples were submitted with your inquiry. Two are triangular shapes measuring approximately 2-3/16 inches by 1-9/16 inches by 1-1/16 inches, and two are rectangular shapes measuring approximately 3-1/8 inches by 1-5/8 inches by 3/4 inch. These lightweight foam plastic blocks float without absorbing water. When wet, they stick together for hours. The blocks are designed for construction play, and are capable of being combined in a variety of structural configurations.

These bathtub blocks are classifiable under the provision for toy building blocks, bricks, and shapes in item 737.5500, Tariff Schedules of the United States, and dutiable at the rate of 6.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JAN 21 1986

REFER TO
CLA-2-07:S:COM:N3G:341-2137
816817

Naseeb Grocers
7012 West Gulf Bank
Houston, TX 77040

Dear Sirs:

In your letter dated December 20, 1985, you inquired about the dutiable status of a sisal tote bag from Kenya.

The sample submitted is a tote bag manufactured of woven sisal twine. It is unlined and has double shoulder straps of leather.

The tariff classification of this tote bag is predicated upon the component material in chief value at the point just prior to final assembly in the article. In this instance the final assembly is when the sisal bag body is joined with the leather straps. The two competing materials are the sisal and the leather. Based on examination of the sample, it appears to be in chief value of the sisal material.

When in chief value of sisal, the tote bag is classifiable under the provision for handbags, of textile materials, of vegetable fibers and not of pile and tufted constructed in item 706.3840, Tariff Schedules of the United States, and dutiable at the rate of 6.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 27 1986

REFER TO

CLA-2-01:S:COM:N1:228-39
816863

Mr. Robert Glenn White
Stein, Shostak, Shostak & O'Hara
3580 Wilshire Boulevard
Suite 1240
Los Angeles, CA 90010-2597

Dear Mr. White:

In your letters dated January 14, 1986 and March 11, 1986, on behalf of Transpacific Food Sales, Inc., you inquired about the dutiable status of frozen, uncooked croissants from New Zealand.

A breakdown by weight of all ingredients accompanied your March 11 letter. The imported articles will be frozen, unbaked croissants, made from a dough composed of flour, water, butter, sugar, yeast, salt, and other ingredients. The butterfat content will be 19 percent by weight. The products will be imported in cardboard cases containing 15 or 25 dozen croissants, depending on their size, and will be sold to distributors who in turn sell to commercial accounts such as hotels, restaurants, and deli and sandwich-type businesses. These accounts will fully cook the croissants when served to their customers.

The unbaked, frozen croissants are classifiable under the provision for edible preparations not specially provided for... containing over 5.5 percent by weight of butterfat and not packaged for retail sale in item 182.9200, Tariff Schedules of the United States Annotated, and dutiable at the rate of 16.5 percent ad valorem. They will not be subject to the quota restrictions in item 950.23, TSUS.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAR 04 1986

REFER TO
CLA-2-01:S:COM:N1:229-41
816886

Mr. Leonard Satz
Savant Customs Brokers & Freight Forwarders, Inc.
11 Broadway, Suite 951
New York, NY 10004

Dear Mr. Satz:

In your letter dated January 10, 1986, on behalf of The Tupman Thurlow Co., Inc., you inquired about the dutiable status of processed lamb from New Zealand.

The product you described consists of frozen boneless lamb which will first be trimmed of fat and cut into chunks (cubes of no more than one-half inch size) or flakes. These chunks or flakes will then be compressed into specified sizes or shapes, such as, for instance, into lamb roasts. No seasonings will be added, nor will the product be cooked.

This processed lamb meat, consisting of compressed chunks or flakes, is classifiable under the provision for "other meats and edible meat offal, prepared or preserved" in Part 2B of Schedule 1, Tariff Schedules of the United States Annotated (TSUSA). If valued not over 30 cents per pound, this product is classifiable in item 107.7000, TSUSA, and dutiable at the rate of 0.7 cents per pound. If valued over 30 cents per pound, the processed lamb is classifiable in item 107.7600, TSUSA, and free of duty.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
FEB 10 1986

REFER TO

CLA-2-06:S:COM:N1B:112-93
816930

Mr. Robert Hornyan
Arizona Customs Brokers
2526 E. University Dr., Suite 465
Phoenix, Arizona 85034

Dear Mr. Hornyan:

In your letter dated January 17, 1986, on behalf of Creative Images, Inc., you inquired about the dutiable status of a battery operated "Flashing Eye Mask" from Hong Kong.

The battery operated (not included) "Flashing Eye Mask" is comprised of a plastic skeleton skull having two red lamps for eyes, electrical wires extending from each eye to a remote plastic case which will house a 9 volt battery and a switch which will make the eyes flash on and off, and a textile hood which is permanently affixed to the sides and top of the skull. The mask may be used at masquerade parties, conventions and other functions which relate to the use of a mask.

The "Flashing Eye Mask" is classifiable under the provision for electrical articles and electrical parts of articles, not specially provided for: Other: Other... in item 688.4280, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

FEB 24 1986

REFER TO

CLA-2-01:S:COM:N2:228-54
816944

Mr. Maurice A. Marchand
A. Lassonde & Fils Inc.
170.5 Teme Avenue
Rougemont, Quebec, Canada JOL 1 MO

Dear Mr. Marchand:

In your letter dated January 14, 1986, you inquired about the dutiable status of fondue kits and fondue dips from Canada.

The fondue kits will be marketed as four distinct varieties; Chinese, Oriental, Chicken and Seafood. These kits are composed of:

1. A 27 ounce can of fondue bouillon which is composed mostly of water, dehydrated vegetables, spices and flavorings. The bouillon is flavored to impart the distinct tastes of the aforementioned varieties of fondues.

2. Three 125 gram size jars of distinct types of fondue sauces. These types are, Bourguignonne, Barbeque, Oriental, Chinese, Mexican, Tarragon and Seafood. These sauces are packed three to a kit and coordinated by flavor to correspond to the particular variety of fondue.

Along with the fondue kits are individually marketed fondue sauces. These sauces will be marketed in 8.8 ounce jars and are the idential varieties to those sauces packaged in the kits.

Instructions for use of the kits indicate that the bouillon portion is to be placed in a fondue pot unchanged, heated sufficiently so as to render it suitable for use as the cooking medium. Cut pieces of meat, poultry, fish or vegetables are to be cooked in the bouillon and then dipped in the appropriate ready to use sauce and eaten.

It should be noted, that although called a bouillon, this product is in no way intended for use or so used as soup. It is a cooking medium for other foods for the purpose of preparing food and imparting a particular flavor to these foods. Both the 125 gram and 8.8 ounce size jars of various fondue sauces are complete products and are so used as a sauce to enhance flavor and are not capable of being eaten by themselves as a foodstuff.

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The fondue bouillon is classifiable under the provision for edible preparations in item 183.05, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem.

The fondue sauces are classifiable under the provision for other sauces in item 182.46, Tariff Schedules of the United States, and dutiable at the rate of 7.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 18 1986

REFER TO

CLA-2-07:S:COM:N3D:223
816967

Mr. Seymour Rothstein
Allegretti, Newitt, Witcoff, & McAndrews, Ltd.
125 South Wacker Drive
Chicago, IL 60606

Dear Mr. Rothstein:

In your letter dated January 20, 1986, on behalf of Tsuyama Manufacturing Company, Ltd., of Osaka Japan, you inquired about the dutiable status of the Cateye Ergociser, Model EC-1000, from Japan. Descriptive literature was submitted with your request.

Model EC-1000 is a stationary exerciser with the flywheel enclosed within what appears to be a metal housing. In the front and rear of this housing, bars with leveling feet extend on both sides. The square handlebar is on top of an adjustable central post to fit the height of the user. The seat post with ergonomic saddle is likewise adjustable. An eddy current brake control, to be powered by household current (the consumption is rated at 40 watts), applies a predetermined loading on the flywheel within the housing. The pedals, which extend on either side of this unit, have permanently affixed straps.

In the center of the handlebars, a computer is mounted on the handlebar post. As you describe it, this computer performs limited functions. The computer is programmed with a test mode for the user's physical fitness level that yields 5 ratings from excellent to poor. The rating result can be entered into an individual's program either under an "Automatic" or "Manual" exercise mode. This unit can store information for up to 9 users which can be retrieved under the "Automatic" mode (2 AA batteries are used to maintain this data). Additional or non-regular users would be employing the "Manual" mode. Other data to be entered are the user's age, weight, sex, and personal code number. When the optical earlobe sensor is plugged in, this unit also provides readouts on pulse rate, energy consumption, elapsed time, current workload, cadence, and work rate (watts), maximum oxygen uptake, maximum physical work capacity, and fitness level. This data is recorded every 30 seconds and printed out on thermal paper by the unit's integral printer. An automatic safety alarm determined by the entered age sounds when the upper limit pulse rate is reached. This upper limit alarm can also be set manually.

In a photograph of the computer in your brochure, one of the readouts is labeled "calorie." This readout is not explained in either your letter or your brochure. Your letter also mentions a

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pretest mode which is not further explained.

Your brochure advertises the EC-1000 in the following manner:

> While watching TV, or listening to music, you can exercise with please, at ease, effectively, and aerobically.
>
> Since the functions of the heart and lungs may be enhanced without physical overload, it may be shared by all members of a family, from young people to grandparents. (emphasis added).

Accordingly, the EC-1000 does not appear to be chiefly used professionally by medical practitioners.

The Cateye Ergociser, Model EC-1000, is classifiable under the provision for sport, gymnastic, athletic, or playground equipment;... not specially provided for, in item 735.2052, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 5.04 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

FEB 27 1986

REFER TO
CLA-2-01:S:COM:N1:231-63
816998

Mr. B. T. Hardcastle
American Oyster Incorporated
950 Spitzer Building
Toledo, Ohio 43604

Dear Mr. Hardcastle:

In your letter dated January 22, 1986, you inquired about the dutiable status of Pleurotus Ostreatus Mushroom from Mexico.

It is our understanding that this item is a mushroom kit composed of compost (ground corn cob and straw) and mushroom spawn (pleurotus ostreatus mycelium) that is formed into 28 pound blocks. These blocks are used for the propagation of mushrooms.

This product is classifiable under the provision for mushroom spawn in item 126.59, Tariff Schedules of the United States, and dutiable at the rate of 1 cent per pound.

Your inquiry asks what the duty costs would be if all the ingredients were exported from the United States to Mexico, manufactured into these blocks, and shipped back to the United States. Questions regarding American Goods shipped abroad and returned should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, N.W., Washington, D.C. 20229-0001.

Shipments of these items are subject to the United States Department of Agricultures regulations. Questions regarding these regulations should be addressed to the U.S. Department of Agriculture, A.P H.I.S., Federal Building, Room 838, Hyattsville, Md. 20782.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 05 1986

REFER TO

CLA-2-07:S:COM:N3H:354
817017

Mr. Charles Marcus
Smart Set Gloves, LTD.
6 East 32nd Street
New York, NY 10016

Dear Mr. Marcus:

Your letter of January 9, 1986 received in this office on January 29, 1986, requested this office to rule upon the tariff classification of gloves from Taiwan. Four samples were submitted with your request.

Style 954/1061 and 955/1070 are ladies seamless dress gloves of acrylic fibers with a vinyl palm and back.

Style 956/1062 is a ladies seamless dress glove of acrylic fibers, with a double cuff design and a vinyl palm and back.

Style 973/1007 is a ladies seamless dress glove of acrylic fibers with a vinyl palm and back. Three rows of embroidered stitching which forms ridges is featured on the vinyl back. For tariff purposes style 973/1007 is considered ornamented.

A component material breakdown for all items submitted, indicates that the vinyl portion is in chief value.

The four samples were analyzed by our Customs Laboratory and reveal the following acrylic weight and vinyl square yards per dozen pairs.

	Textile	Vinyl
Style 954 -	.96 lbs per dozen pairs	.72 sq. yds. per dozen pairs
Style 955 -	1.20 lbs per dozen pairs	.72 sq. yds. per dozen pairs
Style 956 -	1.20 lbs per dozen pairs	.72 sq. yds. per dozen pairs
Style 973 -	1.20 lbs per dozen pairs	.72 sq. yds. per dozen pairs

Based on the laboratory analysis and the cost figures submitted, the gloves are in chief value of the textile portion.

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REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK

Styles 954/1061, 955/1070, and 956/1062 are classifiable under the provision for gloves, of man-made fibers, knit, in item 704.8550, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 15 cents per pound plus 19.7 percent ad valorem.

Style 973/1007 is classifiable under the provision for gloves, of man-made fibers, ornamented, in item 704.3240, TSUSA. The rate of duty is 21.7 percent ad valorem.

Gloves of man-made fibers fall within textile category designation 631-O. As products of Taiwan this merchandise is subject to visa requirements based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

810017

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F12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAR 18 1986

REFER TO
CLA-2-07:S:COM:N3G:346
817030

Mr. Brian Solomon
K.C. Burdette Company
45 John Street, Suite 801
New York, NY 10038

Dear Mr. Solomon:

In your letter of January 27, 1986, you requested this office to rule on the tariff-classification of a beach sandal, product of Taiwan, on behalf of your client, Mirtex Trading Corporation.

Examination of the sample submitted with your inquiry, Stock No. CS-3531, indicates that this is a Y-type thong sandal with an upper made of folded polypropylene strips and a 2-color EVA wedge type bottom. When a cutting of one of the polypropylene strips making up the upper was unfolded and uncrimped, it was found that this strip was of non-fibrillated construction and was over 1 inch in width so that, for Customs purposes, it is considered a plastic surface.

Therefore, this sample, Stock No. CS-3531, is classifiable under the provision for footwear which is over 50% by weight of rubber or plastics; having uppers of which over 90% of the exterior surface area is rubber or plastics; and which does not have a foxing or foxing-like band applied or molded at the sole and overlapping the upper, in item 700.5670, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

FEB 24 1986

REFER TO

CLA-2-04:S:COM:N1:236-79
817064

Mr. Elchanan Frankenthal
U&I Services, Inc.
P.O. Box 636
Tallman, NY 10982

Dear Mr. Frankenthal:

In your letter dated January 9, 1986, you inquired about the dutiable status of a "High Protein Modified Dairy Blend" from Israel.

The importer advised that "High Protein Modified Dairy Blend" is a mixture of 75 percent casein and 5 percent ultra filtrated whey protein, (albumin). It is assumed that the casein is in chief value.

"High Protein Modified Dairy Blend" in chief value of casein is classifiable under the provision for casein and mixtures in chief value thereof in item 493.17, Tariff Schedules of the United States, (TSUS), and dutiable at the rate of 0.2 cent per pound.

Articles classifiable under item 493.17,(TSUS), which are the products of Israel are entitled to duty free treatment under the Generalized System of Preferences (GSP) or the U.S. - Israel Free Trade Area Implementation Act of 1985 (US/Israel FTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 11 1986

REFER TO
CLA-2-01:S:COM:N1:229-82
817073

Mr. Zenon Eliades
Quality Daries, Ltd.
141 Moneymore Road
Cookstown, Co. Tyrone, No. Ireland
Northern Ireland

Dear Mr. Eliades:

Your letter of January 11, 1986 concerns the dutiable status of Feta cheese made from cow's milk and Feta cheese made from a blend of cow's milk and sheep's milk from Northern Ireland.

Feta cheese made from cow's milk and Feta cheese made from a blend of cow's milk and sheep's milk both are classifiable under the provision for "other cheeses, and substitutes for cheese" in Part 4C of Schedule 1, Tariff Schedules of the United States Annotated (TSUSA). If valued not over 25 cents per pound, these cheeses are classifiable in item 117.7555, TSUSA, and dutiable at the rate of 5 cents per pound. If valued over 25 cents per pound, these cheeses are classifiable in item 117.8855, TSUSA, and dutiable at the rate of 10 percent ad valorem.

Cheese which is classifiable in items 117.7555 or 117.8855 is subject to quota quantity restrictions listed in item 950.10D in Part 3 of the Appendix to the Tariff Schedules. Additionally, an import license, issued to the importer by the United States Department of Agriculture, would be required at the time of entry of such merchandise into the United States.

Inquiries regarding licensing requirements and other U.S.D.A. regulations or restrictions may be addressed to the following office:

Head, Dairy and Import Group
Dairy, Livestock and Poultry Division
Foreign Agricultural Service
U.S. Department of Agriculture
Washington, D.C. 20250

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817073

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 20 1986

REFER TO
CLA-2-07:S:COM:N3G-346
817122

Mr. Michael R. Spano
Candies/El Greco, Inc.
2 Harbor Park Drive
Port Washington, N.Y. 11050-4678

Dear Mr. Spano:

In your letter of December 27, 1985, you requested this office to rule on the tariff classification of a woman's boot from Korea.

Inspection of the sample submitted with your inquiry, Style No. EG1801, indicates that this is a woman's all plastic boot, approximately 5-1/4 inches high, with a zipper closure at the front, a white vinyl mudguard and heel counter, and a unit molded rubber/plastic shell sole which is cemented to the upper.

We note that the shell sole presently overlaps the upper by more than 1/4 inch and that you propose to modify this bottom so that the overlap will be less than 1/4 inch. However, the quilted upper on this boot extends all the way down and turns under at the top of the outsole. The upper, in turn, is also overlapped by the stitched on mudguard which extends from the top of the outsole on to the upper and since this mudguard substantially encircles the entire boot, we would consider it a foxing-like band.

This boot would not be considered waterproof because of the stitched upper and it would not qualify as a cold weather boot since the foam insulation is not thick enough for it to be eligible for classification as protective footwear in item 700.5700, Tariff Schedules of the United States Annotated (TSUSA).

Therefore, Style EG1801 is classifiable under the provision for footwear which is over 50% by weight of rubber or plastic; which has a foxing-like band, almost wholly of rubber or plastic, applied or molded at the sole and overlapping the upper; which is not protective against water, oil, or cold or inclement weather; and which you indicate is valued for Customs purposes over $6.50 but not over $12.00 per pair, in item 700.6900, TSUSA, and dutiable at the rate of 20 percent ad valorem, plus 90 cents per pair.

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MAR 20 1986

The sample swatches of "Nappa P.U." and "PVC Nylon" would both be considered a plastic surface. However, classification of a boot using either of these materials would depend on the actual construction of the boot.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

817122

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAR 05 1986

REFER TO
CLA-2-01:S:COM:N1:232-92
817125

Mr. Ignacio Cortes
Nutri-Caribe, Inc.
GPO Box 853
San Juan, Puerto Rico 00936

Dear Mr. Cortes:

In your letter dated January 29, 1986, you inquired about the dutiable status of a cocoa mix for dairy products from the Dominican Republic.

The cocoa mix will consist of 93 percent cocoa powder, six percent sugar, nine-tenths percent lecithin, and one-tenth percent vanillin.

A product with this composition is classifiable under the provision for cocoa, sweetened, in item 156.45, Tariff Schedules of the United States, and is free of duty.

Products classifiable in item 156.45, TSUS, which contain 10 percent or less by dry weight of sugars derived from sugar cane or sugar beets, are not presently subject to any import quotas or restrictions.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 1 . 1986

REFER TO

CLA-2-07:S:COM:N3:D-224
817141

Mr. Mark S. Zolno
Burdett, Bowles & Radzius, Ltd.
333 West Wacker Drive
Suite 1900
Chicago, IL 60606-1218

Dear Mr. Zolno:

In your letter of February 4, 1986, on behalf of your client, Perseco, Inc., you requested the tariff classification of plastic toy animal figures produced in China.

Samples submitted with your inquiry consist of hard plastic multicolored figures molded into shapes depicting various toy animate and inanimate objects ranging in height from two to three inches. They include figures of a boy and girl named "Fern" and "Link," dinosaurs labelled "Wink," "Bones," "Dina" and "Tiny," a horse named "Kobby" and a monster named "Spell." These figures constitute a line identified as "Tinasours."

A second line of merchandise is called "Runaway Robots" which consists of robot creatures mounted on track-like devices. The articles, which include depictions of a lizard, skull, snake, baboon, bird and Kung Fu man, are propelled by wheels operated by a wound coil spring located inside the track-like base.

It is the opinion of this office that the boy and girl figures are classifiable in item 737.24, Tariff Schedules of the United States (TSUS), under the provision for other dolls and dutiable at the rate of 12.7 percent ad valorem.

The dinosaur figures are classifiable under the provision for other toy figures of animate objects, not stuffed and not having a spring mechanism, in item 737.40, TSUS, dutiable at the rate of 8.3 percent ad valorem.

Merchandise classifiable in tariff items 737.24 and 747.40, TSUS, if valued not over 5 cents per unit, is also eligible for treatment within the purview of tariff item 912.30, TSUS, which provides for the temporary suspension of duty for articles entered on or before December 31, 1986.

The alien figure called "Spell" is classifiable under the provision for other toy figures of inanimate objects, not having a spring mechanism in item 737.49, TSUS, dutiable at the rate of 8.3

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percent ad valorem.

The remaining sample, "Baboon," along with the other figures comprising the "Runaway Robot" series, is classifiable under the provision for toys, not specially provided for, having a spring mechanism in item 737.80, TSUS, dutiable at the rate of 10.5 percent ad valorem.

It is to be noted that while several of the samples carry the registered trademark of the McDonald's Corporation, the importer, Perseco, is an authorized importer and distributor of merchandise bearing that mark.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 21 1986

REFER TO

CLA-2-04:S:COM:N1:238-104
817200

Ms. Pat Johnson
P&J Associates, Inc.
1055 West Baseline #2020
Mesa, AZ 85202

Dear Ms. Johnson:

In your letter dated February 3, 1986, you inquired about the dutiable status of "Safe-T-Etch" from Canada.

"Safe-T-Etch", a clear liquid, is an aqueous mixture of hydrofluoric acid, a benzenoid non-ionic surfactant and water. The label indicates that the product is used to etch tub and porcelain shower floors to make them slip resistant.

"Safe-T-Etch" is classifiable under the provision for benzenoid mixtures in item 413.5100, Tariff Schedules of the United States Annotated, and dutiable at the rate of 11.9 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a rate higher than 11.9 percent.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telephone number (800) 424-9085.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 20 1986

REFER TO

CLA-2-04:S:COM:N2:240-125
817252

Mr. C. F. McFeeters Jr.
A.N. Deringer, Inc.
Suite 1504
40 Rector Street
New York, N.Y. 10006

Dear Mr. McFeeters:

In your letter dated February 12, 1986, on behalf of Refined Sugars, Inc., you inquired about the dutiable status of Talin protein produced in the United Kingdom.

The literature submitted with your ruling request indicates that this product is a natural sweetener derived from plant matter. Your letter indicates that plant material from Africa is shipped to the United Kingdom where the Talin protein is produced from this material. You also state that the Talin may be imported in pure form, gum arabic blends, maltodextrin blends and mannitol.

Pure Talin is classifiable under the provision for flavoring extracts, and fruit flavors, essences, esters, and oils, all the foregoing whether or not containing ethyl alcohol: not containing alcohol: other in item 450.2040, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 6.5 percent ad valorem..

Talin in maltodextrin blends and in mannitol is classifiable under the provision for edible preparations not specially provided for: other: other: other in item 183.0520, TSUSA, and is dutiable at the rate of 10 percent ad valorem.

However, your inquiry does not provide sufficient information to enable us to issue a tariff classification ruling on Talin in gum arabic blends. Your request for a ruling should include a description of the manufacturing process by which the gum is produced. Please indicate whether the gum has been manufactured to specifications for a particular use, and if so, please state what further processing will be performed after importation to achieve this result.

Based upon the information you submitted, Talin in gum arabic blends would probably be classifiable under the provision for edible preparations not specially provided for: other: other: other: other in item 183.0520, TSUSA with duty at the rate of 10 percent ad valorem.

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There are no quotas which are applicable to this merchandise at the present time.

Since the African raw plant material is processed into Talin protein in the United Kingdom (thereby being transformed into a new product), it is our opinion that the country of origin of the Talin products is the United Kingdom.

Regarding the tariff classification of pure Talin protein, Talin in maltodextrin blends and Talin in mannitol, this is a ruling letter issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Regarding the tariff classification of Talin in gum arabic blends and regarding the issue of country of origin, this in an information letter issued under the provisions of Section 177.1(d)(2)[19 C.F.R. 177.1(d)(2)] of the Customs Regulations.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Products of this type may be subject to the regulations of the Food and Drug Administration (FDA). Questions regarding FDA requirements may be addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443-1594.

If you require further assistance regarding the requirements of Part 177, Customs Regulations, please contact Mr. Jacob Bunin, National Import Specialist Assistant, telephone number (212) 466-5742, or Mr. Stanley Hopard, National Import Specialist, (212) 466-5760.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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817252

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAR 1 5 1986

REFER TO
CLA-2-07:S:COM:N3:D-224
817302

Mr. Eric Jones
Vice-President
Porter International, Inc.
5758 West Century Blvd.
Room 360
Los Angeles, CA 90045

Dear Mr. Jones:

In your letter of January 20, 1986, you requested the tariff classification of pattern fabric material produced in Korea.

The sample submitted with your letter consists of a number of textile piece goods with printed patterns or lines of demarcation that outline toy animal shapes. After importation, these pattern fabric pieces will be repacked in a retail container together with stuffing material. When the patterns are cut, stuffed and sewn they form a toy stuffed animal.

General Interpretative Headnote 10(h) of the Tariff Schedules of the United States (TSUS) provides that "unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished."

In their imported condition, the fabric pieces are so far advanced that they can be considered unfinished and unassembled components of a toy animal skin.

Accordingly, it is our position that this merchandise is classifiable under the provision for skins for toy figures of animate or inanimate objects in item 737.51, TSUS, and dutiable at the rate of 8.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 21 1986

REFER TO

CLA-2-04:S:COM:N1:235-135
817324

Mr. F. Prackler
Harold I. Pepper Co., Inc.
9 Murray Street
New York, NY 10007

Dear Mr. Prackler:

In your letter dated February 20, 1986, on behalf of your client Perny Inc., you inquired about the dutiable status of various hydrolysates of protein from New Zealand.

According to the telephone conversations with Mr. Peterson of Perny Inc., the products will all be used as nutrient sources for growing bacteria.

All of the products mentioned in Mr. Petersons letter are classifiable under the provision for mixtures, not specifically provided for in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be the nitrogenous chemical components, classifiable under item 425.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 25 1986

REFER TO

CLA-2-07:S:COM:N3:224
817364

Mr. William J. Maloney
Rode & Qualey
295 Madison Avenue
New York, NY 10017

Dear Mr. Maloney:

In your letter of February 21, 1986, you requested, on behalf of your client, L.J.N. Toys, Ltd., the dutiable status of toy fantasy creatures marketed under the tradename "Blinkins." The country of origin is Hong Kong.

The Blinkins are designed to be conceptual characterizations of insect-like fantasy creatures which live primarily in the woods and associate with insects and wild life.

The character figures will be imported in two sizes: a stuffed version of approximately 14 inches in height and a smaller version of four inches in height. Each version shares certain common features including a plastic molded head; human-like facial features; torso and poseable arms and legs; translucent plastic wings; two antennae which protrude from the head; and an exaggerated, protruding bottom which lights when a switch contained within the figure is engaged.

The larger sized Blinkin has certain features which distinguish it from the smaller version. The antennae light up in unison with the bottom. The torso and appendages consist of a skin of textile material filled with traditional stuffing material. The smaller Blinkin figure is made of molded plastic.

Headnote 3 to Subpart E, Part 5, Schedule 7, Tariff Schedules of the United States (TSUS), in pertinent part, defines toy figures of inanimate objects as those which "possess features which are a hybrid of features of more than one animate object." The term hybrid, taken in the context of this headnote language, has come to include those toy figures which are a composition of significant features characteristic of different beings.

The overall appearance of the Blinkins projects a figure with head, limbs and partial torso suggesting a human combined with the antennae, wings and light producing abdominal organ of a firefly beetle insect. Notwithstanding the fantasized, highly stylized winged insect components, they are characteristic of a firefly and taken in their entirety are integral anatomical elements of the Blinkins. Thus, the figures constitute a composite of parts of different species

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and in our opinion, qualify as a hybridization as that term is defined in Headnote 3.

Accordingly, the larger 14 inch Blinkin is classifiable under the provision for toy figures of inanimate objects, not having a spring mechanism, stuffed or filled, in item 737.47, TSUS, dutiable at the rate of 8.3 percent ad valorem. The four inch plastic Blinkin is classifiable under the provision for other toy figures of inanimate objects, not having a spring mechanism, in item 737.49, TSUS, dutiable at the rate of 8.3 percent ad valorem.

Articles classifiable under item 737.47, TSUS, which are the products of Hong Kong are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

For John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OFFICE OF REGULATIONS AND RULI

DATE 07/08/86

LEGAL RULINGS AND DECISIONS MICROFICHE INDEX

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042295	344E08	042460	319G06
042297	344E09	042505	432D14
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042300	344E13	042512	319G08
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042307	344F04	042526	249D13
042308	344F05	042531	432E01
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042312	344F09	042555	432E03
042315	227A08	042557	432E05
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042614	432F07	042753	345C11
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042633	432F09	042755	345C13
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042689	432G06	042819	249E03
042691	138C10	042821	345E05
042692	432G08	042823	345E08
042693	183E09	042851	345E10
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043269	183G01
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043286	120E01
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043587	433D11	043769	272D11
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043598	433E02	043794	121A14
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043637	433F09	043910	71D06
043638	433F11	043912	73B02
043640	433F12	043916	434B03
043642	433F13	043920	434B04
043643	433F14	043926	71E09
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043656	433G03	043933	113G13
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043669	433G08	043955	434B06
043686	433G11	043959	434B09
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048180	140F10
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048254	369F10	048673	71A03
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048256	439G01	048691	17A13
048258	439G03	048692	59A05
048259	207D04	048697	185D01
048267	261G04	048703	272G07
048271	439G05	048726	105E07
048277	369F12	048738	107F04
048279	299C10	048746	320D07
048281	261G05	048754	163G05
048288	207D06	048767	65D07
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049047	163G10
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049058	282G09
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049173	113G14
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049649	102D05
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049790	60E01	049983	131A03
049790	185F02	049985	71B02
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049911	1C05	050021	135F02
049911	65F11	050024	440D01
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052431	102D08	052602	467B05
052433	227G09	052607	299G01
052435	186B06	052610	164C09
052436	586A11	052620	158B11
052438	17D04	052624	61B03
052445	164C04	052624	61D07
052446	17D05	052625	52B06
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052448	186B08	052628	467B07
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052455	273B12	052635	320G11
052461	246A08	052636	67D02
052482	478A06	052636	67E01
052484	262A03	052638	467B09
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052490	299F11	052644	154D02
052492	273B14	052649	443B12
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052501	299F13	052657	370B09
052516	208A13	052657	467B12
052520	164C05	052664	370B10
052526	17D09	052669	69D08
052527	17D12	052670	50G11
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052536	283B09	052672	273C02
052544	164C07	052675	59E09
052548	59D12	052675	59F03
052548	66B11	052675	60D13
052549	68F05	052675	186C05
052552	1F02	052683	65E08
052552	65E11	052690	273C04
052559	370B07	052701	164C10
052564	119D10	052709	411B14
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052571	46F01	052718	164C11
052572	467B03	052719	283B11

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052761	1F09
052763	53B01
052764	164C12
052767	105F10
052768	133G04
052769	370B13
052775	208A14
052783	208B01
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052879	17E05

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052897	111G05
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052964	81G14
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052973	246A10
052979	17E06
052979	164D03
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052989	68E10
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052994	164D05
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053004	443C03
053005	370C09
053006	208B10
053008	164D07
053011	299G07
053012	443C05
053013	208B11
053019	273C10
053027	186D01
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053094	208B13
053095	186D06
053096	208B14
053098	320G14
053100	164D12
053102	443C10
053103	370C11
053103	443C12
053106	443C14
053107	262A05
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053111	140G03
053118	105B13
053119	393C04
053120	208C01
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053129	299G09
053131	227G12
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053139	443D01
053142	411C03
053143	443D02
053145	370C13
053147	17E10
053148	443D04
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053284	17E12	053523	443F06
053285	17E14	053524	208C06
053286	17F02	053525	17F14
053287	62F04	053526	300A04
053288	508C03	053527	17G01
053289	131E04	053532	300A06
053291	2A11	053533	443F07
053293	2A12	053539	451B09
053294	2A13	053546	283C05
053295	17F04	053549	411C09
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053306	273D04	053552	508C04
053313	273D05	053554	496B01
053320	208C04	053556	140G08
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053326	321A07	053563	164E05
053327	17F09	053563	186D13
053329	411C05	053570	2B04
053338	370D01	053571	127E12
053340	443E06	053573	283C06
053346	186D11	053575	17G03
053359	155D02	053579	66E01
053362	42E03	053580	443F12
053363	127E07	053586	443F13
053461	114C11	053592	2B05
053468	443E08	053595	370D03
053472	283C03	053597	273D09
053473	273D07	053600	17G05
053474	2B01	053603	119E05
053476	300A03	053611	17G06
053477	164E03	053613	17G07
053479	57C13	053616	487A07
053482	411C07	053618	2B07
053484	443E11	053621	443G01
053486	443E12	053635	451B10
053492	116D13	053637	164E07
053496	114D14	053639	443G03
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053515	17F11	053654	120A08
053518	443F01	053660	321A09

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053846	321A14
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053852	18A06
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053871	262A09
053874	138G08
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053876	119F01
053879	2C01
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053880	66G07
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053884	164E12
053891	2C05
053892	158B14
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053896	443G09
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053931	186E13	054039	69F02
053934	65D03	054040	487A13
053935	321B04	054042	321B14
053936	186F01	054045	2C09
053937	2C06	054046	63E05
053938	208C14	054048	444A04
053940	128E03	054049	186F10
053950	2C07	054053	300B06
053950	61F10	054054	411D01
053952	370D11	054055	208D03
053953	321B06	054057	508D03
053956	321B08	054064	164F06
053957	321B10	054069	131A11
053959	321B12	054076	122F08
053968	164E13	054080	273E05
053969	159D03	054081	61C08
053970	140G10	054085	300B07
053971	273E03	054086	67B06
053973	52G09	054088	2C11
053978	228A10	054097	208D04
053979	185F03	054101	273E06
053980	208D01	054108	208D05
053987	186F05	054109	18B02
053992	300B02	054110	444A06
053993	164E14	054111	155C05
053994	164F01	054116	250G06
053994	164F02	054124	186F11
053997	427B07	054127	228A12
053998	186F08	054131	321C02
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054004	370D14	054137	116B09
054005	103F10	054137	155G08
054006	411C13	054140	53B04
054010	18B01	054141	228A14
054014	564A10	054148	300B09
054015	300B03	054150	208D07
054016	228A07	054152	370E02
054025	164F03	054154	208D09
054026	444A03	054156	496B02
054027	164F05	054160	444A07
054027	186F09	054162	164F08

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054166	411D02	054269	32E03
054168	186F12	054270	2D01
054172	451C01	054271	122A12
054173	444A08	054272	164F14
054176	300B10	054274	138G11
054177	444A11	054275	186G01
054179	34F11	054277	262A10
054181	53E12	054279	186G02
054182	250G07	054284	115A03
054183	159D04	054285	451C06
054185	545B05	054286	164G02
054186	186F1[illegible]	054287	45C11
054189	57E03	054288	18B13
054189	112B11	054289	59B05
054196	138G09	054290	228B07
054198	451C02	054297	393C10
054199	370E03	054298	508D10
054201	451C03	054305	262A12
054202	228B03	054307	250G08
054204	164F11	054315	60C11
054205	393C06	054317	478A08
054205	444A12	054319	596A07
054207	155G07	054320	228B08
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054210	18B04	054324	227G02
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054216	69G06	054329	577B14
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054220	564A11	054332	186G05
054223	508D05	054333	135F09
054224	18B07	054334	300B14
054225	18B09	054335	59E07
054227	69G04	054336	427B10
054235	508D07	054337	18C01
054238	321C04	054339	208E01
054238	393C08	054346	155C06
054241	208D11	054347	411D03
054247	508D09	054348	208E03
054248	427B09	054352	411D05
054253	300B13	054353	321C06
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054374	42E06
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054385	250G11
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054390	48G05
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054391	66D12
054394	321C07
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054396	151C03
054409	60C04
054409	102A03
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054410	186G11
054411	300C01
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054417	300C03
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054431	164G03
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054452	273E08
054454	250G12
054455	451C10
054456	186G12
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054463	393C13
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054534	496B03
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054560	411D08
054561	283D08
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054565	317D06
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054606	451C13
054607	427C02
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054609	2E03
054610	2E04
054611	529A12
054612	2E07
054612	246A12
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054615	393D01
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054619	370E10
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054635	273F01
054637	370E11
054647	69G09
054647	69G11
054654	250G14
054656	115A05
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054658	130G14
054666	411D14
054669	370E14
054671	18D09
054672	18D12
054676	2E12
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054684	411E03
054686	159D12
054688	508D13
054694	317D08
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054705	411E05
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054726	393D04
054727	208E08
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054729	2F02
054730	2F05
054731	151F09
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054738	18F02
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054751	49F01
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054762	2F11
054763	2F12
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054776	147D14
054777	451C14
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054789	164G09
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054812	104F01	054926	3A13
054813	394A03	054926	105D04
054820	2G05	054930	3B01
054822	37C01	054930	19A08
054824	55B03	054931	49C04
054826	251A05	054933	3B04
054827	37C04	054941	3B06
054830	508E02	054947	508E07
054831	69F09	054948	3B08
054836	246B02	054952	19A11
054836	251A08	054952	187A14
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054843	300D02	054954	151G02
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054846	18F14	054958	164G11
054846	119E09	054959	321D05
054852	74B10	054960	3B11
054853	2G09	054960	187B03
054854	147E05	054961	19A14
054855	147E07	054964	3B13
054863	529A14	054968	3C01
054864	44A06	054975	19B02
054866	321C13	054975	116C13
054873	133E14	054976	508E10
054876	49E11	054978	283D10
054877	152B14	054980	3C03
054880	18G03	054981	251A10
054885	508E05	054987	246B06
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054889	187A08	054988	187B05
054892	187A10	054989	3C05
054895	69E13	054990	3C09
054904	3A03	054991	19B10
054911	18G06	054992	3C12
054912	19A03	054993	3C14
054914	42E08	054994	19B12
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055009	187B08
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055016	3D11
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055026	3D13
055027	19C05
055029	3E01
055030	19C09
055032	3E03
055033	19C12
055037	208E12
055038	3E05
055038	122A09
055040	3E08
055041	3E10
055049	187B12
055050	151C13
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055051	187B14
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055052	51F03
055053	19D01
055054	19D04
055055	130A11
055055	158C03
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055056	321D06
055059	3F02
055063	273F02
055065	3F04
055065	187C02
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055090	508E14

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055098	3F09
055098	187C06
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055101	273F04
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055107	19E02
055112	411F01
055115	228B12
055119	19E04
055121	3F11
055122	273F05
055124	46F13
055125	3F13
055126	19E09
055127	3G01
055128	3G03
055130	19E11
055131	19E13
055132	19F05
055133	187C08
055134	3G05
055135	19F08
055140	19F10
055147	19F12
055150	19G02
055151	19G05
055152	3G07
055153	3G09
055162	3G11
055164	3G12
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055168	147E09
055169	19G13
055172	72E12
055174	4A03
055179	102B14
055179	370F03
055185	147E12
055190	20A03
055193	164G13

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055195	20A13
055199	39A10
055200	37C07
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057229	451F03
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057237	39D04
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057242	46A05
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057245	451F05
057251	262C04
057252	300E12
057254	23B07
057255	39D07
057255	105D08
057256	23B08
057259	81C05
057261	165D12
057262	23B13
057263	23B14
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057298	105D06
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057300	23C14
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057303	188B04
057304	43A11
057306	39D12
057307	56D07
057310	40D01
057311	46C05
057316	23D02
057317	23D03
057318	23D04
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057621	63G12	057798	87E11
057626	44E06	057803	451F12
057626	188C11	057806	165F02
057627	321F06	057807	87B14
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057629	83E08	057812	86G13
057630	262C06	057813	75D09
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057632	487C01	057817	86D06
057633	61G07	057820	78C14
057650	110F09	057821	221F12
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057876	84D03
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057878	109G06
057883	300F01
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057887	300F02
057890	451G02
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057897	283E09
057904	74G04
057905	427D04
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057909	46A12
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057979	109A03
057979	165D06
057983	188D13
057986	74E01
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058000	273G12
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058015	9B07
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058066	262C10	058167	412C05
058070	106F06	058168	104E04
058071	103E12	058171	251D06
058072	393F05	058172	283E13
058076	106E11	058173	165D10
058079	412B14	058175	76B10
058080	496B11	058177	545C05
058087	393G14	058182	188E03
058090	60D08	058183	508G08
058091	228D07	058185	508G09
058093	536A06	058186	188E04
058105	529B08	058187	321F12
058106	188D14	058189	393F10
058108	393F07	058192	188E06
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058121	283E11	058214	412C07
058122	246B12	058215	102D02
058124	451G04	058217	9B09
058125	274A06	058218	9B10
058128	246B13	058219	136B01
058130	53B07	058222	529B14
058132	106G06	058225	9B13
058133	393F07	058230	371B01
058134	427D06	058233	105C10
058136	412C02	058234	251D10
058137	188E01	058237	208G13
058139	529B12	058238	120A06
058140	251D04	058239	9C01
058142	586B10	058241	32E12
058143	57C12	058246	23E13
058144	393F08	058247	9C02
058146	300F08	058248	300F09
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058265	9C07	058348	509A06
058269	451G06	058349	91D06
058270	412C09	058349	91E05
058271	393F12	058352	283E14
058272	9C08	058354	148E04
058274	508G14	058355	136B04
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058279	509A03	058356	9D10
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058287	496B12	058366	60B11
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058319	57C06	058402	188F02
058321	496B14	058406	9D14
058322	165D14	058411	209B07
058323	65C04	058414	300G03
058326	9D04	058416	188F04
058327	76B12	058419	300G05
058330	300F13	058423	371B06
058333	300G01	058424	111F11
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058335	300G02	058433	427D09
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058461	427D11
058462	596A10
058465	509A10
058466	251D13
058467	23F03
058468	154B05
058470	251E01
058473	509A11
058478	23F05
058484	9E04
058485	251E03
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058565	228E06
058567	24A07
058569	371B09
058570	83C03
058571	24A09
058572	509A13
058574	24A11
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058577	24A13
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058631	596A11
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058637	536A07
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058932	103G08
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059026	24D04
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059038	322A05
059040	24D06
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059046	32F01
059047	371C05
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059054	32F02
059058	496C03
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060986	322A14	061085	56A13
060990	209F05	061087	47C10
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060994	141D03	061089	87C10
060998	137F10	061091	412E04
061000	108D07	061094	141D04
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061005	87G14	061103	189D12
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061007	301A11	061105	84C02
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063677	143A13	063802	372A05
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063679	274D05	063811	577E14
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063691	301D06	063815	553B13
063691	322E05	063826	510A06
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064077	168A05
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064464	586C05	064569	168F06
064466	168E06	064570	168F07
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064478	153D06	064578	168F08
064479	143D14	064581	168F09
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064775	372B10
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064841	193A05	064960	169E03
064844	169C14	064961	169E02
064848	193A07	064966	169E04
064852	193A14	064968	372B11
064857	169D01	064971	169E07
064858	169D02	064973	577F06
064876	193B03	064974	169E09
064880	143E07	064978	496E05
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064932	193C01	065047	193D01
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064938	169D13	065052	169G04
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065105	194A03	065228	194C13
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065121	194A06	065242	211F10
065126	211D05	065243	211F13
065134	151E04	065244	211G04
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065140	170C01	065246	564B12
065141	211D11	065248	170E06
065143	194A09	065251	170E11
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065354	194G01
065360	301F01
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065537	212E01	065644	231A06
065541	230F05	065645	212F14
065542	301G02	065646	212G01
065544	230F08	065649	212G05
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065546	212E02	065651	284C01
065547	212E03	065652	212G07
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065754	213B11	065867	213D05
065755	253E04	065868	231E02
065759	213B12	065869	231E04
065760	213B13	065871	510B12
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065822	322G07	065920	231F07
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065828	231D04	065925	231F10
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065835	372C04	065934	213E05
065836	253E11	065937	253G01
065837	231D07	065940	231F12
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065984	231G04
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065992	372C09
065995	231G07
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066001	170E14
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066011	195C06
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066104	213F07
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066121	171A13
066123	171A14
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066126	171B01
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399805	515A13	400075	77E02
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609072	239E06	609444	291B10
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611052	398C02	611532	398G12
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611111	398C05	611542	399A05
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611133	398C10	611601	399A08
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611369	398E04	611903	332A11
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611406	398E12	611974	384F10
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617367	583B05	650074	332F01
650000	469G01	650076	332F03
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650003	332B04	650084	291D05
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650051	332C10	650127	333A09
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650053	332C14	650130	333A11
650054	332D02	650135	355G05
650055	332D04	650138	333A13
650056	332D06	650138	355G07
650059	332D08	650145	240D05
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650162	356A07	650401	14G11
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650339	333B03	650444	240D11
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708374	468C09	708630	384E13
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710247	81F03	710556	146D01
710258	222E09	710557	85G11
710263	95F09	710564	109D13
710300	402D05	710565	83F03
710306	88E02	710585	84D07
710324	62B08	710585	86G06
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710338	80C09	710598	423G11
710338	80E02	710602	82C13
710347	567E12	710611	80C04
710366	79F10	710614	78E06
710373	85C02	710619	560C08
710374	99A13	710622	85C11
710375	84G01	710624	402D08
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710384	85B06	710631	423G12
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710403	82F12	710657	95G07
710412	135A11	710659	109E10
710413	517C09	710663	112A08
710414	559G13	710664	109C12
710430	89A03	710677	101G03
710432	84D11	710678	542D01
710432	110D11	710679	80G08
710439	73E12	710682	85B09
710448	110C10	710683	80C06
710451	86E02	710685	80F06
710465	222E10	710688	75C02
710466	559G14	710689	89A03
710482	80C08	710697	583F02
710485	80G04	710699	84E01
710493	79A03	710700	146D02
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807167	466D05	807356	519G12
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807183	466D11	807365	519G14
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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

ICE OF REGULATIONS AND RULINGS

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RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY 22 1975

708.78

REFER TO
CLA-2:R:CV:S
037808 M

[redacted]

Dear [redacted]

In your letters of December 9, 1974, and January 10, 1975, on behalf of [redacted], you asked for information about the tariff status of both the MBX electron microanalyzer and the IMS-300 ion microanalyzer, products of France.

Both instruments are used by universities, manufacturers, and anti-pollution institutions, among others, and are used to determine the elements contained in samples of various materials being analyzed. As stated in the brochure submitted, the MBX electron microanalysis system functions by the wavelength and energy dispersive analysis of the X-ray spectrum provided by the bombardment of the specimen with a beam of energetic electrons. In operation, electrons are generated and focused by an electron gun on the specimen to be analyzed. The electrons diffuse into and pass energy to the sample from which X-rays are radiated. These emitted X-rays are intercepted and diffracted into a detector.

The IMS-300 ion analyzer may also be used in the fields of geology, metallurgy, physical chemistry, and biology, in addition to the above. This instrument combines the features of a mass spectrometer and an ion emission microscope to provide a map of the chemical distribution of the surface of a specimen. Ion images are created for display on fluorescent screens.

You stated that both instruments use a small beam (the MBX uses an electron beam, while the IMS-300 uses an ion beam) to bombard the solid sample at low power, analyze a second beam by scanning (crystal scanning in the MBX and magnetic scanning in the IMS-300), and detect signals in the form of pulses.

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A3

[redacted]

For the reason that the operating principle of the MBX electron microanalyzer depends upon X-rays employed to identify the composition of the analyzed specimen, the MBX analyzer is classifiable under the provision for apparatus based on the use of X-rays, in item 709.63, Tariff Schedules of the United States (TSUS), with duty at the rate of 2.5 percent ad valorem.

On the other hand, as stated in your letter, the operating principle of the IMS-300 ion microanalyzer does not employ X-rays but depends upon ion images obtained instantaneously and is similar in its microanalytic function to that of an electron scanning microscope. In these circumstances, the ion microanalyzer is classifiable under the provision for electron, proton, and similar microscopes and diffraction apparatus, in item 708.78, TSUS, dutiable at the rate of 11 percent ad valorem.

Sincerely yours,

for Salvatore E. Caramagno
Director
Classification and Value Division

037808

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A4

DEPARTMENT OF THE TREASURY 682.05

U.S. CUSTOMS SERVICE

WASHINGTON

DEC 2 1977

REFER TO

CLA-2:R:CV:MS
053786 FC

053786

[redacted]

Dear [redacted]

In your letter of September 22, 1977, on behalf of [redacted] you requested a ruling on the tariff classification of certain ballasts to be imported from Mexico.

On September 16, 1977, we expressed our opinion that, based upon the circumstances and operations which you described, the American components of the imported ballasts qualify for tariff treatment under the provisions of item 807.00, Tariff Schedules of the United States (TSUS), upon compliance with the Customs Regulations.

Photographs and samples of the different American components and a finished ballast, along with a detailed description of the operations performed in Mexico, as well as the definition, functions, and application of a ballast supplied by your client were submitted with your letter of August 24, 1977.

In that letter you stated that the definitions, functions, and application of a ballast supplied by your client are as follows:

"(a) A Ballast is an Electromagnetic device which limits the current applied to a high intensity discharge lamp to its specified value while supplying sufficient voltage to strike the arc.

(b) The function of a ballast is to limit the current applied to a high intensity discharge lamp to its specified value while supplying sufficient voltage to strike the arc.

REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

AS

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[redacted]

(c) The ultimate application of this ballast is as a component of a High Intensity Discharge Lighting Fixture, both indoor and outdoor. High Intensity Discharge Lamps include: Mercury, Metalic Halde, and High Pressure Sodium."

You suggest that the ballast is properly classifiable as an electrical article, not specially provided for, under the provisions of item 688.40, TSUS.

It is noted that the submitted sample is designated as an auto-transformer, and according to the wiring diagram shown thereon it functions as a transformer. Accordingly, it is our opinion that the article in question is classifiable under the provision for transformers rated at less than 1 kva, in item 682.05, TSUS, dutiable at the rate of 12.5 percent ad valorem.

Sincerely yours,

R. Arnold

For Salvatore E. Caramagno
Director
Classification and Value Division

053786

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A6

MAR 30 1978
CLA-2:R:CV:MA
054319 JB

054319

[redacted]

Dear [redacted]

Your inquiry of November 7, 1977, requested the tariff classification of dental screw posts manufactured in Sweden.

A screw post is designed to be placed in the tooth and serves to help in retention of material used in the buildup necessary before the crown is put on a tooth. The post is made of a leadfree alloy and is electrolytically plated with gold. It is assumed the base material is steel.

You are of the opinion that the screw posts should be classifiable as dental instruments and parts thereof, under item 709.25, Tariff Schedules of the United States (TSUS), dutiable at the rate of 7 percent ad valorem. Customs in Los Angeles plans to classify these screw posts as screws of base metal, having shanks over 0.24 inch in diameter under item 646.75, TSUS, dutiable at the rate of 11.5 percent ad valorem.

Screw posts are dental supplies, not dental instruments. Inasmuch as they are left in the repaired tooth, they cannot be used beyond their initial application. Dental instruments, on the other hand, are specialized hand tools designed for reuse and chiefly used by dentists in the performance of their profession. Thus, item 709.25, TSUS, would be inapplicable.

The Assembly Engineering Master Catalog 1976/77 defines a screw as an externally threaded fastener capable of mating with a preformed internal thread or of forming its own thread while being tightened or released by torquing the screw head. The main function of the screw is that of fastening. The subject screw post is not a fastening device. Rather, it is a retainer used in certain dental procedures. A screw post is placed, not screwed, into a tooth. The provision for screws under item 646.75, TSUS, also is inapplicable.

CODE AND DATE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

[redacted]

054219

The screws are considered to be articles of metal. They would be classifiable according to component material of chief value. If in chief value gold, they would be classifiable as articles of precious metal, of gold, under item 656.10, TSUS, dutiable at the rate of 20 percent ad valorem. If in chief value steel, they would be classifiable as articles of base metal, coated or plated with precious metal: Coated or plated with gold, under item 656.25, TSUS, dutiable at the rate of 25 percent ad valorem.

Sincerely yours,

(Signed Arthur F. Schiffler
For Salvatore E. Caramagno
Director
Classification and Value Division

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[redacted]

CODE AND DATE	[redacted]	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	[redacted]
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

CLA-2:R:CV:MA
056114 JB

[redacted]

Dear [redacted]

Your inquiry of October 18, 1977, requested the tariff classification of cables used in the automotive industry. We replied to that letter on December 12, 1977, stating that while we could not issue a definite tariff ruling, we believed the cables might possibly be classifiable as parts of motor vehicles, other, under item 692.27, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4 percent ad valorem.

Please be advised that we have reconsidered the above advice and would state that our original advice to you was in error. Under General Interpretive Headnote 10(ij), TSUS, a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part. It is our reconsidered view that most of the cables that you would export would be more specifically classified as cables, of wire, whether or not cut to length, fitted with fittings or made up into articles, under item 642.20, TSUS, dutiable at the rate of 9.5 percent ad valorem.

056114

Sincerely yours,

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

CODE AND DATE	[redacted]						
SURNAME	[redacted]						
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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

[redacted]

AUG 09 1978

CLA-2:R:CV:MSP
058462 KW

[redacted]

Dear [redacted]

In your letter dated July 26, 1978, you inquired about the tariff status of a TV set replacement antennas, which are products of Japan. A sample was submitted.

The merchandise consists of a television antenna with two wrenches included in the package. You indicate that the wrenches are used to unscrew the antenna from the base, when it is broken, bent, or otherwise defective. One tool is placed on the base of the assembly and the other is placed on the base of the antenna.

Under General Headnote 10(ij), Tariff Schedules of the United States (TSUS), a provision for "parts" covers a product solely or chiefly used as a part of an article, but does not prevail over a specific provision for such part.

Thus, the antenna is classifiable under the provision for parts of television apparatus, in item 685.20, TSUS, and dutiable at the rate of 5 percent ad valorem. Inasmuch as wrenches are specifically provided for in item 648.97, TSUS, they are dutiable at the rate of 11 percent ad valorem.

058462

Sincerely yours,

[redacted]

(Signed) R. X. ARNOLD

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

CODE AND DATE	(1) INITIATOR [redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-72)

MAR 14 1979

CLA-2:R:CV:MSP
058631 MDB

[redacted]

Dear [redacted]

In your letter of October 4, 1978, you request a ruling regarding the tariff classification of certain wood mirrors which you import from Taiwan.

The mirrors, which are under one square foot in reflecting area, have wood shelves or pegs affixed to the wood frames. For tariff purposes, they should be considered as single entities with the mirrors as predominant features.

They are properly classifiable as mirrors under item 544.51, Tariff Schedules of the United States, dutiable at the rate of 17-1/2 percent ad valorem. Inasmuch as they are being imported from the Republic of China, they are eligible for duty-free entry under the Generalized System of Preferences upon compliance with the applicable regulations.

Sincerely,

[redacted]

Salvatore E. Caramagno
for: Director
Classification and Value Division

[redacted]

All

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

SEP 20 1979

REFER TO
CLA-2:R:CV:MA
062184 E

062184

[redacted]

Dear [redacted]

In your letter of April 11, 1979, you inquire as to the tariff status of aluminum castings and steel forgings, products of West Germany. These articles are for a manual rivet puller which is manufactured in the United States.

The aluminum casting is that of a housing for the rivet puller. The steel forgings are those of a draw bar and joints for the rivet puller. In their condition as imported, they will be in a raw state, totally unmachined, and required milling, grinding, boring and tapping. You state that these articles become parts of a manual rivet puller.

Under the provisions of Headnote 1(iv), Part 2, Schedule 6, Tariff Schedules of the United States (TSUS), Part 2 does not cover parts of articles. The exact point in the processing of a raw material at which it becomes a partly finished article or manufacture is a matter which must be determined on the basis of the circumstances of the particular case involved. Generally speaking this exact point is when the material has been so far processed as to be dedicated to use in the manufacture of an article or part thereof.

While your presentation is not clear on this point because the drawings you submitted are of the finished article, it can be said that if the aluminum casting and steel forgings in their condition as imported are dedicated to use in the manufacture of rivet pullers, they would be classifiable even though unfinished under the provision for

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A12

metal parts of hand tools not specially provided for, in items 651.53 and 651.47, TSUS. The provisions of item 651.53, TSUS, provides for those parts composed of aluminum with duty at the rate of 1.7 cents per pound plus 8.5 percent ad valorem, and the provisions of item 651.47, TSUS, provides for those parts of the rivet puller which would be composed of steel with duty at the rate of 8.5 percent ad valorem.

Sincerely,

Arthur P. Schaffner

For Salvatore E. Caramagno
Director
Classification and Value Division

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481290

A13

JUL 11 1979

CLA-2:R:CV:MA
062340 jh

Dear

This is in reference to your letter of May 24, 1979, regarding the tariff classification of front-end loaders.

The article which is described as the "Boss Loader", is designed to fit farm tractors in the 100 horsepower range. You state that this loader is engineered to stand up to the 180 horsepower range of tractors and is sturdy enough to be used on 2-or 4-wheel drive units. The front-end loader consists mainly of a main frame, which functions as the lifting arms of the loader, a subframe or mounting brackets which provides support to the main frame, two double acting bucket cylinders and two double acting lift cylinders, and a wire braid hydraulic hose kit. It appears that you also furnish a 60-inch bucket as standard equipment for the front-end loader.

If the front-end loader and bucket are chiefly used in agricultural pursuits, they would be classifiable under the provision for agricultural implements, not specially provided for, in item 666.00, Tariff Schedules of the United States (TSUS), and entitled to duty-free entry. However, if these articles are not chiefly used in agricultural pursuits, they would be classified as lifting and handling machinery, in item 664.05 TSUS, and dutiable at the rate of 5 percent ad valorem.

Sincerely,

(Signed Arthur P. Schifflin

Seaport
Salvatore E. Caramagno
~~Director~~
Classification and Value Division

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NA

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CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

CLA-2:RRUCSC
063839 KW

AUG 0 5 1980

[redacted]

Dear [redacted]

In your correspondence dated June 10, 1980, you inquired about the tariff status of certain antenna rotators, which are the products of Japan. Descriptive literature was submitted under cover of your letter.

The submitted material indicates that the antenna rotators include 4 models, the KR-400, KR-500, KR-600, and KR-2000. The latter 3 have "control units" which control the antenna's rotation, supply power to the rotator motor, and indicate through the utilization of a meter. The rotation range of the articles is up to 370 degrees. You indicate that the devices are designed to be used on radios although they are of the type which is suitable for use with television antennas.

We are of the opinion that merchandise of this class or kind is chiefly used in conjunction with television reception and is, therefore, properly classifiable under the provision for television apparatus, in item 685.19, Tariff Schedules of the United States, and dutiable at the rate of 4.8 percent of valorem.

Enclosed for your general information is our pamphlet, "U.S. Import Requirements."

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief
Special Classification Branch

063839

[redacted]

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DEPARTMENT OF THE TREASURY - U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

U.S. CUSTOMS SERVICE
1301 CONSTITUTION AVENUE, NW.
WASHINGTON, D.C. 20229

R

UNCLASSIFIED

7/14/81

X

JOHN HURLEY

566-8181

[redacted]

068760

RE UR WIRE JUNE 22, 1981, PANGAMIC ACID (VITAMIN B15) FOR 1979, IF NON-BENZENOID, ITEM 437.84, TSUS, 2% AD VALOREM; IF BENZENOID, ITEM 407.85, AT 1.7 CENTS PER POUND PLUS 12.5% AD VALOREM. COLUMN 2 RATE IS 7 CENTS PER POUND PLUS 45% AD VALOREM. CALCIUM GLUCONATE CLASSIFIABLE IN ITEM 437.52, TSUS, FOR 1979 AT 5% AD VALOREM.

COLUMN 2 RATES FOR 1979 FOR 437.84 AND 437.52 ARE 10% AND 5%, RESPECTIVELY.

[redacted]

068760

HARVEY B. FOX
DIRECTOR, CLASSIFICATION
AND VALUE DIVISION

[redacted]

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

CLA-2 CO:R:CV:G
068768 JCH

28 AUG 1981

[redacted]

Dear [redacted]

This is in further response to your letter of June 22, 1981, in which you requested information on the dutiable status of derailleur shift cables imported from Taiwan.

In Oxford International Corp., v. United States, 68 Cust. Ct. 12, C.D. 4326 (1972), bicycle control cables with fittings were held classifable under the provision for cables fitted with fittings in item 642.20, Tariff Schedules of the United States (TSUS). The current column 1 rate of duty required under this provision is 8.6 percent ad valorem. Also, merchandise from Taiwan classifiable under this provision may be entitled to exemption from duty under the Generalized System of Preferences.

If the shift cables in question have been imported, the above cited legal precedent should be called to the attention of the Customs officers handling the transaction. If duty on the merchandise has already been liquidated, a protest should be filed on Customs Form 19 at the port of entry.

Sincerely,

(Signed) A. P. [redacted]

Arthur P. Schifflin
Chief, General
Classification Branch

068768

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

25 AUG 1982

CLA-2 CO:R:CV:G
069532 JCH

069532

Chief, Customs Information Exchange

Director, Classification and Value Division

Difference of Opinion on Customs Form 6431

In your memorandum of November 16, 1981, you transferred the difference of opinon on Customs Form 6431 dated September 10, 1980, concerning the tariff classification of steel forgings made in Japan. This difference is listed as the fourth difference on page 2 of CIE N-89/79, Suppl. 27, dated February 1982. Our decision follows:

ISSUE:

The question involved is whether forgings which have not been advanced in any way, but which have been made to specifications for their ultimate production into parts of articles, are classifiable under the provision for forgings in item 606.71, Tariff Schedules of the United States (TSUS), or under the specific provision for the part which they will become, which, in this instance, is the provision for parts of automobiles in item 692.32, TSUS. The 1980 column 1 rate of duty under item 606.71 was 6 percent ad valorem. The 1980 column 1 rate of duty under item 692.32 was 3.9 percent ad valorem. In some instances, however, the classification of forgings under item 606.71 or another forgings provision would accord merchandise a more favorable dutiable status than would result from classifcation of the merchandise as a part.

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FACTS:

The specific merchandise involved in this difference is forgings which will be used in the production of universal joints for motor vehicles.

LAW AND ANALYSIS:

In resolving the issue as set forth above, the interpretation of Headnote 1(iv), Part 2, Schedule 6, TSUS, and General Headnote 10(h), TSUS, is involved. General Headnote 10(h) states, "Unless the context requires otherwise, a tariff description for an article covers such article * * * whether finished or not finished." Headnote 1(iv) excludes from Part 2, Schedule 6, articles specially provided for elsewhere in the TSUS, and parts of articles. In United States v. J. Gerber & Co., 58 CCPA 110, C.A.D. 1013 (1971), the court concluded that General Headnote 10(h) could not be used to exclude forgings from the applicable provision for forgings because the language of the forgings provisions constituted a situation where "the context requires otherwise," thereby rendering General Headnote 10(h) inapplicable with respect to forgings which represent unfinished parts. This decision has not been limited by the Customs Service, and under current instructions must, therefore, be regarded as having been acquiesced in. Accordingly, the preference of item 606.71 over a parts provision should not be open to question at this time.

A question does exist, however, because of certain dissatisfactions with the Gerber decision expressed in CSD 81-1, file No. 065046, and in our decision of November 16, 1979, file No. 062184, in which we reconsidered and affirmed a decision dated September 20, 1979. That question is to what

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extent, if at all, the Gerber decision may be used as a precedent in determining the tariff classification of forgings. We placed the authority of the Gerber decision in doubt for several reasons. First, it was suggested that the Gerber court's views were not consistent with positions taken by that same court in other cases. As examples, we cited United States v. The Servco Co., 60 CCPA 137, C.A.D. 1098 (1973), and Avins Industrial Products Co. v. United States, 62 CCPA 83, C.A.D. 1150 (1975). However, these decisions dealt with different tariff provisions with different legislative histories. The Servco decision in one respect merely stands for the proposition that tubing which is neither used to construct longer lengths of tubing nor as material from which shorter lengths are cut may be regarded as a part, while the Avins decision illustrates a situation where wire used as a material from which shorter lengths will be cut will not be regarded as a part. See our decision in IA 251/79, February 14, 1980, file No. 061845.

More to the point, we cited Redden & Martin v. United States, 5 Ct. Cust. Appls. 485, T.D. 35147 (1915), as a case in which a parts provision prevailed over the applicable forgings provision. In that case, however, the competition was between the forgings provision and a provision for scissors * * * blades * * * finished or unfinished." In that situation, there was at that time a clearer expression of legislative preference for the scissors blades provision over the forgings provision than there is under the present language of the TSUS for any preference of the provision for automobile parts over the applicable provision for forgings. Accordingly, it cannot be categorically asserted that the Gerber decision is not in harmony with earlier and later court decisions.

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We also criticized the Gerber decision for ignoring Headnote 1(iv), Part 2, Schedule 6. However, that headnote has no application with regard to competitions between provisions within Part 2, Schedule 6, and was appropriately not mentioned by the court. With respect to competitions where Headnote 1(iv) might otherwise be pertinent, the finding that General Headnote 10(h) is inapplicable in competitions involving a forgings provision automatically renders Headnote 1(iv) also inapplicable.

In this connection, we stated that the Gerber court was not applying the rules regarding relative specificity in further contravention of the mandate in General Headnote 10(c), TSUS. However, it is fundamental that relative specificity only applies when both competing provisions describe the merchandise. If, as according to the Gerber court, a parts provision does not include unfinished articles when in competition with the applicable forgings provision, the parts provision does not describe the merchandise in its condition as imported, and relative specificity and General Headnote 10(c) have no application in determining the scope of the forgings provision.

Finally, we raised questions as to the applicability of the Gerber decision by suggesting there was a point which could exist either when a forging was made, or at some stage during its further processing, when it ceased being a forging and became dedicated as a part. Then, according to our previously expressed views, the provisions for forgings would not become nullities if you identified that point, provided that point occurred before significant further processing took place. However, the Gerber court, in effect, found that the language of the applicable forgings provision was designed to modify the decision in Saltonstall v. Wiebusch,

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156 U.S. 601 (1895), and to avoid having the Customs Service become involved in questions as to when a forging ceases being a forging and becomes dedicated to use as a part. The necessary inference from the Gerber decision is that whether an article is classifiable as a forging or not as a forging is determined solely by whether any significant further processing after the forging operation has occurred before importation.

HOLDING:

For the foregoing reasons, the rationale contained in CSD 81-1, and in our earlier discussions on the subject, can no longer be regarded as representing the latest views of the Customs Service, and the Gerber decision should be regarded as acquiesced in and as a valid precedent to the extent it may be applicable to the tariff classification of forgings. However, in classifications involving forgings provisions there nevertheless remains the questions as to what constitutes a forging process and whether the imported merchandise has, in fact, not been advanced beyond a forging operation. Since in CSD 81-1 it was not clear that the process involved either a hammering or pressing operation within the traditional concept of a forging operation, that decision, although its discussion of legal precedents will no longer be regarded as representing our current views, is not shown to be erroneous in its conclusion and, therefore, is not revoked. With regard to any other previous decisions regarding forgings, no revocations or reclassifications will otherwise be authorized solely on the basis of the views expressed in the instant decision without independent consideration based on an examination of the merchandise in each individual case as to whether the manufacturing

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operation involved is, in fact, a forging operation in the traditional sense, and whether the merchandise, in fact, does not represent any significant advancements beyond the forging process.

Products of a forging process which have not been significantly advanced before importation will be classified under item 606.71, or other applicable forgings provision, even though the products also represent, in their condition as imported, unfinished versions of articles, or parts of an articles, specially provided for elsewhere in the TSUS.

(Signed) Arthur P. Schifflin

Harvey B. Fox

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[redacted]

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JUL 1 9 1983

CLA-2 CO:R:C7:G
072572 JCH

District Director of Customs
477 Michigan Avenue
Detroit, Michigan 48226

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 38012001130

The above-captioned protest and application for further review were filed against your tariff classification of merchandise which was the subject of entry No. 82662650 filed in April 1982, and manufactured in Canada. Our decision follows:

ISSUE:

The merchandise was classified under the provision for tubes in item 772.60, Tariff Schedules of the United States (TSUS), and dutiable at the column 1 1982 rate of 4.5 percent ad valorem. The protestant contends the merchandise is duty free under the provision for tubes designed for tires designed for agricultural or horticultural tractors or other foreign vehicles in item 772.59, TSUS.

FACTS:

The merchandise is Goodrich tubes in size 20.8R 38, with valve type TR-218. Advertising literature for the B. F. Goodrich Company, and for other tire manufacturers, which has been submitted shows that tubes of this description are for farm vehicles.

LAW AND ANALYSIS:

Generally, tires and tubes within the tire industry farm vehicle use category are not interchangeable with tires and tubes in other industry categories such as those for use on cars and trucks, industrial vehicles, etc. See our decision of April 7, 1982, 089009, for a discussion of the pertinency of multiple uses with the respect to the designed-for classification standard.

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However, while it is suggested that the instant articles do not meet the applicable designed-for standard, the file lacks any specific evidence rebutting the submitted evidence which is consistent with a design for exclusive use on agricultural vehicles.

HOLDING:

For the foregoing reasons, you are instructed to allow the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

(Signed) A. P. SCHIFFLAN

Harvey B. Fox
Director, Classification
and Value Division

072572

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

30 APR 1986

REFER TO
CLA-2:CO:R:CV:G
074004 JLV

074004

Mr. Donald E. Stingel
14701 Spring Meadow Drive
Germantown, Maryland 20874

Dear Mr. Stingel:

In your letter of March 15, 1984, on behalf of your client, AMCA International, Bowling Green, Kentucky, you requested review of a ruling on the classification of an article known as a "wedge anchor." In a letter of December 8, 1983 (file 807180), this article was classified as an article of iron or steel, not specifically provided for, in item 657.25, Tariff Schedules of the United States (TSUS).

The article is called a stud, bolt, stud anchor, or concrete anchor by different trade members. However, the chief use is agreed upon: as an anchor in concrete. It is available in numerous sizes, ranging from 1-3/4 inches in length by 1/4 inch in diameter, to 12 inches in length and 1-1/4 inches in diameter. It is threaded on one end and is tapered on the other. The unthreaded end tapers slightly toward the middle of the shank. On the sample, the taper is 1-1/2 inches in length on a wedge anchor that is approximately 8-1/2 inches in length. A spring wedge is fitted onto the tapered end. A nut and washer are also fitted onto the wedge anchor.

The wedge anchor is designed so that the tapered end, fitted with the spring wedge, can be tapped into a predrilled hole having the same diameter as the wedge anchor. As the nut is tightened (when securing the article to be anchored), the tapered end is pulled up slightly and expands the spring wedge to form an efficient anchorage in the concrete.

Similar fasteners have been considered in prior ruling letters. In a letter of June 4, 1975 (file 035839; ORR Ruling 75-0132), a stud anchor fitted with an expander sleeve was held to be classified in item 657.20 (now 657.25), TSUS, rather than as a bolt because there was insufficient evidence of commercial designation as a bolt. Classification as a stud was not considered. In a letter of February 7, 1978 (file 054605), a similar anchoring device was classified as a stud in item 646.57, TSUS, because it was imported without the expander sleeve.

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There are two issues in this case. First, it must be determined whether or not this fastener is a bolt, stud, or something else for purposes of tariff classification. Commercial understanding or trade designations may be relevant. Secondly, if the fastener without the spring wedge is considered a stud, it must then be determined whether or not the addition of the spring wedge makes it more than a stud.

Commercial or trade designation for this article is not uniform: stud anchor, wedge anchor, concrete anchor, or anchor bolt, are some of the names and depend primarily on the producer or distributor. However, one fact is certain: it functions as a stud. A stud is a type of a bolt, but is distinguished from "bolts" by its application. That is, a stud is usually anchored and provides a projection to which something may be fastened. The common meaning of the term "stud" was considered in Fastening Devices, Inc. v. United States, 40 Cust. Ct. 345, C.D. 2004 (1958). Under the common meaning of the term "stud" we affirm that the decision in our ruling of February 7, 1978 (file 054605), is correct.

The fastener, as it is bought and sold in the trade with the spring wedge, has numerous names which, on the surface, do not narrowly descibe it as a stud. Therefore, the question is raised as to whether, by the addition of the spring wedge, a stud becomes more than a stud.

The spring wedge is a fastener or holder used with studs and, if imported separately, would be classifiable in item 646.42, TSUS. Therefore, the wedge anchor is essentially a stud and a holder imported as assembled. Unlike the nut and washer, the spring wedge is not typically removed. Its design requires that it be assembled onto a stud before insertion into a predrilled hole. Because removal of a spring wedge could impair or prevent reuse if its original dimension could not be regained, the holder and stud are classifiable as an entirety.

The addition of a holder to a stud does not change the nature of the stud. For a reason similar to that by which a two-part bolt is classified as an entirety under the provision for bolts in item 646.54, TSUS, we hold that this two-part stud is classified as an entirety under the provision for studs in item 646.57, TSUS. We do note that the classi-

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fication decisions on two-part mine bolts have been premised on the fact that they are known in the trade as bolts. The fastener in issue does not enjoy such unanimity of recognition. However, the rule of construction is that a tariff term is used in its common and commercial meanings, which are presumed to be the same. In the absence of contrary legislative intent or proof of a specific commercial designation, the common meaning controls. In this case, the evidence is not conclusive as to the commercial meaning, although it is often referred to as a stud or bolt anchor. However, inasmuch as the common meaning of "stud" is applicable to the most significant component, the entirety should be classified as a stud.

The nut and washer are separately classifiable. Their identity is not merged with the stud, and there is no provision for classification of studs with nuts and washers under a single provision. Therefore, the nut is classified in item 646.56, TSUS, and the washer in item 646.70, TSUS.

The stud and anchor are classifiable as an entirety under the provision for studs in item 646.57, TSUS.

The ruling letter of December 8, 1983 (file 807180), is modified to the extent that the wedge anchor is classifiable in accord with this decision. Also, the ruling letter of June 4, 1975 (file 035839, referenced as ORR Ruling 75-0132), is revoked, as is any other ruling or portion of a ruling that is not consistent with this decision.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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814

26 NOV 1984

CLA-2 CO:R:CV:G
074564 jlj

District Director of Customs
127 Water Street
Ogdensburg, New York 13669

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0712-4-000131

This protest was filed against your decision in the liquidation on various dates of eight 1983 Champlain entries covering shipments of Abiform Forms Paper 65 produced by [redacted] in Canada.

This ruling concerns the correct tariff classification of this paper.

FACTS:

The protestant claims that Abiform Forms Paper 65 is nothing more than standard newsprint paper which is either too heavy or too light to meet the specifications for standard newsprint paper under T.D. 56349. It claims that the paper has a higher brightness and that when the paper fails to meet the requirements of standard newsprint in item 252.65, Tariff Schedules of the United States (TSUS), it is properly classifiable under the provision for printing paper not specially provided for, in item 252.67, TSUS, which is a duty-free provision. It also claims that there is an established and uniform practice of classifying this paper in item 252.67, TSUS.

You argue that this is a special paper made to meet the requirements of the printing forms business. You argue that the subject paper has a special brightness and that it is chiefly used for the printing of various forms. You state that the Canadian shipper indicated to the Champlain Customs officer that practically all of this type of paper is being imported for use as business forms. You conclude that the paper in question is classifiable

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under the provision for writing paper weighing over 18 pound per ream, in item 252.75, TSUS, dutiable at the time of entry at the 1983 rate of 4.2 percent ad valorem.

ISSUE:

Is Abiform Forms Paper 65 (now known as Abiform 65) classifiable in item 252.67, TSUS, or in item 252.75, TSUS?

LAW AND ANALYSIS:

The main question here is whether the chief use of Abiform Forms Paper 65 is as writing paper. In order to determine this, we must first determine the class or kind of articles to which Abiform Forms Paper 65 belongs.

In a supplemental brief submitted by counsel for the protestant on September 13, 1984, counsel argues that the class or kind of articles should be composed of all groundwood printing paper with the following characteristics:

(1) The paper is not impregnated, not coated, not surface-colored, not embossed, not ruled, not lined, not printed and not decorated;

(2) The pulp is made from at least 10 percent mechanical wood pulp;

(3) The paper has a basis weight of 20 pounds to 55 pounds (per 25 inch by 38 inch — 500 sheet ream) or equivalent;

(4) The paper has a smoothness of 20 to 180 Sheffield, and

(5) The paper has a brightness of 65 to 70 Elrepho.

To this end, counsel has submitted estimated figures purporting to show that the chief use of such a class or kind of articles is for commercial printing, e.g., for advertising inserts, direct mail flyers, mail order catalogues and magazines.

We reject the category of class or kind proposed by counsel for the protestant as too broad. Including such a wide range of basis weights, smoothness and mechanical wood pulp percentages in the same class or kind is almost like saying that all white paper is the same class or kind of paper.

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Instead, we find that Abiform Forms Paper 65 is part of a class or kind composed of groundwood paper with the following characteristics:

(1) The paper is not coated, not impregnated, not ruled, not surface-colored, not embossed, not lined, not printed and not decorated;

(2) The paper has a brightness of 65 to 70 Elrepho;

(3) The paper has a finish of 140 to 180 Sheffield; and

(4) The paper has a basis weight of 30 to 45 pounds per 25 inch by 38 inch — 500 sheet ream.

(5) The paper is imported in rolls with one of the following widths:

(a) 29-3/4 inches or 29-23/32 inches,
(b) 28-1/2 inches,
(c) 25-1/2 inches,
(d) 23-1/2 inches, or
(e) 14-7/8 inches or 14-27/32 inches.

All the evidence we have with regard to this class or kind of paper indicates that such paper is chiefly used for business forms use. The name of the product was, until the time of this protest, "Abiform Forms Paper 65." (We note that counsel for the protestant has informed us that the trade name of Abiform Forms Paper 65 has recently been changed to Abiform 65.)

Abiform 65 was advertised by the protestant as a forms paper. In a "Marketing Bulletin" from [redacted] dated April 19, 1982, which announced a "new product line" consisting of Abiform, 65 GE brightness, in four different basis weights, the three heavier grades were said to have been developed in direct response to market requests for a grade of business forms paper. The highest grade paper was advertised as intended for multi-part forms and carbonless coating applications.

The Champlain import specialist has advised us that almost all of the importations of Abiform 65 are being shipped to business forms manufacturers in the United States. The end use of paper which is imported by business forms manufacturers is as business forms paper.

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Finally, Abiform is described by a Canadian government publication as a forms paper. In the Canadian government publication "Generic Identification of Paper and Paperboard Brandnames" (1984 issue), both Abiform 65 and Abiform 70 are listed as groundwood forms paper, on page 3 of the publication. (We note that four of the other papers which the protestant would include in the same class or kind as Abiform 65 — i.e., Premium 70, HBX Offset, RP 65, and HBX Roto — are described on pages 12 and 13 of the same Canadian government publication as groundwood papers, not groundwood forms paper.)

In light of the evidence mentioned above, we find that the chief use of the class or kind of articles to which Abiform 65 belongs is as business forms paper. Both T.D. 72-207 and Legal Determination 82-0071 classified as writing paper similar papers which were intended for conversion into computer output forms and business forms. Inasmuch as T.D. 72-207 and Legal Determination 82-0071 found that paper chiefly used for business forms is classifiable as writing paper, and inasmuch as the subject paper is chiefly used for business forms, the correct classification for Abiform Forms Paper 65 is as a writing paper in item 252.75, TSUS.

The protestant has submitted an estimate of 2748 entries covering Abiform 65 liquidated in item 252.67, TSUS, from 1977 to 1982. As we noted above, however, the file contains a "Marketing Bulletin" from Abitibi dated April 19, 1982, which announced a "new product line" of Abiform 65 in four basis weights. Inasmuch as Abiform 65 was proclaimed to be a "new product line" in April 1982, the claim of an established practice for Abiform 65 dating from 1977 is clearly incorrect. All of the liquidations claimed prior to 1982 are based on the liquidations of paper which, while named "Abiform," are not Abiform Forms Paper 65, the subject of this protest.

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HOLDING:

Abiform Forms Paper (now known as Abiform 65) is chiefly used for business forms. It is properly classifiable as a writing paper in item 252.75, TSUS.

The protest should be denied in full. A copy of this decision letter should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

(Signed) J. T. Roth

For Harvey B. Fox
Director, Classification
and Value Division

074569

[redacted]

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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-77)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 4 [redacted]

REFER TO
CLA-2:CO:R:CV:G
074917 JLV

District Director of Customs
Second & Chestnut Streets
Philadelphia, Pennsylvania 19106

Re: Decision on Request for Internal Advice No. 76/84, Concerning Unfinished Elevator Guide Rails

Dear Sir:

Under the provision of section 177.11(a) and (b)(4) of the Customs Regulations (19 CFR 177.11(a), (b)(4)), you requested advice on the tariff classification of certain hot-rolled shapes which are dedicated to use as elevator guide rails (also known as T-rails). This ruling is our decision on the classification issue.

FACTS:

The merchandise in issue is a basic shape formed in a rolling mill from a billet. It is a hot-rolled carbon steel shape weighing over 0.29 pound per linear foot, and is not drilled, punched, or otherwise advanced. It is in the approximate shape of a "T" and is said to be dedicated to the sole use as a vertical guide rail for an elevator.

After importation, the merchandise is further processed as follows:

1. Straightening to a tolerance of 1/32 inch over a length of 16 feet.

2. Machining of the blade or stem to a level of smoothness of 0.25 micrometers or better. This involves the removal of up to approximately 1/16 inch from each of the three sides of the blade.

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3. Machining of the end. This constitutes squaring each end and then milling a groove in one end and a tongue in the other; drilling four holes in each end; and milling the flange side of each so that it is flat for approximately 8 inches from each end.

4. Deburring of the machined ends and application of a rust-inhibitor on all the machined surfaces.

The imported lengths are approximately 16 feet long, and are in 8, 11, 16, and 18.5 pound categories for guide rails.

It is your position that the imported merchandise is an unfinished guide rail which is merely further processed by finishing operations and is, therefore, classifiable as a part of an elevator in item 664.10, Tariff Schedules of the United States (TSUS). Counsel for the importer claims that the operations performed on the imported merchandise are substantial and, therefore, the T-shapes are not unfinished guide rails for tariff purposes.

ISSUE:

Does the processing, performed on imported T-rails, constitute substantial additional processing for the purpose of determining whether it is an unfinished article or a material?

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LAW AND ANALYSIS:

Headnote 1(iv), Part 2, Schedule 6, TSUS, in pertinent part, reads as follows:

> Part 2 headnotes:
>
> 1....This part does not include...
> (iv) other articles specially provided for elsewhere in the tariff schedules, or parts of articles.

In construing this exclusion, the courts have held that a provision for parts of a named article is sufficient to exclude an article from classification under a specific provision in Part 2 of Schedule 6 if the article is a part of an article. General Interpretative Rule 10(ij) is not controlling in such cases. Nissho-Iwai American Corp. v. United States, 602 F. Supp. 88 (Ct. Int'l Trade 1984), affirmed on Appeal No. 85-1259 (CAFC, August 30, 1985); The Servco Company v. United States, 68 Cust. Ct. 83, C.D. 4341 (1972), affirmed 60 CCPA 137, C.A.D. 1098 (1973).

The classification of guide rails as parts of elevators in item 664.10, TSUS, is not in issue. Administrative rulings are on point: ruling letters of July 3, 1975, and December 1, 1980 (files 039300 and 061976, respectively). Our ruling of April 9, 1979 (file 057698), in which rectangular plates, specially flattened and cut, were classified as unfinished parts of machines, is instructive in this case. The plates, precision ground after importation, had only one use.

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Although an article is dedicated to a sole use, it is not considered a part for tariff purposes if, after importation, it must be subjected to substantial additional processing. John V. Carr & Son, Inc. v. United States, 72 Cust. Ct. 19, C.D. 4500 (1974); The Servco Company v. United States, supra.

Although this principle has been clearly stated by the courts, the application turns on the facts of each case. In this case, there is a provision for parts of elevators. The imported T-rails are rolled to the basic configuration of finished guide rails and are identifiable as individual sections. The milling, end finishing, and drilling are necessary to put each section into a condition for use, but these operations are finishing operations which, for purposes of the T-rails, are not "substantial additional processing" as required by the test. The specific nature and configuration of each T-rail at the time of importation establishes what the article is and its use. The machining operations are surface and end finishing operations. See The Servco Company, supra. Furthermore, unlike the wire in Avins Industrial Products Co. v. United States, 72 Cust. Ct. 43, C.D. 4503 (1974), the imported articles have no other stated use.

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HOLDING:

The lengths of hot rolled T-rails are classified as unfinished parts (guide rails) of elevators, in item 664.10, TSUS, rather than as angles, shapes, or sections, of steel in item 609.80, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

076917

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C10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 22 1986

REFER TO

CLA-2 CO:R:CV:G
075013 JLV

075013

District Director of Customs
127 North Water Street
Ogdensburg, New York 13669

Re: Decision on Protest and Application for Further Review of Protest No. 0712-4-000139, dated January 25, 1984

Dear Sir:

The above-referenced Protest and Application for Further Review of Protest were timely filed against your decision in classifying certain floor coverings under the provision for floor coverings of pile or tufted construction, of man-made fibers, in which the pile or tufts were inserted or knotted into a pre-existing base, in item 360.83, Tariff Schedules of the United States (TSUS). The merchandise was entered on October 19, 1983, Entry No. 84-272883, liquidated on October 27, 1983. This ruling is our decision on the issue.

FACTS:

The imported merchandise consists of various grades of carpeting on rolls of up to 96 inches in width and approximately 180 yards in length. The merchandise consists of domestically produced greige goods (nylon yarn which has been inserted by needle, i.e., tufted, into a woven polypropylene backing) which have been dyed in Canada and returned for processing into automotive carpets. After having been dyed in Canada, the carpeting was imported into the United States and subjected to the following processing operations: unrolling and undercoating with a plastic extrusion of polyethylene and modified polymer; drawing through heated rollers to bond the carpeting and the extruded base; cutting to size; dielectrical sealing of heel pads to the top surface of each piece; heating and pressure molding of each carpet piece with a layer of scrap fiber into the shape of the floor pan for a particular motor vehicle; and punching of holes in the carpeting to permit installation of various automotive components after the carpeting is placed in a vehicle. For the sake of this ruling, the

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carpeting at the time of importation is considered to be specifically designed for and solely used in the automotive industry. Any other use would be considered a fugitive use for purposes of this determination.

The protestant claims that the imported carpeting is a fabricated component within the meaning of Headnote 2(a), Subpart B, Part 6, Schedule 6, TSUS. In support of this, the protestant states that the carpeting is dedicated to automotive use and is recognizable as automotive carpeting. The court's decision in John V. Carr & Sons, Inc. v. United States, 76 Cust. Ct. 162, C.D. 4652 (1976), is cited as dispositive of the issue. You claim that the imported carpeting is precluded from classification as a fabricated component because it is in a material length. You cite numerous cases which distinguish between unfinished articles and materials for purposes of tariff classification.

ISSUE:

Is the imported carpeting a fabricated component for purposes of Headnote 2(a), Subpart B, Part 6, Schedule 6, TSUS?

LAW AND ANALYSIS:

An article entered as original motor-vehicle equipment under the provisions of the Automotive Products Trade Act of 1965 (APTA) must be a fabricated component within the meaning of Headnote 2(a). The term "fabricated component" was discussed in the legislative history to APTA. House Report No. 537, dated June 21, 1965, at page 27. The relevant language is as follows:

> The term "fabricated component" is a term of limitation which embraces finished or unfinished components actually incorporated into a motor vehicle. The term does not, however, include materials, such as metal plate, sheet, strip, wire, pipes and tubes, and textile piece goods. In other words, although at the time of importation that component does not have to be in a condition completely ready for assembly without

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> further fabrication, it must at a minimum be so far processed as to be physically recognizable as a component in an unfinished state.

The term "fabricated component" under APTA has been construed by the court in only one judicial opinion, John V. Carr & Sons, supra. The merchandise considered in Carr was brake hose in various material lengths. The hose was specially designed for high pressure hydraulic brake systems in trucks. It was recognizable in the industry as automotive brake hose. The court held that it was a fabricated component under APTA.

Under the long-standing meaning of the term "material" for purposes of tariff classification, the hose in the Carr case was a material. The numerous decisions cited by the government in that case established the precedent for determining whether imported merchandise is a material or an unfinished article. The test requires, in essence, identity of an individual article. The court in Carr stated that these decisions were inapplicable to the facts and issue before it. The conclusion to be drawn concerning the principle of the Carr case is that we need to distinguish between the term "material" as used in the legislative history for APTA and as used for tariff classification purposes. Such a distinction, however, will not affect the tariff classification. It only enters into the determination as to whether a material, if classified under a provision that covers articles both in material lengths and as individual articles, is a fabricated component for purposes of APTA.

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The merchandise in issue is clearly in material lengths for classification purposes and is classifiable in item 360.83, TSUS. This is similar to the situation presented in Carr concerning material lengths of hose. In Carr the court noted that the hose was clearly identified by markings and other evidence as automotive brake line hose, and was recognizable as such.

The carpeting product in issue is solely used in automotive applications. The technical specifications for its construction limit its application to the automotive industry. The carpeting is recognizable as such, and, therefore, is similar to the brake hose in Carr. Secondly, and more significantly, the carpeting material is not known as textile piece goods. Arguably, the carpeting material is a textile fabric in the piece. As such, it would seem to be excluded from APTA treatment under the above-quoted legislative history. However, in a letter received from the American Textile Manufacturers Institute, Inc. (ATMI), we were advised that automotive carpeting "does not fit within the term 'piece goods' as it is used in the textile industry." The high degree of engineering, the specificity of use, and the manner in which it is sold are conclusive in precluding the carpeting material from consideration as textile piece goods. In view of the Carr decision and the definite statement from ATMI, the carpeting material would not be encompassed by the named exemplar, textile piece goods, as a material excluded from APTA.

In summary, the carpeting material is designed for automotive applications, is recognizable as such, and is not textile piece goods.

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Therefore, the carpeting is a fabricated component for purposes of APTA.

HOLDING:

For the above reasons the carpeting material is a fabricated component for purposes of tariff treatment under APTA. The protest should be allowed in full. A copy of this decision should be given to the protestant at the time notice of action is given on Customs Form 19.

Sincerely,

Harvey B. Fox
Directory, Classification
and Value Division

075013

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D1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 24 1986

REFER TO

CLA-2:CO:R:CV:G
075706 JCH
812043

075706

Mr. John E. Hawes
System Integrators, Inc.
P.O. Box 13626
Sacramento, California 95853

Dear Mr. Hawes:

This is in further reference to your letter of January 8, 1985, in which you requested information as to the dutiable status of the Hell Digiset LS 210. The merchandise is a product of West Germany.

The Digiset LS 210 is described as a typesetting system consisting of three modules, an IP 100 image processor, a flatbed recorder and a printer. The IP 100 receives font and other typesetter or text data through interfaces from other domestically sourced input generating equipment. The processor allows further adjusting of print and images regarding toning, slanting, size, etc., and allows for full page laser scanning. In the recorder, film is exposed to the laser signals emitted by modulator electronics and optical components. The film is processed in the printer.

While you contend the system is duty-free under the provision for typesetting machines in item 668.25, Tariff Schedules of the United States (TSUS), we find that that classification is only applicable to the flatbed recorder in question. While you cited court decisions for an opposite conclusion, those decisions did not deal with editing and film developing equipment peripheral to phototypesetters, and, in fact, the typesetters in litigation did not even deal with full-page images. We further find that the IP 100 and the printer are classifiable under the provision for

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machines, not specially provided for, in item 678.50, TSUS. The current column 1 rate under that provision, applicable to products of West Germany, is 3.9 percent ad valorem.

Sincerely,

Arthur P Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

075706

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D3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 30 1986

REFER TO

CLA-2 CO:R:CV:G
075882 JGH

075882

District Director of Customs
2 India Street
Boston, Massachusetts 02109

Dear Sir:

Re: Decision on Application of Further Review of Protest 0401-4-000339, Classification of Base Paper

Counsel for the protestant describes the process of manufacturing Glorythene Black/White Photographic Base Paper (Code Number P 380) as follows:

1. Paper of 100 percent wood pulp stock is made on a conventional Fourdrinier papermaking machine. The paper weighs 144 grams per square meter.

2. One side of the paper is then coated with polyethylene in an extrusion process. This is the white surface of the imported product which is its face. A chill roll on the extruder imparts the desired finish (glossy, matte, or embossed) to this face side. This layer of coating weights 38 grams per square meter.

3. The underside of the paper is coated with polyethylene which is black in color at the same time that step No. 2, above, occurs. This simultaneous coating is known as the tandem extrusion process. That is, it is a one-pass operation in which both sides are coated. The layer of black polyethylene weighs 40 grams per square meter.

4. After being cut to size, the paper is completely manufactured and ready for export to the United States. After importation, the paper is sensitized for use in photography by the application of light sensitive emulsions to the face side (i.e., white side).

5. This paper is used in the instant photography process. When the paper is ejected from the camera, processing chemicals are released onto the white side of the paper. The black pigment

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on the underside prevents light from entering through that side. In seconds, the image photographed is developed directly onto the paper. The user then has a photographic image on the white side of the Glorythene paper.

Information contained in the file is to the effect that prior to 1962, all photographic base papers were coated with a baryta coating. This was to impart the required surface to enable the sensitizer to achieve the right degree of smoothness after the sensitizing coating was applied. In 1962, the Wiggins Teape organization introduced resin coated papers as an alternative to baryta coated paper. At the same time, the Kodak organization also introduced a similar product, and virtually all photographic base papers are now coated with a polyethylene resin coat on both sides. The finish or surface of the polyethylene is achieved by the chill roll. This chill roll can achieve a glossy, matte or embossed finish. The protestant claims that this paper is still purely and simply a photographic base paper specially designed for the sensitizing industry, and although baryta coated papers are still used to a very limited extent for certain specific purposes, the major industry product is resin or polyethylene coated paper. We note that a specification sheet for the product from the Polarid company bears the title "Photographic Base Paper."

The question is whether the imported base paper is classifiable under the provision for basic paper to be sensitized for use in photography, in item 254.05, TSUS (as the importer claims), as other impregnated paper in item 254.85, TSUS, or as a plastic article in item 774.55, TSUS.

It is the port's position that this is not a basic paper because it has the look and feel of two colored plastic sheets. The essential character is imparted by the plastic, and the paper seems to serve no purpose but to bind the plastic sheets together. Finally, the concerned import specialists argue that the plastic layers are functioning portions of the material. The plastic surface is sensitized and thus the product cannot be a paper to be sensitized.

The import specialists are concerned that the paper has no function other than to serve as a backing or a binder. The plastic layers are the functioning portion of material, imparting to the product the essential characteristic. Because of this concern we questioned counsel on this point. He advises that the imaging process used here is the same as when baryta coated photographic base papers were in use. This is the way all photographic base papers are used. Regardless of the thickness or finish of the coating, the image is always developed on the sensitizing materials that sit on top of the coating.

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In consideration of the foregoing it is our conclusion that the paper in question will ultimately be used in the same manner as papers to be coated with baryta which are unquestionably classifiable under item 254.05, TSUS, as basic paper to be sensitized for use in photography. The fact that this paper is an improvement or a variation from the baryta type should not require a different classification. C.D. 4179 noted.

For the foregoing reasons you should allow the protest in full. A copy of this decision should be furnished to the protestant along with the Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffner
For Harvey B. Fox
Director, Classification
and Value Division

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078872

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 30 1986

REFER TO

CLA-2 CO:R:CV:G
075948 JGB
812206

075948

Mr. Victor S. Samara
Samara Brothers, Inc.
34 Exchange Place
Jersey City, New Jersey 07302

Dear Mr. Samara:

Your letter of January 22, 1985, requests a ruling on the tariff classification of two overall and long sleeve shirt sets, styles 5075 and 6075 to be imported from the People's Republic of China. Both samples were sent to Headquarters. They are of the same fiber composition and the same general construction. Only the bib design differs.

Number 5075 has a bib with a horizontal band along the top, with the remainder of the bib shirred beneath. Number 6075 has a higher bib with a curved or scooped front and back. These distinctions are insufficient to create different classification in the tariff items under consideration here; therefore, this ruling will govern both style numbers.

The samples consist of 100 percent woven cotton corduroy overalls with shirts of 65 polyester and 35 percent cotton woven fabric. The shirts have button cuffs and full button closures. The shirts are not ornamented. The overalls are ornamented with textile appliques and embroidery stitching. The overalls have self-fabric suspenders that are to be threaded through the fabric loops inserted in the shoulder seams on the shirts. The two parts are to be imported together and are intended to be worn together.

You state that you intend to import this merchandise in infants' sizes 9-24 months and in toddler sizes 2, 3 and 4.

This matter was referred to Headquarters for resolution because it was necessary to clarify whether a new headnote to the tariff dealing with playsuits should lead to any changes in the tariff treatment of two-piece garments claimed to be playsuits. In our recent ruling, 075949, dated March 11, 1986, we noted that the standards for determining whether two garments were classified together

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under the tariff include reference to Customs Textile Category Guidelines (CIE 36/79), the way the garments are known and marketed, their use, the construction design and composition of the garments, and the way they may be worn together. We also noted that several factors must be evaluated before they yield a classification result, so they do not consist of a formula to be applied mechanically.

The overall and shirt sets, in infants' sizes up to and including 24 months of age and in toddler sizes (2,3, and 4) are classified in item 384.0933, Tariff Schedules of the United States Annotated, as "other ...infants' wearing apparel, ornamented: Of cotton: Other: Not knit: Other coveralls, overalls, jumpsuits and similar apparel; other playsuits, washsuits sunsuits and similar apparel: Coveralls, overalls, jumpsuits, and similar apparel, whether or not known as playsuits: Infants'," dutiable at 20 percent ad valorem (1986), requiring textile category designation 337.

These items apply to your samples because the two parts are imported as a unit and are designed to be worn together. The loops on the shoulder serve the function of keeping the suspenders from falling down during an active child's play. While each garment might conceivably be worn alone or in combination with other garments, the function of the shoulder loops would not be fulfilled by separate wear of the shirt, nor would the suspenders be kept up securely when the overalls were worn with a different shirt.

It is difficult to determine with any certainty whether the buyers would find the shirt loops feature which secures the suspender to be of much value. However, for our classification purposes we note that the feature performs a real function in connecting the garments during wear and that the function goes beyond the trivial, or incidental.

You are advised to contact your local Customs office prior to importation to determine the current status of any import restraints or requirements. This ruling should be attached to the entry documents filed on importation.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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075948

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 30 1986

REFER TO
CLA-2 CO:R:CV:G
076003 JGH

076003

Gail T. Cumins, Esq.
Sharretts, Paley, Carter & Blauvelt, P.C.
Eighty Broad Street
New York, New York 10004

Dear Ms. Cumins:

This is in reference to your submission concerning the tariff classification of foamed polyethylene beads, products of Japan. Polyethylene pellets are said to be impregnated with a blowing agent (freon gas) under heat and pressure. When the pressure is released the pellets expand to form the foamed polyethylene beads. The foamed beads are described as being up to 100 times less dense than the pellets, and the degree to which they are expanded can be controlled by the foaming process.

Subsequent to importation, the beads are used by various molding plants for molding into a variety of solid shapes. In the molding process the beads are subjected to further expansion and fusion to create a variety of products from drinking cups to rigid packing material shapes.

The question is whether the foamed polyethylene beads are considered basic forms classifiable as a polyethylene resin in item 445.30, TSUS; or an advanced form classifiable under the provision for other expanded, foamed or sponge plastics, or articles wholly or almost wholly of such plastics in item 770.80, TSUS.

Headnote 2, Part 4, Schedule 4, TSUS, in defining the term "synthetic plastics materials," states that the plastics may be in solid, semi-solid, or liquid condition, such as flaked, powders, pellets, or granules. In explanation, the Tariff Classification Study, Explanatory Materials, CIE 1/64, Vol. 1, p. 303, states that products included as "synthetic plastic materials" are plastics in the first stage of manufacture, i.e., in physical forms such as liquids, pellets, flakes, and other forms from which finished or semi-finished products may be made. In volume 2 of the Study, page 666, it is noted that another technique for producing styrene foam articles is to place partially pre-expanded styrene beads into a mold and simultaneously introduce steam which causes the expanded beads to further expand and adhere to one another and fill the mold cavity. The Study notes on page 664 that items 770.30-770.80, cover expanded, foamed, or sponge plastics and articles wholly or almost wholly of such plastics.

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Despite these explanations in the Tariff Classification Study, it is argued that the expanded beads are another basic form within the definition of the synthetic plastics materials headnote, that they are "a more expeditious form for the molders use," a form which can be changed by extrusion into various forms which are themselves advanced beyond the resin state. The beads, it is argued, are basic forms which can be processed into any number of molded products. It is maintained further that as pellets, which are extruded products, are considered a material resin by the headnote definition, the foamed bead should be so likewise considered, since it is not further advanced.

While admitting the basic utility of the expanded bead in that it is not dedicated to any specific use, the fact remains that it is a pellet which has been processed beyond the first step of resin manufacture. While still not a final form, the beads are no longer considered a basic form by the headnote definition. This interpretation is reinforced by the Tariff Classification Study.

We think the key to solving this question is the superior heading to items 770.30-770.80 which provides for expanded and foamed plastics as well as articles of such plastics. This coupled with the explanation in the Study, convinces us that although the product under consideration is a foamed pellet, an expanded bead with a versatility of use and lack of dedication, it is nonetheless advanced beyond the state of plastics provided for in Schedule 4, TSUS.

For the foregoing reasons the foamed polyethylene beads are classifiable under the provision for flexible expanded, foamed or sponge plastics in item 770.80, TSUS.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DG

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO
CLA-2:CO:R:CV:G
076137 JCH
811714

19 MAY 1986

076137

William L. Dickey, Esq.
William L. Dickey & Associates, P.C.
International Square
1825 I Street, N.W., Suite 400
Washington, D.C. 20006

Dear Mr. Dickey:

This is in response to your letter of April 29, 1985, in which you petition for reconsideration of a New York Customs ruling dated January 25, 1985, that you applied for on behalf of Asfor Steel Corporation. In that matter, assemblies, each consisting of two wheels, two sets of journal roller bearings and one axle for railroad freight cars, were classified under the provision for parts of freight cars in item 690.35, Tariff Schedules of the United States (TSUS). The current column 1 rate required under that provision is 5.9 percent ad valorem.

You contend the merchandise is properly classifiable under the provision for wheels imported with axles in them in item 690.30, TSUS, a free provision. You further state that this tariff treatment would be consistent with our tariff treatment of similar merchandise in a ruling interpreting the repealed dutiable list of the Tariff Act of 1930. However, the tariff classification in the New York ruling under review was consistent with our interpretations under the TSUS as reflected, for example, in T.D. 66-267(14), 101 Treas. Dec. 682.

Your request for a change in position is largely based on exceptions to the "more than" rule. More specifically, you contend that the addition of journal bearings does not change the essential character of wheel and axle assemblies and cite judicial precedent you believe pertinent. However, we find the cited authority is inapposite here. Item 690.30 is not a provision for wheel and axle assemblies and, therefore, the essential character of such assemblies cannot be taken into consideration. Rather, the provision is only for wheels and parts. It merely contains, in effect, an instruction that

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when wheels are imported with axles inserted, the axles will be regarded as entireties with the wheels. There is nothing in the provision authorizing a journal bearing to also be regarded as an entirety with a wheel.

In this connection, it should be further noted that while the expressio unius rule does not apply to TSUS headnotes, it does have some application to TSUS breakouts. Accordingly, we are of the opinion that the specific authorization for treating a wheel and attached axle as an entirety excludes similar treatment for an attached journal bearing. Nor do we find that any other theories of tariff classification apart from exceptions to the "more than" rule, such as any theory that bearings are wheel parts or axle parts, can be legitimately applied to avoid that conclusion.

Accordingly, we remain of the opinion that the instant assembly constituting an entirety which is other than or more than wheels and an axle is dutiable under item 690.35, and the ruling in question, therefore, is affirmed.

Sincerely,

John T. Rock

For Harvey B. Fox
Director, Classification
and Value Division

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076137

D/2

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: APR 30 1986

FILE: CLA-2:CO:R:CV:G
076161 JCH

076161

TO : Chief, Customs Information Exchange

FROM : Director, Classification and Value Division

SUBJECT: Difference of Opinion on Customs Form 6431

In your memorandum of April 30, 1985, you transferred the difference of opinion on Custom Form 6431 dated December 29, 1983, concerning the tariff classification of the Minolta Color Meter II made in Japan. This matter is listed as the last difference on page 2 of CIE 89/79, Suppl. No. 45, dated March 1986. Our decision follows:

ISSUE:

The sending port contends the merchandise is classifiable under the provision for optical electrical measuring, checking, analyzing or automatically-controlling instruments and apparatus in item 712.05, Tariff Schedules of the United States (TSUS). The column 1 rate of duty required under that provision in 1983 was 17.5 percent ad valorem. The national import specialists are of the opinion that the merchandise is covered by the provision for photographic light meters in item 722.75, TSUS. The 1983 column 1 rate under that provision was 4 percent ad valorem.

FACTS:

It is stated in the sender's remarks that the color meter simultaneously measures the ratio of three colors of a continuous light source or combination of sources and then recommends appropriate correction filters to balance them with

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the type of film used in the camera. It may be assumed the articles employ dichroic optical systems with photoelectric detectors.

LAW AND ANALYSIS:

The main question here is the extent the provision for photographic light meters may be considered broad enough to encompass the subsequently created or commercially significant color meters. Lexicographic and technical references we have consulted show that "light meter" is merely another term for "exposure meter," and that the latter is a device for measuring light intensity for the purpose of shutter and/or aperture settings or control. While it is true the instant articles also measure light intensity, they do not do so until the light is separated into its three primary color constituents, and the measuring or analysis that takes place is for the purpose of filter selection.

With respect to commercial references, we have found only one listing of the instant meters under the category "exposure meters". See catalogs and advertisements of the Cambridge Camera Exchange, Inc., 7th Avenue and 13th Street, New York. All other commercial references to the devices in question rather include them under the broader "meter" category. In this connection, we note that the instant articles are comparatively expensive costing several times more than the typical exposure meter thereby further suggesting a different category of merchandise.

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HOLDING:

1. The foregoing facts are not persuasive of the view that legislative intent would be served by regarding color meters as subsequently created articles within the preexisting scope of the provision for photographic light meters in item 722.75, TSUS.

2. Accordingly, we find that the merchandise is properly classifiable under the provision for optical electrical measuring, checking, analyzing or automatically-controlling instruments and apparatus in item 712.05, TSUS.

Arthur P. Scheffler
for Harvey B. Fox

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076161

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAY 22 1986

FILE: CLA-2 CO:R:CV:G
076295 JCH

076295

TO : Chief, Customs Information Exchange
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Difference of Opinion on Customs Form 6431

In your memorandum of May 7, 1985, you transferred the difference of opinion on Customs Form 6431 dated April 18, 1985, concerning the tariff classification of scanning disc printers made in Switzerland. This difference is listed as the eighth difference on page 1 of CIE 89/79, Suppl. No. 45, dated March 19, 1986.

The merchandise is the Gretag 3142 scanning disc printer. It was initially described by the sending port as using paper cassettes which after exposure were taken to a developer. The national import specialists after examining literature for the merchandise were of the opinion the merchandise produced internegatives which are negatives made from transparencies.

It is assumed that the sending port's classification under the provision for enlargers in item 722.18, TSUS, presupposes an optical system for producing positives or negatives either smaller or larger than the original. If that is the case, and the merchandise contains an internal light source, the merchandise would be correctly classifiable under the provision for enlargers in item 722.18. See Ehrenreich Photo-Optical Industries, Inc. v. United States, Slip Op. 86-35 (Ct. Int'l Trade, decided March 26, 1986). It is our understanding that the distinction between enlarging printers in that matter and the enlarging printers which were the subject of United States v. E. Besler & Company, 64 CCPA 121, C.A.D. 1193 (1977), was that the latter did not contain an internal light source. A distinction was not made because one produced positives while the other made internegatives.

It would appear, therefore, that classification of the instant enlarging printers, whether or not they produce internegatives, under item 722.18 is correct. However, since we have not been furnished any technical information describing the merchandise, this finding should not be regarded as conclusive with respect to any subsequently filed protests and applications for further review which may show that the facts are different from as we understand them to be as indicated above.

Arthur J. Shaffler
for Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 30 1986

REFER TO

CLA-2 CO:R:CV:G
076365 TLL

076365

District Director of Customs
Baltimore, Maryland 21202

Re: Application for Further Review of Protest No. 1303-4-000399

Dear Sir:

The issue involved in this case is whether the imported paper is classified under item 252.67, Tariff Schedules of the United States (TSUS), as book paper and printing paper, not specially provided for, or whether the paper is classified under item 252.75, TSUS, as writing paper weighing over 18 pounds per ream.

The paper at issue is Risco Bond Offset Paper. The paper in question was used to print U.S. Government tax forms. These are to be filled in by pen, typewriter, etc.

This paper is 68 gsm in weight. Sixty-eight grams per square meter is commercially equivalent to 18 pound (17 x 22-500) writing paper, including bond, form bond, and ledger. The basis weight for tariff purposes is 41.8 pounds per Customs ream. The paper was classified on liquidation as writing paper.

The protestant claims the paper should be classified on reliquidation as printing paper, based on an asserted conformity to a government standard for offset book (printing) paper: JCP A60, published by the Joint Committee on Printing, Congress of the United States (JCP).

Before getting into a discussion of JCP standards, reference to two Headquarters precedents is relevant. In T.D. 72-207, Headquarters held certain bond paper to be classified under item 252.75, TSUS, by stating:

> The chief use of this paper in the United States has been determined to be as writing paper for conversion into computer output forms and business forms for the recordation of data by pen, pencil, typewriter or similar device as a means of communication by one or a limited number of copies to one or a limited number of receivers. Generally, the only printing done in the conversion processes is lines, spaces, column headings, and incidental text. This paper is commercially designated as a writing paper by the paper industry within the United States.

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076365

Headnote 2(d), Part 4, Schedule 2, TSUS, defines writing paper in the following manner:

> (d) The term "writing paper" includes, but is not limited to, papers such as ledger, letter, manifold, mimeograph, note, onionskin, tablet, and typewriter papers.

In C.S.D. 82-91, Customs followed T.D. 72-207, and held that computone paper used in the production of computer printout forms, is properly classified under item 252.75, TSUS. In so holding, Customs pointed out:

> ....Apparently, the chief use of computone in the United States is in making computer printout forms for recording data by pen, pencil, typewriter, or similar device. The only printing done on the paper is lines, space column headings, and incidental text.

In the context of C.S.D. 82-91, the tax forms to be printed after importation are designed for "recording data by pen, pencil, typewriter or similar device."

C.S.D. 82-91 went on to state:

> In Treasury Decision 72-207, the Customs Service held that form and computer bond paper was classifiable as "writing paper" in item 252.75, Tariff Schedules of the United States (TSUS), noting that such paper is commercially designated as writing paper by the paper industry within the United States.
>
> The only way in which computone differs from the form bond paper that was at issue in T.D. 72-207 is in the composition of its stock. The form bond which was the subject of the Treasury Decision was composed of 100 percent chemical wood pulp, while computone contains 67 groundwood pulp.
>
> The designation "writing paper," however is a use provision. The percentage of groundwood pulp will not cause computone to be classified differently from the form bond in T.D. 72-207 unless it is shown that the different stock results in a different end use.

We note that writing paper is a chief use provision except for the types of paper specifically enumerated in Headnote 2(d), Part 4, Schedule 2, TSUS, supra. These papers (e.g., ledger, letter, onionskin, etc.) are writing papers by tariff definition, regardless of their use. Insofar as JCP standards are concerned, the paper in question conforms to a JCP standard D10 for writing paper, white and colored. This standard specifies a paper weighing 68 gsm, which is used, among other things, to print forms. With respect to forms, the standard says, "Printed matter may include text, line illustrations, and ruled forms."

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With regard to the standard for printing paper, your attention is directed to the May 1984 Supplement to the Dictionary of Paper, Fourth Edition, which provides:

> Printing papers consist of papers designed to be used by commercial printers, lithographers, magazine publishers, book publishers and similar establishments for mass communications and other end uses where a multitude of copies are required for broad distribution. The kinds of paper in this category include such grades as uncoated offset, machine finished and english finish book papers, high bulk book papers, supercalendered book, and clay filled supercalendered papers.
>
> The products utilizing printing papers are generally sold in completed form, i.e., material is not added after the printing stage. These industries are generally characterized by long press runs on high speed equipment. The material printed on the paper is the sole purpose and intent of the document and imparts all the knowledge to be gleaned, by itself, with no further addition.
>
> Printing papers are usually printed on both sides, and in many cases receive copy requiring heavy ink coverage. Therefore, opacity is generally considered to be a very important characteristic.
>
> End Use Products
>
> End use products include, but are not limited to, magazines, books, pamphlets, folders, brochures, labels, greeting cards, calendars, broadsides, car cards, catalogues, directories, etc.

After review of the imported paper, we are of the opinion that the paper does not meet the above standard.

In sum, we conclude based on Headquarters precedent and JCP standard D10 that Risco Bond Offset Paper is classified under item 252.75, TSUS. Consequently, you are directed to deny the protest. Please see that the protestant is provided a copy of this decision with the returned Customs Form 19.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

For Harvey B. Fox
Director, Classification
and Value Division

076365

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 18 1986

REFER TO
CLA-2 CO:R:CV:G
076386 JGH

076386

District Director of Customs
Second and Chestnut Streets
Philadelphia, Pennsylvania 19106

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1101-4-000021, Classification of Liquid Burnish Golds and Liquid Bright Platinum Lustres, Products of England

The gold and platinum lustres are claimed by the importer to be classifiable under various provisions: paint in item 474.30; pigments in item 473.88 or 473.90; varnishes in item 474.46; benzenoid paints in item 408.48; benzenoid colors, dyes or stains in item 410.22, mixtures in 432.25, TSUS, benzenoid mixtures in item 407.16, or paints in 413.50; or the similitude provision in item 798.00, TSUS.

Customs classified the merchandise as a benzenoid mixture in item 413.51, TSUS. These products are composed of oil soluble, organo-metallic complexes of gold and/or platinum, palladium, rhodium, or other platinum group metals, together with trace amounts of silver and/or base metal in oil soluble, organo-metallic form, and are in solutions of aromatic and aliphatic organic solvents plus synthetic and natural resins. They are used to impart gold or platinum film to the surfaces of glazed earthenware, porcelain and glassware. After decorating the article it is placed in a furnace and fired to a high temperature (1050-1250 degrees F on glass, or 1300-1500 degrees F on glazed ceramic). During the firing the organic components are volatilized, and the metals reduced back to their metallic form with precious metal fused to the substrate.

<u>GMC 2858/M</u> - is said to contain 3.6 percent mercury-gold amalgam, 30 percent gold sulforesinate, with binders and solvents, all of which are volatilized upon firing, and none of which is benzenoid.

<u>Burnish Gold - GMC 3733-S</u> - Gold Powder, 31.6 percent; mercury-gold amalgam, 19.7 percent; with solvents and binders which are volatilized on firing, and none of which is benzenoid.

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Burnish Gold 5375/M - Contains gold powder 15.0 percent; gold sulforesinate 26.0 percent; silverphosphate and copperphosphate, with binders and solvents, none of which is benzenoid.

GMC 5691/S - Contains 20.8 pecent powders, binders and solvents includes methyl cyclohexanone, 4.4 percent, a benzenoid chemical.

Burnish Gold 3209 - Contains gold powder 8.2 percent, gold sulforesinate 32.9 percent; with solvents and binders that include cyclohexanane 4.5 percent and nitrotoluene 1.6 percent, both benzenoids.

Burnish Gold-GMC 112-T, GMC 6957 - Contains gold resinate 43 percent, along with solvents and binders, including 1 percent phenolic resin and 2.6 percent nitrotoluene, both benzenoids.

Bright Platinum - PBC 3805 - Contains 18.0 percent sulforesinate, isophorone 13.5 percent, methylcyclohexanone 3.9 percent and nitrotoluene 3.9 percent.

Bright Platinum - FBC 3807 - Contains 11.3 percent gold sulforesinate, 13.0 percent platinum sulforesinate, 2.4 phenolicresin, 10.7 percent cyclolexanone, nitrobenzene, 3.8 percent.

As to the claim that the products are pigments, the term "pigments" as used in Headnote 1, Part 9(B), Schedule 4, TSUS, would not include the powders in issue. The headnote definition refers to products commonly known as pigments, which the precious metal powders are not. The "Explanatory Notes to the Brussels Nomenclature" defines solutions or suspensions of metallic compounds in solvents used for decorating ceramics or glassware, as lustres, with the most widely used being gold, silver, aluminum and chromium. Thus, though they may be somewhat similar to pigments, they are regarded as being different, and distinct, as are glass frit and engobes.

Another contention is that the lustres are paints or varnishes. Headnote 2, Part 9C, Schedule 4, TSUS, defines paints as pigment dispersions in a liquid vehicle which are suitable for application on a surface as a thin layer and which harden to an opaque solid film. However, in the case of the lustres, instead of pigments these are precious metals, which, when applied to a surface, have to be fired; and rather than a surface coating, it penetrates the porous texture ceramic or glass article. The materials are not considered varnishes either, in view of the headnote definition, as they are not transparent or translucent films.

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As to those products which contain benzenoid binders, solvents or other chemicals, it is asserted that the de minimis rule should obtain. The test, as stated by the court, for determining whether or not a benzenoid ingredient in an otherwise non-benzenoid product is considered de minimis is: (1) whether it was present in a minute amount, and (2) whether it played a role in the principal function of the product or exhausted its usefulness prior to the performance of the principal function. United States v. Aceto Chemical Co., 64 CCPA 78 C.A.D. 1186 (1977). In applying the de minimis test for products such as these in issue, any benzenoid in an amount of about 3 percent or more would not be considered de minimis.

Classification is as follows:

Burnish Gold 2858/M - not in chief value of precious metal and not containing any benzenoids would be classifiable as a mixture in item 432.25, TSUS, dutiable at the highest rate applicable to any component material. The highest rate would be for item 605.28, TSUS.

Burnish Gold GMC 3733-S - Classifiable as an article of precious metal, gold, in item 656.10, TSUS.

Burnish Gold 5375/M - Classifiable in item 656.10, TSUS.

Burnish Gold 5691/S - Classifiable in item 656.10, TSUS.

Burnish Gold 3209 - Classifiable in item 656.10, TSUS.

Burnish Gold GMC 112-T, GMC 6957 - Not in chief value of a precious metal and as the benzenoid content is considered de minimis, it is classifiable as a mixture in item 432.25, TSUS, with the rate of duty dependent on the highest rate of a component material.

Bright Platinum PBC 3805 - Classifiable as a benzenoid mixture in item 407.16, TSUS, in view of its benzenoid content.

Bright Platinum FBC 3807 - Classifiable in item 407.16, TSUS, in view of its benzenoid content.

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076386

You are instructed to deny the protest, except to the extent that reclassification as indicated above results in a partial allowance.

A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

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E9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

29 NOV 1985

CIA-2 CO:R:CV:G
076462 JAS
813865

Mr. K. H. Lee
J. D. Bertolini Industries, Ltd.
132 West 36th St.
New York, New York 10018

Dear Mr. Lee:

In your letter of May 20, 1985, to Customs in New York, you inquire as to the tariff classification of refrigerated containers from Korea (presumably the Republic of Korea).

The containers are described as being of steel and aluminum construction with fiberglass interior lining and insulated with polyurethane. They are not designed, however, to allow heating or cooling liquids to circulate in their walls. They measure 8 ft. x 8 ft. x 20 ft. We are informed that the nose walls of these containers have cutouts to receive refrigeration units. The containers will arrive without the refrigeration units, which will be of American origin and installed after importation. Each unit will have a combination motor/compressor, evaporator, condenser, and fan.

Competing provisions we have considered are item 640.30, Tariff Schedules of the United States (TSUS), covering other containers of base metal chiefly used in the packing, transporting, or marketing of goods (temporarily free of duty under item 911.80), versus item 661.35, TSUS, covering refrigerators and refrigerating equipment, whether or not electrical, and parts thereof. We have previously held that containers such as the ones here involved, imported with their refrigeration units, are classifiable in item 661.35. The subject containers imported without refrigerating units are, in our opinion, unfinished refrigerating equipment, and also classifiable under item 661.35, TSUS.

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Merchandise classifiable under item 661.35, TSUS, which are products of the Republic of Korea, are entitled to duty-free treatment under the Generalized System of Preferences (GSP), upon compliance with all applicable regulations. Copies of the law and regulations are enclosed for your reference.

Sincerely,

William P. Schaffner
For Harvey B. Fox
Director, Classification
and Value Division

Enclosures

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0764462/813865

E11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

30 MAY 1986

REFER TO
CLA-2:CO:R:CV:G
076495 JGB
076496 JGB

District Director of Customs
600 Central Avenue
Great Falls, Montana 59401

Dear Sir:

Re: Decision on Application for Further Review of Protests Nos. 3304-4-000186 and 3304-5-000032

The two above-captioned protests and application for further review were taken against your decision in the classification of printed, plastic-coated woven polyethylene bags, the product of Canada. Protest 3304-4-000186, dated December 21, 1984, covers entry 84-206502-5, entered March 14, 1983 and liquidated November 23, 1984. Protest 3304-5-000032, dated March 14, 1985, covers entry 83-328101-2, entered September 30, 1983 and liquidated January 11, 1985. The protests involve the same parties and same merchandise.

ISSUE:

The protestant claims the bags are classified in item 772.20, Tariff Schedules of the United States (TSUS), the provision for containers of rubber or plastics, with or without their closures, chiefly used for the packi g, transporting, or marketing of merchandise, dutiable at 5.3 pere[illegible]orem (1983).

[illegible]ified the bags in item 385.53, the provision for bags and sacks, or other shipping containers, of textile materials: of man-made fibers, dutiable at 8 cents per pound plus 13.2 percent ad valorem (1983).

E12

076495 / 076496

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The issue is whether the bag is of textiles or of plastic.

FACTS:

This importer requested internal advice on similar merchandise which was answered by this office in IA 155/83 (IA), Headquarters Ruling Letter (HRL) 073348, December 30, 1983. That IA ruled that the bag was classified in item 385.53, TSUS. A sample of that merchandise is available at Headquarters and we have examined it.

We have obtained a sample of the instant merchandise from entry 83-328101-2. This bag is in dimension and construction the same as the merchandise in the IA. The only difference is that this bag is printed in white with predominantly green markings. A safety mark "a" (for asbestos?) is present in the side pleats of both bags in red and black. The white printing on the instant bag extends to about 1 inch from the bottom where the transparent polyethylene woven material is most obvious.

LAW AND ANALYSIS:

The IA noted that its bag "appears to have been coated on its exterior surface with a light layer of transparent rubber or plastics material...." That appearance is equally true in the instant bag. The woven polyethylene strips would readily come apart if the coating of plastic material were not present holding them together.

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076495 076496

Headnote 5(a) to Schedule 3, TSUS, directs Customs to classify coated or filled fabrics in Schedule 7 (as plastic), if coated with "nontransparent rubber or plastic." As noted in the IA, the coating on these bags is transparent, meaning that they are ineligible for Schedule 7 classification, when made of woven textiles. This analysis is directed to the claim advanced by the protestant than the bags are "white opaque." The instant bag is fully transparent where the white printing stops at the bottom of the bag and is also transparent through the area printed in white where the white coloring was not impressed in the interstices of the polyethylene weave.

It should be noted, however, that a more thorough printing job would not be enough to turn this woven bag into a non-transparent article classifiable in Schedule 7. Headnote 5, relied on by the protestant, is not activated by the mere addition of a color over a transparent coating. This mere printing, whether or not it changes the color, does not change the fact that the plastic coating on the woven polyethylene is transparent. Our examination of the sample indicates that the only material change between the bag in the IA and the instant bag is a change in color.

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076495/076496

HOLDING:

You should deny both protests. These bags are classified in item 385.53, TSUS, as liquidated. A copy of this decision should be attached to each Customs Form 19 to be returned to the protestant.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

076495 / 076496

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 24 1986

REFER TO
CLA-2:CO:R:CV:G
076498 JH
813789

076498

Mr. Anthony M. Dix
Commercial Director
Edward Hall & Brothers Ltd.
Botany Works, Whaley Bridge
Stockport SK12 7DQ, Cheshire
England

Dear Mr. Dix:

This is in reference to your inquiry on the classification of bleached honeydew cotton. The cotton is described as not suitable for spinning due to honeydew contamination, which is said to be a sticky, brown, sugar-like substance secreted on cotton by white flies. This is claimed to be a problem with cotton from Sudan, and makes it unspinnable. One solution is said to be the bleaching of the cotton, which involves boiling the cotton with caustic soda, to remove all the natural fats and waxes as well as the honeydew. It is noted that as all the natural lubricant has been removed from the cotton by this process, it is not spinnable. However, the unspinnability is not a factor in this case, as the cotton in question is intended for manufacture into surgical cotton-wool products which do not require spinning.

A sample of the bleached honeydew cotton was submitted to the Cotton Quality Research Station of the Department of Agriculture which determined that the sample was the equivalent to a 1-3/32 inch staple cotton. While not regarded as a machine waste, the sample was said possibly to be from dirty waste. A French technical paper on the nature of this cotton was also submitted. The paper emphasized the major problems faced in spinning "sticky raw cottons due to contamination by Honeydew," and "that using finishing products in raw cotton remains a delicate problem."

The question is whether this type of cotton is a waste.

Cotton fiber does not become a waste merely because it is incapable of being spun. Headnote 1(a), Part 1, Schedule 3, TSUS, in defining waste, lists certain wastes which are by-products of a manufacturing operation or a manufactured product which has been reduced to its constitutent fibers.

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However, additional evidence made available to this office on this type of cotton describes it in different terms. A report prepared by the Cotton Quality Research Station describes the physical properties of a sample of honeydew cotton believed identical to the merchandise in question. It was stated that the bleached cotton fibers could be sprayed with lubricants and spun into many types of yarn up through 20 count. Though not an ideal starting material, it was believed that the bleached fibers could be used to produce yarns as high as 40 count. Also it was noted that the harsh bleach used to remove the honeydew was not necessary. It was stated that honeydew contamination was readily removed with warm water and a wetting agent. It was also noted the honeydew contaminated cotton was suitable for spinning on open-ended spinning machines.

Waste is generally refuse, surplus, and useless stuff resulting from a manufacturing process and commercially unfit, without remanufacture, for the purposes for which the original material was suitable. Harley Co. v. United States, T.D. 41644 (1926). See also Cheltenham Supply Corp. v. United States, 63 Cust. Ct. 271, C.D. 3908 (1969). In United States v. Salomon, 1 Ct. Cust. Appls. 246, T.D. 31277 (1911), the court held that cotton linters, short bits of cotton fibers that adhere to the seed during the ordinary process of ginning and are later recovered by a special gin, were not waste. In Salomon Bros. v. United States, 2 Ct. Cust. Appls. 431, T.D. 32196 (1912), it was held that broken jute fibers rejected by a carding machine, which may be spun or felted, were not waste -- residuum with commercial value and used for the same purpose as the superior quality fibers, except that it produces an inferior product, is not waste. Finally we note C. J. Tower & Sons of Buffalo, Inc. v. United States, 56 Cust. Ct. 274, C.D. 2638 (1966), which held that tire cord yarn which, because of oil spots and other defects, was not useable as such, was not waste because it still fell into the common meaning of the term "yarn."

In view of the above, the subject merchandise is not a waste for tariff purposes. Rather, this type cotton is classifiable under the provision for fibers of cotton, processed but not spun, in either item 300.45, TSUS, if having a staple length of under 1-1/8 inches, with duty at the rate of 5 percent ad valorem, or, if having a staple length 1-1/8 inches or more, in item 5 cents per pound plus 5 percent ad valorem.

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076498

Importations under these provisions are subject to item 955.06, TSUS, TSUS, which imposes an absolute quota of 1000 pounds per 12-month period beginning September 11 in any year.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosures

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076498

F4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY - 6 1986

REFER TO

CLA-2 CO:R:CV:G
076524 jlj

076524

Ms. Angela De Gaetano, Chief
Customs Information Exchange
U.S. Customs Service
6 World Trade Center, Rm. 450
New York, New York 10048-0945

Dear Ms. De Gaetano:

A Customs Form 6431 from the port of Blaine, Washington, concerns entry No. 935745 covering a shipment of cedar hanging planters from Canada to Skagit Gardens Inc., Mount Vernon, Washington. This difference of opinon is listed as the ninth item on page 1 of C.I.E. N-89/79, supplement 45, dated March 1986.

The merchandise in question is hanging planters, 10 inches by 10 inches, of cedar. The issue presented is whether the planters are classifiable under the provision for household utensils and parts thereof, all the foregoing not specially provided for, of wood, other, other, in item 206.98, Tariff Schedules of the United States (TSUS), or under the provision for articles not specially provided for, of wood, in item 207.00, TSUS.

The initiating port thinks that the hanging planters are classifiable as articles of wood, not specially provided for, in item 207.00, TSUS, because they can only be used outdoors, i.e., in patios and shopping centers. This port claims that the instant planters are not decorative planters for household (i.e., indoors) use -- although, interesting enough, the port claims that the outside use is for decoration. This port cites Headquarters Ruling Letter (HRL) 481.39 of January 30, 1969, in support of its position.

The replying port thinks that, if chiefly used in the home, the hanging planters are classifiable as household utensils, not specially provided for, of wood, in item 206.98, TSUS. It called the importer, who stated that he uses the planters for growing plants, then sells them to garden centers for retail sales. The importer stated that, in at least 90 percent of the sales, the planters are bought by individuals for use in the home.

The replying port argues that the planters are chiefly used in the household. It points out United States v. Lipman's, 52 CCPA 59, C.A.D. 859 (1965), in which the court said:

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> ...it would be an unnecessary and artificial limitation to restrict the term "household"...to the interior of a dwelling....The term "household" is broader than the mere physical structure of a house.

In Lipman's, supra, the court also affirmed the lower court's finding that:

> ...there is an increasing tendency on the part of suburban and rural householders to spend much leisure time out of doors, in areas immediately adjacent to the home. The incidence of patio living and outdoor dining is of such common occurrence as to fall naturally within the purview of judicial observation, from which it is reasonable to infer that implements of such living respond as readily to the characterization of household utensils as do the more conventional articles whose uses are confined to the interiors of homes.

The replying port further notes that there is nothing in the construction of the instant hanging planters which distinguishes them from articles of the same class or kind which are chiefly used in the home.

General Interpretative Rule 10(e)(i) states that chief use of an article is to be determined based upon the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong. Chief use depends upon the chief use of the class or kind of such articles, not upon the actual use of the particular shipment in question.

We agree that the hanging planters are of the class or kind of planters which are chiefly used in the home. We also note that the instant merchandise is sold for retail and that the importer states that 90 percent of the sales are for use in the household. While this evidence indicates only actual use of the instant merchandise, we believe that, in this case, the actual use is representative of the chief use of the class or kind of such planters. We note finally that HRL 481.39 conflicts with United States v. Lipman's , supra, and that a decision of the Court of Customs and Patent Appeals takes precedence over an administrative ruling letter. We note that similar wooden flower or plant containers have been classified in item 206.98, TSUS, in HRL 069928 of September 2, 1982, and in HRL 055365 of January 11, 1979.

We find that the instant cedar planters are classifiable under the provision for household utensils of wood in item 206.98, TSUS.

Sincerely,

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William R Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

076524

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

MAY 22 1986

REFER TO

CLA-2 CO:R:CV:G
076529 JGB
813081 N.Y.
812368 N.Y.

076529

Ned H. Marshak, Esq.
Sharretts, Paley, Carter,
and Blauvelt, P.C.
80 Broad Street
New York, New York 10004

Dear Mr. Marshak:

This is in response to your request for a ruling on the tariff classification of a "Lego Basic Building Set With Storage Case." Mr. Levy of your firm presented the original request in his letter of February 1, 1985, New York control no. 812368. Mr. Belanger of your firm made an oral presentation of the issues and the arguments at a conference at Headquarters on April 3, 1986.

You provided a sample. The sample consists of two parts. One part is labeled "1932" and "Basic Building Set With Storage Case." It contains 52 interlocking plastic pieces for children of age 3-5. The pieces come in a cardboard box, adorned with colored pictures of the product, sales information, and a UPC bar code, suitable for use in retail sale. The cardboard box measures 6-3/8 inches by 9 inches and is about 1-3/4 inches deep. The other piece is a storage case which is marked with a label as being, among other things, "Easy to Carry." The storage case appears to be constructed entirely of highly durable child-proof plastic. It is said to hold over 330 pieces and to snap tight for secure storage. The box, somewhat resembling a child's plastic lunchbox, opens on one side with a hinge at the other side of the hatch-like lid. At the other side of the lid are flexible plastic catches that snap, securing the lid. When the case is closed, it is designed to be carried by hand with the help of horizontal indentations on both sides of the case, about 4-1/2 inches long.

The cardboard box does not fit inside the carry case. It is sold, the box on top of the case, with clear plastic wrap attaching the two pieces together for the purposes of the special offer.

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The issue is whether the carry case is classified together as an entirety with the toy blocks. The blocks alone are classified under the provision for toy building blocks, bricks and shapes in item 737.55, Tariff Schedules of the United States (TSUS), dutiable at 6.6 percent ad valorem (1986).

You have argued primarily that the case and the toy blocks are classified together as an entirety. As such, you argue that the line of entireties cases that includes Miniature Fashions, Inc. v. United States, 54 CCPA 11, C.A.D. 894 (1966) and Lafayette Radio Electronics Corp. v. United States, 57 CCPA 62, C.A.D. 977 (1970) would direct Customs to recognize the two pieces as an entirety. This line of cases describes those instances where two articles are imported together and where the value or identity of one part is minimal and subordinated to the value and identity of the other part.

We regard the instant merchandise as distinguishable factually from the principles derived from the cited cases. The importer markets separately at least two storage cases, numbers 781 and 782, the latter said in the enclosed catalog to be "available soon!" The case has a separate market identity without any one of the collections of toy bricks placed inside of it. The value of the case is also substantial in comparison to the blocks included with this special offer. The special offer sticker attached to the plastic holding the blocks box to the case says that the comparable value of the item sold separately is $12.99, based on the suggested retail price of number 322 blocks and number 782 storage case. Our field examination of retail sale of comparable Basic Building Sets from this manufacturer showed an average retail price for the building set alone to be $5.99 and the comparable carry case to be $4.99. This evidence does not support your claim that there is no commercial value to the case. On the contrary, we find factually that the case has substantial value, about 80 percent of the retail price of the blocks, and therefore, would not be controlled by the principles in the entireties cases cited.

In particular, the rationale of Lafayette, supra, is inapplicable here because the storage case is neither an integral part of the block play, nor are the comparable toys sold with carry/storage cases. By contrast, as shown

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in the importer's own catalog, they are usually sold separately. Moreover, there is nothing about the carry case inherently related to toy plastic blocks. The case for the transistor radio in Lafayette, supra, has no independent function or usefulness without the radio that it was sold with; however, this case retains its utility when separated from the box of blocks. It may be used to store and carry other blocks sold by this importer, comparable blocks, or small toys, in general. To respond to your argument in the citation of Ikora, Inc. v. United States, 66 Cust. Ct. 262, C.D. 4202 (1971), the carry case is distinguishable in principle from a glass dish that fits into a silver tray forming an entirety which the court noted had "no commercial or general acceptance" as an article to be used "independent of" the thing with which it is imported. Here there is no mandate by design or construction, by commercial marketing realities, or otherwise, that the case be used with these blocks. In fact, the case, advertised to hold 330 pieces, comes with only 52 pieces. The disparity between the capacity of the carry case and this set highlights the absence of a constructive association of the two separate and distinct articles comprising the proposed importation. They do not form an entirety by a standard definition employed by the Customs Service or the courts.

Another way to find an entirety, applicable to importations of articles having comparable value, is to see if, when joined or put together, the individual identities of the articles merge into a new identity that is a new and different article of commerce. When these blocks with the carry case are put together they do not merge to form a new article of commerce with a new identity. The identity of the articles remains unaffected.

During the conference it was established that no claim is being made that the carry cases are "containers of usual types ordinarily sold at retail with their contents" in the language of General Headnote 6 to the TSUS. The cardboard box, not the carry case, is the container of the usual type ordinarily sold at retail, in this instance.

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Having determined that the two articles do not form an entirety, we must classify the case. This case is classified in item 706.62, TSUS, the provision for luggage of other materials, dutiable at 20 percent ad valorem (1986).

Sincerely,

Arthur P. Scheffler
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

APR 30 1986

REFER TO
CLA-2 CO:R:CV:G
076530 JGB
073186

076530

Area Director of Customs
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-2-014189

This protest was filed against your decision in the liquidation on November 12, 1982, of entry No. 83-224-018-0 dated October 13, 1982, covering shipments of two styles of men's nylon/leather jogging shoes manufactured in Taiwan. The styles are constructed alike but are different colors.

ISSUE:

The protestant claims the joggers are classified in item 700.35, Tariff Schedules of the United States, the provision for footwear, of leather, for men, youths, and boys, dutiable at 8.5 percent ad valorem.

You classified the joggers in item 700.95, TSUS, the provision for other footwear, other, dutiable at 12.5 percent ad valorem.

The issue is whether the joggers are in chief value of leather or of rubber and plastics.

FACTS:

The protestant submitted a component cost breakdown sheet wih its initial protest. This breakdown showed the cost per pair for the leather component, including cutting and trimming to be $1.01. The rubber or plastic component

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was $1.29, including cutting and trimming. On its face, therefore, the component costs of the materials required the classification in chief value of rubber or plastics.

Before the matter was decided, the attorney for the protestant called Headquarters with the request to substitute new cost information provided by the manufacturer or importer. We honored the request because Customs was in the process of reconsideration and clarification of the costs to be included in a computation of the values of component materials for athletic footwear. This clarification is set forth in our file 073826, February 15, 1984, and our telex of April 25, 1984, (telex) from the Assistant Commissioner (Commercial Operations) regarding athletic footwear, file APP-1-CO:T:D:E MF.

The "new" cost breakdown provided by the protestant is dated September 10, 1982, and shows material for both split and pigment leather, as well as cut and trim, equalling $1.03 per pair. The rubber and plastic component costs, including cut and trim, equal $1.01. per pair. The protestant also provided a component weight breakdown dated August 1, 1984.

LAW and ANALYSIS:

The protestant argues that a portion of the costs for equipment, electric power, and overhead should be added to the leather and textile components to determine the true

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value of that component for comparison purposes. Our telex, supra, explains that Customs will consider as relevant: (1) actual labor and certain fringe benefit costs; (2) cost of molds and (3) costs of raw materials, including certain unrecoverable wastes. Costs not included were, among others, certain other fringe benefit costs and "depreciation of machinery or energy costs." Because the equipment, electric power, and overhead costs are not to be included according to the telex, they will not be considered here or allocated among components.

We consider material costs as a basis to which is added a portion of the labor cost. In the case of the uppers, the labor cost of stitching leather overlays onto the fabric uppers will be allocated among the materials comprising the uppers in proportion to their relative weights. C.S.D. 81-239, Headquarters Ruling Letter (HRL) 076494, July 10, 1981. When the component weight breakdown, dated August 1, 1984, is taken into to consideration, we note that the following parts comprise the upper by weight: (1) nylon (with tricot and foam); (2) PVC padded collar; (3) PVC inside lining, and (4) Split suede. These weights (in grams) are respectively: 38.8, 16.6, 10.8, and 98.6, making a total of 164.8. The toe box rubber piece and chemical

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sheet are not included here because they may have been added in a different subassembly. The proportion of the leather weight (98.6) to the upper weight (164.8) yields, when rounded, .6 or 60 percent. When .60 is multiplied with the 59¢, the resulting stitching labor cost is 35¢, to be allocated to leather. Using the same process, the rubber and plastic portion (27.4 grams) against the upper weight (164.8) yields, when rounded .17 or 17 percent. When .17 is multiplied by 59¢, the result is 10¢ to be allocated to the rubber and plastics portion. Both of these processes yield a subtotal for leather of $1.38 and a subtotal for rubber and plastics of $1.11.

The protestant urges us to disregard the 42¢ for "assembling and lasting", and the 57¢ for "EVA and outsole cementing" because "these costs are incurred in the final assembly only, after each separate component, i.e. sole and upper, has been finished and is in condition ready for assembly with the other component."

While we can accept the "assembling and lasting" labor cost as the cost that ultimately joins the two components, the EVA and outsole cementing is obviously not a final assembly. There can be only one final assembly and in the absence of evidence to the contrary, we conclude that the labor costs for final assembly are the ones labeled "II.2.

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Assembling & Lasting." There is no additional entry for stockfitting, that is, cementing the outsole to the mid-sole prior to joining that cemented-together product to the upper. This entry represents stockfitting which is not final assembly. Therefore, entry II.4., "EVA and Outsole cementing" is the last labor cost to be attributed, and it is added solely to the rubber and plastic side. This addition brings the total for rubber and plastics to $1.68. Because $1.68 for rubber and plastic exceeds the leather total $1.38, the shoes are not in chief value of leather.

HOLDING:

The shoes are classified in item 700.95, TSUS. You should deny the protest. A copy of this decision should be attached to the Customs Form 19 to be returned to the protestant.

Sincerely,

Arthur P. Scheffler

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 29 1986

REFER TO

CLA-2 CO:R:CV:G
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076621

Louis S. Shoichet, Esq.
Siegel, Mandell & Davidson
Counselors at Law
One Whitehall Street
New York, New York 10004

Dear Mr. Shoichet:

In a letter dated July 17, 1985, on behalf of the Berkshire Handkerchief Company, you inquired as to the dutiable status of certain nylon shopping bags produced in Taiwan. A sample was submitted for examination.

The sample, style No. 5322, is a double handle nylon tote bag. It measures approximately 20 inches wide by 13 1/2 inches high by 4 inches deep and has double carrying straps measuring approximately 20 inches in length. This bag has no interior pockets or other interior compartments, no closures, and has a zippered outer compartment at its bottom to allow for the insertion of an umbrella.

The issue presented is whether the merchandise is classifiable under the provision for luggage and handbags of other textile materials in item 706.41, Tariff Schedules of the United States (TSUS), or is precluded from classification thereunder, if considered a shopping bag, by virtue of the exclusionary language in Headnote 2(a)(ii) and (b) of Schedule 7, Part 1, Subpart D, TSUS.

Headnote 2(a)(ii) of Schedule 7, Part 1, Subpart D, TSUS, provides in pertinent part that "For the purposes of the tariff schedules — (a) the term "luggage" covers (ii) brief cases *** and like containers and cases designed to be carried with the person, except handbags as defined herein."

Headnote 2(b) of Schedule 7, Part 1, Subpart D, TSUS, provides that "the term 'handbags' covers pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls, but not including luggage or flat goods as defined herein or shopping bags."

We consider the case of J. E. Mamiye & Sons, Inc. v. United States, 85 Cust. Ct. 92, C.D. 4878 (1980), aff'd United States v. J. E. Mamiye & Sons Inc., 69 CCPA 17 (1981), and Legal Determination 82-0122 dated October 4, 1982, to be relevant to the issue involved here.

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The appellate court in Mamiye stated that "the structure of the statute clearly indicates that Congress used the term [handbag] in its broadest sense, covering all types of bags carried in the hand or on the arm." Also, the court construed "the term 'shopping bag' to mean a bag primarily used for shopping, that is, for carrying purchased articles from the place of purchase to the place of use. The court below found that [5] tote bags of the types here in issue, while useful for shopping are primarily used as a second handbag for the convenience of carrying additional personal articles that would not fit in one handbag. The record amply supports the conclusion that the chief use is to carry articles already in one's possession, such as books, packed lunches, umbrellas or extra shoes."

In Legal Determination 82-0122 dated October 4, 1982, it was stated that "tote bags will be regarded as more than shopping bags if they have one or more features in addition to being made of textile materials such as, but not limited to, inside or outside flaps, linings, compartments, any type of closure, or ornamentation or some other feature imparting a degree of quality to the article making it suitable for more than the transport of purchases once or only a few times. For example, a textile bag with no such features, and which is of such insubstantial quality that its life is clearly temporary, or it cannot be used without lining it with the bags merchandise is otherwise packaged in would not be regarded as of the same class of merchandise the Mamiye court was concerned with."

Upon reconsideration, we conclude the limitation imposed by Legal Determination 82-0122 that for a bag to qualify as a shopping bag it must be suitable for the transport of purchases once or only a few times and be of insubstantial quality is a too rigid interpretation of Mamiye. It is our observation that the decision in Mamiye rested on the failure of the government to show that the bags were primarily or chiefly used for shopping rather than on the physical characteristics of the bags.

The fact that style No. 5322 is designed to carry an umbrella which is a personal effect does not mandate its classification as luggage. However, as with the bags which were before the court in Mamiye, there has been no showing that style No. 5322 is of a type of bag primarily or chiefly used for shopping.

In view of the foregoing it is our opinion that double handle shopping bags represented by the sample are classifiable under the provision for handbags of other textile materials in item 706.4140, TSUS, and dutiable at the rate of 20 percent ad valorem. As products of Taiwan these bags are subject to quota/visa restraints.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAY 29 1986

FILE: CLA-2 CO:R:CV:G
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076621

TO : Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Your Memorandum Dated December 19, 1985 (File CLA-2-07:S:COM:N3G-341-210) Concerning the Tariff Classification of Double Handle Tote Bags Manufactured in Taiwan

In a letter dated July 17, 1985 (File No. 076621), the law firm of Siegel, Mandell & Davidson on behalf of Berkshire Handkerchief Co., inquired as to the dutiable status of a nylon shopping tote (style No. 5322). This merchandise is similar to a nylon folding tote bag (style No. 4010) which was the subject of a ruling issued by this office on March 18, 1985 (File No. 074556 c), holding it to be classifiable under the provision for other articles not specially provided for, of textile materials: ornamented in item 386.13, Tariff Schedules of the United States (TSUS), rather than under the provision for handbags of other textile materials in item 706.41, TSUS.

It is your position that an established and uniform practice exists to classify the same or substantially similar double handle tote bags as luggage under Schedule 7, Part 1, Subpart D, TSUS. For this reason and because you believe that style Nos. 4010 and 5322 have been purposely designed to be more than shopping bags in the tariff sense, you ask that the result reached in HRL 074556 be reversed.

You state in your memorandum that prior to December 27, 1978, Customs had a uniform practice to classify merchandise the same as item 5322 and the nylon folding tote within the provision for handbags and luggage. We note that similar merchandise described as a "nylon, open top, double handle shopping bag with a vinyl base" which was the subject of HRL 041791 dated January 2, 1976, was classified under item 389.60, TSUS, as other articles not specially provided for, not ornamented, of man-made fibers.

Also, you indicate that all ports have uniformily liquidated entries covering such bags as Berkshire's under the luggage and handbag provisions since October 1981. We note that on a CF 6431 from the port of Philadelphia dated September 26, 1982, you recommended that a nylon circe shopping bag be classified under item 386.09, TSUS, following the result reached in HRL 041791 dated January 2, 1976.

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In view of the foregoing and the numerous varieties of "tote" bags that have been imported and classified at the various ports since 1981, we are not persuaded that an established and uniform practice of classification exists with respect to the classification of double handle tote bags.

The rationale for the result reached in HRL 072113 dated May 31, 1983, holding that the nylon circe shopping bag is classifiable as a handbag was based on the case of J. E. Mamiye & Sons, Inc. v. United States, 85 Cust. Ct. 92, C.D. 4878 (1980), aff'd United States v. J. E. Mamiye & Sons Inc., 69 CCPA 17 (1981), and Legal Determination 82-0122 dated October 4, 1982.

The appellate court in Mamiye stated that "the structure of the statute clearly indicates that Congress used the term [handbag] in its broadest sense, covering all types of bags carried in the hand or on the arm." Also, the court construed "the term 'shopping bag' to mean a bag primarily used for shopping, that is, for carrying purchased articles from the place of purchase to the place of use. The court below found that [5] tote bags of the types here in issue, while useful for shopping are primarily used as a second handbag for the convenience of carrying personal articles that would not fit in one handbag. The record amply supports this conclusion that the chief use is to carry articles already in one's possession such as books, packed lunches, umbrellas or extra shoes."

In Legal Determination 82-0122 dated October 4, 1982, it was stated that "tote bags will be regarded as more than shopping bags if they have one or more features in addition to being made of textile material such as, but not limited to, inside or outside flaps, linings, compartments, any type of closure, or ornamentation or some other feature imparting a degree of quality to the article making it suitable for more than the transport of purchases once or only a few times. For example, a textile bag with no such features, and which is of such insubstantial quality that its life is clearly temporary, or it cannot be used without lining it with the bags merchandise is otherwise packaged in would not be regarded as of the same class of merchandise the Mamiye court was concerned with."

Upon reconsideration of the matter, the reliance on the Mamiye case to classify the nylon circe shopping bag as a handbag appears to be misplaced. It is our view that the nylon circe shopping bag is primarily used for shopping. The limitation proposed by Legal Determination 82-0122 that for a bag to qualify as a shopping bag it only be suitable for the transport of purchases once or only a few times appears to be a too rigid interpretation of the Mamiye case. The bags involved therein were not considered shopping bags because of the failure of the government to show that shopping was the sole or even the chief use of the bags and not because of their physical characteristics.

We do not believe that the nylon circe shopping bag is similar to the bags involved in Mamiye. Specifically, it is designed to be folded and placed in a handbag and thereafter to be taken out and opened after purchases are made and thereafter used to carry the purchases home. The

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subject bag, unlike those involved in Mamiye, is not primarily used as a handbag. Consequently, it is our view that it was properly classified under item 386.13, TSUS.

Style No. 5322 which is the subject of a ruling request dated July 17, 1985, from the law firm of Siegel, Mandell and Davidson is also a man-made textile double handle tote bag. It measures approximately 20 inches wide by 13 1/2 inches high by 4 inches deep and the shoulder straps measure approximately 20 inches long. This bag has no interior pockets or other interior compartments, no closures, and has a zippered outer compartment at the bottom of the bag to accommodate an umbrella.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS, provides that "For the purposes of the tariff schedules — (a) the term 'luggage' covers — (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel."

The fact that style No. 5322 is designed to carry an umbrella which is a personal effect does not mandate its classification as luggage. However, as with the bags which were before the court in Mamiye, there has been no showing that style no. 5322 is of a type of bag primarily used for shopping. For this reason, it is our position that it is properly classifiable under item 706.4140, TSUS.

Arthur J. Schaffner
for Harvey B. Fox

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[redacted]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

FEB 26 1986

REFER TO

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076676

Rufus E. Jarman, Jr., Esq.
Barnes, Richardson & Colburn
475 Park Avenue South
New York, New York 10016

Dear Mr. Jarman:

You have requested a review, under 19 CFR section 177.2(b)(ii)(C), of New York ruling 813152 of April 17, 1985, on behalf of ITT Automotive Products World Wide Group. The Area Director ruled that the merchandise, a single function high mount stoplamp assembly from Italy, is classifiable under the provision for other sound or visual signaling apparatus, item 685.70, TSUS. You contend that the proper classification is under item 683.65, TSUS, as electric lighting equipment designed for motor vehicles.

The brake light assembly in question consists of a shell fabricated entirely from plastic, a plastic lens, molding screws, bulb, wiring, and electrical contacts. The assembly will be fastened to the package tray at the rear of a motor vehicle with the red lens showing through the back window and will provide an unambiguous signal when the operator of the motor vehicle steps on the brake pedal.

We agree with the New York ruling that these articles are properly classified under item 685.70. As you indicate in your letter, when item 683.65 was added to the tariff schedules, H. R. Rep. No. 342, 89th Cong., 1st Sess. (May 12, 1965), stated that it was to apply principally to equipment covered by the existing item 653.40, illuminating articles and parts thereof, of base metal, other, formerly classified as automotive parts. While a single center high mount stoplamp, required for all passenger cars manufactured after September 1, 1985, is considered a part of an automobile, it is not an illuminating article. "The articles classifiable under 653.40 are limited to illuminating articles." ITT-Thompson Industries, Inc. v. United States, 3 CIT 36, 41 (1982). The fact that an imported article is capable of lighting does not alone make it an illuminating article. "To serve as an 'illuminating article,' the article must be used to 'light up' something other than itself. While an article

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which merely serves to light up itself may be illuminated, it can hardly be considered an illuminating article." Ross Products, Inc. v. United States, 58 CCPA 1, 5, C.A.D. 994, 433 F.2d 804 (1970). In holding that bicycle taillights, which "perform a function analogous to that of automobile taillights," Oxford International Corp. v. United States, 75 Cust. Ct. 58, C.D. 4608 (1975), were properly classified under item 653.40, the Customs Court found that the taillight bulbs lit up not only the taillight but also part of the bike and the road behind it; when turned on in a darkened room, they cast a beam of light illuminating objects in the surrounding area. Oxford at 64. "Item 653.40 describes the 'articles' in terms of the function of 'illuminating.' ...the use of the articles is a significant factor in item 653.40." Ross at 4. High mount stoplamps, which do not serve to light up the area around the vehicle, cannot be said to be described by the provision for lighting equipment for motor vehicles.

Rather than lighting up the surrounding area, like a taillight, a stoplamp gives a visual signal by means of a light when the motor vehicle operator steps on the brake pedal. "Item 685.70 encompasses only those devices whose function is to call attention to temporary or abnormal conditions." Oxford at 68. "[T]emporary operation to alert [sic] an emergency condition" is a necessary characteristic of articles classified under this provision. Carling Electric Co. (Carlingswitch, Inc.) v. United States, --CIT--, Slip Op. 84-60 (May 31, 1984), aff'd on other grounds, --CAFC--, No. 84-1532 (March 21, 1985). The high mount stoplamp is a single function device in a separate housing from the rear lamps of a motor vehicle to provide a more effective indication to following drivers that the vehicle is slowing or stopping. As a visual signalling apparatus, it is properly classified under item 685.70.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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076676

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 24 1986

REFER TO
CLA-2:CO:R:CV:G
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076762

District Director of Customs
700 Parkway Plaza
DFW Airport
P.O. Box 61050
Dallas, Fort Worth, Texas 75261

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 5501-3-000105

This protest was filed against your decision in the liquidation on August 26, 1983, of entry No. 223920 dated April 12, 1983, covering a shipment of stuffed toy unicorns.

FACTS:

The merchandise involved in this application for further review consists of plush toy figures of unicorns. Customs classified the unicorns under the provision for toy figures of animate objects, not having a spring mechanism and stuffed in item 737.30, Tariff Schedules of the United States (TSUS). Protestant contends that such merchandise is more appropriately classified under the comparable provision for toy figures of inanimate objects in item 747.47, TSUS, since a unicorn is an imaginary figure which possesses features which are a hybrid of features of more than one animate object.

ISSUE:

Whether the toy unicorns at issue are classifiable under the provision for toy figures of animate objects in item

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737.30, TSUS, or under the provision for toy figures of inanimate objects in item 747.47, TSUS.

LAW AND ANALYSIS:

Headnote 3, Schedule 7, Part 5, Subpart E defines toy figures of inanimate objects in the following manner:

> For the purposes of the superior heading to items 737.47 and 737.49 and of item 737.51, "toy figures of inanimate objects" are only imaginary creatures that either --
> (i) do not possess features of human or other earthly creatures;
>
> (ii) possess both earthly and non-earthly features but are predominantly non-earthly in nature; or
>
> (iii) possess features which are a hybrid of features of more than one animate object.

Protestant claims that the unicorns involved in this protest should be considered inanimate since unicorns are a hybrid of more than one animate object. In support of this argument, dictionary definitions of the terms "unicorn" and "horn" have been offered. Protestant states that Webster's Third New International Dictionary (1967) defines "unicorn" as "a fabulous animal possibly based on faulty old descriptions of the rhinoceros and generally depicted (as in heraldry) with the body and head of a horse, hind legs of a stag, the tail of a lion, and in the middle of the forehead a single long straight horn held to be a sovereign remedy against poisoning" and that "horned" is defined as "having horns (a mythical beast), the unicorn."

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An examination of the toy unicorn figure leads us to the conclusion that this merchandise is not a true hybrid as contemplated by Headnote 3. The unicorn is a simple, comical, cuddly representation of a horse with a horn appendage. This horn feature is merely incidental. There is no attempt to depict the hybrid creature described in the dictionary definition offered by protestant. This merchandise is distinguishable from true hybrid toy figures which have been considered by Customs to be inanimate. See e.g. C.S.D. 81-236, 15 Cust. Bull. 1202 (1981) concerning "Thun," Lizard Woman," "Beastman," and "Imperious Leader" and New York Rulings 811652 and 811821 concerning "Wuzzles." It is more similar to the subject of a recent decision on application for further review of Protest No. 2704-3-003580, Headquarters Ruling Letter dated October 25, 1985, fi e No. 075294 concerning a winged horse which was ruled to be animate.

HOLDING:

In view of the foregoing, this merchandise was properly classified under the provision for toy figures of animate objects, not having a spring mechanism and stuffed in item 737.30, TSUS. You should deny this protest in full.

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A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

MAY 20 1986

REFER TO
CLA-2:CO:R:CV:G
076807 JGH

076807

District Director of Customs
610 S. Canal Street
Chicago, Illinois 60607

Re: Consideration of Internal Advice No. 9/84, Classification of Autosol 2000

In H.R Ruling 073958 Autosol 2000, a two component system designed to form a plastic stencil print in a screen printing process, was classified as a benzenoid mixture in item 413.51, TSUS. The components consist of a vinyl based emulsion and a benzenoid diazonium salt solution used as a sensitizer and stabilizer. The components, although packaged separately, are intended to be mixed together, and therefore they are classified as an entirety.

On reconsideration, in behalf of the importer, affidavits were submitted from chemists familiar with the product. They maintain that a non-benzenoid sensitizer could be produced and used with the emulsion to accomplish the same purpose as that accomplished by using the benzenoid sensitizer. It is further maintained that the benzenoid component is in a minute amount, less than 1% of the product, and present merely to provide stability to the sensitizer, and has no effect on the polymerization process. It is therefore contended the benzenoid component should be ignored under the de minimis concept, with the entirety being classified as a polyvinyl alcohol resin.

Cases are cited to support the de minimis concept. United States v. Cavalier Shipping Co., 60 CCPA 152, C.A.D. 1103 (1973); F. W. Meyers and Co. v. United States, 54 Cust. Ct. 83, C.D. 4876 (1980); Aceto Chemical Co., Inc. v. United States, 64 CCPA 787, C.A.D. 1186. In each of these cases a benzenoid compound, a warning agent in one, a wetting agent in the others, was added to a non-benzenoid active ingredient. The court concluded in each case that they did not assist in the primary function of the main product in each case, and de minimis applied.

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However, in this case, the diazo sensitizer is a benzenoid compound, a high molecular weight, branched polymer which has a specific composition. It is, therefore, a benzenoid compound. For tariff purposes, a chemical compound is either benzenoid or non benzenoid. A part of a compound can not be considered non essential, otherwise the entire compound would cease to exist if part of the molecule were removed. It is not possible to ignore the benzenoid moiety and conclude a sensitizer remains. In this case the compound contains a benzenoid component and is therefore a benzenoid compound which is essential to the polymerization of the product itself.

The decision in I.A. 9/84 is affirmed.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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076907

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 18 1986

REFER TO
CLA-2 CO:R:CV:G
076952 JAS

076952

Mr. Lee J. Wilson
Reedrill, Inc.
P.O. Box 998
Sherman, Texas 75090

Dear Mr. Wilson:

In your letter of September 3, 1985, you inquire as to the tariff classification of a rock tooth which you proposed to assemble in Mexico with components of United States origin. A blueprint and other drawings were submitted.

You state the rock tooth is the actual cutting component of your line of rock drilling augers, and will be produced in Mexico by soldering (nickel silver alloy) tungsten carbide inserts to metal forgings (the drill body), hand deburr excess solder, paint, and pack 50 teeth per box. The forgings, carbide inserts, solder sticks and cardboard boxes are of U.S. origin.

The described rock tooth for rock drilling augers is a one-piece cutting tool. It would be classifiable under the tariff provision for interchangeable cutting tools for hand-tools or for machine tools, with cutting part containing by weight over 0.2 percent of chromium, molybdenum, or tungsten, or over 0.1 percent of vanadium, in item 649.43, Tariff Schedules of the United States (TSUS), dutiable at the rate of 8.2 percent ad valorem. We presume, however, that the requisite tungsten content is present.

Classification under the provision for parts of other excavating, levelling, boring, and extracting machinery, in item 664.08, TSUS, as originally recommended to you, is not applicable inasmuch as the provision in item 649.43 is more specific. One-piece drill bits, such as the one here, as well as the cutting portion of a two-piece rock drilling bit, are classifiable as cutting tools in item 649.43. The bit bodies imported separately are not cutting tools, but would be classifiable as parts, in item 664.08, if chiefly used with the particular class or kind of articles delineated thereunder.

Item 807.00, Tariff Schedules of the United States (TSUS), would impose a duty on the full value of articles assembled abroad in whole or in part of United States components, less the cost or value of such components. Item 807.00 applies only to fabricated components of United States origin that are designed to be fitted with other components in an assembly process, with no operations performed thereon except the attachment of the components to form the imported articles.

A3

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PUBLIC _____

Consequently, upon compliance with applicable Customs Regulations, allowances may be made under item 807.00 for the value of the tungsten carbide inserts and the metal forgings of U.S. origin which are merely soldered together to form the imported drill bits. No allowances, however, can be made for the solder sticks since they are considered to have lost their physical identity by a change of form and substance in the assembled drill bits. Generally, boxes and packaging materials of U.S. origin that are not advanced in value or improved in condition while abroad may be entered duty-free, under the provisions of General Headnote 6(b)(i), TSUS.

Information on importations under item 807.00, TSUS, and a copy of General Headnote 6(b)(i), are enclosed for your references.

Sincerely,

Arthur P. Schefflin

for Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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076952

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 22 1986

REFER TO
CLA-2:CO:R:CV:G
076965 DW

076965

Margaret Hardy Sachter, Esq.
Soller Singer & Horn
No. 10 The Mews
421 Hudson Street
New York, New York 10014

Dear Ms. Sachter:

Your letter dated September 10, 1985, requests reconsideration of Headquarters Ruling Letter 075319 dated March 14, 1985, in which top and bottom components of a two-piece garment, style 9224, were classified separately. The top portion was classified under the blouse provision in item 383.27, Tariff Schedules of the United States (TSUS), category 339, and the panty was classified under the provision for other wearing apparel in item 383.30, TSUS category 359.

The submitted sample, style 9224, consists of two individual pieces connected by a single row of stitches. Each piece is constructed from a finely knit fabric of 53 percent cotton, 35 percent polyester, and eleven percent spandex. The bottom portion is a solid color panty that has elasticized waist and leg openings and a gusset sewn in the crotch. The striped sleeveless top coordinated to match the panty features a round neckline, foam shoulder pads and a straight hemmed bottom. The single row of stitches holds the top of the panty to the blouse. The stitches are located approximately two inches above the blouse's hem. The blouse hangs over the top of the panty.

This garment at hand is distinguishable from style 9224 in issue in HRL 075319 and 075512 dated June 29, 1985, because the row of stitching connecting the two components is firm. The garment is not easily separated into two parts. Thus, the merchandise has a commercial reality as a one-piece garment because it remains joined during normal use.

The merchandise appears to be in chief value of cotton. Contrary to your assertion that the merchandise is classifiable under the provision for other women's wearing apparel, not ornamented, of man-made fibers, knit, body suits in item 383.80, (now item 384.80) TSUS, it is classifiable under the

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AS

provision for other women's wearing apparel, not ornamented, of cotton, knit, other in item 384.3497, TSUSA, dutiable at the rate of 10.2 percent ad valorem, under category 359. There is no eo nomine designation for body suits under the provisions for women's cotton wearing apparel. This ruling will apply to the imported components only if they are securely fastened. Headquarters Ruling Letter dated September 10, 1985 (file no. 075319) will apply to those garments whose components are easily separated.

Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director Classification
and Value Division

076965

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 25 1985

REFER TO

CLA-2 CO:R:CV:G
076989 c

076989

The Honorable
Bill Goodling
Member of Congress
2020 Yale Avenue
Camp Hill, Pennsylvania 17011

Dear Mr. Goodling:

This is in further reference to your communication of September 12, 1985, on behalf of Mr. Thomas O. Roberts, President, Erin Supply Company, Inc., of Dallastown, Pennsylvania, concerning the tariff classification of certain work gloves manufactured in the Peoples' Republic of China and entered through the port of Baltimore.

It is Mr. Roberts' position that the work gloves involved are not woven or knit cotton gloves. He maintains that they are properly classifiable under the provision for gloves of rubber or plastics with fourchettes in item 705.86, Tariff Schedules of the United States, TSUS.

Samples of the work gloves have been submitted for examination. We have numbered the gloves for identification purposes. Sample No. 1 is made of vinyl coated knit fabric. Sample No. 2 is made of vinyl coated woven fabric with a cotton knit wrist and sample No. 3 is made of vinyl coated woven fabric.

Schedule 3, Headnote 5, TSUS, provides in pertinent part that "for the purposes of Parts 5, 6 and 7 of this schedule and Parts 1 (except Subpart A), 4, and 12 of Schedule 7, in determining the classification of any article which is wholly or in part of a fabric coated or filled or laminated with nontransparent rubber or plastics (which fabric is provided for in Part 4C of this schedule), the fabric shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that (as used in the article) the nontransparent rubber or plastics forms either the outer surface of such article or the only exposed surface of such fabric."

The legislative history to the cited headnote makes it clear that Congress intended the surface character of the fabric to govern its tariff classification. If the coated or laminated surface of the article or fabric in that article did not have a textile appearance or character, then that article or that portion of the article should not be considered as a textile for tariff purposes.

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There are two requirements which must be met in order for the fabric to be considered rubber or plastics. The first requirement is that the rubber or plastic coating, filling or lamination must be nontransparent. The second requirement is that the textile surface character of the fabric must be eliminated.

An examination of the sample gloves shows that the textile character of the fabric has been retained after the application of the plastics coating material. The yarns comprising the fabric, and, in some instances, the spaces between the yarns can be seen.

The gloves designated as sample No. 1 are classifiable under the provision for cotton gloves, made from a pre-existing machine knit or woven fabric, or any combination of such fabrics, not woven, in item 704.5808, TSUS, and dutiable at the rate of 25 percent ad valorem.

The gloves designated as samples Nos. 2 and 3 are classifiable under the provision for cotton gloves, made from a pre-existing machine knit or woven fabric, or any combination of such fabrics, woven, in item 704.4010, TSUS, and dutiable at the rate of 25 percent ad valorem.

Your enclosures are being returned.

If we can provide any additional information or be of further assistance, please do not hesitate to call on us.

Sincerely,

Michael H. Lane
Assistant Commissioner
Commercial Operations

Enclosures

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A8

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 14 1986

REFER TO

CLA-2 CO:R:CV:G
077040 JLV

077040

Mr. Rex J. Reynolds
Norman G. Jensen, Inc.
P. O. Box 146
Sweetgrass, Montana 59484

Dear Mr. Reynolds:

In our letter of September 20, 1985 (file 076939), you were informed that the Customs Service would a review the classification of drill pipe. We have completed our review and have decided against a change in our position. Therefore, public notice is not necessary.

The tariff classification of drill pipe is properly under the provision for pipes and tubes in Subpart B, Part 2, Schedule 6, Tariff Schedules of the United States. As we stated in our letter of February 21, 1985 (file 075468), if you disagree and wish to protect your clients' rights, you should take action by the appropriate procedure.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 21 1986

REFER TO
CLA-2 CO:R:CV:G
077056 c

077056

District Director of Customs
300 S. Ferry Street
Terminal Island
San Pedro, California 90731

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 2704-4-003864

This protest was filed against your decision in the liquidation on September 14, 1984, of entry No. 427154-5 dated May 8, 1984, covering a shipment of plastic picnic sets manufactured in Hong Kong.

FACTS:

The picnic set involved consists of 29 plastic pieces. That portion comprising the carry case is actually two large bowls with a detachable strap which serves to carry the set as well as a bowl. The remaining 27 pieces consist of picnic serving pieces such as cups, bowls, forks, knives, spoons, plates and salt and pepper dispensers, etc.

This merchandise was classified as an entirety under the provision for luggage, whether or not fitted with bottle, dining, drinking, manicure, sewing, traveling, or similar sets, of other materials in item 706.62, Tariff Schedules of the United States (TSUS).

The protestant maintains that the individual articles comprising the set are classifiable separately under items 772.03 through 772.06, TSUS, as appropriate.

ISSUE:

Are the two bowls which act as a carrying case within the purview of the term "luggage" for tariff purposes?

NO

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LAW AND ANALYSIS:

Schedule 7, Part 1, Subpart D, Headnote 2(a)(ii), TSUS, provides in pertinent part that "For the purposes of the tariff schedules — (a) the term '<u>luggage</u>' covers — (i) travel goods *** and like articles designed to contain clothing or other personal effects during travel."

To be considered luggage within the purview of the above-cited headnote, the carrying case itself must be primarily luggage. It is our observation that the "clam shell" combination of bowls does not constitute luggage for tariff purposes inasmuch as the bowls are more than a carry case for the other picnic articles. They are in fact bowls, the main function of which is to act as serving dishes.

In view of the foregoing, classification of the picnic set as luggage is not appropriate. It is our position that the components of the set are separately classifiable. The salt and pepper dispensers are provided for in item 772.03, TSUS, with duty at the rate of 4 percent ad valorem or entitled to free entry under the Generalized System of Preferences (GSP), if otherwise qualified. The plastic knives, forks, and spoons are classifiable under the provision for other articles chiefly used for preparing, serving or storing food or beverages, or food or beverage ingredients, of rubber or plastics in item 772.15, TSUS, and dutiable at the rate of 4 percent ad valorem or entitled to free entry under the GSP, if otherwise qualified. The remaining plastic articles are provided for under item 772.06, TSUS, with duty at the rate of 8 percent ad valorem or entitled to duty-free treatment under the GSP, if otherwise qualified.

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HOLDING:

The protest should be allowed. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

William P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

077056

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A12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 24 1986

REFER TO

CLA-2:CO:R:CV:G
077085 PR

077085

Ms. Jill Friedman
Sales Manager
M. S. Mart N.V. Ltd.
350 Fifth Avenue
Suite 1232
New York, New York 10118

Dear Ms. Friedman:

This is in reply to your letter of October 8, 1985, concerning the country of origin of certain sweaters.

In your letter, you state fabric will be imported into Haiti from either the United States, Europe, or the Far East. In Haiti the fabric will be cut, sewn, and finished into completed sweaters. All the fabric needed for armholes and necks will be shipped in bulk and cut in Haiti.

Based on the above set of circumstances, the subject garments would be considered products of Haiti upon their importation into the United States and would be subject to any import restraints that may be applicable to products of Haiti. The garments would not be considered to be products of the countries where the fabrics were knit.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 29 1986

REFER TO
CLA-2:CO:R:CV:G
077110 PR
815372

077110

Mr. John W. Whitaker
O'Neill & Whitaker, Inc.
1809 Baltimore Avenue
Kansas City, Missouri 64108

Dear Mr. Whitaker:

This is in reply to your letter of August 28, 1985, on behalf of Streamline Products, Inc., concerning the tariff status of certain bookmarks manufactured in Mauritius. Our ruling on the matter is enclosed.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

See Next Frame

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A14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 29 1986

REFER TO
CLA-2:CO:R:CV:G
077110 PR

077110

This ruling concerns the tariff classification of certain bookmarks.

FACTS:

The submitted sample is a bookmark that is approximately 1-7/8 inches wide by 7 inches long. One side of the bookmark contains a quotation from the Bible and what appears to be pressed flowers that are held in place by a clear plastic lamination. There is a small hole near the center top of the bookmark, through which a doubled string or cord has been passed. The end of that string consists of a two-inch long tassel. The tassel is formed by four-inch plied yarns that have been knotted into the end of the double cord.

ISSUE:

The issue presented by the subject merchandise is whether the bookmark, if in chief value of the textile tassel, is classifiable as an ornamented textile article for tariff purposes. In this regard, two determinations must be made in the affirmative for the tassel to cause the bookmark to be classified as an ornamented textile article-- (1) that the tassel is primarily decorative, and (2) that the tassel ornaments a textile fabric or an article of textile materials.

BI

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LAW AND ANALYSIS:

Headnote 3, Schedule 3, Tariff Schedules of the United States (TSUS), lists the types of features that can constitute ornamentation for tariff purposes. The headnote contains the requirement that those features constitute ornamentation only when they ornament fabrics or other articles of textile materials.

In Blairmoor Knitwear Co. v. United States, 60 Cust. Ct. 388, C.D. 3396 (1968), it was held that term "ornamented," as defined in Headnote 3, includes only those features which primarily serve to adorn, embellish, decorate, or enhance. Where the functional purpose is paramount and the decorative effect only incidental, the feature does not create an ornamented article within the purview of Headnote 3.

In this regard, it appears that the knot forming the tassle prevents the fringed portion of the tassel from sliding into a closed book, thus allowing a reader to readily locate the bookmark. However, the fringe that extends outward from the knot presents a highly decorative appearance and serves little, if any, utilitarian function. Subsection (b) of Headnote 3 provides that fringe need not have a separate existence from the article on which it appears in order to constitute ornamentation.

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Since there is no authority to disregard the value of the textile tassel, or the fringe which is part of that tassel, the bookmark, which is stated to be in chief value of the tassel, is a textile article which is ornamented by the fringe. In this regard, it is noted that this office ruled on March 17, 1972, file MCB 418.44, 015851, that a similar article was ornamented for tariff purposes.

HOLDING:

The subject bookmark, which is stated to be in chief value of cotton, is properly classifiable under the provision for other ornamented articles of textile materials not specially provided for, of cotton, in item 386.04, TSUS, with duty at the 1986 rate of 25 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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011710

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY - 5 1986

REFER TO
CLA-2 CO:R:CV:G
077114 c

077114

District Director of Customs
300 S. Ferry Street
Terminal Island, San Pedro 90731

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 2704-8-001041

This protest was filed against your decisions in the liquidations of the following entries:

Entry No.	Date of Entry	Date of Liquidation
75-190685	1-30-75	3-24-78
76-187062	1-27-76	4-07-78
72-162556	11-20-72	4-24-78
72-147600	10-18-72	3-31-78
72-158423	11-09-72	3-31-78
72-166868	12-01-72	3-24-78
72-160845	11-15-72	3-31-78
72-165822	11-29-72	3-31-78
72-171164	12-12-72	3-31-78
72-171366	12-12-72	3-31-78
73-185692	1-17-73	4-14-78
73-186489	1-18-73	4-14-78
73-191346	1-30-73	4-14-78
73-198443	2-14-73	3-31-78
73-201562	2-22-73	3-24-78
73-206523	3-07-73	3-24-78
73-206526	3-07-73	3-24-78
73-207414	3-08-73	3-31-78
73-208270	3-12-73	3-31-78
73-210672	3-16-73	4-14-78
73-213457	3-23-73	3-31-78
73-214248	3-27-73	3-31-78
73-219430	4-06-73	3-31-78
73-224729	4-19-73	3-31-78
73-235937	5-17-73	3-24-78
73-236958	5-21-73	3-24-78
73-237365	5-22-73	3-24-78
73-237787	5-23-73	3-24-78
73-238129	5-24-73	3-24-78
73-239398	5-29-73	4-07-78

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077114

Entry No.	Date of Entry	Date of Liquidation
73-245535	6-12-73	4-09-78
73-246238	6-13-73	3-24-78
73-248934	6-20-73	3-24-78
73-114293	8-03-73	3-24-78
73-122696	8-27-73	3-24-78
74-129493	9-04-74	3-24-78
74-141683	10-02-74	3-24-78
72-150040	10-24-72	3-24-78
74-186725	2-13-74	4-14-78
74-175055	1-15-74	3-24-78
74-178203	1-22-74	3-24-78
74-183948	2-05-74	3-24-78
74-173757	1-11-74	4-07-78
74-191800	3-17-74	4-14-78
74-192665	3-05-74	3-24-78
74-197012	3-18-74	3-24-78
74-201348	3-29-74	3-24-78
74-211308	4-25-74	3-24-78
74-206425	4-12-74	3-24-78
74-223020	5-08-74	5-05-78
74-236500	6-27-74	5-05-78
74-224550	5-30-74	4-07-78
74-226694	6-05-74	4-07-78
74-190146	2-25-74	5-05-78
72-138082	9-26-72	3-31-78
76-182035	1-16-76	5-05-78
73-151948	11-08-73	3-24-78
73-154163	11-14-73	4-07-78
74-171562	1-07-74	4-07-78
73-112246	7-30-73	4-14-78
73-150744	11-07-73	3-24-78
73-151933	11-08-73	3-24-78
74-114614	7-31-74	5-05-78
74-151798	10-29-74	3-24-78
74-163049	11-21-74	3-24-78
74-173971	12-19-74	3-24-78
75-188399	1-24-75	3-24-78
75-190293	1-28-75	3-24-78
75-220757	4-29-75	3-24-78
76-213882	3-26-76	5-14-78

This ruling concerns the validity of American selling price appraisements of certain footwear manufactured in Taiwan and Korea.

FACTS:

The footwear involved was classified in liquidation under the provision for other footwear which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics

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with at least 10 percent by weight being rubber of plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics in item 700.60, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 percent ad valorem.

Schedule 7, Part 1, Subpart A, Headnote 3(b), TSUS, provides that "Subject to the provisions of section 336(f) of this Act, the merchandise in item 700.60 shall be subject to duty upon the basis of the American selling price as defined in section 402 or 402a of this Act, of like or similar articles manufactured or produced in the United States."

Pursuant to the above above-cited headnote, the imported footwear was found to be legally similar to certain domestically produced footwear. It should be noted that in response to a Freedom of Information Act request the protestant was provided information showing the American selling price appraisements at which liquidations were made covering the imported footwear. However, in most instances no information was then provided identifying the domestic prototypes.

Appended to this ruling is Attachment A which sets forth the "most similar" domestic prototype and the exact ASP applicable to each of the protestant's shoes for the dates on which these shoes were exported. This listing also covers stock numbers included on protest Nos. 2704-8-002572/8-004146/9-000652 filed by the same protestant.

Only about twenty five percent of the appraisements shown on the attachment are the same as those used at liquidation due in part to the use at liquidation of LaCrosse shoes as prototypes. Approximately 10 years ago Customs determined that LaCrosse did not "freely sell or offer" its shoes within the purview of section 402a(g), Tariff Act of 1930, as amended.

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BS

077114

It might be possible to establish the price which LaCrosse was "willing to receive" for their shoes, as that term was used in 402a(g), Tariff Act of 1930, as amended. However, Customs has always used a "freely offered" price in preference to a "willing to receive" price. Therefore, in all cases where a LaCrosse shoe was originally used as the prototype, we have substituted another similar shoe from Bata or Uniroyal, who did "freely offer." Since we always used the "equally similar" prototype which was the "closest in price" to the import, the change from the LaCrosse shoe to a Uniroyal or Bata shoe always results in a higher appraisement.

Other shoes have appraisements which were correct for shipments a few months earlier. It is probable that ASP listings kept at your port were somewhat behind. A large number of other appaisements remain a mystery as to the identity of the prototype that was intended by the import specialist. However, whether or not we know the reason for the difference between the liquidated appaisements and our appraisements, we will lose the "presumption of correctness" in court on all such appraisements, but we believe that our alternate appraisements should prevail even without that presumption.

An ASP has not been provided for protestant's stock numbers 56036, 56124 and 52202/11/12/13 because the 15 page typed protestant's list claims the liquidated value to be the correct appraisement.

The primary prototypes shown are the most similar, "freely offered" shoes made in the United States. Alternate prototypes were listed only if the primary prototype did not cover all possible sizes of the import. Since the protestant imported very standard, "mass market" shoes, there are one or more alternate, similar prototypes available for every stock number imported, but we have not listed them.

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077119

ISSUE:

Whether the imported shoes are legally similar to the domestic prototypes listed on Attachment A for ASP purposes.

LAW AND ANALYSIS:

Analysis

Stock No. 56159, etc.
Protestant's Position

Stock Nos. 56159 and 56161 have been described by the protestant as youth's boat shoes with canvas uppers and crepe herringbone pattern molded soles. These shoes are of a handwrapped construction with a one-color molded sole, one foxing wrap and with a flat heel.

The Uniroyal Regatta which is the primary domestic prototype is said not to be similar to the imported youth's boat shoes because of the use of a wedge heel and an injection molded construction with a two color outsole.

The Bata Dockside which is the alternate domestic prototype is said not to be similar to the imported youth's boat shoes because it is an injection molded shoe manufactured in women's sizes.

The major argument made by the protestant here against a finding of similarity is that in terms of construction, a hand wrapped shoe cannot be compared with an injection molded shoe. A handwrapped shoe is made by a labor intensive process which results in a shoe of a higher quality construction.

The protestant points out that an adult shoe is not comparable to a child's shoe and that styling differentiates shoes in the eyes of a consumer, by making them different in appearance.

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Customs Position

The protestant's description of the domestically produced Uniroyal Keds Regatta as being injection molded and having a wedge heel is not accurate. This shoe is hand wrapped and does not have a wedge heel.

Although the domestically produced Bata Dockside is an injection molded shoe the average consumer cannot tell that it is not hand wrapped. It should be noted that while hand wrapping is probably superior in itself as a method, an injection molded bottom using a suitable high grade plastic can outperform a sloppy hand wrapped sneaker using a poor quality rubber.

We agree that an adult shoe is not comparable to a child's shoe. However, our comparison is correct because the Keds Regatta comes in youth's and child's sizes. Generally, we would not consider the styling differences here to be significant enough to preclude a finding of similarity. The impact of styling differences is difficult to assess in view of the varying tastes of the public. Also, the protestant has made a general statement that styling differences cause shoes to be dissimilar but fails to present detailed reasons why this is so for the particular shoes involved.

Stock Nos. 56181 and 56182
Protestant's Position

Stock Nos. 56181 and 56182 are described as child's [redacted] licensed copyright merchandising character shoes. All models are of lace to toe construction and include a licensed copyright character as a merchandising property.

The domestic prototype is the Uniroyal Keds tail lights LTT which is a reflector patch, youth safety shoe without a licensed copyright character.

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A copyrighted character shoe may not be compared to shoes not containing the character.

A consumer who wants a certain merchandising character item will not settle for a product without it.

The Customs Service must take cognizance of the business reality of character merchandising in our consumer economy. The use of such characters differentiates the products in which they are used from any other products which do not contain the characters. Furthermore, it is clear that buying decisions are greatly influenced by the presence or absence of a merchandising character, especially with regard to products for children.

Shoes containing the [redacted] character may not be compared to any shoes not containing this character. This is particularly true with regard to the domestic prototype with reflector patches. The reflector tape used with such footwear constitutes a distinctive difference in terms of appearance and safety from any without it. Such tape must be purchased from the U.S. manufacturer, adding significantly the cost of any footwear to which it is attached. The use of such reflector patches will differentiate the domestic footwear from any without reflector patches, including the merchandising character footwear imported by the protestant.

Customs Position

We do not agree with the protestant that a copyright character shoe may not be compared with shoes not containing that character. First, we are not at all certain that a child would reject the domestically produced reflector patch, youth safety shoe if the imported character shoe were not available and are even less certain that the child would reject the

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imported character shoe if the domestic model were not available. It is also true that in the final analysis the parent rather than a young child would make the decision as to which shoe to purchase and parents are much less influenced by devotion to [redacted] than children.

Stock No. 56189
Protestant's Position

Stock Nos. 56189 and 56191 are children's shoes with a crepe, pillar molded sole.

The Bata Two Points Locut is the primary domestic prototype for stock Nos. 56189 and 56191 exported prior to August 1, 1975, and the Uniroyal Keds Jet King is the primary domestic prototype for these shoes exported between August 1, 1975, to March 1977. The alternate domestic prototype for these shoes exported between August 1, 1975, and August 1, 1976, is the Bata Two Points Locut.

The Bata Two Points is a basketball shoe with a slip lasted construction completely different from that of the imported shoes. In addition to this construction difference, the use to which the imported shoe may be put is different as the pillar sole of the imported footwear would preclude its use on a basketball floor. The pillar molded sole does not have the same qualities of adhesion as a shoe with a basketball type sole construction.

The domestic shoes and the imports are not adaptable to the same use and have different constructions. The differences in use and construction make them neither competitive nor commercially interchangeable. In addition, the imported footwear has patches attached which distinguishes it stylistically from the domestic footwear.

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Customs Position

The protestant's description of the Bata Two Points as being of a slip lasted construction is not accurate. This style is of a hand wrapped vulcanized construction.

The overwhelming use of these shoes is by children as ordinary sneakers. The use of these shoes for basketball playing is confined principally to other than wood floors. The suction cup type soles provide additional adhesive qualities for the Two Points that are significant on a wood floor but are much less so on an outside surface such as cement and asphalt.

Stock No. 56479, etc.
Protestant's Position

Protestant's stock Nos. 56479, 56481, 56479 and 57481 are described as child's and women's boat shoes with canvas upper and crepe herringbone molded sole. The shoe is said to be of hand wrapped construction with a flat heel and one foxing wrap.

Stock Nos. 56479 and 56481 are both in child's sizes. The domestic prototype is the Uniroyal Regatta for child's 5 through women's 3. The Bata Skiff is the domestic prototype for stock Nos. 57479 and 57481 which are in women's sizes.

The Uniroyal Regatta has a wedge heel construction with multiple foxing strips. It was not manufactured in women's sizes.

The imported footwear is not competitive or commercially interchangeable with the domestic prototype. The differences in construction make them significantly dissimilar.

Customs Position

As stated previously the protestant's description of the Uniroyal Regatta is not accurate. This shoe is hand wrapped and does not have a wedge heel. However, as protestant states this shoe was not produced in women's sizes. This is why we have appraised the women's sizes of their

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imports by using the Bata Skiff as the domestic prototype, not the Uniroyal Regatta.

The claim by the protestant that the imported footwear is not competitive or commercially interchangeable with the domestic prototypes has not been substantiated. The assertion that the Regatta and stock Nos. 56479 and 56481 are so different in construction as to render them dissimilar fails because the imported shoes and the Regatta are both of a hand wrapped construction.

Stock No. 56882, etc.
Protestant's Position

Stock Nos. 56882, 56883, 56884, 56885, 67882, 67883, 67884, 67885, 96882, 96883, 96884 and 96885 may be described as youth's, boy's and men's low cut gym shoes. These are gym oxfords with a molded rubber sole and are of a hand wrapped construction. They have a 13 ounce canvas upper and a rubber sole with an NBS abrasion of 35.

The Bata Two Points Locut is the primary domestic prototype for those shoes exported prior to August 1, 1975, and the Uniroyal Ked Jet King is the primary domestic prototype for these shoes exported from August 1, 1975, to March 1, 1977. The alternate domestic prototype for these shoes exported between August 1, 1975, and August 1, 1976, is the Bata Two Points Locut.

The Bata Two Points is a basketball shoe. The sole has a National Bureau of Standards (NBS) abrasion rating of 70 and the insole is well cushioned. It has a 16 ounce canvas upper. As a real basketball shoe, it is sold in stores and departments which specialize in sporting goods. The imported shoe on the other hand, is a type of general shoe merchandise not sold as a specialized basketball shoe even by the protestant. The protestant markets basketball shoes in its sporting goods department rather than in its shoe department.

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The domestically produced Bata Two Point is different from the import in construction, use, quality or competitiveness. The differences in the type of store in which sold, as well as the constructions makes them neither competitive nor commercially interchangeable. As stated before, difference in the type of retail outlet can make footwear non-competitive.

Customs Position

It is our position that the channel of distribution for the import and the domestic prototype is not different. We would consider shoes such as the domestic prototype which are sold in stores and departments which specialize in sporting goods to be essentially in the same channel of commerce as those imports sold in the sporting goods department of the protestant's stores. Also it has not been established that the Bata Two Points was in fact sold as protestant claims.

The Bata Two Points like the imports is of a hand wrapped construction. The protestant has not submitted any evidence which would persuade us that there are any differences in construction which would be significant enough to render the shoes dissimilar.

Stock No. 57259, etc.
Protestant's Position

Stock Nos. 57259 and 57261 may be described as women's canvas upper CVO with a crepe herringbone pattern (deck type) molded sole.

The domestic prototype for these stock numbers is the Bata Skiff. The protestant has not presented any arguments against using the Bata Skiff as the domestic prototype.

Stock No. 57359, etc.
Protestant's Position

Stock Nos. 57359, 57363, 57364, 57368, 57379, 57383 and 57384 are described as either a women's one eyelet tie CVO with calendared sole, or a women's side gore slip-on CVO with calendared sole.

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The Bata 2-ring or promenade which is the primary domestic prototype is a women's two eyelet tie with a rope espadrille wrap. It is significantly dissimilar in appearance as well as appointments and in quality of construction.

The domestic prototype is not comparable to the imported models. The imported footwear is specifically directed toward a certain narrow market composed of elderly women. In addition the imported shoes are significantly different in materials and quality of construction. The sole of the imported shoes is clay loaded rubber as opposed to crepe on the domestic model. The uppers on the imported footwear used starch combining which made them very stiff when new and led to early adhesion failures. The combining of the domestic prototype shows a much higher quality as shown by the suppleness of the shoes. These differences in materials, construction, quality and styling make the imported footwear not comparable to the prototype.

Customs Position

The protestant has not submitted any evidence to substantiate its claim that the imported footwear is specifically directed to a narrow market composed of elderly women.

The difference cited by the protestant with respect to sole materials is not so significant as to render the import and the domestic prototype dissimilar. Also, it is questionable whether the average consumer could recognize the difference in sole materials.

The statement that the imports are inferior to the domestic prototype because of adhesion failures is not supported by any evidence.

Stock No. 67851, etc.
Protestant's Position

Stock Nos. 67851 and 96851 may be described as men's and boy's sports shoes with a licensed merchandising signature by Ken Rosewall.

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The Bata Court Tops is the primary domestic prototype. This shoe is a basketball shoe with a sole dissimilar to the sports shoe sole of the imported footwear. The Court Tops does not carry a licensed merchandising signature. The sole of the Court Tops has an NBS abrasion of 90.

The Bata Court Tops is not comparable to the imported shoes due to the licensed merchandising signature as well as the construction and design for which they may be used. A licensed merchandising property used with a product, imparts to the product with which it is used a significant value as well as differentiating it from all other goods.

The imported footwear also differs in terms of construction and use from the domestic prototype. These differences in constructions and use make the prototype neither competitive nor commercially interchangeable.

Customs Position

The protestant states that the Bata Court Tops is a basketball shoe. However, this shoe appears in the Bata in stock catalog (1974) on page 13 which shows tennis shoes. Also, the heading on page 13 reads "tennis shoes."

We do not agree that an imported shoe with a licensed merchandising signature may not be compared with shoes not possessing that signature due to the "significant value of the signature." The "value of a signature" is difficult to assess inasmuch as it involves subjective determinations on the part of the consumers. Again, we are not at all certain that a person would reject the domestically produced shoe without the signature, if the imported signature shoe were not available. Also, we are not certain that a person would reject the imported signature shoe if the domestic prototype without the signature were not available.

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APPROVALS

Stock No. 56191 covered by CE 220757 dated 4-29-75, if actually liquidated at $5.05 less 2 percent, should be revalued at $4.40 less 2 percent in sizes 11 to 2 and $4.20 less 2 percent in sizes 8-1/2 to 10-1/2.

Stock Nos. 56539, 56541, and 56542 covered by CE 210672 dated 3-16-75 and CE 112246 dated 7-30-73, if actually liquidated at $2.35 less 2 percent should be revalued at $2.25 less 2 percent in all sizes.

Stock No. 96851 covered by CE 151933 dated 11-8-73, if actually liquidated at $5.75 less 2 percent and/or if actually liquidated at $6.75 net on CE 223020 dated 5-28-74, should be revalued at $5.30 less 2 percent on CE 151933 (assuming date of export is after 10-9-73) and at $6.25 less 2 percent on men's sizes 6-1/2 to 13 on CE 223020.

LAW

For the purposes of determining similarity in American selling price cases, four tests have been used as guides: (1) similarity of material, (2) commercial interchangeability, (3) adaptability to the same use, and (4) competitive character.

In 1966 certain guidelines to be used in appraising footwear were issued by the Commissioner of Customs. Those guidelines provide in part that "In carrying out that function such officers shall use all reasonable ways and means to select the product manufactured in the United States which in their opinion is like or most similar to the import in physical characteristics, such as appearance, durability quality, construction, workmenship and finish."

Based on the tests for determining similarity and the guidelines set forth above it is our position that the domestic prototypes selected are legally similar to the imports for the following reasons:

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(1) The imported shoes and the selected domestic prototypes are composed of essentially the same material and are basically similar in construction and design. The differences cited earlier by the protestant are minor and do not preclude a finding of similarity. See Albert F. Maurer Co., v. United States, 51 CCPA 114, C.A.D. 845 (1964).

(2) The imported shoes and the selected domestic prototypes are adaptable to the same uses; and

(3) With respect to commercial interchangeability and competitiveness, we are not convinced that the domestic prototypes are sold in different retail outlets than the imported footwear. In the case of A. Zerkowitz Co. v. United States, 55 Cust. Ct. 643, Reap. Dec. 11095 (1965) (reversed on other grounds), 58 CCPA 60, C.A.D. 1005 (1970), the court stated that "it is easy to see that if an import was sold only in religious supply houses, and the alleged counterpart, only through sporting goods establishments, skepticism as to competitiveness would be warranted. When the outlets differ, however, primarily in the degree to which they cut prices, or claim they do, the difference in outlet is simply a function of the difference in price, and price is the life of competition. The Neiman Marcuses, Brooks Brothers, or Abercrombie & Fitches of this world would indeed be surprised to be told they received no competition from cheaper discount houses. No customer is so wealthy he does not look for a bargain once in a while. The finest stores (not those named above) run bargain basements and occasionally they announce sales, at which times, if rumor is correct, the high-quality merchandise may be secreted in the warehouses and poorer stuff finds its way to the counters. Occasionally, too, high-price stores dispose of slow-moving merchandise to lower-price outlets. Not only is it impossible to find that imports never competed with the alleged counterparts on the shelves of the same stores, but to the extent the competition was at a distance of around the corner, or from the first floor to basement, it is impossible to see the relevance of the fact."

HOLDING:

The protest should be denied, except to the extent that reappraisement as indicated for certain entries specified above results in a partial allowance. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 24 1986

REFER TO

CLA-2 CO:R:CV:G
077155 JAS

077155

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-25668

Dear Sir:

This is our decision on Application for Further Review of Protest No. 3801-5-001357, dated February 25, 1985. At issue are consumption entries 586213, 389220 and 389934, dated respectively, August 18, October 19, and December 27, 1983, and liquidated January 28, 1985. The merchandise is certain workholding devices from West Germany.

FACTS:

A brochure submitted by protestant depicts a number of specially designed positioning and clamping work holders referred to as Self Adapting Fixture Elements (SAFE). While neither protestant nor your office has specified which of the various models in the brochure are the subject of this protest, models 87608 and 87614 are highlighted on pp. 5, 27 and 61, and are presumed to be the subject of this protest. The appropriate national import specialist in New York concurs. These articles are advertised as devices which support and clamp workpieces in machine tool applications. Model 87606 is a positioning, seating, and clamping element using a precision hold down screw and tranverse adjusting slide for adjustment of the distance between two drill holes. Model 87614 is a vertically adjustable element that supports and clamps workpieces through a hole with a precision hold down screw. Both models are advertised for use on "all kinds of machining jobs" with both conventional and numerically controlled machine tools.

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The subject entries were liquidated under the provision for other accessories used principally with machine tools, in item 674.56, Tariff Schedules of the United States (TSUS). You relied on a Protest Review Decision dated May 15, 1984 (073943), as amended by a decision dated July 25, 1984 (074413). Protestant challenges these decisions, however, and maintains that the superior heading to the involved item numbers clearly indicates that work holders are to be classified as parts of machine tools and that the tariff language makes no mention of the fact that to be so classifiable the work holder must be used on only one type of machine tool.

ISSUE:

Are the subject work holders "parts" of or "accessories" used principally with machine tools?

LAW AND ANALYSIS:

In your covering memorandum of June 11, 1985, (PRO-2-06-CV:CT:AWG), you state that C.I.E. 26/66, which essentially supports protestant's position, may be in conflict with our May 15 and July 25, 1984, decisions which formed the basis for your liquidation of the protested entries. C.I.E. 26/66, dated January 14, 1966, has since that date governed the tariff treatment of machine tool work holders. This decision concerned certain dividing heads mounted on the bed of a milling machine, and apparently used only with this type of machine tool. The decision construed the superior heading to items 674.50 through and including 674.56, TSUS, "Work and tool holders and other parts of, and accessories used principally with machine tools," and concluded that work holders are considered parts per se, rather than accessories. This conclusion was

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based on the placement of the comma in the quoted superior heading. Pages 480 and 481 of the Tariff Classifiction Study are cited to support the conclusion reached in C.I.E. 26/66.

While we agree that the dividing heads in C.I.E. 26/66 were correctly held to be parts, classifiable in item 674.53, we feel the proper reasoning is because they were used only with a particular type of machine tool, i.e., a milling machine. Normally, statutory construction and punctuation are to be construed in their ordinary grammatical sense unless such interpretation would result in a conclusion contrary to the manifest intent of Congress. L. R. Markell et al. v. United States, 16 Ct. Cust. Appls. 518, T.D. 43239 (1929), and related cases. The Explanatory Notes on proposed Schedule 6, contained in the Tariff Classification Study of November 15, 1960, vol. 2, published as C.I.E. 1/64, are a valid source of legislative history on the involved provisions. A careful reading of these materials reveals the following. The last sentence of paragraph 2 on page 480 relates item 674.53, the parts provision, to the provisions in paragraph 372, Tariff Act of 1930, as amended. Paragraph 3, at the bottom of page 480 and continuing on page 481, in discussing accessories, begins "There are a number of jigs, fixtures, and other subsidiary devices or accessories which are principally used in connection with machine tools. Such devices, although principally used with machine tools, are not parts of any particular tool."

It is our position that this language strongly implies that if chief use with any one particular machine tool, or with any of the various models or types of that machine tool can be established, a device is to be classified as a part rather than an accessory assuming, however, that it actually qualifies as a part in a tariff sense. For example, a work holder shown to be chiefly used with a twist drill, radial arm drill and other types of drills, would be classifiable as a part and not as an accessory.

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The decision of May 15, 1984, as amended by the decision of July 25, 1984, essentially held that T-slotted angle plates which were work holders used with horizontal boring mills and radial drills, adjustable angle plates similarly used, T-slotted box tables used with radial drills, boring mills and other floor type machine tools, and T-slotted cube blocks, suitable for many machining purposes, were classifiable as other machine tool accessories in item 674.56, TSUS. These decisions are consistent with our interpretation of the quoted language in the Tariff Classification Study. For these reasons, the decision in C.I.E. 26/66 is hereby limited to the merchandise therein considered.

HOLDING:

Self Adapting Fixture Elements, the subject of this protest, are classifiable under the provision for other accessories used principally with machine tools, in item 674.56, TSUS. The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action, to satisfy the notice requirements of section 174.30(a), Customs Regulations.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

MAY 14 1986

REFER TO

CLA-2 CO:R:CV:G
077197 JGB

077197

The Honorable
David de Pury
Minister
Embassy of Switzerland
2900 Cathedral Avenue, NW.
Washington, D.C. 20008

Dear Mr. de Pury:

Your reference: 5 32.21(5)
5 32.125.250-RA/bt

Your letter of October 23, 1985, with accompanying memorandum prepared by the Swiss Embroidery Association, St. Gall, Switzerland, written on that Association's behalf, requests a ruling on the country of origin of twenty-three styles or types of embroidery produced by members of the association for export to the United States. Samples of the base fabric and the end product in each style or type were provided, showing the "before and after" stages of the embroidery operation.

The samples show that woven, knit, net, and pile fabrics are imported into Switzerland where they are embroidered and finished. We understand the base fabrics to be from Hong Kong or another column one country in the Far East. The textile products consist of various fabrics (embroidered fabrics, ornamented nets, and burnt-out laces), sample numbers 1 through 16, and of manufactured articles (motifs, curtains, embroidered doilies, and embroidered handkerchiefs), sample numbers 17 through 23.

Because these samples consist of materials produced in more than one foreign country, the country of origin for Customs purposes is determined by our regulations, 19 CFR 12.130. These regulations provide the standards for determining the country of origin by requiring that the country of origin for a textile or textile product is that foreign country where it last underwent a substantial transformation. A substantial transformation is said to occur when the textile or textile product has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce. 19 CFR 12.130(b).

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The issue is whether the embroidered products are a product of the country where the base fabric is made (country A) or of Switzerland where the embroidery work is done (country B).

The regulations, §12.130(d)(1), present three tests or criteria to determine whether a new and different article of commerce has been created by a manufacturing process. To create a new and different article, there must be a change in: (1) Commercial designation or identity; (2) Fundamental character, or (3) Commercial use. Satisfying one of these criteria is usually enough to meet the "new and different article" standard.

Our examination of the samples shows that all but samples 5 and 12 meet each of these tests. Samples 5 and 12 will be discussed later and are not included in the discussion that follows immediately. The commercial identities of plain woven fabrics and nets have been transformed into the new identities of embroidered curtain fabrics, burnt-out laces, embroidered trimmings, embroidered curtains, embroidered doilies, and embroidered handkerchiefs. All of these items have a recognized identity within the textile trade which is separate and distinct from the base fabric. Second, the fundamental character has been changed by the substantial manufacturing or processing operation in country B. The base materials are neither interchangeable with the finished product nor, in most cases, even similar in appearance. This change is especially apparent with those products which have the original base fabric removed prior to finishing (for example: style 3, the allover cut-out embroidery guipure lace "chemical" embroidery in a blossom design; style 4, another guipure lace in a teardrop pattern; style 16, another guipure lace edging in a flower design, and style 19, a handkerchief with substantial lace edging.)

The third criterion, change in commercial use, is apparent by a casual examination of the samples. For example, in the case of sample 1, an allover chenille embroidery with cut-out base fabric, the base fabric can be used for a variety of textile applications in apparel, furnishing and manufactured articles. The finished cut-out embroidered and chenille-yarn ornamented fabric is dedicated to use in the ladies' dress trade. Sample 6, with a plain base fabric that would be used in apparel or furnishings has been changed to a galloon with eyelets, primarily suitable for use with curtains. Sample 9, a base tulle, is commercially used to manufacture curtains and bridal products among other things. The finished motif is

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dedicated to use as an insert in ladies' apparel. Sample 13, an allover multicolor embroidery used in the ladies' dress trade started with a base fabric that could be used for wearing apparel, furnishings or other manufactured products. Sample 16, a light semi-transparent base fabric is embroidered with a lace trim and then washed in a chemical which dissolves the base fabric altogether, leaving only the trim.

The change in commercial use is even more pronounced in the manufactured finished articles. In the case of sample 20, the plain base woven fabric is used in a variety of ways within the furnishings and apparel trade; the finished product is a handkerchief. This finished handkerchief has guipure lace trim around all edges and predominantly on the corners, extending toward the center 3-4 inches in the samples provided. The finished product has a changed identity and use as a decorative or ornamental handkerchief. The same process applies to sample 20; however, this sample is embroidered in colors so that the areas most covered by the embroidery are the corners from which the embroidery work extends from 3-4 inches toward the center of the handkerchief. Again, a plain base fabric is woven in country A and imported in the piece to country B where it is manufactured into a finished article having a changed identity and use that is different from the base fabric.

In the case of samples 21 and 22, the base fabric, an imported tulle net and woven fabric can be used in apparel, furnishings or other manufactured articles. The completed article has a completely different character, identity, and use that is unrecognizable compared to the base fabric.

The country of origin criteria provided by the regulations, §12.130(d)(2), to determine "substantial manufacturing or processing operations," are also met by the samples provided, with the exception of samples 5 and 12.

The machine embroidery trade occupies a unique and easily definable segment of the textile trade. Customs has elected to analyze the manufacturing processes of this trade based on independent reasearch in the domestic and European trade, as well on our own knowledge gained from authoritative trade publications. Therefore, we know the processes used to make woven base fabrics and tulle in country A, as well as the time, complexity, degree of skill and technology and the value added. Moreover, we know from firsthand examination the characteristics of the machines used to make the embroidery products in country B, because the same highly specialized machines are used by our domestic industry with the same types of base fabrics to produce substantially similar end products.

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In the matter at hand, the base fabrics, products of country A, are in samples 1,3,4,6,7,10,13,15,16,18,19,20,22, and 23 relatively ordinary machine woven fabrics. Samples 2, 9, and 21 are machine-made tulle, a net. Sample 2 also includes a vinyl coated woven fabric, while the entire base fabric for sample 8 is vinyl coated. The base fabric for sample 14 is a pile fabric, while sample 17's base woven fabric is designed to disintegrate when the motif is ironed on another piece of cloth.

For the woven base fabrics and the warp knits, the manufacturing is done with great speed in highly automated looms or warp knitting machines. In the case of the tulle, this machine-made net is manufactured in a highly automated process. The vinyl-coated fabrics and pile fabric are products of special processes, both of which start with a woven fabric made in an automated process followed by another automated process, coating with vinyl on one side in the first instance and making the pile by cutting in the second example. The disintegrating fabric is obviously a machine-woven material; however, the man-made yarn has special properties of being destroyed by heat.

The processes performed in country B, the country of export, are performed mainly by the Schiffli machine, a machine of Swiss origination, the Cornelly machine, and possibly a Raschel lace-making machine with Jacquard applications. In each sample the capital investment in machinery when calculated per yard of fabric produced is overwhelmingly in favor of country B. Simply stated, the raw materials that go into the base fabric are cheap and the method of manufacture of the base fabric is very fast, creating huge volumes of fabric. The processes used on the finished product in country B are very slow, highly complex, and because of the relatively slow speed of production, both labor and capital intensive. The value added in country B is greater than 10:1.

Our data show that because of the time and labor involved in the country B operations, each additional square inch of embroidery by these machines costs about the same as the last, with very little reduction in cost due to volume. Our National Import Specialist for this merchandise noted that the value added by the allover multicolor embroidery of sample 13 makes the value of the base fabric negligible by comparison. In considering the value of something as intricate as the burnt-out laces of sample 16, the value of the base fabric is probably no more than one percent of the value of the

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needlework necessary to create these designs. While the embroidery present on the burnt-out lace sample may be enough to qualify as substantial manufacturing, the additional process of chemical bath involving substantial additions of time and labor gives additional support to this position.

Sample 5 is described as an embroidery trimmed with guipure lace "chemical" embroidery edging. The burnt-out portion measures 1-1/4 inch from the edge at its extreme, while the simple embroidery portion measures about 4-1/2 inches from the edge, including the burnt-out portion. Sample 12 is an eyelet embroidery measuring 2-1/2 inches from the edge. Base fabric in both samples appears to be made on a warp knitting machine.

It is unclear to us what use is to be made of the finished embroidery trim, because it is not disclosed what article of textile material the sample is cut from. Is the embroidered edging destined for use as intimate apparel, underwear, or curtains, for example? Without more precise information it is not possible to determine whether these samples represent a new and different article of commerce. As stated above, most samples are readily identifiable as representing well-known segments of the embroidery trade. Some are finished articles, such as doilies or handkerchiefs, or galloons that show us the height but not the width. However, samples 5 and 12 are a mere edging on a piece of fabric of unknown dimensions with undetermined identity, character and use. With these two exceptions, the samples speak for themselves, but for samples 5 and 12, it cannot be determined that the required change has occurred when we do not know what the finished product is. We should note, moreover, that in the case of curtain fabric, hemming or working of the edge is not enough to create a substantial transformation. See T.D. 85-126, our change of practice notice for this merchandise. Also, adding an embroidered border to fabrics in the piece is not usually enough to change the country of origin. We distinguish samples 5 and 12 from the others presented by noting that the latter samples are finished articles with recognizable dimensions or unfinished articles with repeating allover patterns. The former samples, by contrast, display only a border treatment: a combination of embroidery trimming with guipure burnt-out chemical embroidery in the case of sample 5 and a combination of eyelet embroidery and Schiffli embroidery in the case of sample 12.

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The new country of origin rules make no specific mention of embroidery and burnt-out lace operations. Section 12.130(e) list those manufacturing or processing operations that usually will qualify and those that usually will not qualify for substantial manufacturing or processing operations. If any of these listed operations were involved with the production the samples at hand, they would be considered as a means of applying the regulation; however, the absence of a discussion of the embroidery and burnt-out lace processes in our regulations does not mean that these processes would not meet new country of origin criteria. The criteria for country of origin are contained in §12.130(d). Section 12.130(e) merely explains the preceding paragraph by listing the usual qualifying and non-qualifying operations.

Having met the criteria of §12.130(d), the samples provided, with the exceptions of samples 5 and 12, should be declared substantially transformed in country B as products thereof. Products where the base material is present in the shipment should be covered by a multiple country declaration. (See §12.130(f)(2).) In those cases, such as sample 16, where the base fabric has ceased to exist after chemical treatment, but before exportation, a single country declaration should be presented. (See §12.130(f)(1).) As indicated above, we lack sufficient information to determine whether any test under §12.130(d)(1) has been met for samples 5 and 12. If no test in §12.130(d)(1) has been met, it is inconsequential that the embroidered borders of samples 5 and 12 probably do meet the substantial manufacturing criteria of §12.130(d)(2).

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

C13

071167

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G

077275 PR

077275

This ruling concerns the country of origin of certain cotton piece goods.

ISSUE:

The issue presented by the subject inquiry is whether certain cotton fabric, woven in one country and processed in a second country, becomes a product of the second country for textile restraint purposes.

FACTS:

On December 6, 1984, a meeting was held between various officials in the Customs Service, a member of the British Embassy, and the representative of the importer involved with this request. At that time, the submission on behalf of the importer was presented to Customs. Unfortunately, that submission was inadvertantly misplaced and on March 1, 1985, the importer's representative supplied a copy to Customs. In April the importer's representative was advised by the Customs Service that, on the basis of the information before us, there was a likelihood Customs would rule adverse to the position of the importer. The importer's representative requested additional time to make a new submission, which was forwarded to the Customs Service on June 13, 1985. The importer's representative was advised within 2 months of the receipt of that submission that the information contained therein was insufficient to overcome the questions raised by the original submission.

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The importer's representative again asked for further time and on November 6, 1985, forwarded to Customs a new submission which addressed the concerns raised by Customs concerning the original submission. The latest submission by the importer's representative was sent to our National Import Specialist in New York for a report on the technical aspects concerning that submission. The report from our NIS was received on February 1, 1986.

It is stated that loomstate (gray) fabrics will be purchased in various places around the world, including China, Thailand, Colombia, and Germany. The majority of the fabrics will be 100 percent cotton. These fabrics include plain weaves, brushed cottons, satins, sateens, corduroys, and twills. The cotton fabrics in the gray will contain many impurities, including waxes, pectins, proteins, metal salts, cotton seeds, and starch sizing. The fabrics will be sent to the United Kingdom or Holland where the fabric will be subjected to 10 different processes. These processes are as follows:

(1) Sewing together of the gray fabric into lengths of 5,000 meters;

(2) Cropping, which is a removal of loose hanging threads and surface pile by a machine that contains four cylinder cutting knives rotating against fixed blades;

(3) Scouring, which consists of impregnating the fabric with a solution of caustic soda and detergent, steaming the fabric for seven minutes at 100 degrees centigrade, and then washing the fabric;

(4) Bleaching, which is accomplished by impregnating the fabric with an alkaline hydrogen peroxide solution and then steaming and washing the fabric;

(5) Stentering, which consists of passing the fabric through a hot air drying tunnel;

(6) Dyeing, which is the application of reactive dyestuffs and alkali to the fabric in a "cold-pad-batch reactive system";

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(7) Printing, which is done by a rotary screen process in which seamless metal mesh screens engraved with a design enable dye to be applied selectively to the fabric;

(8) Baking and steaming, which fix the dyestuffs to the cotton at temperatures of 100 degrees centigrade or higher;

(9) Stentering for a second time;

(10) Batching and inspection.

LAW AND ANALYSIS:

Section 12.130(b), Customs Regulations (19 CFR 12.130(b)), provides that a textile or textile product which is processed in more than one foreign territory or country is a product of that territory or country where it last underwent a substantial transformation — where it was last transformed by means of substantial manufacturing or processing operations into a new and different article of commerce. Subsection (e)(1)(i) of section 12.130 states that fabric will usually be a product of a country other than where it was formed if, in the second country, it was dyed, printed, and subjected to two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

The importer believes that the processing done in the United Kingdom or Holland clearly falls within this example. There appears to be no question that the fabric is dyed, printed, and bleached. In the June 13, 1985, submission, the importer's representative advised that prior to the second stentering operation on the fabric, a resin is applied by padding (Helmond process) and is cured at a high temperature (presumably during the stentering process). While it is contended that this is a shrinking process, our National Import Specialist reports that it does not shrink the fabric, but, rather, prevents further shrinkage. However, the National

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077275

Import Specialist further advises that the stentering process, which the subject fabric is put through twice, is a recognized shrinking operation in the fabric finishing industry. In this regard, while not stated, we assume that some shrinkage does take place during the second stentering operation while the resin is being set.

Accordingly, the operations described above apparently are in conformity with the example set out in section 12.130(e)(1)(i). In view of this, and considering (1) all the processing which the fabric in question is subjected to and (2) the change in the fabric as a result of that processing, it appears that the first 9 enumerated steps in the processing plus the addition of the plastic resin are sufficient to constitute a substantial transformation of the gray fabric.

HOLDING:

In view of the discussion above, gray cotton fabric which undergoes the described processing in a country other than where the fabric was formed will be considered for textile restraint purposes to be a product of the second country, in this case, either the United Kingdom or Holland.

Harvey B. Fox
Director, Classification
and Value Division

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077275

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
077278 JGH

077278

MAY 28 1986

Mr. G. W. Holden
Albright and Wilson, Inc.
P.O. Box 26229
Richmond, Virginia 23260-6229

Dear Mr. Holden:

Your letter of November 1, 1985, concerns the tariff classification of Tris (2-butoxyethyl) phosphate. You note that Customs classifies it in item 428.47, TSUS, the provision for other polyhydric alcohols, and esters, ethers, and ether-esters and substituted derivatives thereof. It is your opinion that there are three other tariff provisions which provide better definitions of the product. You suggest classification as an ester of monohydric alcohol in item 428.72, or as an ether of monohydric alcohol in item 428.96, or as surface active agent in item 465.95, TSUS.

In your opinion the product is an ester of phosphoric acid with a major application as a surface active agent. It is used, you contend, in acrylic emulsion floor polish as a foam control agent, to improve substrate wetting and mutual compatibility of the polish components.

Tris (2-butoxyethyl) phosphate contains several functional groups, one of which is an ether-ester of a polyhydric alcohol. Headnote 1, Part 2(D), Schedule 4, TSUS, states that organic compounds in the subpart are arranged according to functional group. Any organic compound which is described in more than one functional group is classifiable in the first group in which it is described. Therefore since ether-esters of polyhydric alcohols, item 428.47, appears before esters of monohydric alcohols, item 428.72, and ethers of monohydric alcohols, item 428.96, it must be classified in item 428.47, TSUS.

As to the claim that the chemical is classifiable as a surface active agent in item 465.95, TSUS, it is noted that reference works indicate it is principally used as a plasticizer, and that its use in floor wax is as a leveler and not as a surfactant.

Accordingly, Tris (2-butoxyethyl) phosphate's classification in item 428.47 is affirmed.

Sincerely,

Arthur P. Schiffler
Chief, General
Classification Branch

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 20 MAY 1986

FILE: CLA-2:CO:R:CV:G
077292 JCH

077292

TO : Area Director of Customs
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 82/85 Concerning the Tariff Classification of Rope Chain Jewelery Made in Israel (Your Memorandum of November 7, 1985, CLA-2-07:S:COM:N3G:344-25[illegible])

The subject internal advice request was initiated by counsel in a brief dated August 30, 1985.

This merchandise was the subject of our letter of June 18, 1985, file No. 076357, in which we declined to consider the dutiable status of the merchandise but rather extended the importer the opportunity to later substantiate the claim that the merchandise comprises bracelets in a subsequently filed protest. We have not been made aware of any subsequently filed evidence. In a conference conducted on November 21, 1985, it was again noted in discussions with counsel the type of information which we would require to establish that the merchandise constituted bracelets.

Counsel rather, in effect, seeks to dissociate considerations relative to the status of the merchandise as bracelets from a practice issue on which the claim for classification as bracelets is currently predicated. Accordingly, we still have been supplied with no advertising literature, proof of sales, or any other information establishing that the merchandise constitutes bracelets. The importation experience of this single importer which is claimed to date from 1981 is not, in our opinion, shown to be of sufficient extent or duration to constitute a practice.

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With respect to the possibility that a practice finding here also is precluded because issues of fact, rather than issues of law, are involved, counsel has referred to previous discussions with various Customs personnel indicating that the Customs Service was well aware of the nature of the merchandise. Therefore, it is suggested that a change in dutiable status evidenced a change in a legal conclusion as to classification. Our previous conclusion makes it unnecessary to address this aspect of this matter. We do note, however, that corrections in dutiable status by line officers based on factual determinations merely involve the performance of required duties and do not constitute rulings by the Secretary of the Treasury changing dutiable status as a result of new interpretations under the law within the contemplation of section 315(d) of the Tariff Act of 1930, as amended. Hensel, Bruckmann & Lorbacher, Inc. v. United States, 49 CCPA 15, C.A.D. 787 (1962). Counsel's attention is also directed to United States v. Citroen, 223 U.S. 407 (1912).

For the foregoing reasons, it is our conclusion that there exists no established and uniform tariff classification practice which would entitle the instant IA applicant to classification of the subject merchandise under the provision for bracelets in item 740.14, TSUS, and the Generalized System of Preferences free rate authorized under that provision. A copy of this decision may be made available to the IA applicant.

John T. Rich

For Harvey B. Fox

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077292

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 30 1986

REFER TO

CLA-2 CO:R:CV:G
077300 c

077300

Mr. Frank Brennan
Consultant
Mudge, Rose, Guthrie, Alexander & Ferdon
2121 K Street, N.W.
Washington, D.C. 20037

Dear Mr. Brennan:

In your letters dated November 13, and December 5, 1985, on behalf of Norman Industries, Inc. of Lake Elsinore, you inquired as to the dutiable status of a novelty animal backpack of man-made textile fiber materials produced in Korea. A sample was submitted for examination.

The sample is a child's backpack which resembles a Panda bear. It measures approximately 18 inches high. The head, arms and legs are fully stuffed but the body cavity is devoid of filling. Standard backpack harness straps and fasteners are permanently sewn to the ends of the arms and legs. These fasteners are identical copies of those patented by a United States firm under the names "Ladderlock" buckle and "Side Release Buckle." These items are specifically manufactured for use in the backpack industry. The sample has a back compartment equal to the full volume of the torso and measures approximately 14 inches deep by 10 inches wide. The interior is rayon lined and there is a sewn-in label which has the printed legend "I'm one of the authentic Bear Buddies." The label has a space for an address and is completed with the phrase, "If you find me, please call my home." The compartment is closed by means of a 16 inch long elliptically shaped nylon coil zipper.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), Tariff Schedules of the United States (TSUS), provides in pertinent part that "For the purposes of the tariff schedules - (a) the term 'luggage' covers (i) travel goods such as *** knapsacks, *** and like articles designed to contain clothing or other personal effects during travel."

Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, provides that "For the purposes of the tariff schedules, a 'toy' is any article chiefly used for the amusement of children or adults."

General Interpretative Rule 10(e)(i), TSUS, provides that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses if any combined."

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The issue presented is whether the sample animal backpack is chiefly used for the amusement of children or adults. If so used, it would be considered a toy for tariff purposes. If not so chiefly used, it would be considered luggage for tariff purposes.

In a recent decision this office had occasion to rule as to the dutiable status of a Koala "candy bear" which was in chief value of man-made textile materials and measured approximately 12 inches in height. The head, arms and legs of the bear were stuffed but the body cavity was empty. The bear was dressed in overalls which formed the bottom half of the torso with plush fabric forming the top half. The hollow body cavity of the bear formed an interior compartment while a zipper closure across the front of the bear secured the lined compartment and a smaller pouch therein. Adjustable textile tape harness straps were attached to the rear of the overalls at the seam and at the back of the stuffed head to form armholes.

In reaching the conclusion that the "candy bear" is a toy for tariff purposes, this office took the position that the utilitarian aspect of the merchandise was incidental to its play value for the following reasons:

(1) The "candy bear" is so small as to be confined to use by 2 to 5 year old children,

(2) the amount of storage space is minimal;

(3) the "candy bear" is in fact a plaything and can provide frivolous amusement to the users. See United States v. Topps Chewing Gum, Inc., 58 CCPA 157, C.A.D. 1022 (1971). Wilson's Customs Clearance, Inc. v. United States, 59 Cust. Ct. 36, C.D. 3061 (1967); and

(4) as a practical matter the candy bear would not be chiefly used as an article of utility i.e., for the users to carry their personal belongings during travel.

In the case of Ideal Toy Corp. v. United States, 78 Cust. Ct. 28, C.D. 4688 (1977), the court made the observation that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose incidental to the amusement."

It is our observation in this instance that although the novelty backpack does have some play value, it is incidental to its utilitarian function for the following reasons:

(1) The novelty backpack is purposefully designed to be a functional backpack;

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(2) the lack of stuffing in the torso renders the article less like a fully stuffed animal and more like a backpack;

(3) the absence of any filler material causes the article to collapse thus lessening its play value; and

(4) the carrying capacity of the cargo compartment would allow one to carry large items.

In view of the foregoing, it is our position that the novelty backpack is classifiable under the provision for luggage of other textile materials in item 706.4144, TSUS, and dutiable at the rate of 20 percent ad valorem. The applicable textile quota number is 670. As a product of Korea this merchandise would be subject to textile quota restraints.

Sincerely,

Arthur P Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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077300

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

077314

9 MAY 1986

REFER TO
CLA-2:CO:R:CV:G
077314 c

District Director of Customs
U.S. Customhouse
1 E. Bay Street
Savannah, Georgia 31401

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1703-3-000216

This protest was filed against your decision in the liquidation on April 8, 1983, of entry No. 83-351141-0 dated November 22, 1982, covering a shipment of sport shoes manufactured in Korea.

FACTS:

The fabric/leather sport footwear involved was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that these sport shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather.

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LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on the matter was that importer submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

We have reviewed the component cost breakdowns submitted by the protestant which show that the footwear is in chief value of leather. We have no "tangible evidence" which would permit us to categorically state that the information provided is false. Consequently, it is our position that entry No. 83-351141 should be reliquidated under item 700.35, TSUS, or item 700.45, TSUS, as applicable. However, any youth's sizes 11-1/2 to 2 should be treated as unisex and reliquidated under item 700.45, TSUS.

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HOLDING:

The protest should be allowed. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur F. Schaffler
For Harvey B. Fox
Director, Classification
and Value Division

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077134

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY - 5 1986

REFER TO
CLA-2 CO:R:CV:G
077337 TLL

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Application for Further Review of New York Seaport Protest No. 1001-5-004744

This is a protest against your decision in the subject application for further review of certain fruit preserves classified under items 146.14 through 150.50, Tariff Schedules of the United States (TSUS). Protestant argues that the products are more properly classified as jams classified under items 153.02 through items 153.32, TSUS.

FACTS:

An organoleptical examination of the imported fruit products was jointly conducted with the Import Specialist, New York Seaport, and the National Import Specialist. A significant amount of recognizable fruit was found in each representative sample of the various products.

ISSUE:

Whether the imported fruit products which contain recognizable fruit can be considered a jam under the TSUS.

DISCUSSION OF LAW:

In Julius Goldfarb v. United States, 55 Cust. Ct. 120 (1965), the court considered a product which consisted of whole strawberries which had been cooked with sugar and pectin and then packed in jars. It noted that while there was no intent to keep the berries whole, they did, in fact, remain so to a large degree. Relying on the common definition of jam - fruit and sugar cooked to a thick consistency, without preserving the shape

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of the fruit, the court concluded that as the strawberries retained their shape and had not been reduced to pulp or crushed, the products were not a jam, but in fact were edible berries, prepared or preserved. This court decision was followed by many administrative decisions, including Headquarters Ruling Letter 060450 (C.S.D. 80-176) which stated that here there is a fixed, highly viscous substance of relatively uniform consistency, with no recognizable pieces of fruit, the products are jams for tariff purposes; products which contain whole or recognizable pieces of fruit would be classifiable as prepared or preserved edible fruits.

Protestant argues that the terms "jams" and "preserves" as used the industry are interchangeable and synonomous and classification should be under items 153.02 through 153.32, TSUS. The history of this tariff provision shows that this argument has been duly considered. See for instance, page 267, Summaries of Trade and Tariff Information, Schedule 1, Volume 8, TC Publication 289 (1969), where the United States Tariff Commission stated:

> No distinction is made between a jam and a preserve by the FDA or by the trade. For tariff purposes, however, a distinction is made. If a fruit is processed and packed in a manner which substantially retains the shape of the fruit, then it is dutiable as a preserve under provisions for "prepared or preserved fruit," and not under the tariff provisions for jams. Conversely, a jam is defined as a product made by boiling fruit and sugar to a thick consistency, without preserving the shape of the fruit. An imported product, properly labeled a jam according to FDA standards, might be dutiable as preserved fruit; similarly, some imported products labeled as a "preserve" (e.g., strawberry preserves) may be dutiable as jam. Generally, the rates of duty for preserved fruits are higher than those for jams.

This same information was restated on page A-37 of USITC Publication 1462 entitled Certain Articles Containing Sugar (1983).

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PUBLIC

CONCLUSION:

The classification of the imported fruit products as a preserve on the basis of the recognizable fruit content is correct. You are directed to deny this protest. A copy of the decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

William P. Shuffler
For Harvey B. Fox
Director, Classification
and Value Division

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E1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 30 1986

REFER TO

CLA-2 CO:R:CV:G
077421 TLL

077421

Mr. C. Verschuur
Head Sugar Export and EEC-Affairs
Cooperative Vereniging Suiker Unie U.A., Breda
Zuilenstraat 100
Posthus 3411
4800 MG Breda
Handelsregister Breda, Netherlands 28699

Dear Mr. Verschuur:

Your letter of November 18, 1985, addressed to the United States Embassy in The Hague regarding the importation of Comprima instant press powder has been forwarded to the United States Customs Service for response.

You seek to import into the United States two types of Comprima instant press powder. Type MG gm is composed of 96.5 percent cane or beet sugar and 3.5 percent glucose. Type MG zd also has a cane or beet sugar content of 96.5 percent, with the balance composed of corn starch. Samples of both varieties were enclosed with the file. Both samples are uniform white powders of a very fine grain size. You point out that the imported product is of great interest to the pharmaceutical industry in the United States for use as a raw material.

We have reviewed the submitted file and have concluded that Comprima is classifiable as an edible preparation, not specially provided for, in item 183.05, TSUS, with duty at the rate of 10 percent ad valorem. This position was recently set forth in New York Seaport Ruling 816746 of February 20, 1986, in reply to a request from a potential importer.

In any case, Comprima would not be eligible for entry into the United States. Presidential Proclamation 5071 established a quota in item 958.15, TSUS, for all articles classifiable under item 183.05, TSUS, which contain in excess of 65 percent cane or beet sugar and which are not sold to the retail consumer in the identical form and package in which it was imported. This quota effectively embargoes the importation of this product. In the unlikely event that this product should be held to be classifiable as cane or beet sugar in a dry amorphous form in item 155.20, TSUS, it would be subject to the quota on such sugar and there is no allocation for sugar from Holland.

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There is a suggestion that this product is a sugar classifiable under the provision for "Specialty Sugars" and eligible for entry free of quota. Even if conceded as a "Specialty Sugar" the product likely would still not be entitled to entry because information we have is that this product is produced domestically. Therefore, entry under this program would not be permissible.

Sincerely,

William P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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E3

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

9 MAY 1986

REFER TO
CLA-2 CO:R:CV:G
077445 c

District Director of Customs
300 S. Ferry Street
Terminal Island, San Pedro 90731

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 2704-4-003833

This protest was filed against your decision in the liquidation on August 31, 1984, of entry No. 84-133676 dated April 24, 1984.

FACTS:

Certain women's fashion boots having a 1/2 inch rubber band securing the joint between the sole and upper were liquidated under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics, having uppers of which not over 90 percent of the exterior surface area is rubber or plastics and having a foxing or foxing-like band applied to or molded at the sole and overlapping the upper, valued over $6.50 but not over $12.00 per pair in item 700.69, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear is properly classifiable under the provision for other footwear which is over 50 percent by weight of fibers and rubber plastics with at least 10 percent by weight being rubber or plastics and having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper) in item 700.56, TSUS.

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The rationale presented for the protestant's position is that Congress did not intend that the foxing exception apply to non-athletic footwear such as the fashion boots in issue. The protestant also asserts that not all footwear having foxing characteristics were intended to fall within items 700.64 through 700.69, TSUS, in view of T.D. 81-79 which eliminated a boot from foxing criteria.

077445

ISSUE:

(1) Does the foxing exception apply to the women's fashion boots?

(2) Does the result reached in T.D. 81-79 control the classification of the women's fashion boots?

LAW AND ANALYSIS:

With respect to style No. 6120 covered by Order Nos. 4045 and 4016, the CF5523 submitted shows that only 41 percent of the exterior surface area of the uppers is rubber/plastics. If this information is accurate, classification under item 700.56, TSUS, is precluded because classification thereunder requires that over 90 percent of the exterior surface area of the uppers consist of rubber/plastics.

In T.D. 83-116, Customs specifically took the position that the foxing exception applies to non-athletic footwear. Also, an earlier ruling issued as CIE 187/64 Supp. 1, dated April 19, 1966, arrived at the same conclusion.

In T.D. 81-79, certain moon boots were found not to have a foxing-like band, not because they were boots, but because their particular construction was not foxing-like. A reading of this ruling shows that had the boots been constructed differently, a finding of the presence of a foxing could have resulted.

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In view of the foregoing, it is our position that classification of the instant women's fashion boots under item 700.69, TSUS, was appropriate.

HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

077745

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PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 20 1986

REFER TO

CLA-2 CO:R:CV:G
077446 JGH

077446

Port Director of Customs
Port Huron, Michigan 48060-5471

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3802-5-000136 on the Classification of "V-803 OXO Bottoms," Product of Canada

"V-803 OXO Bottoms" are described as resulting from the production of 2-ethyl hexanol. They are said to be the bottoms of a distillation tower and to contain heavy organic compounds.

A sample of the product was described as a mixture of nonbenzenoid high boiling organic compounds. It was said to appear clear with no other impurities, and was regarded as a nonbenzenoid mixture containing diols.

The question is whether the product is classifiable as a mixture in item 430.10, TSUS, and dutiable under item 428.47, or as a waste in item 793.00, TSUS.

A waste is a material which has ceased, through some change, to serve its original purpose or to be what it originally was. It has the characteristics neither of the raw material or of the finished product, and fit only for remanufacture. Supreme Tire and Rubber Co. v. United States, 7 CCR 193, C.D. 566.

The product in question results from the extraction of 2-ethylhexanol. The imported product is not imported for the purpose of remanufacture, as is the usual case with a waste. It is described as being a mixture of organic compounds with no apparent impurities. It is used as imported to make a preservative product. Similarly, linseed oil foots derived from the alkali refining of linseed oil, which was found to have a large percentage of free fatty acids and salts of fatty acids mixed together was dutiable as a nonenumerated manufactured article in paragraph 1558, Tariff Act of 1930, rather than as a waste in paragraph 1555, Tariff Act of 1930, Archer-Daniels-Midland Company v. United States, 24 CCR 187, C.D. 1229 (1950).

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The product is a byproduct, rather than a waste, a mixture of organic compounds, with little or no impurities present.

You are directed to deny the protest in full.

A copy of this decision should be forwarded to the protestant along with the Form 19 Notice Action. The original protest form included with your submission is hereby returned.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

Enclosure

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97-7-16

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 22 1986

REFER TO

CLA-2 CO:R:CV:G
077455 JCH
816105

077455

Mr. Claude Brosseau
A. N. Deringer, Inc.
30 West Service Road
Champlain, New York 12919-9703

Dear Mr. Brosseau:

This is in response to your request for the tariff classification of merchandise dated November 1, 1985, which the New York Region has referred to us for reply.

The merchandise consists of Longines-data 7000 series optical mark readers made in Canada. The articles come in different models and are used to read various documents, such as tests, and score them or furnish other data derived from them. A read head may consist of a halogen lamp, a fiber-optic cable, and optical elements for reading in rows. These articles are used as peripheral data processing equipment or, with certain programming, independently.

Merchandise of this type is classifiable under the provision for office machines, not specially provided for, in item 676.30, Tariff Schedules of the United States (TSUS). The current column 1 rate of duty required under that provision is 3.9 percent ad valorem. However, any models which have their own calculating mechanism for independent use would be classifiable as data processing machines in item 676.15, TSUS. The current column 1 rate of duty under that provision is 4.1 percent ad valorem.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

9 MAY 1986

CLA-2 CO:R:CV:G
077459 c

077459

Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005090

This protest was filed against your decisions in the liquidation on January 27, 1984, of entry No. 84-190425-5 dated December 7, 1983, and entry No. 84-190424-2 dated November 29, 1983, covering a shipment of athletic footwear manufactured in Korea.

FACTS:

The leather/nylon joggers involved were liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

The protestant also claims that the footwear was classified as not being "of leather" based on an erroneous theory of law that when determining component material of chief value for the purposes of classification under items 700.35, 700.45 and 700.95, TSUS, the separate values of "rubber" and "plastics" are combined before comparing them to the value of the "leather." It is the protestant's position that the individual values of the rubber and the plastics must be broken out separately.

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ISSUE:

1. In determining component material of chief value of footwear, should the individual values of the plastics and rubber components be broken out separately?

2. Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

It has been consistently our position that in determining component material of chief value that the plastics and rubber components should be combined.

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on the matter was that importer submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or response.

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The manufacturer's component value breakdowns reflect the following costs.

Entry No. 84-190425-5

Invoice No. 1	Leather Costs		Rubber/plastics Costs	
(CH/Youths' Velcro Joggers		$1.13		$0.77
	cutting	.09	cutting	.19
	trimming	.03	trimming	.17
		$1.25	sole labor	.20
				$1.33

Invoice No. 2	Leather Costs		Rubber/plastics Costs	
(M/B Velcro Joggers	M	B	M	B
	$1.37	$1.29	$0.96	$0.89
cutting	.09	.09	cutting .19	.19
trimming	.03	.03	trimming .17	.17
	$1.49	$1.41	sole labor .20	.20
			$1.52	$1.45

Entry No. 84-190424-2

Invoice Nos. 1 and 2	Leather Costs	Rubber/plastics Costs
	$1.763	$0.575
cutting	.10	cutting .08
trimming	.05	trimming .06
	$1.913	sole labor .27
		$0.985

"Sole labor" listed under the rubber/plastics components covers the costs of grinding and buffing the different layers of the bottoms. L.D. 81-0186 of December 16, 1981, stated that these costs should be allocated among the materials comprising the bottoms. It is not possible to allocate stitching charges on the above because there is no indication of weights on the various components comprising the uppers.

A review of the component value breakdowns on Entry No. 84-190425-5 shown above reveals that the rubber and plastics components constitute the component material of chief value of this footwear. Consequently, it is our opinion that classification of the joggers under item 700.95, TSUS, was appropriate.

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Although the component value breakdown for the joggers covered by entry No. 84-190424-2 shows leather to be in chief value by a wide margin, we know that the 2.097 sq. ft. of leather claimed to be present in a pair of women's size 6 joggers is inaccurate. However, in the absence of a laboratory report as to the amount of leather actually present in the shoes, we have no "tangible evidence" to refute the claim that the shoes are in chief value of leather. Consequently, the shoes should be reliquidated under item 700.45, TSUS.

077459

HOLDING:

The protest should be denied in part as to the footwear covered by entry No. 84-190425-5 (invoice Nos. 1 and 2) and allowed in part as to that footwear covered by entry No. 84-190424-2 (invoice Nos. 1 and 2). A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Shepffer

for Harvey B. Fox
Director, Classification
and Value Division

E13

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

077528

MAY 20 1986

REFER TO

CLA-2 CO:R:CV:G
077528 TLL

Mr. Gordon E. Tonkin
Department of External Affairs
125 Sussex Drive
Ottawa, Onario, Canada KIA OG2

Dear Mr. Tonkin:

Your letter of November 5, 1985, regarding the classification of four coupon books was forwarded to this office for reply.

Samples of four coupon books were submitted. They are essentially bound coupons, containing virtually no other matter. Three of the sample books are approximately 8 1/4 inches long, and each page consists of three coupons. The fourth book is 4 inches long, and each page, detachable, is one coupon.

Each coupon of the samples is a voucher, worth a reduction in price of a commodity, stated in dollars or as a percentage of price; or worth some commodity or service free of charge under certain stated conditions. Each coupon "has no intrinsic value as article(s), but is valuable only as evidence that certain amounts of money (or goods or services)" are available.

Your letter seeks confirmation that classification under either item 274.75 or 274.80, Tariff Schedules of the United States (TSUS), would be applicable. Our review of the coupon books has led us to conclude that they are intangibles under General Headnote 5(d), TSUS, and as such are not articles subject to the provisions of the Schedules.

With regard to the possible application of 19 U.S.C. 1305, that provision prohibits the importation of lottery material. The courts have interpreted "lottery" to mean that three elements are necessary: a prize, a consideration, and a chance. Since you have indicated that there is no requirement of consideration for any of the sample booklets, 19 U.S.C. 1305 would not affect the importation of this material.

Sincerely,

William V. Schaffler

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 16 1986

REFER TO

CLA-2 CO:R:CV:G

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077533

Sidney H. Kuflik, Esq.
Lamb & Lerch
Counsellors at Law
233 Broadway
New York, New York 10279

Dear Mr. Kuflik:

In a letter dated December 16, 1985, on behalf of your client, Gerico, Inc. of Denver, Colorado, you inquired as to the tariff classification of a nylon bag for a baby carrier and whether the bag is entitled to an exemption from the country of origin marking requirements. You state that the nylon bag will be a product of either Taiwan or the People's Republic of China.

The sample submitted is a nylon stuff bag which resembles a small duffle bag in shape. There is a nylon drawstring closure. Nylon binding is used to stitch the one seam and extends above the top forming a three inch loop. This loop is designed so that the bag can be carried by hand or suspended from the handle of a baby stroller or carriage when traveling with the baby. The bag is designed to contain the carrier and other accessories such as a diaper, baby bottle, etc.

The importer, Gerico, is currently marketing a baby carrier both with or without the stuff bag. In those instances in which the carrier is marketed without the stuff bag, it is packaged in a polyethylene bag with a cardboard header. Baby carriers are usually sold in such packaging.

It is your opinion that the nylon bag is merely a packaging device having the subsequent incidental use as a storage bag and is therefore properly classifiable under the provision for other articles not specially provided for, of textile materials, ornamented in item 386.13, Tariff Schedules of the United States (TSUS). The basis for your claim is said to be Headquarters Ruling letter (HRL) No. 075534 dated April 29, 1985, which held that a cotton storage sack for a sleeping bag is classifiable under item 386.50, TSUS.

HRL No. 075534 does not support your claimed classification. That decision is applicable to the type of cotton bag involved therein and under the same circumstances. That cotton storage bag was to be imported with a sleeping bag and a nylon stuff bag. The nature of a down or fiber filled sleeping bag requires a breathable bag by which the sleeping bag can be hung-up to air dry after a night exposed to the elements. If the filling remains damp, it loses its insulating value and developes an odor. The storage bag was constructed of a gauze type cotton fabric which was not intended for travel but rather to allow the sleeping bag to aerate. The use of the cotton storage bag is peculiar to a sleeping bag.

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Noting that the stuff bag is imported without the baby carrier, General Headnote 6(a), TSUS, would apply in determining its classification. In its condition as imported the bag is of the type usually sold at retail as a "stuff sack" or "ditty bag."

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS, provides in pertinent part that "For the purposes of the tariff schedules — (a) the term 'luggage' covers -- (i) travel goods such as *** kitbags, haversacks, duffle bags, and similar articles designed to contain clothing or other personal effects during travel."

The nylon stuff bag is a "similar article" within the cited headnote. Also, it is obvious that the bag is designed to contain the baby carrier and other personal effects while traveling with the child. An ideal example would be when a parent takes the child on an outing with the stroller. When desired, the child can be placed in the carrier and the bag continues to hold the other personal effects. Practical daily observation especially at public parks and amusement centers demonstrates that the bag was not designed to be a mere storage bag to be left at home when going places with the child. In fact the baby carrier requires no storage bag as evidenced by Gerico's sale of the baby carrier without the stuff bag.

In view of the foregoing, it is our opinion that the sample nylon bag is within the purview of the term "luggage" for tariff purposes. However, in a supplemental letter dated April 9, 1986, you called our attention to the fact that the drawstring of the nylon bag is made of woven braid cord. You suggest in the event that this office decides that the nylon bag falls within the luggage provisions of the schedules that classification under the provision for luggage of other textile materials, wholly or in part of braid in item 706.34, TSUS, is appropriate.

In order to classify the nylon bag, it is first necessary to interpret the phrase "in part of braid" as it appears in Schedule 7, Part 1, Subpart D, TSUS. General Headnote 9(f)(iv), TSUS, provides that "'in part of' or 'containing'" means that the article contains a significant quantity of the named material. This headnote also provides that the de minimis rule applies. Our previous interpretation of the word "significant" as applied to the phrase "in part of" implies a degree of usefulness, of being necessary or meaningful. Therefore, an item would contain a significant quantity of braid if that portion or quantity serves a useful purpose and/or increases the saleability of the article. In E. Fougera & Co. v. United States, 49 Treas. Dec. 986 T.D. 41632 (1926), the court determined that the phrase "in part" related to "a substantial part in a commercial sense." The decision in Fougera is amplified by Aceto Chemical Co., Inc. v. United States, 75 Cust. Ct. 167, C.D. 4625 (1975) at 169, and United States v. Cavalier Shipping Co., Inc., 60 CCPA 152, C.A.D. 1103 (1973), wherein it was noted that only in the most limited of circumstances should a quantitatively minute amount of the specific materials control the tariff classification. See Headquarters Ruling Letter 073592 dated June 12, 1984, which emphasizes the necessity of determining whether the amount used has really changed or affected the nature of the article.

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An examination of the sample submitted indicates to us that the added braided feature will not really change or affect the nature of the bag or its saleability. Accordingly, it is our position that the merchandise is properly classifiable under the provision for other luggage of other textile materials in item 706.4152, TSUS, and dutiable at the rate of 20 percent ad valorem. If the bag is produced in Taiwan, it is subject to quota/visa restraints under quota category No. 670.

With respect to the country of origin marking, you maintain that the nylon bag is entitled to an exemption therefrom pursuant to 19 U.S.C. 1304(3)(H) and 19 CFR 134.32(h). You assert that because Gerico is purchasing the nylon bag for its own use, namely packaging and storing its soft baby carrier, it qualifies as the ultimate purchaser of the goods. Specifically, Gerico is entitled to the exemption due to the fact that by the circumstances of the importation Gerico will necessarily know the country of origin of the nylon bags even though it is not marked on the bags.

An ultimate purchaser may be defined as the last person in the United States who will receive the article in the form in which it was imported. If an article is to be sold at retail in its imported form the purchaser at retail is the ultimate consumer. We do not agree that Gerico qualifies as the ultimate purchaser of the nylon bag. This bag was not designed merely for storage or packaging. As stated previously it was designed and is used after retail sale to contain the baby carrier and other personal effects when traveling with a child. In this instance Gerico is not entitled to an exemption from the country or origin marking requirements because it is not the ultimate purchaser within the purview of 19 U.S.C. 1304(3)(H) and 19 CFR 134.32(h).

The nylon bag must be marked to indicate the country of origin as provided by section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). In order to avoid confusion, it is suggested that the existing sewn-in label be amended to read "Bag made in...."

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUN 3 1986

REFER TO
CLA-2 CO:R:CV:G
077535 jlj
815459

077535

Mr. Martin J. Lewin
Ms. Teresa M. Polino
Mudge, Rose, Guthrie, Alexander and Ferdon
2121 K Street, N.W.
Washington, D.C. 20037

Dear Mr. Lewin and Ms. Polino:

In your letter of December 23, 1985, and your conference of April 2, 1986, you requested a reconsideration of New York letter 815459 dated December 3, 1985. New York letter 815459 classified two types of women's flannel nightwear under the provision for women's wearing apparel, ornamented, of cotton, other, not knit, other, in item 384.0925, Tariff Schedules of the United States Annotated (TSUSA). Samples of the two nightgowns in question were submitted along with your reconsideration request.

Style 8528 is a women's 100 percent cotton flannel, waltz-length (40 inches) gown with a 1.5 inch ruffled stand-up collar, a 1.75 inch ruffled cuff, and a 6 inch ruffle at the bottom of the gown. Style 9880C is a woman's dorm pajama which is 34 inches long at the center of the back with a 1 inch ruffled stand-up collar, plain cuffs, a shirt-tail bottom and matching bikini pants.

The styles at issue, style 8528 and style 9880C, each have a piece of gathered fabric (i.e., a ruffle) at the neckline. This fabric is inserted in the neckline seam between the bodice of the garment and the facing. The fabric does not finish a raw edge.

You claim that the ruffles at the necklines of the nightgowns do not constitute ornamentation because they are functional features in that they provide warmth for the wearer's neck. New York Customs classified the nightgowns as ornamented because the ruffles at the neck enhanced the appearance of the nightgowns; New York Customs thought that the ruffles were primarily decorative.

You argue that, in previous Customs rulings, where ruffles served a bona fide function, the ruffles were held not to be ornamentation. You rely especially on Customs Headquarters Ruling Letter (HRL) 069012 dated November 19, 1981, which said in passing that the argument "that this type of ruffle provides additional warmth may have some merit where the ruffle is attached to a long-sleeved cotton flannel nightgown which is worn primarily for warmth." (Emphasis added.)

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You claim that the 1.25 inch ruffle at the neck of style 8528 and the 1 inch ruffle at the neck of style 9880C do not constitute ornamentation because their primary function is to provide warmth at the wearer's neck. You also claim that the ruffles prevent cold air from getting inside the garments. You argue that the neck is one of the most exposed parts of the body and that women who choose nightgowns with ruffles at the throat do so because the ruffles provide additional warmth. Relying heavily upon HRL 069012, you argue that the ruffles are functional and that their functional aspects outweigh any decorative aspects which the ruffles might have.

Your reliance upon HRL 069012 is misplaced. The sentence upon which you place so much emphasis merely said that the argument (i.e., that a ruffle at the neck was functional in that it provided extra warmth) might have merit if the nightgown was worn primarily for warmth.

To recapitulate, HRL 069012 (Internal Advice 131/81) dealt with ruffles at the necklines of cotton dorm pajamas. Part of HRL 069012 concerned the rationales for considering a neckline ruffle to be functional. One rationale mentioned was that a neckline ruffle might provide additional warmth when found on flannel nightgowns. We concluded, however, that the rulings on the subject were inconclusive and that a classification practice (i.e., to call flannel nightwear with neckline ruffles not ornamented) did not exist.

Headnote 3, Schedule 3, Tariff Schedules of the United States (TSUS), provides that the term "ornamented" refers to textile articles which are ornamented with, among other things, textile fabric. The courts have ruled that the test for ornamentation is whether the feature serves a primarily decorative rather than utilitarian function. Colonial Corp. of America v. United States, 62 Cust. Ct. 502, C.D. 3815 (1969). There is no question that the subject ruffles have a decorative effect upon the nightwear in question. The question is whether the ruffles also serve a functional purpose which overrides their decorative effect.

Style 8528 has a 1.5 inch ruffle. Style 9880C has a 1 inch wide ruffle. The assertion that these ruffles provide warmth is unsupported. A ruffle is merely a styling feature designed to enhance and embellish the appearance of the garment. The ruffles in question do not finish a raw edge. They enhance the appearance of the nightwear. While they may conceivably afford the wearer some additional warmth, we find that this functional factor is outweighed by the decorative effect both ruffles create. The decorative effect of both ruffles far outweighs the purpose of providing a bit of extra warmth.

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We find that the classification of styles 8528 and 9880C as other women's wearing apparel, ornamented, of cotton, not knit, other, pajamas and other nightwear, in item 384.0925, TSUS, is correct. We hereby reaffirm New York letter 815459.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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28 MAY 1986

CLA-2:CO:R:CV:G
077545 PR

This ruling concerns the tariff status of a certain woman's garment and tie belt.

ISSUE:

There are three issues that are presented by the submitted sample: (1) whether the garment is classifiable under the ornamented apparel provisions in the tariff schedules because of rows of stitching found in various locations; (2) whether the tie-belt is classifiable as an entirety with the garment or is classifiable separately; and (3) whether the garment is classifiable as a shirt or as a jacket.

FACTS:

The submitted sample is a martial arts style woman's upper body garment. It is made from a lightweight woven cotton fabric. While the garment resembles part of a martial arts uniform, it is much too light and flimsy to be worn as such. A 2 inch by 84 inch belt of the same fabric as the garment will be imported with the garment. The belt is intended to be tied around the waist of the wearer. It has 4 rows of stitching which are essentially the same color as the fabric from which the belt is made. The garment is approximately hip length and has a full front opening which is secured at approximately waist level by two fabric ties located on the inside of the garment. It has 3/4 length

077545

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sleeves, shoulder pads, and side slits. The placket and sleeve cuffs each have four rows of noncontrasting stitches similar to that on the belt. There are no labels in the sample garment or belt. Since we are advised by the inquirer that it is a woman's garment, we will proceed on that assumption.

LAW AND ANALYSIS:

In order for a feature on a garment to cause that garment to be classifiable as ornamented for tariff purposes, that feature must be one which is listed in Headnote 3, Schedule 3, Tariff Schedules of the United States Annotated (TSUSA), and be determined to be primarily decorative in nature. Stitching, such as found on the belt, placket, and cuffs, is within the purview of Headnote 3. However, it appears that on the subject garment and belt, the decorative effect of the stitching is minimal and the functional value of that stitching in adding a desired degree of stiffening to those areas outweighs any decorative aspect of the stitching. Accordingly, the garment and belt are not ornamented for tariff purposes.

Headnote 3 to Part 6, Schedule 3, TSUSA, provides that, except for certain classes of apparel sets, each garment is to be separately classified even if two or more garments are imported together and designed to be sold together at retail. One of the exceptions to this rule is for judo, karate, and other oriental martial arts uniforms. In a ruling of February 12, 1986, file C77496, Customs held that belts were

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intended to be included within the coverage of that headnote. Accordingly, substantial belts were stated to be classifiable separately, except if those belts fell within the purview of one of the named exceptions.

In this instance, while martial arts uniforms are excepted from the purview of the headnote, the subject garment is not a martial arts uniform. At best, it may be argued that the submitted sample is part of a martial arts uniform, not the uniform itself. However, as stated above, this office believes that the garment is much too light to be used in the martial arts.

The question then arises whether the instant belt is within the class of articles covered by Headnote 3, supra. In order to decide the issue, Customs has reexamined its ruling of February 12, 1986, and has concluded that it requires clarification. Section (a) of Headnote 3 provides:

> Except as provided in (b) of this headnote, each garment is to be separately classified under the appropriate tariff item, even if two or more garments are imported together and designed to be sold together at retail.

Our February 12 ruling did not fully consider whether articles (other than string ties) which act as belts and consist only of the identical fabric (including color and pattern) as the accompanying apparel item constitute a "garment" within the purview of Headnote 3(a) when they do not have a buckle, clasp, or special attachment for closure purposes. Generally, such articles are insignificant in

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relation to the dress, pants, coat, etc., with which they are intended to be worn, are of little value, are not useable on other apparel items, are not sold separately, and, although technically within the definition of a "belt," do not reasonably fall within the class of articles covered by Headnote 3(a). Accordingly, such "belts" will continue to be classified with the apparel items they accompany.

The remaining question to be resolved is whether the subject garment is a shirt or a jacket. Although lightweight, the subject garment does not appear to be the type of garment that would be worn in place of a shirt. Rather, considering the nature of the front opening and the garment as a whole, the subject merchandise will normally be worn over a shirt or a blouse, in the manner of a jacket. The garment is, therefore, classifiable as a coat or jacket for tariff purposes.

HOLDING:

The sample jacket and belt is classifiable as an entirety under the provisions for other women's or girls' wearing apparel, of cotton, not knit and not ornamented, coats, in either item 384.3500, TSUSA, if valued not over four dollars each, or in item 384.3777, TSUSA, if valued over four dollars each. In either event, the textile and apparel category applicable to the instant garment is 335.

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We have been advised by the Committee for the Implementation of Textile Agreements that the June 10, 1986, effective date of our ruling of February 12 will not provide importers and foreign governments, with whom the United States has entered into bilateral textile agreements, sufficient time to adjust to that ruling. Accordingly, pursuant to section 177.9(d), Customs Regulations (19 CFR 177.9(d)), our ruling of February 12, 1986, file 077496, is hereby modified to reflect the principles set out above and that an importer of merchandise which is affected by that ruling may, for merchandise entered, or withdrawn from warehouse, on or before August 31, 1986, continue to enter such merchandise as entireties. After that date, all merchandise affected by either the February 12, 1986, ruling or this ruling will be classified in accordance with the principles set out above.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

077545

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F11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 18 1986

REFER TO
CLA-2:CO:R:CV:G
077555 JGH

077555

Beverly L. Pevsner, Esq.
Beiley & Pevsner
7600 Southwest 57th Avenue
Suite 107
Miami, Florida 33143

Dear Ms. Pevsner:

This is in reference to your inquiry concerning the dutiable status of an unleaded gasoline which your client F&H Chemical Corp. wishes to import from Brazil, Romania or Mexico.

You describe the petroleum product as being unleaded and meeting all the standards set forth in ASTM D-439, for automotive gasoline "except that it has an octane level of 85 to 86.9." For this reason you contend it should be classified as a naphtha.

Contrary to your understanding, under ASTM D-439, the minimum octane level for unleaded automotive gasoline is 85. Inasmuch as this petroleum product meets all of the standards for unleaded gasoline listed in ASTM D-439 it is classifiable as motor fuel in item 475.25, TSUS.

Sincerely,

Arthur P. Schaffer

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 15 1986

REFER TO

CLA-2 CO:R:CV:G
077587 JGH

District Director of Customs
U.S. Customs Service
77 S.E. 5th Street
Miami, Florida 33131

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 5201-2-000358, Classification of Shampoo Ingredients, Products of British West Indies

The entries in question were made between September 1979 and February 1981. The products are designated as EM 764, JU-760 and Kotah LO-03. Ju-760 and Kotah LO-03 are said to be chiefly used for their dermatological properties in shampoo and bath additives. EM 764 was found on laboratory analysis to be a mixture of fatty substances.

Various claims were made in behalf of the importer as to the classification of these products. EM 764 was said to be a surface active agent in item 465.95, or a fatty acid in item 465.35. Kotah LO-03 was claimed to be a nonenumerated article in item 799.00, a cosmetic preparation in item 461.40 or wood tar oil or benzenoid mixture in 407.09. JU-760 was claimed to be dutiable under item 465.95, item 409.30, benzenoid surfactant; wood tar oil in item 494.40, or a drug in item 439.50.

Analysis of EM 764 disclosed that the product contained sodium lauryl sulfate, alkyl ethanolamide (fatty amide) and a fatty ester. Therefore, it is an artificial mixture of two or more of fatty substances, in item 491.00, TSUS.

Analysis of Kotah LO-03 and JU-760 disclosed that they both contain Coal Tar Solution, U.S.P. Coal Tar Solution, U.S.P., is composed of coal tar, polysorbate 80 and alcohol. It is considered a "drug" ingredient under Headnote 9, Part 1(c), Schedule 4, TSUS. JU-760 also contains a non-ionic benzenoid emulsifier. The products are not surface active agents, so that items 465.35 or 465.95 do not apply. As they are of identifiable chemical composition, neither does item 799.00 apply, nor do the other items listed apply. Kotah LO-03 and JU-760, if entered before July 1, 1980, are classified as benzenoid medicinals in item 407.85, TSUS. If entered on or after July 1, 1980, these two products would be classifiable under the provision for benzenoid dermatological agents in item 412.14, TSUS.

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EM-764 is not a surface active agent but a mixture of fatty substances, and therefore classifiable in item 491.00, TSUS.

You are directed to deny the protest in full. You are requested to furnish the protestant with a copy of the decision with the Form 19 Notice of Action.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

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F14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

9 MAY 1986

REFER TO

CLA-2 CO:R:CV:G
077603 c

077603

Herbert J. Lynch, Esq.
Sullivan & Lynch, P.C.
Attorneys and Counselors at Law
156 State Street
Boston, Massachusetts 02109

Dear Mr. Lynch:

In a letter dated January 13, 1986, you inquired as to the dutiable status of stocking waders and incomplete waders manufactured in Korea. Samples were submitted for examination.

This merchandise will be imported as completed stocking waders having a pod-like unsized foot portion which will be worn under boots and as incomplete waders which lack a foot portion. After importation the incomplete version will be completed by adding either the "pod" bottoms or boots. Both the finished and the incomplete versions will be imported in six fabric types labelled A through F. With the exception of D, all variations consist of textile fabric coated, filled or laminated with rubber or plastics in which the textile is present on the exterior surface. Type D has a non-transparent rubber on the exterior and interior surfaces and a middle layer of textile fabric.

It is our position that the finished imported stocking waders constructed of fabric type D are classifiable under the provision for other wearing apparel not specially provided for, of rubber or plastics in item 772.3195, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 6.3 percent ad valorem. The finished stocking waders constructed of fabric types A, B, C, and E are classifiable under the provision for other garments designed for rainwear, hunting, fishing, or similar uses, wholly or almost wholly of fabrics which are coated or filled, or laminated with rubber or plastics, which (after applying Headnote 5 of Schedule 3) are regarded as textile materials in item 376.56, TSUS, and dutiable at the rate of 9.1 percent ad valorem. See T.D. 56545(194). Those waders which do not rise over 6 inches above the natural waistline would fall within textile category No. 647, if for men. Those extending over 6 inches above the waist would be in category No. 659. The finished stocking waders constructed of fabric F which is in chief value of cotton are dutiable at the rate of 7.6 percent ad valorem under item 376.54, TSUS. The applicable textile category number is 359.

It is our position that the unfinished wading outfits imported without anything to cover the foot are not unfinished footwear even if their only function is to have either a "pod" or boot attached by an American maker before sale to the public. Any import which does not cover any part of

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the foot cannot be considered "footwear" because it lacks the essential character of footwear. In terms of the specific tests cited in the case of Daisy-Heddon Div. Victor Comptometer Corp. v. United States, 66 CCPA 97, C.A.D. 1228 (1979), the omitted part, which covers the foot has such significance "to the overall functioning of the completed article" as footwear that the import is not "substantially complete."

With respect to classification outside of the footwear provisions, it is clear that if the wading outfits could be completed only with the attachment of boots, they would not be considered "wearing apparel" for tariff purposes because parts of footwear are not "wearing apparel." See Westminster Corp. v. United States, 78 Cust. Ct. 22, C.D. 4687 (1977).

If the incomplete waders could be completed only with the attachment of "pods," i.e., comparatively shapeless foot coverings designed to be worn under boots, they would be classifiable as unfinished wearing apparel. However, you state that these articles can and may be completed either with boots or "pods." It is our observation that it is commercially feasible to complete the imported articles as either footwear or as wearing apparel. Because of this it is our opinion that classification as unfinished wearing apparel is precluded. See Headquarters Ruling Letter No. 056984 dated March 20, 1980, wherein it was held that if flatwear blanks could be finished as either spoons or forks they would be classifiable not as "unfinished," but as articles of metal.

Based on the foregoing, it is our view that the incomplete waders are classifiable as articles according to component material of chief value. Waders constructed of fabric types A, B, and E are classifiable under the provision for articles not specially provided for, of textile materials, not ornamented, of man-made fibers, knit in item 389.4000, TSUS, and dutiable at the rate of 4 cents per pound plus 14.6 percent ad valorem. Incomplete waders constructed of fabric C are classifiable under the provision for other articles not specially provided for, of textile materials, not ornamented, of man-made fibers, not knit in item 389.6270, TSUS, and dutiable at the rate of 4 cents per pound plus 10 percent ad valorem. Incomplete waders constructed of fabric F, if in chief value of cotton, are classifiable under the provision for articles not specially provided for, of textile material, not ornamented, of cotton, not knit in item 386.5300, TSUS, and dutiable at the rate of 8.2 percent ad valorem. Incomplete waders constructed of fabric D, if chiefly used as parts of footwear (i.e. finished with boot attachments), are classifiable under the provision for parts of footwear of rubber or plastics in item 774.50, TSUS, and dutiable at the rate of 6.5 percent ad valorem or entitled to duty-free treatment under the Generalized System of Preferences (GSP), if otherwise

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qualified. If not chiefly used as parts of footwear these incomplete waders are classifiable under the provision for other articles not specially provided for, of rubber or plastics in item 774.55, TSUS, and dutiable at the rate of 5.7 percent ad valorem or entitled to duty-free treatment under the GSP, if otherwise qualified.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

077603

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

APR 15 1986

CLA-2 CO:R:CV:G
077613 JNB

077613

Ms. Renee Sonn
F.W. Myers & Co., Inc.
P.O. Box 1270
Seattle, Washington 98111

Dear Ms. Sonn:

This is in response to your letter of January 13, 1986, filed on behalf of importer of record Coral Sea Wholesale & Marketing Industry Ltd., requesting a ruling concerning the country of origin of shop towels cut and hemmed in Hong Kong but made of fabric woven in China. It should be noted that the towels about which you inquire have already been detained by U.S. Customs in Seattle, Washington.

The towels are 18 inches by 18 inches and are made of 100 percent woven cotton. The shipment left Hong Kong bound for the United States on October 11, 1985. A certificate of Hong Kong origin accompanied the towels. Customs in Seattle has refused entry of the merchandise on the basis that the true country of origin is, in fact, China. You appeal for a "special" ruling that would hold the subject merchandise to be of Hong Kong origin so that anti-dumping duty can be avoided and necessary visas from China need not be obtained.

On March 5, 1985, Customs published in the Federal Register (50 FR 8710) as T.D. 85-38 a final rule which promulgated new regulations concerning the entry of textiles and textile products. The regulations were held effective to all shipments exported from their country of origin on or after April 4, 1985. Inasmuch as the subject merchandise was exported from Hong Kong on October 11, 1985, it necessarily must have been exported from its country of origin, China, prior to that date. Accordingly, these textile products fall under these regulations.

Section 12.130(e)(2) of the Customs Regulations (19 CFR 12.130(e)(2)) provides that an article cannot be considered as a product of a foreign territory or country by virtue of merely having undergone cutting to length or width when the fabric which is so cut is readily identifiable as being intended for a particular commercial use. Towelling as you describe, when exported from China to be cut and hemmed in Hong Kong, is considered to be intended for a particular commercial use. See Analysis of Comments, 50 FR 8714.

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Towelling comprised of fabric which is the product of China and is cut to length or width elsewhere remains, for purposes of the textile regulations, a product of China. Accordingly, the subject towels, although cut in Hong Kong, are products of China.

We note that you have requested a ruling on a matter that is not prospective, but rather is the subject of a current transaction. Technically, this is in contravention of the Customs Regulations. We caution that the Internal Advice procedures spelled out in section 177.11 of the Regulations (19 CFR 177.11) should be used in future when disputes arise with regard to current transactions.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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077613

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

MAY 14 1986

REFER TO
CLA-2:CO:R:CV:G
077644 SM

077644

Mr. Hendrik te Neues
te Neues Publishing Company
15 East 76th Street
New York, New York 10021

Dear Mr. te Neues:

You have requested a tariff classification ruling for certain printed calendars to be imported from West Germany.

The submitted sample calendar, "Sightseeing 1986: A Space Exploration," consists of eight sheets of glossy paper, each approximately 12-3/8 inches by 24 inches, laid one upon another and fastened together along the center with three wire staples. When all the sheets are folded along the center row of staples, the calendar is closed. When opened out, it can be hung on a wall using a small hole at the top of each sheet. A calendar grid for each month is paired with a captioned color photograph showing some aspect of the U.S. space exploration program. One of the sheets, which is perforated along the center, can be torn out easily and serves to advertise the te Neues Publishing Company and the many types of calendars it has available. The outer sheet, which forms the front and back covers, is of a heavier paper than the inside pages.

Assuming that the calendar has been printed in whole or in part by a lithographic process, it is classifiable in Part 5 of Schedule 2 under item 274.10, Tariff Schedules of the United States (TSUS), if not over 0.020 inch in thickness; or under item 274.15, TSUS, if over 0.020 inch in thickness. If the calendars are products of West Germany, the Column 1 rate of duty will apply. The 1986 Column 1 rate for item 274.10 is .5 cent per pound; for item 274.15, 2.1 cents per pound. Further reductions are scheduled: as of January 1, 1987, the Column 1 rate for item 274.10 will be "Free"; for item 274.15, it will be 2 cents per pound.

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Headnote 3 of Part 5 provides that the "thickness" of printed matter produced by a lithographic process "is that of the thinnest paper contained therein, except that the thickness of a permanently mounted lithograph is the combined thickness of the lithograph and its mounting." Therefore it is necessary to determine whether the calendar contains "permanently mounted" lithographic prints.

The Tariff Acts of 1909, 1913, 1922, and 1930 provided that for tariff purposes the thickness of lithographed materials was to be that of the thinnest sheet, except that "the thickness of lithographs mounted or pasted upon paper, cardboard, or other material, shall be the combined thickness of the lithograph and the foundation on which it is mounted or pasted." In the few cases decided under that provision, the courts gave differing interpretations to the term "mounted," saying at one time that Congress had meant that for a process to be considered mounting, it had to be at least as permanent as pasting; but later saying that Congress had intended "mounting" to have a very broad meaning under which many types of processes would qualify. See, for example, W. White v. United States, T.D. 36844, 31 Treas. Dec. 589 (1916); United States v. Thorens, Inc., 32 CCPA 137, C.A.D. 298 (1945).

When Congress enacted the tariff schedules in 1962, it provided in Headnote 3, as indicated above, that the combined thickness of a lithograph and its mounting was to be used for tariff purposes when the lithograph was "permanently mounted." Cases decided under the amended statute have not shed much light on the meaning of that phrase. In Graphics International Inc. v. United States, 63 Cust. Ct. 330, C.D. 3916 (1969), the merchandise in question was lithographically printed inserts for children's magazines, consisting of a base sheet with glued-on printed pop-up figures. The parties agreed that the lithographs were "permanently mounted," and the court did not discuss the meaning of the term. Similarly, in Charles Scribner's Sons, v. United States, --CIT--, Slip Op. 83-98 (September 30, 1983), where the merchandise was determined to be a calendar properly classifiable as being not over 0.020 inch thick, the court did not discuss the meaning of "permanently mounted," or the mounting of that particular calendar, although a witness had testified that the spiral binding was not permanent.

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Finally, we note our ruling 070998, of September 22, 1983, which determined that a calendar consisting of 12 sheets held together at the top with a piece of thin folded gray metal was not mounted at all, let alone permanently mounted, because it lacked any kind of base or foundation.

Headnote 3 provides that "the thickness of a permanently mounted lithograph is the combined thickness of the lithograph and its mounting." (Emphasis supplied.) Permanent mounting, then, requires at a minimum some kind of mounting, that is, a backing used for reinforcement or display. Webster's Third New International Dictionary (Unabridged ed. 1971). Because your calendar is attached to a thicker backing that forms the cover, we consider it to be "mounted." However, because of the non-permanent nature of the fastening, that is, the three wire staples, the calendar is not "permanently mounted" for purposes of Headnote 3 to Part 5 Schedule 2, TSUS. Therefore, the thickness relevant for determining the rate of duty under item 274.10 or 274.15, TSUS, is that of the thinnest page, as indicated above.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 18 1986

REFER TO

CLA-2 CO:R:CV:G
077650 JGH

077650

Kurt Olson, Esq.
McDermott, Will and Emery
1850 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Olson:

Your letter of January 21, 1986, concerns the tariff status of a mixture of anhydrous ethyl alcohol and 7.25 to 7.5 percent ethylbenzene (by volume).

The mixture would be manufactured in a GSP eligible country, with all constituent materials used being produced in the beneficiary developing country (BDC).

A ruling on this product cannot be provided as the quantities are given in terms of percentages by volume. You will have to submit a component breakdown by weight before a decision can be made on the matter.

You indicate that in a certain instance the ethylbenzene component of the mixture may be a product of a non-BDC which is imported into the BDC and used to produce the final mixture. You ask whether under these circumstances the mixture would be eligible for duty-free treatment under the Generalized System of Preferences provided that the 35 percent value added criterion is met.

Because of the recently published Presidential Proclamation 5452, there are no longer any duty free benefits for mixtures containing alcohol of the type described, if a product of GSP eligible country. Rather these types of mixtures are now fully dutiable. If the ethanol mixture has an ethylbenzene content of 7 percent or more by weight, it is classifiable under the provision for benzenoid mixtures containing alcohol in item 407.17, TSUS. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate would be ethanol classifiable in item 427.88/901.50. The rate of duty is 3 percent ad valorem plus 60 cents per gallon.

If the ethanol mixture contains less than 7 percent by weight of ethylbenzene, it would be classifiable as ethanol in item 427.88/901.50, with a rate of duty of 3 percent ad valorem plus 60 cents a gallon.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUN 5 1986

REFER TO

CLA-2 CO:R:CV:G
077656 SM

077656

Mr. Ralph C. Meola
Corporate Transportation Manager
Rhone-Poulenc Inc.
P.O. Box 125
Black Horse Lane
Monmouth Junction, New Jersey 08852

Dear Mr. Meola:

You have requested a tariff classification ruling for five types of artificial zeolite designated molecular sieves 13X, sodium silico-aluminate; 4A, sodium silico-aluminate; 3A, sodium and potassium silico-aluminate; 4AFT, a mixture of sodium silica-aluminate and alumina; and 5A, sodium and calcium alumino-silicate. They are products of France.

Naturally occurring zeolites are minerals that have the capacity to act as cation exchangers or as molecular sieves. Synthetic forms can be tailor made to enhance desirable commercial properties. All five molecular sieves involved in this ruling request are stated to be homogeneous mixtures of reaction and to have crystal structures represented by specific chemical formulas. In the form of beads or pellets, they are shipped in steel drums. The literature you have sent further indicates that molecular sieves can be used for gas or liquid drying, gas or liquid purification, separation of saturated and unsaturated hydrocarbon mixtures, and drying of air in confined spaces. Their suitability for these purposes results from their reversible adsorption capabilities, easily exchangeable cations, and network of calibrated pore openings yielding a high internal surface area. A bed of molecular sieves works in one of two ways when a gas or liquid is passed through it: either it separates molecules by allowing only those smaller than the pore openings to enter and be adsorbed; or, when the gas or liquid is composed only of molecules that are very small, it will adsorb molecules of higher polarity by affinity.

Depending on what their chemical, mineralogical, and physical properties are, what they are considered to be by scientists and the trade, and what their end uses are, synthetic materials may be identified as their natural counterparts for tariff purposes. T.D. 84-130. However, the molecular sieves in question here cannot be said to be synthesized forms of naturally occurring zeolites such as chabazite, mordenite, or faujasite. Rather, our Technical Services Division indicates that they are more properly described as mixtures of inorganic compounds. As such they are subject to classification in Schedule 4, Tariff Schedules of the United States (TSUS), even if they might in some sense be describable as mineral substances, as provided in several headnotes in the tariff schedules. Headnote 1(i) to Schedule 4 provides: "This schedule does not

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include . . . any of the mineral products provided for in Schedule 5." Headnote 1 to Part 2, Schedule 4, provides: "This part covers chemicals, except those provided for elsewhere in this schedule and those specially provided for in any of the other schedules." Headnote 1(i) to Subpart 1K, Schedule 5, provides: "This subpart covers mineral substances and articles of mineral substances, not provided for elsewhere in the schedules, but does not include . . . chemical elements or chemical compounds in Part 2 of Schedule 4, or mineral substances provided for in other parts of Schedule 4." In International Selling Corp. v. United States, 62 Cust. Ct. 23, 25, C.D. 3669, 294 F. Supp. 642 (1969), the Customs Court considered these headnotes and stated:

> We read the above headnotes to mean that in the case of merchandise which might be subject to dual classification under Schedule 5 or Schedule 4, Schedule 5 must be given preference except in the instance of those mineral substances under Subpart K thereof, which are chemical elements or chemical compounds provided for in Part 2 of Schedule 4, or mineral substances provided for in other parts of Schedule 4.

Inasmuch as these molecular sieves are chemical compounds provided for in Part 2 of Schedule 4, the latter takes precedence. Therefore, they are properly classifiable under item 423.96, TSUS, as other mixtures of two or more inorganic compounds.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

077656

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY 20 1986

REFER TO

CLA-2 CO:R:CV:G
077662 c

077662

District Director of Customs
New Orleans, Louisiana 70130

Dear Sir:

Re: Decision on Application for Further Review of Protest Nos. 2002-4-000124-155-143-181-210-251-267-306-366-182-208-230-297-298-299-300 and 385

These protests were filed against your decisions in the liquidations of various entries covering shipments of athletic footwear produced in Korea.

FACTS:

The athletic shoes involved were liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestants claim that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Does the documentation provided by the protestants show that the shoes are in chief value of leather?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the

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cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on the matter was that importer submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

Protest No. 2002-4-000124

This protest covers 4,200 pairs of men's and women's nylon/leather joggers which are claimed to be properly classifiable under item 700.45, TSUS. It is our position that classification under item 700.95, TSUS, was appropriate because the component value breakdown submitted is not in the correct format and does not show the amount of leather claimed to be present in a pair of these men's and women's joggers.

Protest No. 2002-4-000155

This protest covers 10,008 pairs of women's nylon/leather casual shoes which are claimed to be properly classifiable under item 700.45, TSUS. It is our position that classification of these shoes under item 700.95, TSUS, was appropriate because the manufacturer's component value breakdown did not show the amount of leather claimed to be present in a pair of these shoes.

Protest No. 2002-4-000143

This protest asks for a refund of $227.23 in connection with the liquidation of style No. 5264K. Actually, style No. 5264K was liquidated under item 700.35, TSUS, at 8.5 percent ad valorem, as entered. However,

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Invoice No. 3 covering 2,394 pairs of women's nylon/suede joggers was advanced to 700.95, TSUS, at 12.5 percent ad valorem rather than 700.45, TSUS, at 10 percent ad valorem, as entered. It is our position that classification of the shoes covered by Invoice No. 3 under item 700.95, TSUS, was appropriate because the manufacturer's component value breakdown for these joggers shows a cost of 81 cents for leather including cutting and trimming against a cost of 91 cents for rubber/plastics costs including 23 cents for sole labor.

Protest No. 2002-4-000181

This protest covers 5,400 pairs of men's, boys', and women's nylon/suede joggers. As far as we can determine, these joggers are all approximately the same style but on the manufacturer's value breakdown covering the men's size 8, we note that manufacturer claims he purchased a total of 2.13 sq. ft. at $1.08 plus 11 cents for cutting and trimming. However, on a boy's size 4, the manufacturer shows 2.03 sq. ft. of leather purchased at $1.1297 plus .2408 cent for cutting and trimming. It is our position that classification under item 700.95, TSUS, was appropriate in view of the contradictory data provided by the importer which was not explained.

Protest No. 2002-4-000210

As far as we can determine Order No. 4813K covering 3,600 pairs of men's and boys' mesh and smooth leather hitop basketball shoes were liquidated under item 700.95, TSUS, with duty at the rate of 12.5 percent ad valorem. However, the manufacturer's component value breakdown shows leather charges on this style amounting to $2.50 against $1.22 for the rubber/plastics components. Therefore, classification as leather footwear

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under item 700.35, TSUS, was appropriate. However, this protest covers 7,152 pairs of men's and boys' nylon/suede leather joggers liquidated under item 700.95, TSUS. A review of the manufacturer's component value breakdown shows leather charges on the men's size as $1.06 against $1.21 for the rubber/plastics components. That breakdown for the boys' size shows 87 cents for leather charges against a cost of $1.09 for the rubber/plastics components. In view of the foregoing classification of the 7,152 pairs of shoes under item 700.95, TSUS, was appropriate.

Protest No. 2002-4-000251

This protest covers misses/childs/infants leather/fabric sport shoes. The protestant claims that the footwear is in chief value of leather. Although the protestant has attached copies of the commercial invoice and the CF 5523, it neglected to include the corrected value breakdown mentioned in its protest. Inasmuch as the protestant has not supplied any evidence to support the claim that this footwear is in chief value of leather, it is our view that classification of the shoes under item 700.95, TSUS, was appropriate.

Protest No. 2002-4-000267

This protest covers Invoice No. 4 on 3,600 pairs of men's nylon/suede leather joggers which were liquidated under item 700.95, TSUS, with duty at the rate of 12.5 percent ad valorem. It is our position that classification of these shoes under item 700.95, TSUS, was appropriate because the manufacturer's component value breakdown shows that the footwear is in chief value of rubber/plastics.

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Protest No. 2002-4-000306

This protest covers 8,352 pairs of men's/boys'/youths' sport shoes. The manufacturer's component value breakdown shows $1.29 for leather costs including 40 cents for cutting against $1.166 for the rubber/plastics charges. The 40-cent charge for cutting appears very high when compared with other cutting charges shown by different manufacturers. It is our position that the shoes should have been classified under item 700.35, TSUS, inasmuch as we have no tangible "evidence" to contradict the cutting charges.

Protest No. 2002-4-000366

This protest covers men's/boys'/youths' nylon/suede leather joggers. The three manufacturers' component value breakdowns submitted indicate that the joggers are in chief value of leather. Therefore, these joggers in men's and boys' sizes should have been classified under item 700.35, TSUS, while the youths' sizes are considered unisex classifiable under item 700.45, TSUS.

Protest No. 2002-4-000182

This protest covers 4, 800 pairs of men's nylon/leather joggers. It is our position that classification under item 700.95, TSUS, was appropriate because the component value breakdown submitted does not show the amount of leather purchased or the amount of leather claimed to be present in the shoes. It should be noted that the manufacturer was well aware of the information required on component value breakdowns.

Protest No. 2002-4-000208

This protest covers 3,600 pairs of men's nylon/leather joggers. It is our position that classification under item 700.95, TSUS, was appropriate inasmuch as a component value breakdown was not submitted with the protest.

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Protest No. 2002-4-000230

This protest covers 1,536 pair of men's nylon/leather joggers. It is our position that classification under item 700.95, TSUS, was appropriate inasmuch as a component value breakdown was not submitted with the protest.

Protest No. 2002-4-000297

This protest covers 1,524 pairs of style Nos. 55-5002-5 and 55-5001-1 which include boys'/youths' nylon/leather footwear. Based on the component value breakdown these shoes appear to be in chief value of leather. Therefore, it is our position that they should have been classified under item 700.35, TSUS, with the exception of youths' sizes 10 through 2 which should have been treated as unisex classifiable under item 700.45, TSUS.

Protest No. 2002-4-000298

This protest covers 9,144 pairs of nylon/leather joggers which are claimed to be classifiable under item 700.35, TSUS, and item 700.45, TSUS. It is our position that classification under item 700.95, TSUS, was appropriate because a review of the component value breakdowns show that the claimed leather costs on the men's joggers were $1.35 against $1.40 for the rubber/plastics costs and on the women's sizes, the leather costs were $1.13 against $1.27 for the rubber/plastics costs.

Protest No. 2002-4-000297

This protest covers nylon/leather joggers which are claimed to be classifiable under item 700.35, TSUS. A review of the component value breakdown for these joggers shows a leather cost of $1.26 against a cost of $1.40 for the rubber plastics components when the 34 cents for the "sole labor" is added. It should be noted that Headquarters Ruling Letter No. 077216 c dated December 13, 1985, held that the cost of the "sole labor" is

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077662

properly attributable to the rubber/plastics costs because the bottom is all rubber or plastics. In view of the foregoing, it is our position that classification under item 700.95, TSUS, was appropriate.

Protest No. 2002-4-000300

This protest covers footwear included on two different entries. A review of the documents submitted reveals that there was no value breakdowns submitted with entry No. 84-704513-4 and entry No. 84-704042-1. It is our position that in the absence of the required documents that classification of the footwear under item 700.95, TSUS, was appropriate.

Protest No. 2002-4-000385

This protest covers 5,922 pairs of women's canvas and leather sandals with PVC soles which were entered and liquidated under item 700.95, TSUS. It is now claimed that the footwear is in chief value of leather which requires classification under item 700.45, TSUS. It is our view that classification of these shoes under item 700.95, TSUS, was appropriate because a component value breakdown was not submitted showing that the shoes were in chief value of leather.

HOLDING:

Protest Nos. 2002-4-000306-366 and 297 should be allowed.

Protest No. 2002-4-000210 should be allowed in part as to Order No. 4813K covering 3,600 pairs of men's and boys' mesh and smooth leather hitop basketball shoes and denied in part as to the 7,152 pairs of men's boys' nylon/suede leather joggers.

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The remaining protests should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Shaffer

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A10

077662

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 22 1986

REFER TO
CLA-2 CO:R:CV:G
077672 JGH

077672

Bill Alberger, Esq.
Bishop, Liberman, Cook, Purcell & Reynolds
120 Seventeenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Alberger:

Your letter of January 22, 1986, in behalf of Cotia America, Ltd., concerns the dutiable status of a mixture of 92.5 percent ethanol and 7.5 percent ethylbenzene, by volume, from a country entitled to GSP benefits. It is assumed the mixture is intended for fuel use.

Effective March 31, 1986, under Presidential Proclamation 5452, ethanol mixtures classifiable under the various specified mixture provisions of the tariff schedules are no longer entitled to duty-free treatment if products of a country entitled to GSP benefits.

In addition, since the percentages in the mixture you mention are in terms of volume instead of weight, a binding ruling is not possible, since classification of mixtures of this type is based on weight.

If an ethanol-ethylbenzene mixture contains 7 percent or more ethylbenzene by weight of the entire mixture, it is classifiable as a benzenoid mixture containing ethylalcohol in item 407.17, TSUS. The rate of duty is 1.7 cent per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate would be ethanol dutiable under items 427.88/901.50, TSUS, at 3 percent ad valorem plus 60 cents per gallon.

Ethanol mixtures of the type described containing less than 7 percent ethylbenzene by weight of the entire mixture are classifiable in item 427.88/901.50, TSUS, and dutiable at 3 percent ad valorem plus 60 cents per gallon.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

A11

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

9 MAY 1986

REFER TO

CLA-2:CO:R:CV:G
077690 JGH

077690

Philip D. Saxon, Esq.
Duane, Morris & Heckscher
Suite 1017
Wilmington Trust Center
Rodney Square North
Wilmington, Delaware 19801

Dear Mr. Saxon:

Your letter of January 30, 1986, concerns the dutiable status of a mixture of ethanol and ethylbenzene presumably intended as a motor fuel additive. The mixture would contain by weight no more than 92.5 percent ethanol and no less than 7.5 percent by weight ethylbenzene. A mixture of this composition would be classifiable under item 407.17, TSUS (formerly item 407.16) dutiable at the rate of 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. The component with the highest rate would be ethanol classifiable under item 427.88/901.50 and dutiable at 3 percent ad valorem plus 60 cents per gallon.

Effective March 31, 1986, entries of ethanol mixtures classifiable in item 407.17, TSUS, are no longer eligible for duty-free status under the Generalized System of Preferences.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 18 1986

REFER TO
CLA-2 CO:R:CV:G
077693 JEH

077693

H. Darrel Darby, DPM
President
Darby, Inc.
1038 6th Avenue
Huntington, West Virginia 25701

Dear Dr. Darby:

This is in further reference to your letters of January 29, and February 3, 1986, which requested reconsideration of a New York decision on the tariff classification of the Darby Shoe.

You describe it as an orthopedic device used as a postoperative surgical-trauma shoe and splint. You state that the shoes are not designed to be worn in pairs and are generally used singly by patients who have had surgery, suffered trauma, or some deformity that handicaps an individual for a short period of time. The disability usually lasts any where from one to eight weeks, then the shoe is thrown away. Our examination of a sample shows it is a multipurpose convalescent shoe with no special features which would avoid its characterization as footwear.

It is your position that the shoe should be classified in item 709.57, Tariff Schedules of the United States (TSUS). However, General Interpretative Rule 10(c), TSUS, provides that an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it. We have held in previous rulings on similar articles that the footwear provision is more specific than the provision for other orthopedic and similar appliances. Further, Schedule 7, Part 1, Subpart A, Headnote 1, TSUS, provides that all footwear designed for human wear is to be classified as footwear except for (1) footwear with permanently attached skates or snowshoes, (2) hosiery, and (3) infant's knit footwear. The article in question is not listed as one of the exceptions.

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Under the foregoing precedents and rules of construction, the fact that a shoe is designed for convalescent, post surgical, orthopedic or other medical purpose does not avoid its tariff classification as footwear so long as the article, such as the instant sample, retains its essential character as footwear. Nor does temporary use or the fact that a shoe is not worn in pairs affect its dutiable status.

Accordingly, the multipurpose convalescent shoe at issue was properly classified as footwear in item 700.59, TSUS.

Sincerely,

Arthur P. Schaffner

Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

077696

DATE: 5 JUN 1986

FILE: CLA-2 CO:R:CV:G
077696 sm
806919

TO : Chief, Commercial Operations
Branch 3, New York Seaport

FROM : Director, Office of Regulations and Rulings
Headquarters, U.S. Customs Service

SUBJECT: Reconsideration of New York Ruling 806919
Your File CLA-2-03:S:COM:N:3:I-358-15 of
January 21, 1986

You have asked us to reconsider the portion of ruling 806919 of September 26, 1983, issued to J. Moyles and Associates, Inc., on behalf of Jewel Imports, that determined that a swimsuit designed to accommodate buoyancy aids and sold together with them was properly classified under item 383.19, Tariff Schedules of the United States (TSUS) (currently item 384.19, TSUS), as other ornamented wearing apparel, of man-made fibers, knit. Reconsideration was requested because the ruling of September 26, 1983, appears to be inconsistent with a prior Headquarters ruling covering substantially the same type of merchandise.

The merchandise that prompted the request for reconsideration is sold under the name "My Buddy Swim Trainer." It consists of a girls'-style knit swimsuit of 100 percent nylon with large snap openings in the front and back to accommodate foam inserts. On the front, a large decal-type decoration of plastic material that appears to have been applied by heat transfer is an applique, and constitutes ornamentation. "My Buddy" is designed to keep children buoyant while they practice swimming strokes in a natural position. It is intended to maintain confidence without dependency since it permits gradual decrease in the number of floats worn as children learn to swim on their own. Imported without the floats, the swimsuit is packaged and sold together with them in the United States.

It is our determination that this article is properly classifiable as wearing apparel, and that ruling 806919 is therefore correct. In Admiral Craft Equipment Corporation v. United States, 82 Cust. Ct. 162, 164, C.D. 4796 (1979), the Customs Court stated:

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PUBLIC

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> A provision for wearing apparel is a classification by use. Cf. United States v. Hillier's Son Co., 14 Ct. Cust. Appls. 216, T.D. 41706 (1926). Accordingly the test of whether an article falls within the classification is whether it belongs to the class of articles used as wearing apparel. See Bangor & Aroostook Railroad Co. et al. v. United States, 20 CCPA 96, T.D. 45724 (1932).

In Antonio Pompeo v. United States, 40 Cust. Ct. 362, 364, C.D. 2006 (1958) the court also considered the question of what constitutes wearing apparel, and stated:

> Dictionary definitions tend to indicate that wearing apparel refers to clothes or covering for the human body worn for decency or comfort, and common knowledge indicates that adornment is also an element of many articles of wearing apparel.

The article in question here is used as wearing apparel, i.e., it is worn by children for swimming. Color pictures on the package show it being so used. It also meets the requirements of being worn for decency or comfort. As an added feature it has two snap openings that allow the insertion of foam floats. However, these floats cannot be used unless a child is already wearing the swimsuit, and the suit can be worn without using the floats at all.

This article was properly classified under item 383.19, TSUS (currently item 384.1920, TSUSA, quota category 659). Headquarters ruling 062901 of June 16, 1980, which determined that a different classification was correct for a similar swimsuit, is hereby modified, pursuant to 19 CFR 177.9(d), to the extent that it is at variance with this decision.

Thank you for bringing this matter to our attention.

Harvey B. Fox

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076696

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: APR 30 1986

FILE: CLA-2:CO:R:CV:G
077703 SM
077704

TO : District Director of Customs
Miami, Florida 33131-2595

FROM : Director, Classification and Value Division

SUBJECT: Requests for Further Review of Protests Nos. 5201-5-000347 of July 19, 1985 and 5201-5-000335-339 of July 10, 1985

These protests concern the classification of women's cotton shirts, style 9071, from India. These are hip-length short-sleeved shirts with three buttons down the center full front opening. On each side of the front, a pocket with a curved opening extends from the hemline to approximately half way to the shoulder seam and from the side seam to about an inch from the front opening. On the center of each pocket, a single stitched-down tuck with a free standing edge about a quarter of an inch wide extends vertically from the top of the pocket into the hemline. You determined that these articles are classified under item 383.05 (now item 384.05), Tariff Schedules of the United States (TSUS), as women's wearing apparel, ornamented, of cotton, not knit. The importer claims that the merchandise is properly classified under item 383.47 (now item 384.46), TSUS, as not ornamented.

The importer's representative stated on the Form 19 that no reason was given for the "ornamented" classification, and that this classification contradicts Headnote 3, Schedule 3, TSUS, and is inconsistent with various Customs rulings.

However, the Form 29 clearly states that the tuck on each pocket was the reason for the determination, and Headnote 3 provides that tucking can constitute ornamentation. Furthermore, we are not aware of, nor has the importer's representative cited, any rulings by Customs that are not in accord with your classification of this garment.

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077703/077704

Ruling 041922, of November 24, 1975, for example, determined that tucking on the pockets of a short-sleeved shirt-jacket constituted ornamentation. Further, in Excelsior Import Associates v. United States, 79 Cust. Ct. 144, C.D. 4726 (1977), aff'd, 66 CCPA 1, C.A.D. 1212 (1978), the Customs Court held that the single one-inch wide tuck on a shirt pocket constituted ornamentation.

A feature specified in Headnote 3, appearing on a finished garment in a conspicuous place, performing no utilitarian purpose, and having a decorative effect will be considered ornamentation. Colonial Corp. of America v. United States, 62 Cust. Ct. 502, C.D. 3815 (1969). The tucks on the garment in question are prominently located on the front. Like the tucks discussed in Excelsior Import Associates, supra, they do not serve any functional purpose but only produce a visual effect enhancing the appearance of the shirt.

Therefore, we are in agreement with your position that this garment is properly classified under item 383.05, TSUS, as women's ornamented wearing apparel, and you should deny this protest in full. A copy of this decision should be forwarded to the protestant along with your Form 19 Notice of Action.

Harvey B. Fox

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BY

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 29 1986

REFER TO

CLA-2 CO:R:VC:G
077705 JGH

077705

Mr. P. A. Novelly
Apex Oil Company
8182 Maryland Avenue
St. Louis, Missouri 63015-3721

Dear Mr. Novelly:

Your letter of January 22, 1986, concerns the dutiable status of an ethanol-alkylbenzene mixture from a designated beneficiary developing country under the Generalized System of Preferences (GSP). It is assumed that the product will be used for fuel purposes.

It is your opinion that a mixture of 93 percent ethanol and 7 percent alkylbenzene would be free of duty under item 407.16, TSUS, from a country entitled to GSP benefits.

Pursuant to Proclamation 5452, ethanol mixtures of this type are no longer entitled to duty-free treatment under the GSP. Rather they are fully dutiable under the provision for benezenoid mixtures containing ethyl alcohol in item 407.17, TSUS. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate is ethanol classifiable in item 427.88/901.50. The rate of duty is 3 percent ad valorem plus 60 cents per gallon.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

BS

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

9 MAY 1986

REFER TO
CLA-2 CO:R:C:V:G
077727 DW
816441

077727

Mr. Ronald L. Rapaport
Metal Film Company, Inc.
1717 Paterson Plank Rd.
North Bergen, New Jersey 07047

Dear Mr. Rapaport:

We are responding to your request dated November 27, 1985, for a ruling on the tariff classification of certain metallic yarns.

The imported merchandise sold under the trademark Lurex is produced by encasing aluminum foil or metalized Mylar between two sheets of clear polyester film that is bonded to both sides of the middle layer by an adhesive. Color is applied by adding pigment to the adhesive. Then the sheet is slit to the desired width, and the yarn is spooled. As imported in this condition, the yarn is a monofilament not over 150 denier.

It is your belief that the subject merchandise is classifiable as a metalized yarn in item 312.30, Tariff Schedules of the United States (TSUS).

Schedule 3, Part 1, Subpart F, Headnote 1(a), TSUS, defines the term "metalized yarns" for tariff purposes to be "yarns in chief value, but not wholly, of tinsel wire or lame".

The subject merchandise does not satisfy the definition in the headnote, because Lurex yarns are not in chief value of tinsel wire or lame.

It is our view that Lurex yarns are classifiable under the monofilament provisions in the Tariff Schedules. This is supported by the following statement in the Tariff Classification Study Explanatory Materials:

> Another technique in producing monofilaments is to cut thin strips from laminated sheets which may include a film or layer of metal or other material....

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> Whatever production technique is used to produce a monofilament, such filaments, subject to reasonable limits as to their cross-sectional dimension, should be included as man-made fibers.

And the courts have held that it is proper to consult the Tariff Classification Study to determine the legislative intent of particular provisions of the Tariff Schedules. See Rifkin Textiles Corp. v. United States, 54 CCPA 138, C.A.D. 925 (1967).

The Customs Service has maintained this distinction between yarns and monofilaments in its administrative determinations. Merchandise similar to that in question has been classified by Customs according to value and denier under the provision for monofilaments in items 309.02 through 309.06, TSUS. See Headquarters Ruling Letters (HRL) MCS 474.511 M dated March 24, 1970, and 068030 dated May 21, 1981. Thus, the appropriate classification for the subject merchandise is in item 309.03, TSUS.

You also have expressed concern about the classification of Lurex when it is shipped as a supported yarn with two ends of 15 denier nylon criss-crossed over and under the metallic filament.

On this point, in HRL 039816 dated July 7, 1975, we stated that supported Lurex was classified under the provision for other yarns of man-made fibers, other in item 310.60, TSUS, because the criss-crossing pattern of the two nylon filaments around the Lurex filament is considered to be more than a plying operation, in turn, which makes the supported Lurex more than a plied yarn. It follows that if Lurex is imported as a supported yarn, it is classifiable in item 310.60,TSUS.

As for your claim that a uniform and established practice exists to classify this type of merchandise as metalized yarns in item 312.30, TSUS, an examination of all the entries filed by the importers listed in your letter during 1984 and 1985 under the tariff provisions in dispute fails to support your contention.

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We note that you have requested a ruling on a matter that is not prospective, but rather is the subject of a current transaction. Technically, this is in contravention of the Customs Regulations. We caution that the Internal Advice procedures spelled out in section 177.11, Customs Regulations, should be used in the future when disputes arise with regard to current transactions.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 29 1986

REFER TO

CLA-2 CO:R:CV:G
077750 JGH

077750

Mr. John Cunningham
Certified Petroleum Corporation
303 South Front Street
Columbus, Ohio 43215

Dear Mr. Cunningham:

Your letter of January 29, 1986, concerns the dutiable status of a blend of what is described as at least 7 percent ethylbenzene and mixed xylenes and no more than 93 percent ethanol. It is stated that the blend would be imported from a designated beneficiary developing country under the Generalized System of Preferences. Effective March 31, 1986, ethanol mixtures are no longer entitled to benefits under the GSP.

Since the ethylbenzene content in the mixture described would be less than 7 percent by weight of the entire mixture, the mixture would be classified, as a mixture containing ethyl alcohol in item 432.26, TSUS. The rate of duty is 3.9 percent ad valorem but not less than the highest rate applicable to any component material. The highest rate in this mixture would apply to ethanol under item 427.88/901.50, TSUS, of 3 percent ad valorem plus 60 cents per gallon, assuming that the mixture is intended for fuel purposes.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

APR 23 1986

CLA-2 CO:R:CV:G
077760 JLV

077760

Richard M. Belanger, Esq.
Sharretts, Paley, Carter & Blauvelt, P.C.
1707 L Street, N.W.
Washington, D.C. 20036

Dear Mr. Belanger:

In a letter of February 10, 1986, you requested on behalf of your client, N.V.W. (USA), Inc., a ruling on the tariff classification of coated and scroll cut steel sheet.

The merchandise is tin-free steel sheet which is cut to specific lengths. Two edges of each sheet are cut in a scroll pattern. An epoxy phenolic lacquer is then sprayed onto one side of each sheet, heated, and dried. The product is to be used in the manufacture of ends for cans. The diameter of the cans determines the pattern of the scrolled cut in order to maximize the number of can ends per sheet.

The scroll pattern has no apparent function in the finished product. Each scroll is designed to permit the maximum number of can ends (top or bottom) from a given surface area, and, therefore, to reduce waste. In prior rulings we have held that similar scroll cut steel sheets have been processed beyond the condition of a basic sheet of steel as provided for in Subpart B, Part 2, Schedule 6, Tariff Schedules of the United States. Ruling letter of September 11, 1978 (file 057211); ruling letter of March 13, 1978 (file 056338).

The coated scroll cut steel sheets are classifiable under the provision for other articles of iron or steel in itm 657.25, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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B/O

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 6 1986

REFER TO

CLA-2 CO:R:CV:G
077776 sm
816537

077776

Mr. Richard R. Somers
W. N. Proctor Company, Inc.
115 Broad Street
Boston, Massachusetts 02101

Dear Mr. Somers:

You have requested a tariff classification ruling on behalf of the Pellon Company for a material called Viledon Type PA/560 G that is used to make air filters.

Examination of your sample shows that this product is composed of a layer of dense, nonwoven polyester fiber textile fabric approximately 3/4 of an inch thick, laminated with a woven man-made fiber textile scrim. You state that it will be shipped in rolls about 65 feet long and 6.5 feet wide from the country of manufacture, West Germany.

You state in your request that similar nonwoven materials have been classified by Customs as nonwoven fabrics of textile materials under item 355.25, Tariff Schedules of the United States (TSUS), in rulings including 053287 and 073668. Ruling 053287, of March 3, 1979, concerned the classification of certain textile fabrics used as wall covering materials. The fabric classified by that ruling under item 355.25, TSUS, was wholly a nonwoven fabric and was not laminated. The other two fabrics the subject of that ruling were laminated with a paper backing, and were classified under item 359.50, TSUS. Similarly, in ruling 073668, of August 20, 1984, there is no indication that the nonwoven textile filter material classified under item 355.25, TSUS, was laminated to another fabric.

This product is properly classifiable under item 359.50, TSUS, as a laminated textile fabric not specially provided for, of man-made fibers.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

MAY 30 1986

REFER TO
CLA-2:CO:R:CV:G
077786 c

077786

Allan H. Kamnitz, Esq.
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, New York 10004

Dear Mr. Kamnitz:

In a letter dated February 14, 1986, on behalf of Dover Handbag, you inquired as to the dutiable status of a "Hug-A-Pet" toy (Style No. 1243) manufactured in Taiwan. A sample was submitted for examination.

The sample "Hug-A-Pet" toy is a plush comical depiction of a panda bear that measures approximately 12 inches in height and is in chief value of man-made textile materials. The head and appendages of the sample are stuffed but the interior of the body is devoid of filler material. A 4-1/2" x 4" nylon pouch with a zipper closure is affixed to the back of the bear's trunk. Adjustable textile tape harness straps are attached to the four legs of the toy animal.

The sample is in all material respects indistinguishable from the novelty "candy bear" which was the subject of Headquarters Ruling letter No. 076982 c dated October 24, 1985. In that ruling, a 12 inch plush textile animal with adjustable harness straps and a hollow body cavity was found to be a source of play value to the exclusion of any significant functional use. The target age group, minimal storage space, and preponderant play value were factors indicating its chief use as a toy. These factors are present in the nature and design of the instant sample.

In view of the foregoing, it is our position that the "Hug-A-Pet" novelty backpack is classifiable under the provision for toy figures of animate objects (except dolls): not having a spring mechanism: not stuffed: other in item 737.40, Tariff Schedules of the United States (TSUS), and dutiable at

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the rate of 8.3 percent ad valorem or entitled to duty free treatment under the Generalized System of Preferences (GSP), if otherwise qualified.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B13

097786

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAY 14 1986

FILE: CLA-2 CO:R:CV:G
077797 TLL
078064

TO : District Director of Customs
San Francisco, California

FROM : Director, Classification and Value Division

SUBJECT: Tariff Classification of Tea Containing Flowers, Petals, and Fruit Peel: IA No. 12/86

The subject internal advice concerns the tariff classification of tea containing flowers, petals, and fruit peels. The products, described on the attached invoices as OP or BOP with flowers, peels, pieces, or leaves, were entered under the provision for tea, crude or prepared, in item 160.50, TSUS, and were reclassified by your office under item 183.05, TSUS, the provision for other edible preparations not specially provided for. The company claims it has imported and entered such teas under item 160.50, TSUS, for many years. It further notes this merchandise is described in Tea Standard No. 800. The company views this as an "incongruity," and presumably is of the opinion the Tea Standard should control the tariff classification.

The meaning of the term "tea" in item 160.50, TSUS, was discussed in Mitsugi Higashi v. United States, 64 Cust. Ct. 25, C.D. 3954 (1970). The court reviewed lexicographic and technical sources, the Summaries of Trade and Tariff Information, and the Tariff Classification Study. The majority concluded the common meaning of "tea" to be the product of the tea plant or tea tree (Thea sinensis, now Camilla sinensis), and not products used to make tea-like beverages. If not more specifically provided for elsewhere, the latter would be classified as edible preparations not specially provided for. A product's use in the same manner as tea did not dictate classification as such. Hence the classification of the merchandise at bar in item 182.[illegible] (now 183.05) TSUS. This principle was administratively followed in classifying a beverage product made from the plant Aspalathus Lineans in item [illegible]2.92 (183.05) TSUS (Headquarters letter 059820 CM dated March 8, 1979), and in holding certain herb, mint, and spice teas were other than tea in Headquarters letter 059626 CM dated August 10, 1978.

This limitation of the term tea also may be found on page 9 of the Summary of Trade and Tariff Information, USITC Publication 841, February 1982, entitled Chicory, Tea, and Mate, wherein it is stated, "Tea is the dried leaf of an evergreen tree which grows in warm, rainy regions of the tropics and subtropics."

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077797

Although a sample was not submitted with the request for internal advice, it is assumed, based upon the invoice descriptions OP and BOP, that the subject teas are, in fact, products of the tea plant. However, they also contain flowers, leaves, and fruit peels. Mitsugi did not define a product containing more than products of the tea plant. The court's source materials referred to "the prepared leaves of the tea plant," "the leaves, leaf buds and internodes of this plant," "the manufactured product prepared from the green leaves by fermentation and firing; the drink brewed from the manufactured product." The instant merchandise would therefore be outside the common meaning of "tea" in item 160.50, TSUS.

Insofar as Tea Standard No. 800 is concerned, we find it to be irrelevant for classification purposes. In ORR 360-69, a product that would appear to be clearly described by this Tea Standard was considered more than tea, and classified as an edible preparation, not specially provided for.

Accordingly, tea containing flowers, petals, and fruit peels are properly classified under item 183.05, TSUS. You should advise the IA applicant of this decision.

Arthur P. Schyffler
For Harvey B. Fox

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076776

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

JUN 5 1986

REFER TO
CLA-2:CO:R:CV:G
077829 c

077829

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-017355

This protest was filed against your decision in the liquidation on October 21, 1983, of entry No. 83-374998-1 dated September 8, 1983, covering a shipment of athletic footwear.

FACTS:

The athletic footwear involved covered by Invoice No. 3 was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for other footwear of leather for men, youths and boys in item 700.35, TSUS.

ISSUE:

Does the value breakdown submitted by the protestant show that the shoes are in chief value of leather?

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The manufacturer's cost breakdown reflects the following costs:

ORDER KAK 1046 (patt. KUN 2380)

Leather cost =	men $1.33	Boys $1.23
cutting & trimming=	.18	.18
	1.51	1.41
Rubber & plastics cost =	men $1.05	Boys $1.00
cutting -	.17	.17
trimming -	.09	.09
sole labor -	.20	.20
	$1.51	$1.46

Inasmuch as there is no indication of the weights of the upper components, it is impossible to allocate the stitching charge shown on the cost breakdown.

The breakdown shows that the leather and rubber/plastics charges are the same for the men's sizes while on the boy's sizes the rubber/plastics charges exceed the leather charges.

It is our position that classification of the shoes under item 700.95, TSUS, was appropriate noting that the cost breakdown shows that neither the men's nor the boys' sizes are in chief value of leather.

HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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047829

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 5 1986

REFER TO
CLA-2 CO:R:CV:G
077830 c

077830

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-007633

This protest was filed against your decision in the liquidation on April 6, 1984, of entry No. 84-268758-4 dated March 6, 1984, covering a shipment of athletic footwear produced in Korea.

FACTS:

The nylon/leather athletic footwear involved was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

1. Does the documentation presented by the protestant show that the shoes are in chief value of leather?

2. Is Customs required to accept the cost breakdowns submitted by the protestant?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has

c4

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evidence in its possession that the cost breakdown is erroneous; or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that importer-submitted data need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

In reviewing the component value breakdowns submitted, we note that the manufacturer has allocated his stitching costs on the basis of his material costs, counting the costs of materials with the "V" typed in the "stitching part" column. This allocation is not in agreement with the instructions set forth in L.D. 81-0186 dated December 16, 1981, that the "cost of stitching leather overlays onto the fabric uppers should be allocated among the materials comprising the uppers in proportion to their relative weights."

Therefore, we have ignored the stitching charges shown on the value breakdowns because they are not calculated correctly. After excluding the stitching charges, we note that the following styles are in chief value of rubber/plastics as follows:

Style BOG-6274
(Invoice No. 1)

Leather cost	- $1.061	Rubber/plastics cost	- $1.061
Sorting	- .012	Cutting	- .057
Cutting	- .036	Sole Labor	- .179
	$1.109		$1.297

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Style BOG - 6274
(Invoice No. 2)

Leather cost	- $.879	Rubber/plastics cost	- $.875
Sorting	- .012	Cutting	- .057
Cutting	- .036	Sole Labor	- .179
	$.927		$1.111

In view of the foregoing, classification under item 700.95 was appropriate.

With respect to the other styles which are claimed to be in chief value of leather, we have no "tangible evidence" which would permit us to categorically state that the information provided by the protestant as to component material of chief value is false. Accordingly, those styles should be reliquidated under item 700.35, TSUS, or item 700.45, TSUS, as applicable. However, any youth's sizes 11 1/2 to 2 should be treated as unisex and reliquidated under item 700.45, TSUS.

HOLDING:

The protest should be denied in part as to style Nos. BOG-6274 (Invoice No. 1) and BOG (Invoice No. 2) and allowed in part as to the remaining styles. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Shuffler
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 3 1986

REFER TO

CLA-2 CO:R:CV:G
077831 c

077831

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-007490

This protest was filed against your decision in the liquidation on March 30, 1984, of entry No. 84-2684202 dated February 21, 1984, covering a shipment of athletic footwear manufactured in Korea.

FACTS:

Certain nylon/leather footwear was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous; or (3) the

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cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that importer-submitted data need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

The cost breakdowns submitted by the manufacturer show the following costs:

P.O. 58128/58374

Leather cost	- $.9462	Rubber/plastics cost	- $1.0624
Cutting	- .0317	Cutting	- .0205
Trimming	- .0141	Trimming	- .0124
Stitching	- .2286	Sole Labor	- .1301
	$1.2206	Stitching	- .0615
			$1.2869

P.O. 58373

Leather cost	- $1.2435	Rubber/plastics costs	- $.7436
Cutting	- .0372	Cutting	- .011
Trimming	- .0157	Trimming	- .0086
Stitching	- .2314	Sole Labor	- .1309
	$1.5278	Stitching	- .0683
			$.9624

The cost breakdown covering misses' sizes (P.O.58128/58374) shows that these shoes are in chief value of rubber/plastics. Consequently, classification of the shoes under item 700.95, TSUS, was appropriate.

The cost breakdown covering the women's joggers (P.O. 58373) shows that these shoes are in chief value of leather. We have no "tangible evidence" which would indicate that the cost breakdown is false. Consequently, these shoes should be reliquidated under item 700.45, TSUS.

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HOLDING:

The protest is denied in part as to the misses' shoes covered by P.O. 58128/58374 and allowed in part as to the women's joggers covered by P.O. 58373. A copy of this decision should be attached to our Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffler

for Harvey B. Fox
Director, Classification
and Value Division

138740

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C9

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY 29 1986

REFER TO

CLA-2 CO:R:CV:G
077832 c

077832

Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-011741

This protest was filed against your decision in the liquidation on June 8, 1984, of entry No. 190463-7 dated April 6, 1984.

FACTS:

Certain leather/nylon athletic footwear was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has

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evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on this matter was that importer-submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

The manufacturer's cost breakdowns are as follows:

Invoice No. 1 - KAK 1153

Leather cost =	$1.733	Rubber/plastics cost =	$ .63
cutting =	.10	cutting =	.08
trimming =	.05	trimming =	.06
	$1.883	sole labor =	.26
			$1.03

Invoice No. 2 - KAK 1142 - Men's Size 9

Leather cost =	$1.36	Rubber/plastics cost =	$1.50
cutting =	.11	cutting =	.09
trimming =	.07	trimming =	.05
	$1.54	sole labor =	.25
			$1.89

KAK 1142 - Boys Size 5

Leather cost =	$1.05	Rubber/plastics cost =	$1.20
cutting =	.10	cutting =	.08
trimming =	.07	trimming =	.05
	$1.22	sole labor =	.25
			$1.58

The cost breakdown for Invoice No. 1 shows that the shoes are in chief value of leather. We have no tangible evidence that the leather costs are false. Therefore, the shoes should have been liquidated at 8.5 percent ad valorem under item 700.35, TSUS.

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The cost breakdowns for Invoice No. 2 show that the shoes are in chief value of rubber/plastics. Therefore, classification of the shoes under item 700.95, TSUS, was appropriate.

HOLDING:

The protest should be allowed in part as to those shoes covered by Invoice No. 1 and denied in part as to the shoes covered by Invoice No. 2. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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077832

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

077836

DATE: MAY 23 1986

FILE: CLA-2:CO:R:CV:G
077836 jlj

TO : District Director of Customs
Dallas/Fort Worth, Texas 75261

FROM : Director, Classification and Value Division

SUBJECT: Request for Reconsideration of Internal Advice Request No. 71/84, Concerning the Correct Tariff Classification of Certain Tablet Paper

This request for reconsideration of Internal Advice No. 71/84 was initiated by letters dated January 3, 1986, November 26, 1985 and February 26, 1985, from Harry Kelly, Esquire, representing his client, Herlitz Inc. of Dallas, Texas.

FACTS:

The merchandise at issue is a tablet paper described on the invoice as "woodfree sulphite paper, 16 pound, 17 inches by 22 inches by 500 sheets, white, bleached, uncoated, bond finished, free of any groundwood or other impurities, cellulose fiber from chemical pulp."

In Customs Headquarters Ruling Letter (HRL) 074567 (Internal Advice No. 71/84) of October 24, 1984, the subject paper was classified under the provision for writing paper weighing over 18 pounds per ream, in item 252.75, Tariff Schedules of the United States (TSUS). The inquirer believes that the tablet paper is classifiable under the provision for book and printing paper, not specially provided for, in item 252.67, TSUS. (It should be noted that paper invoiced as 16

C13

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pound, 17 inches by 22 inches for 500 sheets, is equivalent to 36.9 pounds per ream for Customs purposes.)

ISSUE:

Is the tablet paper classifiable as writing paper in item 252.75, TSUS, or as book and printing paper in item 252.67, TSUS?

LAW AND ANALYSIS:

Headnote 2(d) of Schedule 2, Part 4, TSUS, reads as follows: "the term 'writing paper' includes, but is not limited to, papers such as ledger, letter, manifold, note, onionskin, tablet and typewriter paper." This headnote, which defines writing paper, mandates the classification of tablet paper as writing paper. For the instant tablet paper, this means classification in item 252.75, TSUS, because the paper weighs over 18 pounds per ream.

The inquirer claims that the instant paper is chiefly used as book and printing paper in the United States and that, pursuant to the chief use provisions of General Headnote 10(e)(i), TSUS, it must be classified in item 252.67, TSUS. He claims that we are mistaken in assuming that the instant paper is chiefly used as writing paper and that all tablet paper is writing paper. He argues that Customs took notice of the actual use of the instant paper instead of its chief use in HRL 074567. He claims that some but not all tablet paper is writing paper. He argues that the chief use of the class or kind of paper controls the classification, and he presents additional affidavits from

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executives in the paper industry claiming that the instant paper is chiefly used as book and printing paper in the United States. He claims that "tablet paper" is a generic term used to mean paper weighing 16 pounds or less. He claims once again that similar paper was classified as book and printing paper in item 252.67, TSUS, in HRL 035964 from 1974. In view of the alleged practice classifying similar paper in item 252.67, TSUS, counsel asks Customs to go through a "change of practice" procedure if any other tariff number is found applicable.

In HRL 074567, many of counsel's claims were considered and answered. HRL 035964 deals with paper which has a brightness of 59.5, no sizing and no ash content. The instant paper has a brightness of 85.8, 2.5 percent sizing and 16 percent ash content. As we stated in HRL 074567, these differences mean that the paper at issue in HRL 035964 and the instant tablet paper are not part of the same class or kind, therefore no change of practice is required.

Most of the inquirer's arguments are based upon his contention that, despite Headnote 2(d), supra, the classification of the instant paper is dependent upon the chief use of the same class or kind of paper, which he claims is as book and printing paper.

General Headnote 10(e)(i) states that "in the absence of special language or context which otherwise requires -- a

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tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation...." (Emphasis added.) It is Customs position that, while "writing paper" is normally a chief use provision, Headnote 2(d), Part 4, Schedule 2, TSUS, supra, is "special language" which requires otherwise. It is our opinion that even if it was shown that tablet paper was chiefly used in the United States as book or printing paper (although this does not appear to be the case), tablet paper would still have to be classified as writing paper because Headnote 2(d) is controlling and precludes the operation of General Headnote 10(e)(i). The evidence presented, however, indicates that tablet paper is writing paper rather than book and printing paper.

We note that the American Paper Institute May 1984 Supplement to the Dictionary of Paper, Fourth Edition, refers to tablet paper as writing paper. The Supplement states "It is apparent that there is now a need for additional definitional material describing writing papers and printing paper. This supplement to the fourth edition has been prepared to satisfy that requirement." On page 1 of the Supplement, the "Description of Uncoated Writing and Related Papers" includes a section on "End Use Products" which states "End use products [i.e., of writing and related papers] include, but are not limited to, writing, letters, notes,

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mimeographing, spirit duplicating, electrostatic copying, convenience copying papers, writing tablets...."

In HRL 074567, counsel provided samples of items made from the instant tablet paper. The samples consisted of such items as telephone message memoranda, calendar pages, legal pads, lined pads, ruled paper, routing tickets, spiral ruled memo books, and spiral ruled notebooks. All of the exhibits were printed and were furnished, presumably, to prove that the tablet paper was printing paper. Instead they strengthed the Dallas/Ft. Worth import specialist's argument that the instant paper is writing paper. All of the samples fit into the category of writing paper, in which specific written data will be added later by pen, pencil, typewriter or some other means. In HRL 074567, we concluded that the tablet paper was classifiable as writing paper in item 252.75, TSUS. While the above-mentioned evidence indicates only the actual use of the instant paper, we believe that the actual use is representative of the chief use of the class or kind of such paper.

Counsel's claim that "tablet paper" is a generic term used to mean paper weighing sixteen pounds or less does not seem to be supported by trade opinion. The American Paper Institute (API), which represents American primary level paper companies, states that it has "never heard the idea expressed that tablet paper was a generic term for paper under 16 pounds."

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Several samples of the tablet paper were submitted to the American Paper Institute, which found that the apparent nominal basis weight for the sample was 15 pounds (per 17 inch by 22 inch, 500 sheet ream). The API states that "This is standard weight for grades such as tablet and form bond."

Counsel protests that the instant paper was imported in rolls and not in sheets, therefore Customs' reliance upon the fact that the basis weight was based upon a ream of paper 17 inches by 22 inches by 500 sheets is misplaced. Initially we note that counsel himself identified that particular ream as the one upon which the basis weight was based. Next we note that it is common practice in the paper industry to quote the basis weight of writing paper based on the weight of 500 sheets of paper measuring 17 inches by 22 inches, while printing paper weights are quoted on the basis of 500 sheets measuring 25 inches by 38 inches. While this is just one factor among many, it is interesting to note that the instant tablet paper's basis weight as quoted by counsel for the importer is based upon writing paper dimensions.

In the American Paper Institute's May, 1984, Supplement to the Dictionary of Paper, writing papers are discussed on page 1 as follows:

> They are usually used by an individual, within a company for correspondence, copying, computer output, or on a direct basis -- conducting business transactions. For some purposes horizontal lines, vertical lines and/or words may be printed on the form to facilitate its ultimate use, e.g., pre-printed business forms.

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> This printing generally does not impart complete information relative to the end use of the form. Rather, it can be considered to be only a guideline, framework or format for the specific data which is added later -- by pen, pencil, typewriter, automatic accounting equipment, copiers, computers, etc. (Emphasis added.)

In T.D. 72-207, concerning form bond paper, and Legal Determination 82-0071, concerning computer output forms, we said much the same thing.

The May, 1984, Supplement has the following to say regarding printing papers (on page 2):

> The products utilizing printing paper are generally sold in completed form, i.e., material is not added after the printing stage.... the material printed on the page is the sole purpose and intent of the document and imparts all knowledge to be gleaned, by itself, with no further addition.

All of the samples submitted in the HRL 074567 file fit into the category of writing paper, in which specific written data would be added later by pen, pencil, typewriter or some other means.

In the previous letter, counsel also argued that affidavits submitted by the importer and by another paper company executive established that the tablet paper was book and printing paper. We reviewed these letters, but we were not convinced that they proved the chief use of the instant paper to be other than writing paper, especially in light of Headnote 2(d), Schedule 2, Part 4, TSUS, which specifies that tablet paper is a writing paper.

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The instant paper was invoiced as tablet paper, it was used for tablets and other writing paper uses, it has a basis weight which is characteristic of tablet paper, its basis weight was invoiced in writing paper dimensions, and it is specifically defined as writing paper in Headnote 2(d), Part 4, Schedule 2, TSUS. We find that the instant paper is writing paper.

HOLDING:

The instant paper is classifiable as writing paper in item 252.75, TSUS. The inquirer should be informed of this ruling.

Harvey B. Fox

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071586

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAY 23 1986

FILE: CLA-2 CO:R:CV:G
077855 TLL

077855

TO : District Director of Customs
San Juan, Puerto Rico

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice No. 91/85; Puerto Rican Coffee Processed into Instant Coffee in California and Returned to Puerto Rico

This subject internal advice concerns the dutiability of wholly grown Puerto Rican green coffee sent to California to be processed into instant coffee, and thereafter returned to Puerto Rico.

In general, all coffee imported into the Customs Territory of the United States is accorded duty-free treatment whether green, roasted, ground, or instant in items 160.20, or 160.21, Tariff Schedules of the United States (TSUS). Additionally, the Commonwealth of Puerto Rico is considered to be part of the customs territory of the United States. General Headnote 2, TSUS. Under 19 U.S.C. 1319, the Commonwealth of Puerto Rico was granted the following authority by the Congress:

> The Legislature of Puerto Rico is empowered to impose Tariff duties upon coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the United States....

Reference to the case of Porto Rico Brokerage Co., Inc. v. United States, 23 CCPA 16 (1935) provides an explanation of the legislative history as to intent of 19 U.S.C. 1319. Therein, the court stated:

> ...The Congress [U.S.] undoubtedly used the word "imported," standing alone, as meaning coffee brought into Puerto Rico from foreign countries, and, in order to include coffee brought into Puerto Rico from the United States, it used the words "coming into." Here the Congress clearly distinguished between the words "coming into" and the word "imported." When it referred to foreign commerce, it used the word "imported" and when it referred to products of continental United States, although grown in a foreign country, it used the words "coming into."

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The coffee is not "foreign grown" but is cultivated in the Commonwealth and transported to the United States for processing into instant coffee. As such, 19 U.S.C. 1319 does not authorize the assessment of duty upon the instant coffee when returned from the United States to the Commonwealth.

You have also inquired about coffee imported into Puerto Rico from beyond the Customs Territory of the United States in a "semi-roasted" condition. This coffee would be classified under item 160.10, TSUS, in Puerto Rico and then shipped to the United States for processing into instant coffee. It is our position that this product would be covered by 19 U.S.C. 1319. The coffee would never lose the identity of a foreign grown product and would be dutiable as coffee when returned to Puerto Rico even though it may have been manufactured into instant coffee in the United States.

The fact that Puerto Rico is not a member of the International Coffee Organization has no bearing on the questions raised in this internal advise.

Harvey B. Fox

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055845

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAY 29 1986

FILE: CLA-2:CO:R:CV:G
077858 JCH

077858

TO : Chief, Customs Information Exchange
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Difference of Opinion on Customs Form 6431

In your memorandum of February 20, 1986, you transferred the difference of opinion on Customs Form 6431 dated January 30, 1985, concerning the tariff classification of tub tender spa support systems manufactured in Canada and entered in 1984 at the port of Blaine, Washington. This matter is listed as the 14th difference on page 1 of CIE N 89/79, Suppl. No. 46, April 1986. Our decision follows:

ISSUE:

The sending port believes the merchandise is classifiable under the provision for electric water heaters in item 684.48, Tariff Schedules of the United States (TSUS), for which the 1984 column 1 rate of duty was 4.5 percent ad valorem, or alternately under the provision for electrical articles, not specially provided for (n.s.p.f.), in former item 688.43, TSUS, for which the 1984 column 1 rate of duty was also 4.5 percent. The national import specialists are of the opinion the merchandise is classifiable under the provision for household articles of iron or steel, n.s.p.f., in item 654.00, TSUS. The column 1 rate under that provision in 1984 was 5.3 percent ad valorem.

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FACTS:

The merchandise is a modular article containing all of the mechanical and electrical components for a spa of the type used in households. The module includes an electrical control panel with circuit breakers, a pump, a filtering system, a water heating system, and various valves for the control of flow through these components.

LAW AND ANALYSIS:

So long as this merchandise is in a configuration qualifying it as an entirety, we are of the opinion no single component performing only one of its multiple functions should control classification. Under Headnote 1(v), Part 5, Schedule 6, TSUS, the provisions for electrical articles, n.s.p.f., cannot take precedence over articles described by the provision for machines, n.s.p.f., in item 678.50, TSUS. When that provision becomes in competition with the provision for household articles, n.s.p.f., the latter must then prevail in accordance with the rule in Frank P. Dow Co. v. United States, 21 CCPA 282, T.D. 46819 (1933). For a more detailed discussion of the type of issues involved and other applicable precedents, see our protest review decision of May 14, 1982, file No. 068801.

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HOLDING:

For the foregoing reasons, we find that the merchandise is properly classifiable under the provision for household articles of iron or steel, n.s.p.f., in item 654.00, TSUS.

Arthur P. Schaffner
For Harvey B. Fox

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078858

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

9 MAY 1986

REFER TO
CLA-2 CO:R:CV:G
077866 c

077866

Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005486

This protest was filed against your decision in the liquidation on January 27, 1984, of Entry No. 84-121482-2 dated December 19, 1983, covering a shipment of athletic footwear manufactured in Korea.

FACTS:

The nylon/leather athletic footwear involved was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States.

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Do the value breakdowns submitted by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

The manufacturer's component value breakdowns reflect the following costs:

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D12

071986

Style No. POG 6424 (P.O. 57154)

Misses' Joggers

Leather Cost	= $.9462	Rubber/plastic Costs	= $1.0624
Cutting	= .0317	Cutting	= .0205
Trimming	= .0141	Trimming	= .0124
Stitching	= .2286	Sole Labor	= .1301
Total Cost	= $1.2206	Stitching	= .0615
		Total Cost	= $1.2869

Style NOG 96423 (P.O. 57160)

Women's Joggers

Leather Cost	= $1.2435	Rubber/plastic Costs	= $.7436
Cutting	= .0372	Cutting	= .0110
Trimming	= .0157	Trimming	= .0086
Stitching	= .2314	Sole Labor	= .1309
Total Cost	= $1.5278	Stitching	= .0683
		Total Cost	= $.9624

A review of the cost breakdown for the misses' joggers P.O. 57154 shows that the value of the rubber/plastics components exceeds the value of the leather components. Consequently, classification of these joggers under item 700.95, TSUS, was appropriate.

A review of the cost breakdown for the women's joggers coverd by P.O. 57160 shows that the value of the leather components exceeds the cost of the rubber/plastics components. We do not have a laboratory report or other tangible evidence which would permit us to refute the leather costs shown on the breakdown. Consequently, the 4800 pairs of women's joggers should have been classified under item 700.45, TSUS.

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D13

HOLDING:

The protest is denied in part as to the footwear designated as misses' joggers P.O. 57154 and allowed in part as to the footwear designated as women's joggers P.O. 57160. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

077846

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY - 5 1986

REFER TO

CLA-2 CO:R:CV:G
077867 c

077867

Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-008250

This protest was filed against your decision in the liquidation on March 16, 1984, of entry No. 83-357614-1 dated February 22, 1983, covering a shipment of athletic footwear produced in Korea.

FACTS:

Certain nylon/leather athletic shoes were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the footwear is in chief value of leather which requires classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Does the documentation provided by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

At the time of entry the manufacturer's component value breakdown was submitted on shoes covered by Order No. 733, Stock No. 18733. Your footwear team subsequently requested by CF 28 component breakdowns on footwear covered by the other stock numbers included in this shipment. However, the requested value breakdowns were not submitted.

E1

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The component value breakdown submitted shows a value of $1.1854 for the leather components against a value of $1.049 for the rubber/plastics components. We have no tangible evidence which indicates that this cost breakdown is erroneous. Therefore, the 2,412 pairs constituting the Men's Order No. 0733 and the 3600 pairs constituting the Men's Order No. 739, both of which are Stock No. 18733 are in chief value of leather which requires their classification under item 700.35, TSUS, as other footwear, of leather, for men, youths and boys.

Inasmuch as the value breakdowns covering the remaining stock numbers were not submitted in response to your request, it is our position that classification of these shoes under item 700.95, TSUS, was appropriate.

HOLDING:

The protest is allowed in part as to those shoes covered by Order Nos. 733 and 739 and denied in part as to those shoes covered by the remaining stock numbers. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

1986

REFER TO

CLA-2 CO:R:CV:G

077868 c

Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-006878

This protest was filed against your decisions in the liquidation on June 11, 1982, of entry No. 81-188238-1 dated July 1, 1981, in the liquidation on October 1, 1982, of entry No. 81-188341-6 dated July 14, 1981, and in the liquidation on September 2, 1983, of entry No. 82-876453-1 dated July 9, 1982.

FACTS:

Certain nylon/leather athletic footwear was classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the entry papers submitted show that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Should the cost breakdowns submitted by the protestant showing the footwear to be in chief value of leather be accepted?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has

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evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on this matter was that importer submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

Entry No. 82-876453-1 included 2,574 pairs of women's nylon/leather joggers, Order 1081, Pattern EKEF0508. The manufacturer's component value breakdown shows a leather cost of $1.33 against a cost of $1.12 for the rubber/plastics components. There are also included 1,188 pairs of youths' nylon/leather joggers, Order 1084, Pattern EKEF1108. The manufacturer's component value breakdown for this style shows a leather cost as $1.17 and a cost of $1.01 for the rubber/plastics components. We have no information which would contradict the component values submitted by the manufacturer. Therefore, these joggers being in chief value of leather should be reliquidated under item 700.45, TSUS, including the youths' sizes which should be treated as unisex.

Entry No. 81-188341-6 covers 3,420 pairs of men's/boys nylon/leather joggers. The component value breakdown covering the men's sizes shows 1.46 sq. ft. present in the shoes per pair, whereas the Customs laboratory report on a man's size 9 style 1008 shows 0.457 sq. ft. or 0.914 sq. ft. per pair. Based on the laboratory report the leather cost is adjusted as follows:

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$\frac{.914}{1.46}$ = 626 x 1.48 = .927
.14 cutting and trimming
$1.067 leather costs
Rubber/plastics costs = 1.22

In view of the foregoing, it is our position that classification of the men's sizes under item 700.95, TSUS, is correct. However, the 1,920 pairs of boys' sizes should be reliquidated under item 700.35, TSUS, since this appears to be a completely different shoe based on the price. Also, we have no "tangible evidence" that the figures submitted by the manufacturer are erroneous.

Entry No. 81-188238-1 covers 17,000 pairs of men's and boys' nylon/leather joggers which were originally priced from the factory at $8.26 per pair. However, because of defects the factory reduced the price to $5.00 per pair. The manufacturer's component value breakdown shows leather costs at $1.95 against $2.67 for the rubber plastics costs. It is our position based on the manufacturer's cost breakdown that classification under item 700.95, TSUS, was correct.

HOLDING:

The protest should be allowed as to that footwear covered by entry No. 82-876453-1 and the 1,920 pairs of boy's nylon/leather joggers covered by entry No. 81-188341-6. The protest should be denied as to that footwear covered by entry No. 81-1882381-1 and the 1,500 pairs of men's/boys nylon/leather joggers covered by entry No. 81-188341-6.

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A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Griffin

for Harvey B. Fox
Director, Classification
and Value Division

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0798468

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

MAY 14 1986

REFER TO

CLA-2:CO:R:CV:G
077872 SM

Mr. D. S. Rana
Commercial Attache
Embassy of India
2536 Massachusetts Ave., N.W.
Washington, D.C. 20008

Dear Mr. Rana:

This letter is in response to your inquiry of February 19, 1986, addressed to William Marchi, on behalf of Nataraj Fashions, Inc. This firm imported a shipment of garments, claimed to be vests, that the Import Specialist at the New York Seaport classified as sleeveless blouses. No explanation is given for the proposed classification as vests.

Three samples were sent; one is unmarked, while the others are labeled style 691 and 692, respectively. All are of lightweight woven fabric, labeled 100 percent cotton; all are sleeveless and unlined. Style 691 is a blouson style; it hangs to the hip and has a drawstring encased in a band of self fabric around the bottom. It is formed of three horizontal panels across the back and three on each side of the full-front seven-button opening. One strip of woven 3/4 inch wide woven twill tape forms the placket on the left side; the buttonholes are worked through it. Another strip of tape is inserted between the top and middle front panels. A tab of the same tape buttons over each of the inserted breast pockets. The garment also has pockets with slant openings at the waist, and a collar band.

Style 692 has a full-front, five-button opening and a convertible-type collar. A self-fabric band encircles the bottom and is gathered with elastic along the back. The fabric of the garment is gathered into a yoke at the front and pleated into it at the back. Various pockets with buttons and a zipper cover the front in the area between the lower edge of the armhole and the top of the band at the waist. Epaulets and a decorative fabric loop stitched into the seam of one of

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E7

the pockets constitute ornamentation, since this is clearly not the type of garment on which epaulets serve a primarily functional purpose.

The sample for which no style number is given is white, with a convertible-type collar, a full-front opening with four snaps, and two patch breast pockets. At the back waist the garment is gathered with elastic; two snap tabs allow for adjustment of the fit of the waist.

Rough sketches of the garments are enclosed.

A vest is normally worn over another outer garment. See, for example, ruling 074584 of December 13, 1984. It is generally a short garment, reaching to the waist, without sleeves, buttoning down the front, and may be worn under another garment, such as a suit jacket. See T.D. 78-205. A judgment as to what an article of apparel is for tariff purposes, such as a coat or jacket, blouse or shirt, will be made in the individual case, based on such factors as the cut, overall appearance, style, and weight. See ruling 039454 of May 9, 1975.

Examination of the three submitted samples indicates that none can be properly classified as a vest. The elastic and drawstring make gathers that would be too bulky if any of the garments were worn under a jacket. All three garments lack the deep V neckline and oversized armholes that often characterize vests. Rather, each is styled in such a way as to provide adequate coverage if worn alone next to the skin or over underwear, without another blouse or shirt. In fact, given the fit of the collars and armholes in particular, they would probably be uncomfortable if worn over other outer garments. Since they are designed for women's wear and adequately cover the neck-to-waist area, they are properly characterized as blouses, and classifiable as such.

The unnumbered, white garment and style 691 are classifiable under item 384.4609, Tariff Schedules of the United States, Annotated (TSUSA), quota category 341, as women's cotton blouses, not knit, not ornamented. Style 692

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074872

is classifiable under item 384.0505, TSUSA, quota category 341, as women's cotton blouses, not knit, ornamented.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

CL8LLO

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

MAY 22 1986

REFER TO

CLA-2:CQ:R:CV:G
077873 SM

077873

Mr. D. S. Rana
Commercial Attache
Embassy of India
2536 Massachusetts Ave., N.W.
Washington, D.C. 20008

Dear Mr. Rana:

This letter is in response to your inquiry of February 19, 1986, addressed to William Marchi, on behalf of Delhi York, Inc. This firm imported a shipment claimed to be quota-exempt India items, specifically abas, that were determined by New York Customs to be dresses subject to quota.

The submitted sample of style DU-002 is a 100 percent cotton woven knee-length women's dress. It has a gathered skirt stitched to a wide-cut bodice, no sleeves, a jewel neckline, and a self-fabric tie belt 1-1/4 inches wide. The neckline, armhole edges, and bottom edge are scalloped and embroidered; the front bodice is embroidered and beaded.

Under paragraph 6 of the current bilateral Agreement concerning Trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products, "India Items" conforming to the descriptions set out in Annex D to the Agreement are not subject to the restrictions of the Agreement. Annex D defines "India Items" as "traditional folklore handicraft textiles products made in the cottage industry. They comprise clothes . . . whose shape and design are traditionally and historically Indian." It further defines an aba as "an over-garment close-fit at the upper part with a Ghagra type skirt touching the ankles." A ghagra is defined as "an ankle-length very wide skirt with drawstring or hooks at the waist."

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E/O

Examination of the submitted sample reveals that it does not conform to the definitions set out in Annex D of the Agreement, principally in that it lacks a wide, ankle-length skirt with drawstring or hooks at the waist.

Since the garment is not an aba according to the terms of the Agreement, it cannot be exempted from applicable quotas. We concur with the decision of the Import Specialist that this article is properly classifiable as an ornamented dress of cotton, not knit, under item 384.0905, Tariff Schedules of the United States Annotated (TSUSA). This item corresponds to quota category 336.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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E11

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: APR 22 1986

FILE: CLA-2:CO:R:CV:G
077876 SM

077876

TO : District Director of Customs
Terminal Island, San Pedro, CA 90731

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 101/85 of December 11, 1985, Concerning Whether Neck and Waist Tabs of Men's Jacket Style No. 501 Constitute Ornamentation

This request was initiated by Brownstein, Zeidman and Schomer on behalf of Winer Industries, Inc. The jacket in question, produced in Macau, is claimed by the importer to be a ski jacket, although it is not made of fabric, such as nylon, normally associated with ski wear. It is made of a wholly cotton woven outer shell, a woven man-made fiber lining, and a middle layer of a man-made fiber batting. It has long sleeves; elasticized cuffs and waist; a full front zippered opening; a 3-1/2 inch by 1-3/4 inch rectangular woven twill tab stitched to the bottom of the right quarter panel, secured to the left quarter panel by a single metal snap; and a 4 by 4-1/4 inch rectangular piece of doubled fabric, matching the outer shell material, stitched just below the collar on the left quarter panel, which attaches to the right quarter panel by means of two metal snaps. Since the only features in question are the 4 by 4-1/4 inch fabric piece and the 3-1/2 by 1-3/4 inch tab, a further description of the garment is not necessary.

The importer claims that the jacket is properly classified under item 379.46, Tariff Schedules of the United States (TSUS) (now item 381.47, TSUS), as other men's or boys' wearing apparel, not ornamented, of cotton, not knit, coats, valued over $4 each, other. You have classified it under item 379.06, TSUS (now item 381.05, TSUS), as other men's and boys' wearing apparel, ornamented, of cotton, other, not knit, coats. We are in agreement with your position.

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The importer claims that the twill tab at the waist and the fabric piece at the neck have the primarily functional purpose of tightening the jacket at the top and bottom to prevent cold and wind from getting inside and body heat from escaping. However, the jacket can be fully closed by means of the zipper, and examination shows that the two pieces are not adjustable and do not tighten the jacket in any way. As they are of lightweight fabric and cover only six inches of the zipper's 22 inch length, they do not provide any significant protection against cold and wind.

The importer also claims that the tabs do not embellish, adorn, or decorate the jacket, as they are of the same fabric and color as the rest of the jacket and have the same type of stitching. In fact, the tab at the waist is of a woven twill tape and is not of the same fabric as the shell. In any case, the tabs are prominently located on the center front and enhance the appearance of the garment viewed as a whole. The fact that the textile fabric piece at the top of the zipper is of the same fabric as the shell does not preclude it from being ornamentation. Headnote 3 of Schedule 3 provides that textile fabric can serve as ornamentation. It is our view that the decorativeness of the two fabric pieces outweighs any functional purpose they may serve. In line with IA 79/84, which determined that a neck strap that made no difference in the fit of a men's jacket collar was ornamental, the jacket is properly classified under item 379.06, TSUS (now item 381.05, TSUS).

You should advise the inquirer of this decision.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 30 1986

REFER TO

CLA-2:CO:R:CV:G
077883 c

077883

Mr. John M. Fleming
Rayco Tennis Products
1386 La Mancha Place
Chula Vista, California 92010

Dear Mr. Fleming:

In a letter dated February 18, 1986, you state an understanding that an 11 meter package of tennis racket string is classifiable under the provision for other lawn tennis equipment in item 734.88, Tariff Schedules of the United States (TSUS), while a 200 meter package of tennis racket string is classifiable as cordage of man-made fiber in item 316.60, TSUS. (item 316.60, TSUS, has been replaced by item 316.55, TSUS, and item 316.58, TSUS).

Specifically, you ask that we issue a ruling classifying both the 11 meter package and the 200 meter package under item 734.88, TSUS.

The reason why tennis strings of man-made material in 11 meter lengths and such strings in 200 meter lengths are treated differently for tariff purposes is found in the case of Lyons Export & Import Inc. v. United States, 65 Cust. Ct. 394, C.D. 4111 (1970). The merchandise involved in that case was tennis strings imported in coils 660 feet long, wound on plastic reels. The court in reaching its decision stated that "racket strings of man-made fibers classifiable under Schedule 7, Part 5D, are limited to those put up and packaged for retail sale * * * we conclude that it was the intent of Congress that tennis racket strings of man-made fiber put up and packaged for retail sale be classified under item 734.88 (Schedule 7, Part 5D), as other lawn tennis equipment and parts, and that tennis racket strings of man-made fiber, not so packaged, be classified under item 316.60, as cordage of man-made fiber."

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According to information before this office, only standard lengths are pre-cut and packaged individually for retail sale. These lengths are 33 feet, 34 feet, 35 feet, 36 feet and in sets of 22 feet by 11 feet. These lengths are classifiable under the provision for other lawn tennis equipment in item 734.88, TSUS, and dutiable at the rate of 3.2 percent ad valorem.

In view of the foregoing it is our position that tennis racket string in 200 meter lengths is precluded from classification under item 734.88, TSUS. In the absence of a sample of the tennis racket string involved we cannot advise you definitely as to its dutiable status. However, tennis racket string of man-made fiber in 200 meter lengths is dutiable at the rate of 2 cents per pound plus 9.2 percent ad valorem under item 316.55, TSUS, if measuring under 3/16 inch in diameter or at the rate of 12.5 cents per pound plus 15 percent ad valorem under item 316.58, TSUS, if measuring 3/16 inch or over in diameter.

Sincerely,

Arthur P. Scheffler

For Harvey B. Fox
Director, Classification
and Value Division

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077883

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 14 1986

REFER TO
CLA-2 CO:R:CV:G
077884 c

077884

Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-5-003939

This protest was filed against your decision in the liquidation on March 22, 1985, of entry No. 85-215949 dated October 10, 1984, covering a shipment of vinyl suit covers manufactured in Taiwan.

The merchandise involved consists of two PVC garment bags. Style No. 40 A/B is described on the invoice as being 3 mil. thick vinyl and measuring 24 inches by 40 inches with a 34 inch zipper. The PVC material is embossed to impart a nylon taffeta finish. This bag is designed to contain one or two garments while being carried by a clothes hanger. It is also intended to protect the contents.

Style No. 44/ZJCP is described on the invoice as being 4 mil. thick vinyl and measuring 24 inches by 43 inches with a 9 inch bottom flap. The PVC material is embossed to impart a nylon taffeta finish. This article has a gusset hanger opening on both ends and a business card clear view window pocket on the front. The bag is designed so that the clothes hanger can be inserted through the gusset openings and one end is tucked under the 9 inch flap thus facilitating carrying the bag.

The protestant claims that identical styles were the subject of Headquarters Ruling Letter (HRL) No. 075785 dated March 19, 1985. In that ruling style Nos. 40/T and 44/ZJCP were held to be classifiable under the provision for other household articles, not specially provided for, of rubber or plastics in item 772.15, TSUS.

It is our position that the classification of the instant styles is controlled by the decision rendered in HRL 075785 dated March 19 , 1985. However, we are currently reviewing the correctness of that decision.

The protest should be allowed. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner
For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 15 1986

REFER TO

CLA-2 CO:R:CV:G
077902 JCH
C145464

077902

The Honorable
Matthew F. McHugh
Member of Congress
Terrace Hill-Babcock Hall
Ithaca, New York 14850

Dear Mr. McHugh:

Thank you for your letter of February 28, 1986, on behalf of Cornell University. The Laboratory of Nuclear Studies there disagrees with the proposed classification of cesium iodide/thallium iodide crystals under the provision for parts of electrical measuring, checking, analyzing or automatically-controlling instruments and apparatus in item 712.49, Tariff Schedules of the United States, and has applied for internal advice to resolve the issues raised.

We have carefully considered their position including the supportive points made in your letter. We are enclosing a copy of our decision which is self-explanatory and more fully responsive to the arguments presented.

If we can be of any further assistance in this matter, please feel free to write or call again.

Sincerely,

Richard W. Miller
Associate Commissioner for
Congressional and Public Affairs

Enclosure

See Next Frame

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: MAY 15

FILE: CLA-2 CO:R:CV:G
077902 JCH

077902

TO : District Director of Customs
Buffalo, New York 14202-2378

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 6/86 Concerning the Tariff Classification of Cesium Iodide/Thallium Iodide Crystals Used in Nuclear Studies

The subject internal advice request was initiated by the Laboratory of Nuclear Studies, Cornell University, in a letter dated December 19, 1985. This merchandise may be made in either Japan or Great Britain. Our decision follows:

ISSUE:

The Customs Service presently proposes classifying the merchandise under the provision for parts of electrical measuring, checking, analyzing or automatically-controlling instruments and apparatus in item 712.49, Tariff Schedules of the United States (TSUS). The current column 1 rate of duty under that provision, applicable to products of the above-identified exporting countries, is 5.5 percent ad valorem. The IA applicant contends the merchandise is rather covered by the provision for mixtures of two or more inorganic compounds other than those more specifically described, in item 423.96, TSUS. The current column 1 rate of duty under that provision is 0.6 percent ad valorem.

FACTS:

The crystals at issue are made from their constituent compounds, cesium iodide and thallium iodide in powder form, in a manufacturing process which involves the slow cooling of a molten substance over the course of 3 to 4

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weeks. The crystals which are thus formed are sawed and ground into rectangular or trapezoidal bars which are also polished. The bars are then "wrapped" in teflon and aluminized mylar. After importation, they are glued to photoelectric detectors which are arranged in apparatus for the measurement of both the direction and intensity of energy from electron and positron collisions. The collisions produce photons causing the emission of green light from the crystals. The light is conducted to the detectors.

207902

LAW AND ANALYSIS:

The main point made by the IA applicant is that item 423.96 is a specific provision for the crystals which must prevail over a parts provision in accordance with General Headnote 10(ij), TSUS. That rule of construction states:

> [U]nless the context requires otherwise, a tariff description for an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

Of the various methods for describing merchandise in the TSUS, one is by the component material of which the merchandise is in chief value. The provisions in Schedule 4, TSUS, where item 423.96 appears, generally do not represent descriptions of that type, but rather are descriptions of chemicals and related substances in material form. Therefore, tariff descriptions in Schedule 4 and elsewhere in the TSUS for chemicals and merchandise in other material forms would seldom, if ever, constitute specific provisions in competition with parts provisions. See, for example, Amersham Corporation v. United States, 5 CIT 49 (1983), where it was held that merchandise was not described by the Schedule 4 provision under which it was claimed to be classifiable and was rather classifiable under a parts provision since General Headnote 10(ij) was, therefore, not applicable.

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The Schedule 4 provision was not applicable because the merchandise was advanced beyond the stage of a chemical or related substance. In our opinion, the instant crystals also represent merchandise advanced beyond the stage of a chemical mixture and represent articles made from chemicals. In addition to the cutting, grinding and polishing operations which take place before importation, the articles also include the so-called wrapping. Even though that may represent a small portion of the total cost, it further demonstrates that an article rather than a chemical mixture is involved. Accordingly, the IA applicant's contention that the merchandise is described by item 423.96 is not sustainable.

While various legal precedents and legislative history have been called to our attention for an opposite conclusion, we do not agree those authorities are dispositive of the issues here. For example, West Coast Glass Distributors v. United States, 62 Cust. Ct. 444, C.D. 3797 (1968), relied on by the IA applicant, does not illustrate the preference for a materials provision over a parts provision under General Headnote 10(ij) as claimed. In that matter, the court stated that the prevailing "provision for laminated glass, shaped, manifestly provides for more than the material itself." Id. at 447.

With respect to Pacific Hardware Sales Co. v. United States, 64 Cust. Ct. 68, C.D. 3960 (1970), cited for the same premise, the merchandise in litigation represented an unfinished article and only qualified as a part under a parts provision by applying the rule in General Headnote 10(h), TSUS. That headnote states that a tariff provision includes an article "whether finished or not finished." Therefore, contrary to the inferences drawn from that matter, the decision rather is an example of the rule that merchandise which is described by a tariff provision in its condition as

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imported will not be classified under a provision which describes it in terms of its condition after future further advancement. In the instant situation, the crystals are imported in a finished condition, and they do not become the articles suitable for the purpose intended by any manufacturing operations accomplished after importation other than assembly to the parts they will be used with.

The larger apparatus in which the instant articles are installed as components, as described in the submissions in this matter, would be classifiable, if imported, under item 712.49. Accordingly, the use of the crystals as components in that apparatus warrants their classification under the parts portion of that provision. It should be further noted that under 15 CFR 301.2(k), articles used as components or parts are generally not eligible for an exemption from duty under the free-rate provision for certain scientific instruments imported for the use of educational institutions in item 851.60, TSUS.

HOLDING:

For the foregoing reasons, we find that the cesium iodide/thallium iodide crystals in question are properly classifiable under the provision for parts of electrical measuring, checking, analyzing or automatically-controlling instruments and apparatus in item 712.49, TSUS. Please provide the IA applicant with a copy of this decision.

Harvey B. Fox

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079902

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

APR 30 1986

REFER TO

CLA-2 CO:R:CV:G
077907 JNB

077907

Mr. Roland Rock
Nippon Express U.S.A., Inc.
2481 South Wolf Road
Des Plaines, Illinois 60018

Dear Mr. Rock:

This is in response to your letter of January 19, 1986, submitted on behalf of TDK Corporation of America, requesting a binding ruling on the tariff classification of three electrodes (Style Nos. MEL-08, MEL-09, and MEL-11). The electrodes, functioning as electrical conductors, are used to transmit signals produced by the human heart to an electro-cardiograph machine. They are comprised of a conductive gel (which makes contact with the skin) and a ferrite substrate which are sandwiched around a silver/silver chloride layer. The layers are enclosed in a plastic frame. The products are designed to hold a lead wire with a magnetic catch. The electrodes are manufactured in Japan.

You contend that the electrodes are most properly classifiable as medical apparatus (including electro-medical apparatus) and parts thereof: Other, other, under the provisions of item 709.17, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4.4 percent ad valorem. This claim is based on the fact that the electrodes are dedicated for use with electro-cardiograph machines. Customs currently classifies like articles as other electrical apparatus for making or breaking electrical circuits; and parts thereof, under the provisions of item 685.90, TSUS, dutiable at the rate of 5.7 percent ad valorem.

Classification of electrodes used in transmitting signals to electro-cardiograph machines is well settled. The electrodes serve to make connections in an electrical circuit. As such, they are more specifically provided for under item 685.90, TSUS, as apparatus for making or breaking electrical circuits, rather than as parts of an electro-cardiograph machine under item 709.17, TSUS. See Customs Ruling Letter

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dated February 5, 1973 (Control No. 024464), Customs Ruling Letter dated August 7, 1974 (Control No. 035323), Customs Ruling Letter of August 10, 1979 (Control No. 062436) affirmed on reconsideration in Customs Ruling Letters dated January 19, 1981 (Control No. 063573) and November 6, 1981 (Control No. 067262).

In light of the clear precedent, the electrodes are classifiable as other electrical apparatus for making or breaking electrical circuits under the provisions of item 685.90, TSUS, dutiable at the rate of 5.7 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076907

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

MAY 27 1986

REFER TO
CLA-2:CO:R:CV:G
077912 SM
817259

077912

Ms. Mary Ann Ost
H. Z. Bernstein Co., Inc.
Suite 1973
1 World Trade Center
New York, New York 10048

Dear Ms. Ost:

You have requested a tariff classification ruling on behalf of Direct Import Corporation of America for two moon boots from Italy: Style 153, "Olympia," and Style 22, "Alfa." A new sample of each has been submitted to Customs Headquarters.

Both boots are of man-made materials. Style 153, which stands about 13-1/2 inches tall, has a light grey "upper" folded to the inside to a depth of about three inches and stitched into the lining. It has an expandable opening, fastened with three Velcro strips that pass through three white plastic loops. A grey molded sole, into which the "upper" is stitched, extends up over the toe and sides and about 3-1/4 inches up the back. Superimposed over the grey sidewall by a double injection process is a dark blue band of varying width that encircles the entire boot. A dark blue injection also covers most of the outsole, except for some cut-out areas where the grey is visible; it extends up the side of the boot for about 1/2 inch all around, except for about 2-1/2 inches along the instep area on both sides. At the instep area, three 1/4 inch wide blue strips extend upward from the outsole and connect with the encircling blue band. Elsewhere, there is a gap of about 1/8 inch between the encircling blue band and the blue upward extension of the outsole.

Style 22, which has a removable lining, stands about 11 inches tall. The "upper" is elasticized where it would fit around the leg; it is black, encircled by two diagonal bands in contrasting shades of grey, and is stitched into a molded all-black, single injection sole extending up over the toe and about three inches up the back.

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The issue for tariff classification purposes is whether each boot has a foxing or a foxing-like band applied or molded at the sole and overlapping the upper. If not, each would be properly classifiable under item 700.56, Tariff Schedules of the United States (TSUS).

The Customs Service's position on the interpretation of the terms "foxing or a foxing-like band" in the footwear provisions of the TSUS was set out in T.D. 83-116. There a foxing was described as a separate strip of material securing the joint between the sole and the upper. There is no such strip on either of the two boot styles under consideration here.

As to a foxing-like band, while T.D. 83-116 indicates that something molded to look like a foxing can be a foxing-like band even if it performs no function, it also requires that for a design feature in the form of a band to be considered a foxing-like band, it must be applied or molded at the sole and overlap the upper. Unit-molded footwear will be considered to have a foxing-like band if a vertical overlap of 1/4 inch or more exists from where the upper and the outsole initially meet. A foxing-like band must also encircle or substantially encircle the entire shoe.

On Style 153, a dark blue band of varying width does encircle the entire boot. However, it is positioned above the point where the foot would rest. Thus, it is in fact part of the upper. It does not cover the juncture of the upper and the sole. It does not "overlap the upper." The blue portion of the outsole that extends 1/2 inch up the sides is below the point where the foot would rest and so it does not overlap the upper, either, although it is molded at the sole. Thus, no design feature on Style 153 fits the description of a foxing-like band.

The single-injection, single-color Style 22 also lacks any feature that can be described as a foxing-like band. Thus, assuming all other statutory conditions are met, both styles are classifiable under item 700.56, TSUS.

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077912

You should attach a copy of this ruling letter to the documents filed with the appropriate Customs Service field officer in connection with the importation of these boots.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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017912

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY - 6 1986

REFER TO

CLA-2:CO:R:CV:G
077914 SM

077914

Ms. Rosalie M. Henrich
Import Manager
Harris Systems, Inc.
7500 North St. Louis Avenue
Skokie, Illinois 60076

Dear Ms. Henrich:

You have requested a tariff classification ruling for two carpets that you plan to import from Greece. You do not state what the carpets are made of or how they are made, but you have sent two samples to our New York office.

You state that the carpets are fire-retardant so that they can be used in front of a fireplace. Further information is provided by our National Import Specialist, who indicates that they are composed of woven wool fibers. One carpet (item B) measures approximately 25-1/2 by 53 inches and has a tufted deep pile surface with fringes on four sides. The other carpet (item K) measures approximately 23 by 59 inches and has a cut deep pile surface with fringes on four sides.

Subpart A of Part 5, Schedule 3, Tariff Schedules of the United States (TSUS), provides for "textile floor coverings". Your carpets, composed of woven wool fibers, are in chief value of textile material. Even if the backing holding the pile in place is of rubber, plastics, or other nontextile material, by Headnote 3 to Subpart A that fact will not be taken into consideration in determining the component material of chief value.

Headnote 2(a) of Subpart A defines the term "floor coverings" to include "carpets ... of any size or shape ... suitable for use as floor coverings in homes, business establishments, institutions, vehicles, or elsewhere...." The words "suitable for use" as applied in Customs law mean actually, practically, and commercially fit for such use. Such suitability does not require that the merchandise be chiefly used for the stated purpose, but it does require more than evidence of a casual, incidental, exceptional, or possible use. Keer, Maurer Co. v. United States, 46 CCPA 110, 114, C.A.D. 710 (1959), and cases cited therein.

F13

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You state that the carpets are to be sold for use in front of hearths of fireplaces. Information provided to our National Import Specialist by those in the trade and some users of hearth rugs indicates that users having an existing floor covering would place a hearth rug over that covering in the area of the hearth. Individuals without floor coverings would place the hearth rug before the hearth to protect the floor. Thus, the carpets are not merely casually, incidentally, or exceptionally used as floor coverings, but in fact are actually, practically, and commercially fit for such use, as the statute requires. The fact that they are chemically treated so as to be flame retardant in order to protect a floor or existing floor covering from sparks or glowing embers does not make them any less suitable for use as floor coverings or any less classifiable under the textile floor coverings provisions. Many types of rugs or carpets serve to protect floors. Headnote 1 of Subpart A specifically excludes from that subpart only floor coverings of unspun fibrous vegetable materials, linoleum and other nontextile floor coverings, and rugs or carpets over 100 years old.

For the foregoing reasons, your carpets are properly classifiable in Part 5A of Schedule 3, under the provisions for floor coverings of pile or tufted construction, of textile materials, according to the method of construction. A copy of the applicable provisions is enclosed for your information. Column 1 rates apply to products of Greece.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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079614

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR 10 1986

REFER TO
CLA-2 CO:R:CV:G
077924 PR

077924

This ruling concerns the classification of certain men's garments.

ISSUE:

The issue presented is whether the subject garments are shorts and, therefore, classifiable in item 381.6210, Tariff Schedules of the United States Annotated (TSUSA), with a textile and apparel category designation of 347, or whether the garments are swimwear, classifiable in item 381.6585, TSUS, with a textile and apparel category designation of 359.

FACTS:

Four samples (styles 5446, 5E856, 16T440, and 16T438) were submitted. Each short length boxer style garment is meant to be worn below the waist by males and is made from a fairly lightweight poplin fabric that is either wholly cotton or a 60 percent cotton/40 percent polyester blend. Each sample has a full substantial knit man-made fiber liner securely fastened on the inside of the garment; a fully elasticized waistband with a drawstring; an inserted pocket at each side seam with a button-type hole cut and stitched around the edges to allow water to escape from the pocket; a small inner change-type pocket made from the same fabric as the liner, with an overlapping flap top; and a rear inserted pocket with either a zipper closure or a pocket flap secured with a fabric closure. One sample is a single color, two samples are pieced together so that the lower and upper halves are different colors, and the last garment is similar to the bicolored samples, except that the waistband is a third color. On the tricolor sample, the drawstring ties on the outside of the waistband.

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LAW AND ANALYSIS:

In our ruling of February 17, 1984, 077387, Customs set out criteria for making the distinction between swimwear and shorts. In that ruling, we stated:

> In determining whether a garment falls within the purview of swimwear and would not, therefore, be classified as shorts, if a question concerning the commercial identity of the garment arises, Customs will look to the following features.
>
> (1) Fabric from which the garment is made. Fabrics such as denims, corduroys, and twills are usually heavier fabrics than used in normal swimwear. Such fabrics are bulkier and absorb more water than is usually desirable for swimwear.
>
> (2) Side inserted pockets are usually a characteristic of shorts and not swimwear. In addition, the extra fabric required adds to the water absorbancy of the garment.
>
> (3) Cotton liners, again because of increased water absorbancy, are more often found on multipurpose or running shorts.
>
> (4) A fly front is not a normal feature on swimwear.
>
> The weight and absorbancy of the fabric of each garment in question is the primary criterion and may be determinative by itself. None of the other features are necessarily determinative by themselves, or even in combination. Each article of apparel should be considered as a whole and, due to the specific nature of swimwear, if a garment is not readily identifiable swimwear, it is a multipurpose garment and should be classified as shorts.

The above criteria were intended to assist Customs in determining whether particular garments were commonly or commercially known as swimwear and, therefore, classifiable as such rather than as shorts. Applying that criteria to the instant samples, we find that those garments are swimwear.

If it were not for the side inserted pockets, there apparently would be no question on the classification of these garments: the fabric is normal for men's or boys' swimsuits; the liner is lightweight,

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nonabsorbable, and substantial; the waistband, drawstring, and inside pocket are normal features for swimsuits; and the rear inserted pockets with closures have become an accepted swimsuit feature. In view of this, the side pockets, which are made of lightweight, nonabsorbable fabric, and which have special water holes cut into them, are not sufficient, by themselves, to cause the samples to fall within the class or kind of garments commonly and commercially known as shorts (as opposed to swim trunks).

HOLDING:

The sample garments described above are properly classifiable under the provision for other men's or boys' cotton wearing apparel, not ornamented and not knit, in item 381.6585, TSUSA, with a textile and apparel category designation of 359.

Harvey B. Fox
Director, Classification
and Value Division

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077924

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

APR 10 1986

CLA-2 CO:R:CV:G
077924 PR

077924

Area Director of Customs
6 World Trade Center
New York, New York 10048

Dear Sir:

Enclosed for your information is a ruling on men's swimwear garments with three exterior pockets. Our intention in issuing that ruling is to clarify a prior ruling of March 4, 1985, 074920, from this office. That ruling held that certain garments with three exterior pockets were not classifiable as swimwear.

In our ruling of February 17, 1984, 077387, we provided criteria for making the distinction between swimwear and shorts. In that ruling, we stated:

> In determining whether a garment falls within the purview of swimwear and would not, therefore, be classified as shorts, if a question concerning the commercial identity of the garment arises, Customs will look to the following features.
>
> (1) Fabric from which the garment is made. Fabrics such as denims, corduroys, and twills are usually heavier fabrics than used in normal swimwear. Such fabrics are bulkier and absorb more water than is usually desirable for swimwear.
>
> (2) Side inserted pockets are usually a characteristic of shorts and not swimwear. In addition, the extra fabric required adds to the water absorbancy of the garment.
>
> (3) Cotton liners, again because of increased water absorbancy, are more often found on multipurpose or running shorts.
>
> (4) A fly front is not a formal feature on swimwear.
>
> The weight and absorbancy of the fabric of each garment in question is the primary criterion and may be determinative by itself. None of the other features are necessarily determinative by themselves, or even in combination. Each article of apparel should be considered as a whole and, due to the specific nature of swimwear, if a garment is not readily identifiable as swimwear, it is a multipurpose garment and should be classified as shorts.

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The above criteria were specifically intended to assist our import specialists in determining whether garments fall within the class or kind of apparel commonly and commercially known as swimwear.

In our ruling of March 4, 1985, after quoting the above criteria, the statement was made, "Applying that criteria to the garments you submitted, we find the tariff classification to be determined by the presence (or lack thereof) of the side inserted pockets."

It has now come to our attention that the National Import Specialist having the responsibility for men's swimwear has interpreted our ruling of March 4, 1985, as establishing a "three pocket" rule — that three exterior pockets on a garment automatically precludes that garment's classification as swimwear. This has been confirmed by a phone conversation with the concerned NIS.

While we can appreciate the difficulties encountered in determining whether certain garments are classifiable as shorts or as swimwear, and the administrative convenience of a "three pocket rule," such a rule is clearly contrary to our ruling of February 17, 1984, and is not supported by the ruling of March 4, 1985. The ruling of February 17, 1984, specifically stated that only the weight and absorbancy of the fabric of each garment may be determinative by itself. If the weight and absorbancy of the fabric of a garment is not determinative, the garment should be considered as a whole and, barring the unusual, only a combination of the other features on a garment should be determinative. A "three pocket rule" ignores the requirement of commercial identity, and, in our view, would not be legally defensible if the matter were presented for judicial adjudication.

In addition, our ruling of March 4, 1985, does not support the establishment of a "three pocket rule." That ruling first quoted the above criteria, and, immediately thereafter, stated, "Applying that criteria to the garments you submitted." Taken in context, it is obvious that Headquarters did apply the criteria specified and found that the three open pockets on two of the garments were enough, in combination with other features (e.g., the weight of the fabric), to cause those garments to be multipurpose shorts.

The quoted criteria are, in fact, guidelines and should be judiciously applied to individual garments. Accordingly, similar garments may be classified differently, depending on their individual characteristics. We recognize that this approach may require difficult decisions and,

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057924

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occasionally, result in nonuniform classification decisions. However, any standard which, on its face, ignores the commercial identity of an article, where ascertaining that identity is essential for classification purposes, is certain to be struck down by the courts.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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66

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 20 1986

REFER TO

CLA-2 CO:R:CV:G
077945 jlj
816984

077945

Ms. June Mahoney
National Distributors Corp.
P.O. Box 20155
DAG Hammerskjold Plaza
New York, New York 10017

Dear Ms. Mahoney:

In your letter of January 27, 1986, you request a tariff classification of a "cat bed" from the People's Republic of China. You did not submit a sample along with your letter.

We are informed by our New York office, which saw a sample of the merchandise, that the "cat bed" is similar in shape to a miniature house. It is 21 inches in length, 14 inches in width and 12 inches in height. It has an iron frame covered by a cotton canvas cloth with padding. There is a nylon mesh covering the opening to the "bed" or house. Our New York office tells us that the nylon mesh can be rolled up and down like venetian blinds. Inside there is a foam mattress that is covered with cotton canvas.

A value breakdown submitted along with this merchandise states that the cloth cover and inside padding is worth $7.50, while the frame of the "bed" is worth $3.50.

The "cat bed" is classifiable according to its component of chief value. Inasmuch as we do not have a complete value breakdown before us, we assume that the "bed" is in chief value of woven cotton fabric. We also assume that the item is not ornamented. If these assumptions are correct, then the "cat bed" is classifiable under the provision for articles not specially provid 1 for, of textile materials, other articles, not ornamented, of cotton, other, other, in item 386.53, Tariff Schedules of the United States (TSUS), dutiable at the 1986 Column 1 rate of 8.2 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

MAY 14 1986

REFER TO
CLA-2:CO:R:CV:G
077952 JLF

077952

Mrs. Helen Sugar
C.J. Tower & Sons
128 Dearburn Street
Buffalo, N.Y. 14207

Dear Mrs. Sugar:

This is to inform you that Ruling 077952, (copy enclosed) has been issued by the Customs Service and effectively revokes New York ruling letter 805529. It is the position of the Service that the snow racer is properly classifiable under the provision for sport, gymnastic, athletic, or playground equipment,..., not specially provided for, in item 735.20, Tariff Schedules of the United States (TSUS).

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

Enclosure

See Next FRAME

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

077952

MAY 14 1986

REFER TO

CLA-2:CO:R:CV:G
077952 JLF
815584

Mr. David N. Allan
C. J. Tower & Sons
645 Griswold Street
Detroit, Michigan 48226

Dear Mr. Allan:

Your letter on behalf of your client, Canadiana Outdoor Products, dated September 26, 1985, and addressed to our New York office requesting a ruling regarding the tariff classification of SnoRacers, has been referred to our office for direct reply to you.

The Noma SnoRacer is constructed as an article with two parallel ski-type runners attached by means of a tubular steel frame to a center seat which is long enough to hold two people. In front of that seat is a steering column and wheel. The tubular steel frame joins the seat and runners to the steering column. A center ski-type runner is controlled by the steering wheel. A tension spring apparently controls the steering mechanism. A brake lever is mounted to the right of the steering wheel and activates a ground metal piece which digs into the snow.

The importer describes the merchandise as a recreational snow sled and believes that since it is similar in use to a toboggan, the article should be classified as a toboggan in item 734.95, Tariff Schedules of the United States (TSUS). The merchandise has been entered under the provision for skis and ski equipment, snow shoes, sleds and toboggans: other, in item 735.06, TSUS. Consistent with this entry is New York Ruling 805529 which has classified identical merchandise in item 735.06, TSUS. Finally, under present consideration is the classification of this merchandise under the provision for sport, gymnastic, athletic, or playground equipment..., not specially provided for, in item 735.20, TSUS.

We find that certain features of the Noma SnoRacer such as the raised seat which permits the user to sit upright, and the additional front runner, distinguish it from a toboggan, thus precluding classification in item 734.95, TSUS.

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Furthermore, the SnoRacer does not fit any of the descriptions for skis or ski equipment, snowshoes, or sleds.

On the other hand, articles similarly constructed and used for downhill sliding on snow have been classified under the provision for ... sport, gymnastic, athletic or playground equipment,..., not specially provided for, in item 735. 20, TSUS. CIE 1740/64, August 31, 1964, held that a "Jet-Ski-Scooter" produced in Canada and built with one or two bicycle-type seats was classifiable in item 735.20, TSUS, rather than as a sled in item 735.06, TSUS. In addition, CIE 1074/65, July 28, 1965, classified very similar merchandise under item 735.20, TSUS. Marketed as a "Ski-Bob", this article was constructed with a saddle seat, two skis attached to frame, and a short front ski steered by a hand grip. Nearly identical to the instant merchandise and classified under item 735.20, TSUS, was the "Novoslei Snow Go-Kart", which had a tubular frame joined to a center seat. The frame joined the seat to the steering wheel which controlled the center ski-type runner with a tension spring. See Ruling 040946, August 26, 1975.

In view of the foregoing precedent and the distinguishing characteristics of the Noma SnoRacer, we find the merchandise which is the subject of this ruling request to be properly classifiable under the provision for ... sport, gymnastic, athletic, or playground equipment..., not specially provided for, in item 735.20, TSUS, dutiable at the rate of 5.04 per cent ad valorem.

In New York ruling letter 805529, a similar article, the model GT-73-4121 was held to be classifiable in item 735.06, TSUS. Inasmuch as this decision is contrary to the classification above, it is revoked pursuant to 19 CFR Part 177.9, Customs Regulations.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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735952

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

APR 18 1986

REFER TO

CLA-2 CO:R:CV:G
077973 JLV

077973

Ms. Josiane M. Chami
Arosa Overseas, Inc.
5, Pre d'Orsat, P.O. Box 167
CH 1245 Collonge-Bellerive
Switzerland

Dear Ms. Chami:

In your letter of February 27, 1986, you request a ruling on the tariff classification and rate of duty for certain watches produced in Switzerland. You also request information on the acceptable markings and on the requirements for a single filing of information on the watches.

The watches are described as follows:

1. Movement: 100% Swiss made, quartz (battery operated) 1 jewel, unadjusted, calibres 6-3/4 and 11-1/2, complete with battery.

2. Case: Polyester, waterproof to 100 feet.

3. Bracelet: Elastomer (plastic).

Watches with quartz analog movements are classifiable as watches in item 715.05, Tariff Schedules of the United States (TSUS). Under Headnote 3(a), Subpart E, Part 2, Schedule 7, TSUS, the complete tariff citation for watches includes item 715.05 and the specific provisions for the movement and case.

The unadjusted quartz movement with 1 jewel is an electromechanical mechanism that possesses moving parts (stepping motor, gear train) and is controlled by the quartz crystal. It is classified in item 716.09, TSUS, dutiable at 36 cents each. The plastic case is classified under the provision for other cases in item 720.28, TSUS, and dutiable at 4.1 cents each plus 8.7 percent ad valorem. Therefore, the watches (each watch consisting of a movement and case only) are classified in item 715.05-716.09-720.28, TSUS, and are dutiable at the above rates as though the movements and cases are imported separately.

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Watchbands are separately classified. Bands of rubber or plastics are classified under the provision for other articles, not specially provided for, of rubber or plastics, in item 774.55, TSUS, and dutiable at 5.7 percent ad valorem.

The batteries are also separately classifiable under the provision for primary batteries in item 682.95, TSUS, and dutiable at 5.7 percent ad valorem if they are products of Switzerland.

The name or the logo of a U.S. customer may appear on the dial along with the "Swiss Made" marking. Likewise, the name of the Swiss manufacturer may also be engraved on the case. You should, of course, be aware of the special marking requirements of Schedule 7, Part 2, Subpart E, TSUS, copy enclosed (see also page 46 of the pamphlet "Importing Into the United States," copy enclosed), applicable to the various watch components.

You should also be aware that a bill, H.R. 2029. to amend these requirements is now pending before Congress and it is likely to be enacted. However, until such time a bill is enacted, the special marking requirements are applicable.

The filing of information, referred to in the publication "Importing Into the United States," is a procedure designed for mechanical adjustments on mechanical watches. Quartz analog watches do not have such adjustments. For example, the adjustment made to a trimmer capacitor is not an adjustment for tariff purposes. If you have any further questions on this or any other matter involving the classification and entry of watches, please contact Mr. Lou Piropato, the Customs National Import Specialist, at 212-466-5895, or the appropriate import specialist at the port of entry for your merchandise.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

Enclosures

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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071973

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 16 1986

REFER TO

CLA-2 CO:R:CV:G
077983 JAS
815669

077983

Mr. Luc C. Pamerleau
USA Marketing Division
USA Trading & Investment Development
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario, Canada K1A OG2

Dear Mr. Pamerleau:

Your letter of September 30, 1985 (UTM-2418 6056-USA/6), to the Regional Commissioner of Customs, New York Seaport, inquiring as to the tariff classification of certain refrigerated containers from Canada, has been forwarded to us for reply.

Our New York office reponded to you concerning those containers with refrigeration elements. The remaining units are so-called passive containers or boxes and range in size from the portable 2-man pack (5-6 cu. ft.) to larger units on skids (40-50 cu. ft.). They have a light gauge aluminum exterior with 4 to 6 inches of polyurethane foam insulation held in place by an aluminum or plastic liner. Hinges and handles will be of steel.

You have suggested the possible applicability of item 772.20, Tariff Schedules of the United States (TSUS), the provision for containers, of rubber or plastics, with or without their closures, chiefly used for the packing, transporting, or marketing of merchandise. However, there is insufficient evidence to establish that these containers are in chief value of the polyurethane. More importantly, these containers are said to be used in fishing, food processing, and recreational hunting applications, as well as to store military field rations. These articles are similar in function to picnic coolers which hold or store food. In such applications, the transporting of the food is clearly secondary. Consequently, classification in item 772.20, TSUS, is not believed applicable.

The described containers would be classifiable under the tariff provision for other articles of plastic, chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients, in item 772.15, TSUS. We assume, of course, that the polyurethane foam insulation is confirmed as the component material in chief value. The duty

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rate under item 772.15, TSUS, is 4 percent ad valorem. If aluminum is found to be the component material in chief value, the subject containers would be classifiable under the tariff provision for articles of aluminum, not coated or plated with precious metal, in item 657.40, dutiable at the rate of 6.2 percent ad valorem.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

071983

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PUBLIC _____

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 5 1986

REFER TO
CLA-2:CO:R:CV:G
077986 SM

077986

Mr. Peter Boyce
Managing Director
The Marketing Man Pty. Ltd.
1st Floor
316-320 St. Kilda Road
St. Kilda 3182
Australia

Dear Mr. Boyce:

You have requested a tariff classification ruling for a calendar, printed in Australia, that you plan to distribute in the United States.

The submitted sample, "Sons' [sic] of Sydney Beaches Calendar," consists of seven sheets of glossy paper, each approximately 12 inches by 24 inches, laid one upon another and fastened together through the center with two wire staples. When folded across the center, the calendar is closed; when opened out, it can be hung up by means of a small hole at the top of each page. Color photographs of men in swimsuits are paired with a calendar grid for each month.

Assuming that the calendar has been printed in whole or in part by a lithographic process, it is classifiable in Part 5 of Schedule 2 under item 274.10, Tariff Schedules of the United States (TSUS), if not over 0.020 inch in thickness; or under item 274.15, TSUS, if over 0.020 inch in thickness. If the calendar is a product of Australia, the Column 1 rate of duty will apply. The 1986 Column 1 rate for item 274.10 is .5 cent per pound; for item 274.15, 2.1 cents per pound. Further reductions are scheduled: as of January 1, 1987, the Column 1 rate for item 274.10 will be "Free"; for item 274.15, it will be 2 cents per pound.

Headnote 3 of Part 5 provides that the "thickness" of printed matter produced by a lithographic process "is that of the thinnest paper contained therein, except that the thickness of a permanently mounted lithograph is the combined thickness of the lithograph and its mounting." Therefore it is necessary to determine whether the calendar contains "permanently mounted" lithographic prints.

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Because your calendar is attached to a thicker backing that forms the cover, we consider it to be "mounted." However, because of the non-permanent nature of the fastening, that is, the two wire staples, the calendar is not "permanently mounted" for purposes of Headnote 3 to Part 5 of Schedule 2, TSUS. Therefore, the thickness relevant for determining the rate of duty under item 274.10 or 274.15, TSUS, is that of the thinnest page, as indicated above. This decision is in line with that in our recent ruling 077644 of May 14, 1986 concerning a calendar fastened in a similar manner.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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077680

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

077998

DATE: MAY 29 1986

FILE: CLA-2:CO:R:CV:G
077998 c

TO : Area Director of Customs
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 102/85 Concerning the Tariff Classification of Corrugated Polypropylene Plastic Sheets Manufactured in Hungary.

FACTS:

The merchandise involved designated as "Cariplast" corrugated plastic sheets will be produced in standard sizes of 96 inches long, 48 inches wide and 4 millimeters thick. However, these sizes may be varied to meet different customer requirements. The sample submitted is an extruded polypropylene plastic sheet with smooth surfaces covering cells running the entire length of the material. After importation the sheets may be used as packaging, sign boards and glazing material.

The inquirer maintains that the product is classifiable under the provision for other film, strips and sheets, all the foregoing which are flexible: wholly or almost wholly of rubber or plastics: not of cellulosic plastics materials in item 771.43, Tariff Schedules of the United States (TSUS).

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ISSUE:

Is the merchandise classifiable as film, strips and sheets in item 771.43, TSUS, or as other profile shapes in item 771.55, TSUS?

LAW AND ANALYSIS:

The inquirer asserts that this product is a "profile shaped sheet". The rationale for this assertion is said to be implied by the use of the phrase "other profile shapes" in the superior heading to items 771.43 and 771.55, TSUS. This phrase is interpreted to mean that all the preceding named articles are considered profile shapes for tariff purposes. If a profile shape meets the dimensional requirements of the headnote, is not of cellulosic plastics, and is flexible, it must in the inquirer's opinion be classified in item 771.41 or 771.43, TSUS.

It is clear from Schedule 7, Part 12, Subpart B, Headnote 1, TSUS, that the superior heading involved describes three different groups of merchandise, namely, blocks and slabs in bulk forms, film, strips, sheets and plates, and filaments, rods, seamless tubing, and profile shapes. In context, the phrase "other profile shapes" refers to profile shapes other than those in the form of filaments, rods or seamless tubing. That such items are viewed as profile shapes is noted in the Summary of Trade and Tariff Information No. 7-12-10 (February, 1981), p.2 where it is stated "profiles may take the form of long strips, filaments,

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rods, seamless tubing, rectangular or cubical solids, trapezoidal rods, and other various intricate shapes..."

The distinguishing characteristics of a profile shape are its intricate cross sectional design and the continuity of that pattern throughout the length of the article. In Sekisui Products, Inc. v. United States, 63 Cust. Ct. 123, C.D. 3885 (1969), a profile shape was described as an article that has "a complexity of curves and surfaces as opposed to either a plane or round surface, or a corrugated surface that is exceedingly simple."

From the above explanation of what a profile shape is, it is apparent that a flat, rectangular solid may be a profile shape if it has an intricate, continuous cross sectional design. A sheet, on the other hand, is more broadly defined in terms of its length, width and surface condition. The subject material is formed by extrusion and has an intricate, multi-surface, cross sectional design. It conforms to the more demanding requirements as a profile shape. As noted previously, profile shapes and sheets are different commodities for tariff purposes, and are separately provided for.

HOLDING:

The "Cariplast" corrugated plastic sheets are classifiable under the provision for other profile shapes,

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wholly or almost wholly of plastics in item 771.55, TSUS.

You should inform the inquirer of this ruling.

Arthur P. Schaffner
For Harvey B. Fox

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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077168

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUN 3 1986

REFER TO

CLA-2 CO:R:CV:G
078012 jlj

078012

Miss H. K. W. Ho
Second Secretary
Hong Kong Commercial Affairs
British Embassy, Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

Your letter requesting reconsideration of the textile category assigned to certain 100 percent polyester, two piece, woven suit dresses has been referred to this office for reply. A sample, style 841, was submitted along with your letter.

The submitted sample consists of a matching dress and jacket manufactured from a 100 percent woven polyester fabric.

A memorandum from Ms. Shirley Hargrove of the Department of Commerce states that the instant suit dresses were entered on Customs entry number 86-380710-7, dated November 6, 1985, at JFK Airport in New York. Our New York office advises us that the suit dress set was presented at JFK with a visa for category 636. The JFK import specialist required an additional visa with textile category number 635 for the jacket.

The Hong Kong Trade Department (hereafter referred to as "Hong Kong") and your office think that category 636 is applicable to the entire suit dress. It is your opinion that both the United States and Hong Kong classify two piece suit dresses in category 636 if the two pieces are identical in fabric and color. You ask us to review the textile category number and to correct the import statistics for categories 636 and 635 if we find that the suit dresses should have been entered in category 636 exclusively.

In Customs Headquarters Ruling Leter (HRL) 076799, dated November 14, 1985, we ruled that a sundress and a matching bolero style jacket were separately classifiable and had two different textile category numbers, pursuant to changes effected by the Trade and Tariff Act of 1984, Pub. L. 98-573 (approved October 30, 1984). Section 122 of the Act added a Headnote 3 to Part 6 of Schedule 3, Tariff Schedules of the United States (TSUS). Headnote 3 provides that — with certain exceptions — each garment is to be separately classified under the appropriate tariff number, even if two or more garments are imported together and are designed to be sold together at retail.

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In accordance with HRL 076799 and Headnote 3, Part 6, Schdule 3, TSUS, the jacket and the dress are separately classifiable. The dress is classifiable under the provision for other women's wearing apparel, not ornamented, of man-made fibers, not knit, other, other, dresses, in item 384.9425, TSUS, dutiable at the Column 1 rate of 18.8 percent ad valorem plus 4 cents per pound. The dress requires a visa for textile category 636. The jacket is classifiable under the provision for other women's wearing apparel, not ornamented, of man-made fibers, not knit, other, coats, suit-type coats and jackets, in item 384.9143, TSUS. The jacket requires a visa for category 635.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

JUN 2 1986

CLA-2 CO:R:CV:G
078015 DW

078015

Miss H.K.W. Ho
British Embassy
Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

We are responding to your letter dated September 9, 1985, on behalf of Fieldston Clothes, that has been forwarded by the Department of Commerce.

Apparently, shipments of infants' snowsuits consisting of a jacket and matching bib overalls were denied entry at the port of Boston, Massachusetts because they lacked visas for categories 635 and 659, respectively.

You state that it is the practice of the Hong Kong Trade Department to issue visas for category 659 to such garments that are meant to be worn together as a suit and are designed to protect the wearer from the elements.Essentially, you are arguing that the two-piece snowsuit is classifiable as an entirety, thus, requiring a single visa for the two garments.

The matching jacket and bib overalls have woven nylon shells and linings and a polyester filling. The jacket has a full front zipper opening, a waist drawstring, side pockets, cotton corduroy inserts at the yoke and arms, and a detachable zippered hood with a drawstring closure. The jacket is ornamented by woven fabric with a front button closure that is inserted between seams, at the neckline and over the zipper opening. The bib overalls have fabric overlays at the knees, elasticized shoulder straps and a partial rear zipper opening.

We have not been informed of the size range for this importation. We note, however, that the submitted sample is in infants' toddler size 3. Normally, this numerical designation indicates that the items are imported in the infants' toddler size range 2-4.

Congress enacted Headnote 3, Part 6, Schedule 3, Tariff Schedules of the United States (TSUS) as part of the Trade and Tariff Act of 1984, Pub. L. 98-573, which provides that,

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with certain exceptions, each garment is to be separately classifiable under the appropriate tariff provision even if two or more garments are imported together and are designed to be sold together at retail. The purpose of the law was the elimination of most commercial tests used in classifying two-piece garments as entireties.

Paragraph (b) of this new headnote excludes the following garments from the effects of the headnote: (i) suits, (ii) pajamas and other nightwear, (iii) playsuits, washsuits and similar apparel, (iv) judo, karate, and other oriental martial arts uniforms, (v) swimwear, and (vi) infants' sets designed for children who are not over 2 years of age.

The issue is whether the snowsuit is classifiable as an entirety under one of the foregoing exceptions. You have stated that these garments are intended to be worn together as a "suit". Subsection (i) excludes suits from the scope of the headnote. Suits are defined in The Random House College Dictionary, 1968 ed. as "2. A set of men's garments of the same color and fabric, consisting of trousers, a fitted jacket, and often a vest. 3. A similarly matched set of women's garments consisting of a skirt and jacket, and sometimes a topcoat". It is our view that this snowsuit is outside the common meaning of the term "suit".

The other exception that conceivably may apply to the merchandise is subsection (vi) infants' sets designed for children who are not over 2 years of age. The snowsuits are sized for children over 2 years of age; therefore, they do not qualify under this exception.

These garments are not classifiable as an entirety under the wearing apparel provisions. They must be classified under separate tariff provisions. The jacket is classifiable under the provision for other women's, girls' and infants' wearing apparel, ornamented: of man-made fibers: not knit: coats: infants: other in item 383.2223 (now 384.2323), TSUSA, under category 635. The bib overall is classifiable under the

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provision for other women's. girls' and infants' wearing apparel, not ornamented: of man-made fibers: not knit: other: other: in item 383.9297 (now 384.9497), TSUSA. This tariff provision requires a visa from Hong Kong for category 659.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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510815

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

APR 15 1986

REFER TO

CLA-2 CO:R:CV:G
078018 JNB
816819

078018

Mr. John M. Kloman III
Med Tec International
1511 K Street
Washington, D.C. 20005

Dear Mr. Kloman:

This is in response to your letter of January 8, 1986, requesting a ruling concerning the classification of a surgical towel. Samples have been submitted. The record indicates that the towels are products of Guatemala.

The identical samples are of 100 percent woven cotton fabric. You assert that the towel is prewashed at the factory after dyeing. The towel measures 18 inches by 30 inches. You state that the towel is to be used in medical applications including, but not limited to, providing a sterile area during surgery.

The towel is classifiable as other furnishings, not ornamented, of cotton, other towels, not jacquard-figured, under the provisions of item 366.26, Tariff Schedules of the United States (TSUS), dutiable at the rate of 11.3 percent ad valorem. A visa is required for the importation of such towels under category number 369.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 9 MAY 1986

FILE: CLA-2:CO:R:CV:G
078019 SM

078019

TO : District Director of Customs
Houston, Texas 77057-3012

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 14/86, Your File CLA-2-H:C:C2 of February 10, 1986

This request involves the question of whether a triangular label on a particular pair of jeans constitutes ornamentation for tariff purposes. You have determined that it does. The initiator of the request, Givens, Kelly and Shaw on behalf of Scope Imports, Inc., argues that it does not. For the reasons stated below, we are in agreement with your position.

Photographs sent by the requesting party show the same type of label on the front of several different garments. On the sample pair of jeans, it is stitched on at the left front pocket opening just forward of the side seam and about two inches below the bottom of the waistband. It is made of a woven fabric coated or laminated with a light beige-colored plastics material textured to simulate leather and stitched to the jeans with the same gold-colored thread used for the rest of the top-stitching on the garment. The label is shaped like a right triangle and measures about 1-1/2 inches along the hypotenuse. The lettering, which is black, includes the words "trademark" and "authentic" in block letters along the legs of the triangle and the trademark "Dax" in larger block letters spread along the hypotenuse.

Headnote 3, Schedule 3, Tariff Schedules of the United States (TSUS), provides that articles of textile materials, such as these jeans, may be ornamented by the use of a variety of types of ornamentation, including textile fabric. Further, Headnote 2 provides that textile materials include the fabrics provided for in Part 3 and 4 of Schedule 3. Part 4C provides for woven fabrics coated or laminated with rubber or plastics.

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Hence the fabric of which the label is made is of the type that may constitute ornamentation. Previous rulings that determined that similar fabrics were of the type that could constitute ornamentation when applied to a finished garment include 033658 of May 13, 1974, and 022725 of May 8, 1973.

Factors that determine whether features specified in Headnote 3, such as textile fabric, will be considered ornamental in a particular case include whether they are in a conspicuous place, and whether they serve primarily a decorative as opposed to a useful function. Colonial Corp. of America v. United States, 62 Cust. Ct. 502, C.D. 3815 (1969). It is the Service's position that the primary purpose served by a manufacturer's identifying label on the outside of apparel is to enhance its appearance, saleability, or prestige. See, for example, ruling 070031 of August 25, 1982. In general, relatively small, rectangular shaped identifying labels containing plain, orderly lettering applied to apparel so as to be visible during normal wear, will not be considered ornamentation: however, anything done to enhance the appearance of the label, and therefore the garment, may result in the label being considered ornamentation. See, for example, ruling 060436 of August 16, 1979.

Here the label is conspicuously placed on the outside front of the jeans, where its primary purpose is decorative. Its non-rectangular shape, "grained" surface textured to imitate leather, and lettering arranged along the sides of the triangle rather than in straight, left-to-right rows, result in a decorative effect outweighing any useful purpose it may serve. The fact that the letters are relatively small and in block form is not alone determinative of the ornamentation issue.

Leather labels held not to be decoratively shaped in rulings 060194, of April 17, 1979, and 802139, of February 8, 1982, and therefore not ornamental, were rectangular, not triangular. Moreover, the label here is not of leather, as counsel for the importer suggests it is, but of textile material. Even if it were leather, since it is in the form of a design, a triangle, cut in outline and superimposed on the fabric, it is an applique. United States v. Hamburger Levine Co., T.D. 34382 (1914). Headnote 3, Schedule 3, specifically mentions applique as a form of nontextile ornamentation.

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The jeans and other garments should be classified as ornamented apparel because of the label. Please inform the inquirer of this decision.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 23 1986

REFER TO
CLA-2:CO:R:CV:G
078020 SM
817390

078020

David Gantz, Esq.
Oppenheimer, Wolff, Foster, Shepard and Donnelly
1317 F Street, N.W.
Washington, D.C. 20004

Dear Mr. Gantz:

This letter is in response to your submission of April 4, 1986, supplementing a request for the tariff classification of the "Avenue" moonboot that was submitted by Bostrum-Warren, Inc., Customhouse brokers for your client, Hanbee America, Inc.

The sample women's boot in question is navy, grey, and red, about 11 inches high, with an expandable front opening and a zipper. A gummed label on the inside near the top is marked "Snowbird." The boot has a molded cup sole with a sidewall of about 1.75 inches at the toe and about 2.75 inches at the heel. The polyurethane "upper" is stitched to the top of the inside of the cup but ends about 3/4 of an inch above the point where the foot would rest. Thus there is an area in which the side of the foot would be covered only by the cup sole and the lining. A contrasting grey strip about 5/16 of an inch wide encircles the entire sidewall. The bottom of the strip is positioned about 3/8 of an inch above the point where the foot would rest, and the top is just below the point where the polyurethane ends. The bottom edge of the grey strip is attached to a grey toe cap, a grey heel bumper, and a grey "stirrup" that crosses the outsole to reach from the grey strip on one side of the boot to the other. The strip, toe cap, heel bumper, and stirrup are formed in one piece as part of an injection molding process.

The only issue for tariff classification purposes is whether the boot has foxing or a foxing-like band applied or molded at the sole and overlapping the upper. If it does not, it is properly classifiable under item 700.56, Tariff Schedules of the United States (TSUS).

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T.D. 83-116 of May 6, 1983, set out Customs position regarding the proper interpretation of provisions in the tariff schedules pertaining to imported footwear having foxing or a foxing-like band. Foxing is described as a band, separate from the sole and upper, that secures the joint between the sole and upper. No feature of the sample boot fits this description; there is a grey band encircling the boot, but it does not secure the joint between the sole and the upper. As to a foxing-like band, while T.D. 83-116 indicates that something molded to look like a foxing can be a foxing-like band even if it performs no function, it also requires that for a design feature in the form of a band to be considered a foxing-like band, it must be applied or molded at the sole and overlap the upper. Unit-molded footwear will be considered to have a foxing-like band if a vertical overlap of 1/4 inch or more exists from where the upper and the outsole initially meet. A foxing-like band must also encircle or substantially encircle the entire shoe.

The grey strip in question here does encircle the entire boot. However, as indicated above, it is positioned above the point where the foot would rest. Thus it is in fact part of the upper. It does not cover the juncture of the upper and the sole. It does not "overlap the upper." The toe cap, heel bumper, and stirrup are applied or molded at the sole and do overlap the upper. However, taken together, they cover only about 40 percent of the distance around the boot, and this does not, in our opinion, constitute substantial encirclement. The fact that they extend upward and join the grey strip, which is part of the upper, is not sufficient for them to constitute a foxing-like band.

For the foregoing reasons, assuming all other statutory conditions are met, the boot is properly classifiable under item 700.56, TSUS.

Sincerely,

Arthur P. Griffin

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

MAY 29 1986

REFER TO
CLA-2:CO:R:CV:G
078021 c

078021

District Director of Customs
555 Battery Street
San Francisco, California 94105

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 2809-5-000917

This protest was filed against your decision in the liquidation on June 14, 1985, of entry No. 85-150426-3 dated February 28, 1985.

FACTS:

Certain misses leather casual shoes were classified in liquidation under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather and should have been classified under the provision for other footwear, of leather for other persons: valued over $2.50 per pair in item 700.45, TSUS.

ISSUE:

Does the documentation provided by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

The only evidence regarding component material of chief value submitted by the protestant is the CF-5523, Invoice Details For Footwear. This form states that the shoe is in chief value of plastics. Consequently, classification of the subject footwear under item 700.95, TSUS, was appropriate.

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HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer
For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 30 1986

REFER TO
CLA-2 CO:R:CV:G
078062 c

078062

Andrew P. Vance, Esq.
Barnes, Richardson & Colburn
Attorneys & Counsellors at Law
475 Park Avenue South
New York, New York 10016

Dear Mr. Vance:

In a letter dated February 25, 1986, on behalf of Intepur, a Division of Dart Industries, you inquired as to the tariff classification of ladies' acrylic/nylon knitted gloves manufactured in Taiwan. A sample was submitted for examination.

It is your view that the gloves are properly classifiable under the provision for other knit gloves of man-made fibers, not ornamented, and not made or cut from pre-existing fabrics in item 704.8550, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 15 cents per pound plus 19.7 percent ad valorem.

Additionally, you state a belief that the sample is subject to quota category No. 631-O because the knitted outer shell is not made from pre-existing fabric and the sherpa lining is not produced from pre-existing knit fabric.

An examination of the sample glove shows that the outer shell is made on seamless knitting machine. However, the liner is made from tufted acrylic fibers which are attached to a pre-existing knit textile fabric base. In addition, the fingers of the glove are lined with a pre-cut knit fabric.

In view of the foregoing, it is our position that the glove is "made from pre-existing fabric" and is dutiable at the rate of 15 cents per pound plus 19.7 percent ad valorem under item 704.8525, TSUSA. The applicable textile quota category number is 631-W.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY - 5 1986

REFER TO
CIA-2 CO:R:CV:G
078063 c
816885

078063

Mr. Henry L. Kotkins, Jr.
President
Skyway Luggage Company
Skyway Center
Seattle, Washington 98121-1392

Dear Mr. Kotkins:

Your letter dated January 7, 1986, addressed to our New York office concerning an interpretation of the term "linings" as used in Schedule 7, Part 1, Subpart D, Headnote 3(i), Tariff Schedules of the United States (TSUS), has been referred to this office for a direct reply to you.

The referenced headnote provides that "For the purposes of this subpart — (i) locks and other hardware fittings, frameworks, and linings *** shall be disregarded in determining the component material of chief value in the products."

You ask that we address the following questions regarding our interpretation of the term "linings."

1. Considering the term of art which has long been established in the industry, should any part of the interior of the case be included?

2. If parts of the interior are to be included, is there a distinction between loose linings and linings which are laminated to the back of covering materials?

3. If the value of the included linings exceeds that of any of the outer covering materials, will that be judged as determining principal value?

4. If the linings are non-textile are they excluded or included? (Example: a nylon case, with enough vinyl surface trim and vinyl linings that the chief value is vinyl).

Your questions are directed specifically toward pullman or suitcase type luggage. The components that you are most concerned with are the interior pockets, tie tapes, curtains and any other components found in the interior of a bag.

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Our responses to your questions are as follows:

1. No. The term "linings" is defined in Webster's International Dictionary, Third Edition, as "a layer (as of fabric) inserted under usually following the lines of and made temporarily or permanently fast to the principle material of a garment." We would not consider interior pockets, tie tapes or curtains to fall within the above-quoted definition of "linings."

2. Yes. Loose linings are not essential to the character of the principal material. Usually loose linings are sewn in place. However, linings which are laminated to the back or covering materials are not lining the article but rather are backing or supporting the material and would probably not be considered a lining at all. The laminating material is essential to the exterior fabric.

3. Materials found not to be "linings" or an otherwise excluded component will be considered in determining the component material of chief value.

4. A material found to be a "lining" for tariff purposes is excluded regardless of its composition.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 22 1986

REFER TO

CLA-2 CO:R:CV:G
078091 JNB
817047

078091

Leonard L. Rosenberg, Esq.
Sandler & Travis, P.A.
444 Brickell Avenue
Miami, Florida 33131

Dear Mr. Rosenberg:

This is in response to your letter dated April 14, 1986, which requested reconsideration of a New York ruling letter dated April 7, 1986 (Control No. 817047). In that decision, a garment designed to be worn by females and described as a bath wrap made of terry knit fabric was classified as other women's wearing apparel, not ornamented, of cotton, knit, other, dressing gowns, including bathrobes, beach robes, lounging robes, and similar apparel, under item 384.3410, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 10.2 percent ad valorem. Articles classifiable under this provision are subject to the import restraints of textile category 350.

The ruling also offered an advisory classification as to a similar garment designed for use by men. A binding ruling as to this garment was not issued because no sample was provided. Accordingly, this reconsideration will not offer an opinion as to the advisory classification provided in the New York ruling.

It is your view that the subject garment, a sample of which is provided, would be most properly classifiable as other women's wearing apparel, not ornamented, of cotton, knit, other, other, under item 384.3497, TSUSA, also dutiable at the rate of 10.2 percent ad valorem, but subject to the import restraints of textile category 359.

The garment is accurately described in the New York decision as being rectangular in shape with a woven terry binding surrounding the sides and bottom and finishing the raw edges of the fabric. The top of the garment is covered by a larger strip of woven terry binding that also covers an elastic waistband. At each end of the binding a velcro strip acts to fasten the wrap. The garment is not ornamented for tariff purposes. It is designed to be worn around the body, extending from below the shoulders to mid-thigh.

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You cite Fairchild's Dictionary of Fashion, 1975, as defining a bath robe as a "wrap-around robe usually with long sleeves, shawl collar, and sash; popular for both sexes in terry cloth or plaid wool or bath robe cloth." You assert that the subject garment does not fall within that category. The New York ruling letter agreed with that assessment in finding that the subject garment was not a robe; however, the issue remains whether the wrap can be considered similar apparel for classification purposes.

You suggest that the principle of ejusdem generis must be applied in this instance, and, pursuant to said principle, the wrap must possess characteristics which are similar or which unite it with the enumerated articles, i.e., bath robes or beach robes. You contend that the wrap does not have the multiplicity of uses of a bath robe or beach robe because it is not generally worn over other articles of clothing, but rather is worn alone.

While the subject garment is not a robe per se as it lacks sleeves and coverage for the shoulders and chest above the breasts, it functions as a beach robe or a bath robe and must be classified as a similar article. We do not agree that the wrap would generally be worn alone. Rather, the wrap, in our view, would commonly be used to cover a bathing suit, protect the wearer from the sun or for drying off after swimming, much as a beach robe. Further, it is comprised of a terry cloth which is generally associated with beach robes or bath robes. Accordingly, we are of the view that the garment has characteristics of a bathrobe or beach robe and must be classified as similar apparel.

The terry bath or beach wrap is classified as other women's wearing apparel, not ornamented, of cotton, knit, other, dressing gowns, including bathrobes, beach robes, lounging robes, and similar apparel, under item 384.3410, TSUSA, dutiable at the rate of 10.2 percent ad valorem. The garments are subject to import restraints under textile category 350. New York ruling 817047 is affirmed.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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017804

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

078102

DATE: MAY 23 1986

FILE: CLA-2 CO:R:CV:G
078102 JGH

TO : District Director of Customs
Houston, Texas 77052

FROM : Director, Classification and Value Division

SUBJECT: Classification of Ethanol

Your memorandum of April 9, 1986 (CLA-2-H:C:C2 RF), contained certain questions on the implementation of Headquarters memorandum of March 14, 1986 (CLA-2 CO:R:CV:G 077715 JGH), concerning the assessment of item 901.50, TSUS, duties on ethanol. You state that Union Carbide intends to export approximately 1.5 million gallons of ethanol in satisfying its claim of nonfuel use of certain imported ethanol. We agree with your view that such exportation would satisfy the nonfuel use criteria and, therefore, the ethanol in question would not be subject to the item 901.50 duties.

You also ask questions concerning any diversion of the ethanol within the 3 year period.

(1) Where part of a shipment of ethanol has not been withdrawn from bonded warehouse and thus has not been diverted to fuel use, Customs would have no reason to abridge the 3-year statutory period on the part remaining in the warehouse.

(2) Where a warehouse entry is still open but part of the previous withdrawal of the ethanol has been diverted to fuel use, additional duties on the amount diverted should be assessed by billing for the additional duties.

(3) If the importer refuses to respond to a request for supplemental tender, inasmuch as warehouse entries are not liquidated until all the merchandise covered thereby is withdrawn, Customs has no authority to liquidate the entry before such final withdrawal. Customs, however, does have a lien on the merchandise and could, if necessary, refuse its withdrawal until the tender is made. In those situations where the market value of the remaining merchandise does not approach the additional duties billed, you should contact your regional counsel for advice.

In addition you inquire whether submitted declarations from Shell Chemical Co. and Union Carbide concerning the sale of imported ethanol satisfies the nonfuel use standards. Union Carbide states that imported ethanol will be (a) sold for export and exported directly from the U.S. or (b) ultimately consumed (presumably by Union Carbide) in the manufacture of industrial chemicals, in which case Union Carbide would document the disposition of the ethanol. Union Carbide concludes that under no circumstances would the ethanol be used or sold for fuel or fuel purposes. If the

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ethanol is sold domestically Union Carbide states that it will furnish Customs with "the appropriate documentation." In addition, Union Carbide submitted a list of their ethanol Customers and what it believes the ethanol is used for by these customers.

Shell Chemical Company's statement was to the effect that they market only to industrial users and not to beverage or fuel users. They note that they have no plans to market to fuel users, and in any event, the ethanol imported is derived from ethylene and therefore would not qualify for Federal or State ethanol tax subsidies. Shell asserts that while they have no way of knowing with certainty what their customers do with the ethanol, they have reason for believing the ethanol is marketed as the customers advise, since they are traditional suppliers of ethanol to the industrial market, and are, of course, aware that synthetic ethanol does not qualify for the subsidies. Shell also submitted a list of their customers names.

Our September 25, 1985, instructions to all field officers regarding the declaration required to be filed upon the entry of nonbeverage ethanol (or mixtures containing such ethanol) were intended to emphasize to importers their obligation to substantiate that an exemption from the additional item 901.50 duties applies. If the importer is identified in the declaration as the ultimate user of the ethanol (or mixture), that statement together with a statement that the ethanol (or mixture) will not be used for fuel purposes constitutes a sufficient declaration. If the importer is not identified as the ultimate user, the declaration must identify who the ultimate user will be and must state that the ethanol (or mixture) will not be used for fuel purposes.

The purpose of our instructions was to facilitate Customs' followup in establishing that the importer was entitled to the exemption from the item 901.50 duties claimed upon entry. The instructions permit some discretion by field officers in their application, but it should be borne in mind that the principal reason the instructions were issued -- as stated in the instructions themselves — was the strong suspicion that the prior declaration and followup procedures were not working. Therefore, you may accept from an importer who intends to resell the imported ethanol (or mixture) a declaration which lists all of the potential buyers, provided such buyers are identified in the declaration as the final users of the ethanol (or mixture) and the importer states that the ethanol (or mixture) will not be used for fuel purposes. The importance of the latter statement in every declaration cannot be overstressed, since it emphasizes to the importer his absolute liability should any subsequent diversion to fuel use occur. In our opinion, an importer who intends to resell the ethanol (or mixture) and is unwilling to make the required affirmative statement (opting instead for possible equivocations such as "intend," "traditional," "likely," "will not be sold for," etc. with respect to final use or users), has demonstrated a sufficient uncertainty as to the actual end use of the ethanol (or mixture) to warrant application of the additional item 901.50 duties at the time of entry. The magnitude of the additional item 901.50 duties justifies the requirement for both a strong, unambiguous declaration by the importer at the time of entry to substantiate a claimed exemption as well as the subsequent tender, within 3 years of entry, of equally strong

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and conclusive proof of nonfuel use. It is hoped that the letters you recently mailed to Union Carbide, Shell and any and all other ethanol importers in your district (pursuant to our April telexes to you), have fully apprised them of their obligations.

As to the declaration submitted by Union Carbide (January 27, 1986) and Shell (November 1, 1985), which you furnished for our examination, we find that they do not support an exemption from the additional item 901.50 duties in their present form.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY 22 1986

REFER TO
CLA-2 CO:R:CV:G
078137 jlj

078137

District Director of Customs
Patrick V. McNamara Building
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3801-6-000104

This protest was filed against your decision in the liquidation on October 25, 1985, of entry No. 972868 dated September 3, 1985, covering a shipment of automobile weather stripping of rubber produced in Canada.

FACTS:

The Canadian manufacturer describes the instant weather stripping as "extruded rubber sealing strip incorporating a continuous metal carrier and sponge rubber end cap (each end)." The weather stripping was liquidated under the provision for gaskets, of rubber or plastics, in item 773.25, Tariff Schedules of the United States (TSUS). The protestant's broker claims that the weather stripping should be classified under the provision for chassis, bodies (including cabs), and parts of the foregoing motor vehicles, other, other, other, in item 692.32, TSUS.

ISSUE:

Is the weather stripping classifiable as gaskets in item 773.25, TSUS, or as parts of motor vehicles in item 692.32, TSUS?

LAW AND ANALYSIS:

Protestant's broker claims that the weather stripping is more than a gasket and that it is an auto part designed, manufactured and dedicated to use as an auto part classifiable in item 692.32, TSUS. In support of his

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position he offers a written statement from the Canadian shipper that the weather stripping is intended to function as an "inner belt line window sealing strip for General Motors Corporation, C-P-C Division 1988 'W' Car (Coupe Model)." The Canadian shipper allegedly orally informed the broker that the weather stripping has several functions. One function is that of a gasket -- i.e., to function as a seal against weather, wind and noise. Another function claimed by the Canadian shipper is that of keeping the window in place by exerting pressure on the glass. Without the part, the window would be very loose, which would result in rattling when the window was partially rolled up.

The broker further claims that the weather stripping is precisely shaped and dedicated to use on only one particular automobile model and that it has no use other than as an automobile part.

The Detroit import specialist claims that the weather stripping meets the definition of a gasket. She observes that gaskets are usually specially shaped and sized to render them commerically fit for their intended use. She cites General Interpretative Rule 10(ij) in support of her position.

General Interpretative Rule 10(ij) states "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such article."

The American Heritage Dictionary of the English Language, New College Edition (1976) defines "gasket" as "any of a wide variety of seals or packings used between matched machine parts..." The instant merchandise fits this definition of "gasket." While the weather stripping is evidently

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intended to be part of an automobile, it is also a gasket. Under General Interpretative Rule 10(ij), an auto part which is more specifically provided for elsewhere (e.g., as a gasket) is classifiable under the more specific provision. Finally, we do not agree that the weather stripping is more than a gasket because it has two functions. The instant merchandise is described by the Canadian shipper as "weather sealing strip" and on the invoice as "W/Strip." We believe that the primary function of the instant merchandise is weather stripping, which puts the merchandise squarely into item 773.25, TSUS.

HOLDING:

The protest should be denied in full. The weather stripping is classifiable in item 773.25, TSUS. A copy of this letter should be sent to the protestant along with your CF 19 Notice of Action.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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L31810

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
078160 PR

APR 29 1986

078160

Leslie Alan Glick, Esq.
Bregman, Abell, Kay & Simon
1156 15th Street, NW
Washington D.C. 20005

Dear Mr. Glick:

This is in reply to your inquiry of April 22, 1986, on behalf of Cecil Saydah Co., concerning the tariff classification of certain towels produced in Taiwan and Korea. Our decision on the matter is enclosed.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

See Next Frame

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

078160

REFER TO
CLA-2 CO:R:CV:G
078160 PR

This ruling concerns the textile restraint status of certain towels manufactured in either South Korea or Taiwan.

ISSUE:

The issue presented is whether the subject towels are includable in textile category 363 as other towels or in category 369 as dish towels.

FACTS:

Three towels were submitted as samples. All three are rectangular shaped, approximately 16 by 26 inches, wholly of cotton with a full terry pile on both sides, and all white except for decorative Christmas-style designs printed on one side. Two of them, one with Christmas trees and holly designs and the other with two pictures of Santa Claus and a reindeer (Rudolph) encased in holly wreaths, have small (1 by 7/8 inch) cardboard labels which contain the words "PRINTED KITCHEN TOWEL," plus the fiber content, washing instructions, and country of origin. On the printed side of each of these towels, in two opposite corners, approximately 1 1/4 inches in from the edge are the words "KITCHEN TOWEL" in 3/8 inch letters. The third towel has geese and other Christmas-style designs, but has no labelling on it indicating that it is a kitchen towel. Instead, it is firmly attached to two potholders with matching designs and a cardboard label which states "3 PIECE SET, 1 KITCHEN TOWEL, 2 POT HOLDERS."

We are advised that the subject towels, which are valued over 45 cents each, will be imported either in sets (as represented by the described sample or with matching placemats, two samples of which were furnished),

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or individually (in which case they would be marked and printed as represented by the first two described sample towels). When imported individually, retailers purchase them with potholders and placemats, and advertise them as kitchen ensembles. Advertisements were submitted showing that at least one large chain store did sell the articles in that manner.

We have been informed by our National Import Specialist that towels with virtually identical designs are being sold as hand towels.

LAW AND ANALYSIS:

Whether the subject towels are classifiable as dish towels, category 369, or as other towels, category 363, depends on the chief use of that class or kind of merchandise to which the imported articles belong. General Headnote 10(e)(i), Tariff Schedules of the United States Annotated (TSUSA). Because of the difficulty of distinguishing between hand towels and dish towels and of determining chief use, it is proper to first look at the article or articles being imported. In this instance, all three samples have designs that are suitable for use in a kitchen and are either printed with the words "KITCHEN TOWEL" in two prominent places or are imported attached to kitchen placemats or potholders. These facts raise a presumption that the towels will be chiefly used in the kitchen. In the absence of any convincing evidence to the contrary, that presumption will govern the classification of the towels.

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HOLDING:

The subject towels are classifiable under the provisions for cotton terry dish towels, in either item 366.2020, TSUSA, if valued not over $1.45 per pound, or item 366.2420, TSUSA, if otherwise, and subject to quota, visa, or export license requirements applicable to category 369.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078160

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

0 5 MAY 1986

CLA-2 CO:R:CV:G
078161 JNB

Daniel A. Pinkus, Esq.
Assistant Chief Counsel
International Trade Litigation
26 Federal Plaza
New York, New York 10278

Re: Samuel Haber's Sons v. United States
Court No. 85-3-00413

Dear Mr. Pinkus:

This is in response to your letter of April 15, 1986, which requested our views on the above-noted case. The matter involves the classification of fusible interlining material, i.e. a knit material of man-made fibers (17 percent nylon, 83 percent rayon) which has thermoplastic dots applied thereto. It is your view that the material is classifiable as a coated fabric, which is in contravention of a Customs Ruling Letter issued on an identical product.

Specifically, you question Customs Ruling Letter of January 21, 1983, (Control No. 070229) which held such fabric to be classifiable as knit fabrics of man-made fibers under item 345.50, Tariff Schedules of the United States (TSUS), rather than as knit fabrics, coated or filled with rubber or plastics material, under item 355.82, TSUS. The ruling letter found that the dots of plastic were not visible except under magnification and they did not make the fabric noticeably stiffer. The sample scrutinized in that case was a white fabric.

Be advised that we are in accordance with your views on the matter. The fabrics, including the white fabric, should be uniformly classified as knit fabric ... of textile materials, coated or filled with rubber or plastics material, of man-made fibers, other, under item 355.82, TSUS.

The merchandise in the instant case consists of charcoal, camel, and natural-colored fabrics, in addition to white. You initially discuss classification of the charcoal color fabric citing Bruce Duncan v. United States, 80 Cust. Ct. 46,

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C.D. 4736 (1978), as controlling precedent. The Bruce Duncan court found dyed and unnapped black fabric, described as a fusible interlining cloth with polyamide dots, as a coated fabric within the meaning of Headnote 2(a), Schedule 3, Part 4, Subpart C, TSUS, since the dots had a visible and significant effect on the fabric. A sample of the fabric which was the subject of the Bruce Duncan case is submitted.

After review of the material, we concur in your view that the dots are visible to the naked eye and that they significantly affect the surface of the fabric. Additionally, the fabric qualifies as a coated fabric pursuant to the test delineated in T.D. 81-219. The test requires that (1) the coating or filling material be separately distinguished from the fabric by the naked eye, (2) the coating or filling material impart a shine, luster or glossy appearance or a dull appearance that is noticeable by a casual examination, or (3) the coating does not cause the fabric to have a pronounced (obvious) appearance of stiffness. The dots which coat the fabric are separately distinguishable by the naked eye and the coating material imparts a shiny appearance to the fabric.

The camel and natural-colored fabrics also clearly are coated fabrics when considered in light of the above-noted test.

Ruling Letter 078161 only considered a white fabric, the color upon which the coating is most difficult to discern. We have had an opportunity to reexamine the fabric and concur in your view that the coating is distinguishable to the naked eye. The fabric, in our view, is coated and meets the test elucidated in T.D. 81-219. Ruling Letter 070229 is modified to reflect the views of this letter.

We also acknowledge that an issue regarding the date of liquidation of a certain entry has been raised. Inasmuch as we concur that the classification issue should be resolved in favor of the importer, the issue of liquidation is now moot.

Sincerely,

John T. Lail

Harvey B. Fox
Director, Classification
and Value Division

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078161

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY - 5 1986

REFER TO
CLA-2 CO:R:CV:G
078176 JGH

078176

Mr. Lee Skinkle
Morflex Chemical Company, Inc.
2110 High Point Road
Greensboro, North Carolina 27403

Dear Mr. Skinkle:

Your letter of April 8, 1986, concerns the tariff classification of diethyl phthalate (DEP).

You note that DEP is classifiable in the provision for products chiefly used as plasticizers, in item 409.34, TSUS, and the provision which you characterize as the one for intermediates, item 404.38, TSUS.

It is Customs understanding that there are two grades of DEP: The technical grade which is chiefly used as a plasticizer, and the purified (perfume) grade which is chiefly used as a fixative or solvent in perfume formulations. There is no evidence as you suggest, that Customs has ever considered the perfume grade as an intermediate. In any event, Item 404.38 is not restricted to intermediates.

As to your suggestion that both grades be classified in item 409.34, you will note that item 409.34 covers products chiefly used as plasticizers. Since there is no evidence that the perfume grade of DEP is chiefly used as a plasticizer, it could not be classified in item 409.34, TSUS.

Sincerely,

Arthur P. Schiffl n
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

078195

19 MAY 1986

REFER TO

CLA-2 CO:R:CV:G
078195 JNB

The Honorable
Dominick L. DiCarlo
Judge of the Court of
International Trade
One Federal Plaza
New York, New York 10007

Re: American Hardboard Association v. United States and MacMillan Bloedel, Ltd., Party-in-Interest, Court No. 83-9-01301

Dear Judge DiCarlo:

Attached please find a copy of our administrative decision issued pursuant to your remand order of January 27, 1986, on the above-noted case. The decision finds that certain hardboard lap siding is most properly classifiable as laminated boards, bonded in whole or in part, or impregnated, with synthetic resins, under the provisions of item 245.80, Tariff Schedules of the United States.

Sincerely,

For John T. Fock
Harvey B. Fox
Director, Classification
and Value Division

Attachment

See Next Frame

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The following is an administrative decision on the classification of certain imported prefinished hardboard lap siding.

BASIS FOR ADMINISTRATIVE JURISDICTION:

On March 22, 1982, Customs published a notice in the Federal Register (47 FR 12258) acknowledging receipt of a petition from a domestic interested party filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). The notice solicited comments on the merits of the petition. The petition claimed that the proper classification of prefinished hardboard lap siding should be as hardboard, whether or not face finished, other, under the provisions of item 245.30, Tariff Schedules of the United States (TSUS), dutiable at the current rate of 7.5 percent ad valorem. Customs had been classifying this product as building boards, not specially provided for, whether or not face finished: Other boards, of vegetable fibers (including wood fibers), under item 245.90, TSUS, free of duty.

In a ruling dated October 29, 1982, (Control No. 070255), Customs informed the petitioner that the comments solicited by the March 22, 1982, notice had been reviewed, and the petition was denied. The classification of the siding under item 245.90, TSUS, would continue.

In response to Customs action, petitioner filed notice of its intention to contest the decision in accordance with 19 U.S.C. 1516 and section 175.23 of the Customs Regulations (19 CFR 175.23).

By publication of T.D. 83-104 in the Federal Register on May 11, 1983, (48 FR 21231), Customs informed the public of the petitioner's desire to contest the decision, and gave a detailed account of the proceedings to that date together with a full explanation of the reason for denying the petition.

In the subsequent proceeding contesting the classification before the Court of International Trade, American Hardboard Association v. United States and MacMillan Bloedel Ltd., Party-In-Interest, Court No. 83-9-01301, a tariff classification not previously considered was suggested. On January 27, 1986, the Court remanded the case for decision on the correctness of the current tariff classification as opposed to the newly suggested alternative classification under the provisions for Building boards ... : Laminated boards, bonded in whole or in part, or impregnated, with synthetic resins, under item 245.80, TSUS, dutiable at the rate of 1.4 cents per pound plus 2.6 percent ad valorem.

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By notice published in the Federal Register on March 11, 1986, the public was informed that Customs was reviewing the tariff classification of the lap siding at the direction of the Court. Comments were solicited. Six comments were received. Two comments, including that submitted by counsel for the American Hardboard Association, supported the alternative classification. The remainder of the comments, including that submitted by counsel on behalf of party-in-interest MacMillan Bloedel Ltd., opposed the alternative classification.

Due to dissatisfaction of some parties with the description of the product in the March 11, 1986, notice, a supplemental notice, soliciting further comments and providing a more complete description of the manufacturing process of the merchandise at issue, was published in the Federal Register on April 15, 1986 (51 FR 12712). Final comments were received by April 25, 1986. One comment was submitted by party-in-interest MacMillan Bloedel in response to that notice.

This decision is now being issued in response to the Court order.

DESCRIPTION OF THE PRODUCT:

The product at issue is a plank of hardboard, 7/16-inch thick and either 9 or 12 inches wide. Approximately one inch from the bottom, a hard plastic locking strip or "spline" is fixed into a groove in the back of each plank. The top edge of each plank is machined to form a groove or "rabbet", which fits the spline into the plank above.

The hardboard plank is manufactured through a wet process whereby wood fibers are combined with water, phenolic resin, wax and alum. This combination is fed onto a moving screen and is called a "wet mat". Compregnite is sprayed onto the surface fibers of the wet mat to stabilize the fibers against moisture.

A newsprint paper face which has been coated with linseed oil is then applied to the wet wood fiber mat. At this point the mat is still approximately 70 percent water. The mat then goes on to the loading elevator and into a press. Through the combination of heat and pressure, the mat is formed into a hardboard plank. The application of the heat and pressure results in the interlocking of the fibers of the newsprint and

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the wet mat due to the natural binding constituents of the wood fibers in concert with the synthetic resins. The resulting product has improved surface qualities provided by the fine fibers of the newsprint. The planks are prefinished at the time of importation with acrylic latex paint.

ISSUE:

Is the subject product a laminated building board bonded in whole or in part, or impregnated, with synthetic resins so as to be classifiable under item 245.80, TSUS?

DISCUSSION:

Face Finished v. Laminated

Counsel for MacMillan Bloedel (hereinafter MB) initially asserts that the hardboard product is "face finished" rather than "laminated." The TSUS, in Schedule 2, Part 3, Headnote 2, defines the term "face finished" as follows:

> 2. The term "face finished", as applied to the boards and panels provided for in this part, means that one or both surfaces of a panel or board have been treated with creosote or other wood preservatives ... or have been overlaid with paper, fabric, plastics, base metal or other material.

Counsel concludes that, by statutory definition, overlaying a board with paper is face finishing. As such, the afore-described manufacturing process is analagous to face finishing rather than lamination.

We do not concur. There is no basis in the statutory language to conclude that lamination and face finishing are unrelated concepts. Counsel assumes that any board that falls under the definition of face finished cannot also be laminated. The superior heading for both items 245.80 and 245.90, which reads "Building boards, ... , whether or not face finished" suggests otherwise. Building boards are classified under items 245.80 and 245.90, TSUS, without regard to face finishing. Accordingly, a face finished board is not precluded from classification as a laminated board.

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Laminated - The Common Meaning

Counsel for MB, in support of the current classification of the instant product as building boards, other, under item 245.90, TSUS, cites the definition of the adjective "laminate" found in Webster's Third New International Dictionary:

> 1. Laminate 1: ... 2: ... made by laminating: composed of layers of firmly united material.

Counsel further notes that, in the same source, the first definition of the adjective "laminate" states "consisting of laminae". "Lamina", the singular form of "laminae", is defined as "a thin plate or scale". The verb "laminate" is defined, by the same source, as "to make by uniting superimposed layers of one or more materials (as by means of an adhesive or bolts)."

Counsel for MB posits that the subject merchandise is not laminated within the above definitions because: (1) it does not consist of laminae because there are no thin plates or scales; (2) it is not made by uniting superimposed layers by means of adhesives or bolts; and (3) it is not composed of layers of firmly united material because there are no visible layers in the merchandise as a finished article.

We do not agree. First, no persuasive reason is forwarded as to why the newspaper layer cannot be considered a thin plate or "lamina" which is superimposed on the wet mat layer during manufacture.

Additionally, counsel reaches conclusions about the common definition of "laminated" without considering the language of item 245.80, TSUS. The provision includes laminated boards bonded in whole or in part (emphasis added) with synthetic resins. The newsprint layer is united to the wet mat with the assistance of the synthetic phenolic resin. We acknowledge that some bonding of the wood fibers would occur without the addition of synthetic resin and compregnite to the wet mat, but the resulting product would not be useable as hardboard. The resins aid in the bonding of the wood fibers

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through the application of heat and pressure. Clearly, the subject board is bonded in part with synthetic resin. A synthetic resin has been held to be the chief binding agent in a product when that resin was combined with layers of cloth and bound together to form a grinding disc. Crown Abrasive Co., Inc. v. United States, 34 Cust. Ct. 347, Abs. 58990 (1955).

Finally, counsel claims that the layers in the finished article must be visible. Although expert testimony is presented to support this claim, there is no basis in the cited definitions for such a conclusion. Visibility of layers is not a condition for the finding of a laminate. Counsel has formulated a legal conclusion which is not present in the lexicographical source.

On the other hand, counsel for the American Hardboard Association (hereinafter AHA) notes the following definition of "laminated":

> ... made by bonding or impregnating superimposed layers (as of paper, wood or fabric) with resin and compressing under heat.

See, Longman Dictionary of the English Language, p. 639, New Standard Dictionary of the English Language, p. 671, Webster's New Collegiate Dictionary, p. 822.

This common definition supports a finding that the subject board is laminated. The layer of paper is bonded, in part by the synthetic resin, with the wet wood fiber mat. Compression under heat results in a laminated product.

Commercial Meaning

Counsel for MB cites the United States Department of Commerce publication Commercial Standard CS251-63: Hardboard, effective February 11, 1963, which describes laminated hardboard as follows:

> Hardboard laminated with an adhesive in multiple plies to obtain greater thickness. These products are used for special purposes where added thickness or two smooth surfaces are desired. Laminated hardboards are available for internal or external use.

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From this description, counsel draws the conclusion that to be a laminated hardboard, a product must have multiple plies of finished boards of the same material (such as wood), bonded together with an adhesive (such as glue). Counsel states that the boards are required to be in layers, and they must be in finished form when bonded.

Again, counsel draws conclusions not apparent in the commercial description cited. We concede that the subject hardboard is not laminated to obtain greater thickness; however, it is laminated with the newsprint layer to obtain a smoother surface that can be more easily finished. The commercial definition does not limit the product to include only finished board of the same material bound together with an adhesive. These conditions have been artificially imposed by counsel and have no basis in the common or commercial meaning of the product.

Counsel refers to C.W. McMillin, Your Selection Guide to Bonded Wood Composition Boards, Product Engineering 41 (February 29, 1960), as supporting the notion that the industry, at the time of enactment of the TSUS, considered "laminated building boards" to have three essential components: 1) a structural core; 2) facing materials; and 3) an adhesive. The McMillin source, however, describes a product known as composite board. Counsel does not present evidence to suggest that composite board and laminated board are, in fact, the same product. The McMillin source has limited probative value when considering laminated hardboard.

It should also be noted that advertising literature published by MB notes that the product is manufactured by a process where "an exclusive oil-impregnated overlay is laminated to the hardboard surface under heat and pressure. Counsel insists that the use of the word "laminated" does not reflect the actual commercial meaning of the word. The use of the term attempted to convey the fact that the surface of the board was hard and smooth like boards that actually are laminated. The use of the term "laminated" in this context is dismissed as advertising puffery.

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The method of advertising or display of merchandise, while not determinative of classification, does have probative value. See Davis Products, Inc. v. United States, 59 Cust Ct. 226, 230, C.D. 3127 (1967). New York Merchandise Co., Inc. v. United States, 62 Cust. Ct. 38, 44, C.D. 3671 (1969). Montgomery Ward & Co. v. United States, 62 Cust. Ct. 718, 724, C.D. 3853 (1969).

In the instant case, the lamination gives the product an improved surface quality. Mr. Peter Armstrong, MB's Marketing Manager, claims this improved surface to be a competitive advantage. The product undergoes a separate manufacturing step so that the newsprint layer can be added, thereby providing a quality enhancing characteristic not otherwise available in hardboard. Such being the case, it is unreasonable to dismiss MB's advertising as mere puffery.

Expert Testimony

In support of the contention that the merchandise is not laminated, counsel for MB submits the expert testimony of Dr. Lawrence J. Broutman, Professor of Materials Engineering at the Illinois Institute of Technology, Chicago, Illinois. Dr. Broutman is stated to be an expert on laminates and building materials in general.

Dr. Broutman defines a laminate as a structure that consists of (1) dissimilar finished materials that are fused together or bonded by means of an adhesive and that constitute distinct visible layers of comparable thicknesses, or (2) similar finished materials that are bonded together by means of an adhesive that constitute distinct visible layers of comparable thicknesses. He asserts that, to the best of his knowledge, this definition is accepted by the general public and the building industry as well as by scientific and academic communities. He claims that layers must be visually distinguishable either to the unaided eye or microscopically. Sharp, definite boundary lines between layers must exist.

Counsel for AHA points out, and we concur, that Dr. Broutman's expertise is more clearly in the area of plastics. Dr. Broutman does not have extensive experience with wood or hardboard products. His expertise in plastic lamination is unquestioned; however, his inability to define clearly many common terms relating to hardboard and the wood industry colors the value of his expert testimony. See Deposition of Dr. Lawrence J. Broutman, December 3, 1985, at p. 11-14.

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Dr. Broutman avers that he derived his definition in an empirical manner, considering the universe of laminates, including those in the wood field, and extracting their common and salient characteristics. His definition places numerous conditions on laminated products that are not evident in any other source. We are of the view that the lack of support for his views from any other source diminishes the probative value of his testimony.

As has been noted, the definitions of "laminate", from lexicographical sources, do not support the conclusion that a laminate must have distinct visible layers of comparable thicknesses. Dr. Broutman has previously testified that he was unaware of any definition of laminate, other than his own, that contains the "comparable thickness" requirement. As counsel for AHA notes, this statement by Dr. Broutman impeaches his claim that his definition is accepted by the general public and building materials industry as well as by the scientific and academic communities.

On page 11 of the submission dated April 25, 1986, counsel for MB attempts to rehabilitate the views forwarded by Dr. Broutman by stating that the key to finding that a product is laminated is the presence of distinct visible layers. While the presence of a sharp boundary will reinforce the conclusion that a product is laminated, it is the layers rather than the boundaries that are important to lamination. This statement is in direct contradiction to a statement made by Dr. Broutman in his original affidavit where he claims that the boundaries must be sharp and distinct. See Affidavit of Dr. Lawrence Broutman, Exhibit X, p. 3.

Accordingly, we are of the view that Dr. Broutman's testimony is of limited probative value and does not serve to enhance the understanding of the definition of "laminated" as it applies to building boards.

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Legislative History

Counsel for AHA claims that in order to be classified under item 245.80, TSUS, a product must be building boards that are laminated and are either internally bonded in whole or in part with synthetic resins or impregnated with those resins. Counsel points to the following Tariff Classification Study language in divining the intent of Congress in enacting the 245.80 tariff classification:

> Most hardboard is presently classified in Paragraph 1413. However, if its surface is covered with a laminate of synthetic resin and paper, it is classifiable in Paragraph 1403 as a manufacture of pulp if in chief value of hardboard or in Paragraph 1539(b) if in chief value of the laminate (emphasis added).

U.S. Tariff Commission, Tariff Classification Study; Schedule 2 - Wood and Paper (November 15, 1960) at 64. The subject board is covered with a laminate of synthetic resin and paper. Both paragraphs 1403 and 1539(b) are cited in the Tariff Classification Study as sources for item 245.80, TSUS.

Counsel for MB contests above analysis because it presupposes that the surface of the product is covered with a laminate. In our view, AHA's analysis is based on something greater than supposition. It is made pursuant to the common and commercial meanings of the term "laminate" in that the product is composed of layers bonded together under heat and pressure to form an article that contains a smoother surface than would otherwise be available.

While noting that no legislative history source, including those describing the origins of item 245.80, TSUS, supply a definition of the term "laminated", counsel for MB looks to the legislative history explaining Paragraph 1402 promulgated in the Tariff Act of 1930. Paragraph 1402 provided for "wall board ... not ... laminated by means of an adhesive substance. Counsel cites the legislative history which notes that "Laminated board as known in the industry consists of two or more layers of board combined with an adhesive substance. ... the term 'laminated by means of an adhesive substance' ... is here used to indicate a board produced as a secondary process by combining two or more layers with the employment of an adhesive substance." S. Rep. No. 37, 71st Cong., 1st Sess. 42 (1929).

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This language indicates that laminated board may be combined from two layers of board; however, in the final analysis the report refers to a laminated board as one produced by combining "layers" rather than layers of board. Counsel for MB concludes that Congress understood a laminated building board to be one that had two or more layers of finished board combined by means of an adhesive substance. Again, we cannot accept the interpretation that a laminated board must be constructed of finished material. The cited language does not support this proposition. Counsel for MB insists that secondary sources be interpreted in a manner which supports the definition of laminate supplied by his expert witness even when such interpretation is not consistent with the clear language of those sources.

Counsel for AHA states that the legislative history of 245.80, TSUS, supersedes that of an "unrelated, now-defunct category adopted thirty years earlier." The Tariff Classification Study does not supersede the legislative history of the Tariff Act of 1930; however, legislative history describing the origins of item 245.80 has significant probative value in determining the type of product Congress intended to be classified thereunder.

Judicial Precedent

Both sides cite F.W. Myers & Co. v. United States, 59 Cust. Ct. 427, C.D. 3180 (1967), as favorable precedent. In F.W. Myers, a building board made of two facing sheets composed of asbestos and cement around a core asphalt impregnated fiber board, with the layers being bonded in part by synthetic resin, was held to be a laminated board. Lamination was not an issue in the case; both plaintiff and defendant conceded that classification of the product was limited to item 245.80 as laminated boards or items 518.41-44 as articles in part of asbestos and hydraulic cement. The case provides no significant instruction on the issue of lamination. No one could disagree that the product qualified as a laminated board under any definition heretofore advocated by either side. Accordingly, we find this case to have little probative value to the issue at hand.

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Counsel for MB cites United States v. O.M. Baxter (Inc.), 16 Ct. Cust. App. 257, T.D. 42868 (1928), as supporting the proposition that a laminated product is one composed of laminae or layers. The case confirms the validity of the lexicographical definitions.

Those definitions are further supported by Richard Crittal Radiant Heating Corp. v. United States, 27 Cust. Ct. 193, C.D. 1369 (1951). The court held that partially finished panels used in radiant heating were classifiable as laminated products. The panels were constructed of three layers of resin-bound asbestos with a wood filler. On each side of the center layer was an electrical element. The court found that the verb "to laminate" meant to cover or construct with layers "and this appears to be the sense in which the word 'laminated' is used in the tariff act provision." Richard Crittal, supra, at 195.

In Crown Abrasive Co., Inc. v. United States, supra, the court held that a grinding disc was classifiable as a laminated product. The disc had been formed by the combining under heat and pressure of 20-24 layers of cellulose paper impregnated with phenolic resin and coated with an abrasive. The resulting product was found to be a laminate even though a mere visual examination of the disc would not disclose the laminations.

Counsel for MB attempts to discredit the Crown Abrasive decision by noting that the test used to determine whether the merchandise was laminated involved smashing the disc with a hammer and scrutinizing the resulting debris microscopically. He claims this method of scrutiny would necessarily obscure the layers.

This criticism is misleading. The court noted that "the completeness with which the article was smashed might destroy any evidence of lamination" and dismissed the results of that test. Crown Abrasive, supra, at 348. The court gave weight to the testimony of the expert witness called by the United States (which took the position that the product was not a laminate) who admitted under cross-examination that the layers were not discernible visually.

The finding in Crown Abrasive regarding visibility of layers contradicts the definition of laminate advocated by expert witness Dr. Broutman. As with common and commercial definitions of laminate, judicial precedent provides yet another source that does not square with the expert testimony provided.

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Dr. Broutman's definition of laminate requires that the layers all be of finished products. This requirement also does not comport to judicial precedent. In Sommers Plastic Products Co. v. United States, 58 Cust. Ct. 409, C.D. 3002 (1967), the court found that polyvinyl chloride sheeting comprised of a top layer of polyvinyl chloride-type synthetic resin, a middle layer of foamed polyvinyl chloride resin and a backing of rayon fabric was classifiable as a laminated product.

The product was manufactured through a process where the middle layer is baked to a jelly-like consistency and is rolled onto the rayon fabric. Heat and pressure activate the foaming agent and cause the middle layer to expand. The top layer is then applied and is affixed through the further application of heat and pressure. The rayon backing and the top layer of polyvinyl chloride bind because of the middle layer. The result is a laminated product constructed of materials that are not finished.

Counsel for MB claims that the Sommers decision classified the product properly because the two finished layers (the rayon backing and the polyvinyl chloride top layer) were combined by means of a synthetic resin adhesive. However, the Sommers court refers to the foaming synthetic resin as a middle layer. It can be deduced from this reference that a layer need not be in finished form at the time of construction in order for the finished product to be classifiable as a laminate.

Accordingly, we find that judicial precedent contradicts Dr. Broutman's definition of laminate, upon which counsel for MB so heavily relies. Precedent supports the classification of the subject hardboard lap siding as a laminated board.

Administrative Rulings

Counsel for MB cites the following administrative precedent as support for the conclusion that the subject board is not laminated:

1) New York Ruling dated March 8, 1981 (Control No. 800125) - An insulated board consisting of wood fiber board laminated with glass fiber material bonded with a synthetic resin under heat and pressure held classifiable under item 245.80.

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2) Customs Ruling Letter of June 1, 1979 (Control No. 060298) - A product comprised of a fiberboard core with a hardboard veneer laminated thereto by means of a synthetic resin held classifiable under item 245.80.

3) T.D. 67-6(4) - A paperboard finished with kraft paper, aluminum foil or fabric was classifiable under item 245.90 as a face finished product.

The first two rulings cited by counsel specifically note the products as being laminated because of the presence of a synthetic resin bond. There is no indication that the product in T.D. 67-6(4) was bonded in whole or in part, or impregnated, with synthetic resin. Without such a bond, classification of the product under item 245.90 is proper. Classification under item 245.80 would then be precluded.

The administrative precedent that counsel for MB cites is not persuasive. We do not concur with counsel's conclusion that the above rulings uphold the definition of lamination involving use of finished products of comparable thicknesses.

Comments Other Than AHA and MB

Four other comments were received. Three of the comments were in support of the 245.90 classification. With one exception, the substance of these comments has been addressed in the general discussion above.

One commenter states that it manufactures hardboard by much the same method as MB. The commenter notes that rather than adding a layer of newsprint to the wet wood fiber mat, it adds a layer of very fine wood fibers over the coarser fibers before the application of heat and pressure. The commenter is of the view that it can be presumed that this hardboard is not laminated. While this is not the issue at bar and the evidence presented is incomplete, it cannot be stated with certainty that the board so manufactured is categorically not a laminated board.

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HOLDING:

The subject hardboard lap siding, which is manufactured through a process whereby a newsprint face is overlaid on a wet wood fiber mat and combined with such mat through the application of heat and pressure, is classifiable as a building board, not specially provided for, whether or not face finished: laminated boards, bonded in whole or in part, or impregnated, with synthetic resins, under item 245.80, TSUS, dutiable at the rate of 1.4 cents per pound plus 2.6 percent ad valorem.

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

MAY 14 1986

REFER TO

CLA-2 CO:R:CV:G
078208 JGB
818211 N.Y.

078208

Mr. David C. Pierce
520 Bleeker Avenue
Mamaroneck, N.Y. 10543

Dear Mr. Pierce:

Your letter of April 11, 1986, requests a ruling on the tariff classification of a laser photographic hologram from the Netherlands. The sample you submitted is a circular piece of flat transparent plastic, 0.087 inch thick and approximately 1-1/2 inch in diameter, upon the surface of which has been printed by holography the picture of a sea shell.

Under the principles set forth in Headquarters Ruling Letter 077273, March 10, 1986, this article is classified in item 274.70, Tariff Schedules of the United States (TSUS), the provision for "Photographs, engravings, etchings, lithographs, and wood cuts, and pictorial matter produced by relief or stencil printing process, all the foregoing, whether bound or not bound, and not specially provided for: Printed not over 20 years at the time of importation: Other," dutiable at 3.2 percent ad valorem.

You suggest that this article would have been classified in item 960.50, Appendix to the TSUS, during the effective period of this temporary provision as one of the "similar articles provided for in item 274.50 through 274.70 inchusive...." During the effective period of item 960.50, it provided duty-free entry. We agree that the hologram would have been eligible for classification in item 960.50.

When item 960.50 expired, Customs instructed the ports to permit duty-free entry under bond for this item with liquidation to be extended pending passage of legislation to make this provision part of the permanent tariff.

Proposed legislation has been introduced in the Congress pertaining to this subject. Some legislation would make all formerly 960.50-eligible merchandise duty-free under a permanent tariff provision and would make the application of the duty-free status retroactive to August 11, 1985. We do not wish to speculate about what action the

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Congress might take. If the Congress acts to make the tariff provision permanent and retroactive, goods entered between the time the provision expired and the effective date of the act will be liquidated free with the bond released. If the Congress acts to make some or all of the formerly-free goods dutiable, then Customs will liquidate the appropriate entries by collecting duty against the bond.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 9 MAY 1986

FILE: CLA-2 CO:R:CV:G
078225 JGH

078225

TO : Chief, Commercial Operations, Branch 1

FROM : Director, Classification and Value Division

SUBJECT: Clarification of Internal Advice 69/85 on the Classification of Water Imported by Pipeline - Your Memorandum of March 13, 1986

It is your opinion that there may be a conflict between the decision in ruling 077393 of December 23, 1985, and 072700 of January 20, 1984.

The tariff provisions in issue are item 166.10, TSUS, covering all mineral waters, natural, imitation, or artificial, and item 523.81, TSUS, covering crude mineral subtances.

In the January 1984 decision the water was intended for beverage use and was imported in retail size containers or in bulk, possibly by truck, to be delivered to homes or possibly bottled for table use.

In contrast, the 1985 case dealt with the shipment of water by pipeline to furnish an entire area with water. Since the water was potable it could be used for drinking water, but this was only one of the uses. The purpose was to furnish water for general use. In this sense the pipeline water was no different from a municipal water supply.

Therefore, the distinction to be drawn between the two decisions is whether the water, bottled or not, is primarily intended as a beverage classifiable in item 166.10.

Water intended for all uses, beverage use being only one, is classifiable as a crude mineral substance in item 523.81, TSUS.

Arthur J. Schuyler
For Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 23 1986

REFER TO

CLA-2 CO:R:CV:G
078257 JGH

078257

Mr. M. Radia
RAJ Chemicals Incorporated
P. O. Box 63, 5 Mershon Lane
Plainsboro, New Jersey 08536

Dear Mr. Radia:

This is to advise you that the classification expressed in ruling letter 807591 of November 21, 1983, is not in accordance with the current views of the Customs Service. That letter is revoked pursuant to section 177.9(d)(1), Customs Regulations.

A mixture of 86.3 percent ethanol and 13.7 percent isopropanol, used as an octane enhancer for motor fuel, is classifiable under the provision for mixtures of two or more organic compounds in item 430.20, TSUS. The rate of duty is 3.9 percent ad valorem but not less than the highest rate applicable to any component compound. The component with the highest rate is ethanol classifiable under item 427.88/901.50 and dutiable at 3 percent ad valorem plus 60 cents per gallon.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

See E3

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY 23 1986

REFER TO
CLA-2 CO:R:CV:G
078257 JGH

078257

Kurt Olson, Esq.
McDermott, Will & Emery
1850 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Olson:

Your letter of May 8, 1986, concerns the current status of a letter dated November 21, 1983 (807591), concerning the dutiable status of a mixture of 86.3 percent ethanol and 13.7 percent isopropanol. This mixture was classified under the provision for mixtures of organic compounds in item 430.20, TSUS. The rate of duty to be assessed was the rate for isopropanol provided for in item 428.06, TSUS, 14 percent ad valorem.

This is to notify you that the classification in the letter of November 21, 1983, is not in accordance with the current views of the Customs Service. A letter of revocation to the addressee of 807591 has been sent in accordance with section 177.9(d)(1), Customs Regulations.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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E3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 23 1986

REFER TO

CIA-2 CO:R:CV:G
078292 c
815364 NY

078292

Mr. Fred Goris
International Department
Fisher-Price
636 Girard Avenue
East Aurora, New York 14052-1885

Dear Mr. Goris:

In your letter dated September 10, 1985, you requested a ruling concerning the tariff classification of a "musical microphone" manufactured in Hong Kong.

You have described the merchandise as a microphone that transmits sound through an FM band on a radio. An examination of the descriptive literature reveals that there are 13 notes present including the numbered black buttons which are sharps and flats. However, the 0 button and the T button expand the scale another 12 notes in each direction into the tenor clef and above the treble clef. Therefore, the scale has a total of 37 notes. This article also contains an integrated circuit which gives it the capability to "play" eight prerecorded tunes and to record and playback other tunes.

You suggest that the musical microphone is properly classifiable under the provision for transmitters in item 685.30, Tariff Schedules of the United States (TSUS) because its musical capabilities are clearly subordinate to its primary function and use as a microphone/transmitter.

Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, provides that "For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults."

The photograph of the "musical microphone" and the description of its capabilities indicate that it will be chiefly used in the United States for the amusement of children or adults. Also, the product is marked with the name Fisher-Price, a major toy manufacturer.

It is our opinion that the primary design and function of this product is that of a toy musical instrument. We view the microphone feature as subordinate to the musical instrument feature rather than being co-equal with that feature.

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In view of the foregoing, it is our position that the "musical microphone" is classifiable under the provision for toy musical instruments in item 737.60, TSUS, and dutiable at the rate of 7.6 percent ad valorem.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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076292

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO
CLA-2:CO:R:CV:G
078318 c

04 JUN 1986

Mr. Henry L. Kotkins, Jr.
President
Skyway Luggage Company
Skyway Center
Seattle, Washington 98121-1392

Dear Mr. Kotkins:

In a letter dated May 16, 1986, you asked that we reconsider the points raised in your January request to our New York office which were the subject of our letter to you dated May 6, 1986.

We regret that our letter may have caused you some confusion. Our aim was to offer some guidance in the classification of luggage and to answer the somewhat hypothetical questions posed to us. Unfortunately, answers to these types of questions are not always entirely satisfactory particularly, as in this case, when the merchandise involved is the subject of intense interest to both domestic manufacturers and importers.

In an effort to clarify the matter, we offer the following restatement of our position:

(1) interior pockets, tie tapes or curtains are not "linings" for tariff purposes;

(2) loose linings are usually considered "linings" for tariff purposes;

(3) "laminated linings" (i.e., the inside surface of a laminated exterior surface material) are usually not considered "linings" for tariff purposes

(4) materials found not to be "linings" or an otherwise excluded component will be considered in determining the component material of chief value; and

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(5) a material found to be a "lining" for tariff purposes is excluded regardless of its composition.

You state that the Webster's Dictionary definition of linings quoted by us has application to garments and is not relevant to luggage because curtains, loose pockets, tie tapes, etc., do not exist in garments. In the absence of a commonly accepted definition of luggage linings, we are of the opinion that the previously quoted definition of garment linings is analogous and useful.

You assert that on entries of luggage, customs officers have not considered the laminated backing materials when determining component material of chief value. We are not aware that customs offices at any port are considering the laminated backing materials as linings which are to be excluded in component material determinations.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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JUL 22 1982

VES-12-02-CO:R:CD:C
105671 PH

This ruling concerns the tariff classification of the SKI-SURFER, a small engine-powered watercraft.

ISSUE:

What is the tariff classification of the SKI-SURFER, an approximately 9 1/2 foot long reinforced fiberglass engine-powered watercraft?

FACTS:

The inquirer has requested a tariff classification ruling on the SKI-SURFER, a reinforced fiberglass watercraft powered by a twin cylinder two stroke inboard engine with a water jet. The SKI-SURFER is apparently made in Great Britain and we so assume for purposes of this ruling. The craft is 9 feet, 5 inches in length, 3 feet, 1 inch in width, and 2 feet, 1 inch in height and weighs 287 pounds. The specifications for the craft state that it is constructed to provide places for one sitting and one sitting or kneeling passenger. The promotional literature enclosed with the ruling request indicates that the craft is for use in water-skiing and states that it can be ridden "... standing up as a surfboard ... kneeling down as a speedboat, [a]nd carrying a passenger if you wish."

LAW AND ANALYSIS:

Generally, under the Tariff Schedules of the United States (TSUS), a yacht or pleasure boat owned by a resident of the United States or brought into the United States for sale or charter to a resident thereof, is dutiable under item 696.05, TSUS, at the rate of 1.8 percent ad valorem, if valued not over $15,000, or item 696.10, TSUS, at the rate of 3.7 percent ad valorem, if valued over $15,000.

We have ruled that a motorized surfboard, consisting of a streamlined hull, a 10 horsepower two stroke engine, a shrouded propellor, a fuel tank with a reserve tank, and a long surfboard-like surface with two paddles alongside the board, which is operated by means of a pistol grip hand throttle attached by a straining rope and steered by the operator shifting his weight as on a conventional surfboard, is classifiable under item 696.05, TSUS. We also have ruled that a surf-sailer, consisting of a hull of fiberglass shell encasing a foam core, approximately 13 feet long, 27 inches wide, and 7 inches deep, with no "cockpit" or depressions in which to place one's feet while sailing, and which is steered by tilting its mast, adjusting its moveable skeg, and movement of the operator's body weight, is classifiable under item 696.05, TSUS.

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For tariff classification purposes, we can find no distinction between the above-described two cases and the SKI-SURFER under consideration. Accordingly, the SKI-SURFER is classifiable under item 696.05, TSUS, and dutiable at the rate of 1.8 percent ad valorem, assuming that it is valued at less than $15,000.

HOLDING:

The SKI-SURFER, an approximately 9 1/2 foot long reinforced fiberglass engine-powered watercraft, is classifiable under item 696.05, TSUS, and dutiable at the rate of 1.8 percent ad valorem, assuming that it is valued at less than $15,000.

EFFECT ON OTHER RULINGS:

None.

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.

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CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER E7
SURNAME	[redacted]						[redacted]
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

SEP 16 1983

VES-13-18-CO:R:CD:C
106270 LLB

This ruling concerns certain vessel repair duties assessed pursuant to title 19, United States Code, section 1466.

ISSUE:

Whether numerous items entered on a vessel repair entry are classifiably free items under section 1466(a), and whether one operation in particular is a permanent modification to the hull and fittings of the vessel?

FACTS:

The vessel in question arrived from European ports of call on May 14, 1982, and filed a vessel repair entry citing costly repairs in Bremerhaven, Germany, and Rotterdam, Netherlands. Voluminous invoices were later supplied and an application for relief in outline form was filed which entirely relies upon the confusing and nearly illegible invoices for evidentiary support. A claim of casualty is made in the case of one minor item, and the claim of vessel modification is made in regard to one other. The claim for duty-free entry for the remainder of the foreign operations is made, we assume, on the basis that they be considered classifiably free items under section 1466(a). In the interest of keeping our reply from becoming overlong, following discussion of the statutory basis for assessement of duty and granting of remission, narrative will give way to a chart format wherever possible which provides, of course, the item under consideration, our advised disposition, and citation of authority in support of that position.

106270

LAW AND ANALYSIS:

Title 19, United States Code, section 1466(a), provides in pertinent part for payment of an ad valorem duty of 50 percent of the cost of foreign repairs to a vessel documented under the laws of the United States to engage in the foreign or coastwise trade. Section 1466(d)(1) provides that the Secretary of the Treasury is authorized to remit, or refund such duties if the owner or master of the vessel provides good and sufficient evidence that the vessel was compelled by stress of weather or other casualty to put into such foreign port to make repairs to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination. As previously mentioned, the vast majority of the items to be considered in this case are claimed to be items which do not constitute repairs under section 1466(a).

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ITEM	CLAIM	RECOMMENDATION	AUTHORITY
Overtime Labor Pay	1466(a)	Dutiable	C.I.E. 970/60
Marking Anchor Chain	1466(a)	Dutiable	C.I.E. 233/60
Routine Inspection not associated with a repair	1466(a)	Free	C.I.E. 429/61
Routine Boiler inspection and cleaning	1466(a)	Free	C.I.E. 233/60
Transportation Costs (If properly segregated)	1466(a)	Free	C.I.E. 204/60
Clearance and Readings and ropeguard necessary to accomplish them (not associated with a repair)	1466(a)	Free	C.I.E. 429/61

A leading case in the interpretation and application of section 1466 is United States v. Admiral Oriental Line et al., T.D. 44359 (1930). That case distinguished between equipment and repairs on one hand and permanent additions to the hull and fittings on the other, the former being subject to duty under section 1466.

The application makes one claim of such non-dutiable modification, this appearing as invoice item number 122/17. We note, however, that a wasted pipe appears to have been replaced, and that a new sight glass was delivered to be carried as a ship's spare under this number. As such, the item would not qualify as a modification to the hull as contemplated by the court in Admiral Oriental, supra.

Also appearing is a claim for remission for alleged stevedore negligence connected with the repairs to certain cargo container stacking frames. The language of the statute is clear and specific in requiring "good and sufficient evidence" of casualty. We have previously ruled that mere bald statements, unsupported by evidence, are insufficient to support grants of remission. (Ruling letter 105812, October 27, 1982). The file contains absolutely no evidence of casualty in regard to this item and so it must be denied.

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HOLDING:

The application for remission of vessel repair duties is granted in part and denied in part, as set forth above.

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.
Chief
Carrier Rulings Branch

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[redacted]

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CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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JUL 25 1962

DB 731.1 C

275836

TD. 55679-B
4

FOR PUBLICATION

Honorable D. Patrick Ahern
Collector of Customs
Los Angeles, California

Dear Mr. Ahern:

Treasury Decision 54427-H, as amended by Treasury Decision 55461-E, covering the allowance of drawback on, inter alia, steel cleaning machines and steam generators manufactured by Clayton Manufacturing Company, El Monte, California, under section 313(b) Tariff Act of 1930, as amended, with the use of cold rolled steel sheet, is hereby further amended to cover the said products manufactured by the company under section 313(b) of the tariff act with the use of steel tubing, iron tubing (pipe), and electric motors.

There are enclosed, approved, copies of the manufacturer's drawback statements subscribed to on September 10, 1959, and November 7, 1961, requesting the foregoing action and containing the manufacturer's proposals as to procedures it will follow and records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

The quantity of imported steel tubing and iron tubing of the required kind and quality which may be designated as the basis for the allowance of drawback hereunder shall not exceed a quantity thereof equivalent to the quantity of such tubing of the same kind and quality as that designated which was used in the manufacture of the exported articles as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

The quantity of imported electric motors of the required kind and quality which may be designated as the basis for the allowance of drawback hereunder shall not exceed a quantity thereof equivalent to the quantity of the electric motors of the same kind and quality as that designated which appears in the exported articles as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

The Company has expressed its understanding and agreement that the pipe, boiler tube and electric motors which it will use in manufacture of the articles for exportation with benefit of drawback will be so similar in quality to the imported merchandise designated as the basis for drawback, that the pipe and motors used, if they

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had been imported would have been subject to the same amount of duty as was paid on the imported pipe and motors.

The company further expresses its cognizance of and states its full understanding of the conditions prescribed in the rate of drawback upon which Treasury Decision 54427-H was predicated and further agrees not to claim drawback in any case where the material used in manufacture would have paid less duty, if imported, than the material designated except for such factors as fluctuations in market value.

However, section 313(b) of the tariff act provides in part that:

> If imported duty-paid merchandise of the same kind and quality are used in the manufacture or production of articles there shall be allowed upon the exportation of any such articles...an amount of drawback equal to that which would have been allowed had the merchandise used therein been imported.

Although the company's plan of operation complies with the "same kind and quality" requirements of section 313(b) its drawback statement shows that such benefits may be claimed in disregard of the fact that paragraph 326 of the tariff act which covers steel and iron pipes provides for varying rates of duty in accordance with the diameter and thickness of such pipe. Accordingly, in order to avoid the possibility of overpayment the company shall be required to furnish in writing prior to liquidation of any drawback claims under this authorization the following statement:

> We understand, that drawback cannot be allowed under section 313(b) of the tariff act, as amended, in an amount greater than would be allowable had the merchandise used in manufacture of the exported articles been imported. Accordingly, it is understood and agreed that we will not designate imported steel and iron tubing on which a greater amount of duty was paid than would have been paid on the tubing "used" in manufacture of the articles on which drawback is claimed.

This rate is being issued also with the understanding that the company will designate and use electric motors of the same model number in its manufacture of articles for exportation with benefit of drawback.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured and exported on and after May 28, 1959. Exportation shall be made within 5 years after importation of the imported merchandise.

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Your attention is invited to the provisions of section 22.13(a) of the Customs Regulations which require the completion of drawback claims within 3 years after exportation. In this regard the file shows that an application involving the exportation of the foregoing products was filed with the collector of customs on May 28, 1959, whereby coverage was sought under the drawback law on such articles manufactured and exported on the above date. The Bureau received the application and supplemental statement on October 2, 1961. In view of the time required to consider this matter and issue this amendment the period prescribed in section 22.13(a) of the regulations is extended for six months as to the articles manufactured hereunder between May 28, 1959, and November 29, 1959.

Sincerely yours,

(Signed) W. E. HIGMAN

Deputy Commissioner

Enclosure 32292

[redacted]

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[redacted]

938572

NOV 18 1981

CLA-2 CO:R:CV:G
542638 TLL

District Director of Customs
Dallas/Fort Worth, Texas 75261

Dear Sir:

This is in reply to your memorandum dated October 9, 1981, asking for confirmation of your interpretation of TAA #25.

Your office requests advice as to whether or not a variance increase from standard material cost constitutes a material assist adjustment within the meaning of the Trade Agreements Act of 1979 (TAA).

The parent firm in the United States sells component parts to its subsidiaries in the foreign country at standard costs for the purpose of assembling integrated circuits. The assembled devices are sold by the subsidiary to the parent at prices based upon the standard cost plus a profit.

The parent discovers that at the end of the accounting period that there is a price variance from the standard, i.e., the actual cost of the material exceeds the standards.

Although the TAA states that material assists are one of the adjustments that we are permitted to add to the price paid or payable in forming transaction value, TAA #25 indicates that, if the transfer prices are established in accordance with generally accepted accounting principles, they may be accepted as statutory transaction value.

In this instance, there is no question that this importer's standard costs are based upon the use of generally accepted accounting principles and that much of the price variance was caused by unusual fluctuation in the price of gold.

Based upon TAA #25 it is your belief that a variance increase from the standard cost of materials is not a material assist because it is not a cost (not a part of standard cost) within the meaning of the TAA. Therefore, it should not be added to the transfer for formation of transaction value or for comparison with a test value to see if they closely approximate each other. Such variances should be ignored, and the transfer price accepted as transaction value, unless they are significantly and consistently in favor of the importer.

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This is to verify your belief that a variance increase from the standard cost of materials is not to be treated as an assist "within the meaning of the TAA." Simply stated, there is no authority under the TAA to do otherwise. Therefore, such variances should be ignored and the transfer price accepted as transaction value as specified in TAA #25.

Sincerely,

(Signed) Irving W. Smith, Jr.
Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

MAY 6 1983

CLA-2 CO:R:CV:V
542999 TLL

542999

Dear Sir:

Re: Application for Further Review of Protest 3001-2-000234

The above-captioned protest and application for further review were filed against your decision in the subject protest.

FACTS:

Section 10.41a(e) of the Customs Regulations requires that a consumption entry must be filed for containers diverted from international traffic, and that all import duties and import taxes due on the container or instrument at the rate or rates in effect and in its condition on the date of such diversion or withdrawal must be paid. The protestant has diverted a number of such containers, filing entries which are the subject of this protest. The district director has appraised the subject containers on the basis of a 10 year depreciation schedule while protestant is arguing that the merchandise should be depreciated over only 7 years. Protestant argues that based on a 1978 ruling, and the emphasis on generally accepted accounting principles set forth in the Trade Agreements Act of 1979 (TAA), we must accept the 7 year depreciation schedule. The 1978 ruling pertaining to a penalty case permitted depreciation of containers over a 7 year period.

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Your office has taken the position that neither the 7 year depreciation period nor the 5 year accelerated depreciation period provides a suitable value for appraisement purposes, even though they may be perfectly acceptable for tax purposes. The 10 year depreciation schedule was used because it closely approximated the market value of similar containers as reflected by the prices in actual sales transactions.

542999

ISSUE:

Has the imported merchandise been appraised correctly?

DISCUSSION OF LAW:

In reviewing the submitted file, we wish to point out that the 1978 ruling was in regard to the settlement of a particular penalty claim and is not relevant for the matter under consideration, that is, the appraisement of imported merchandise. Furthermore, since section 402 of the Tariff Act of 1930, as amended, has been amended by the TAA, we would not be bound by that decision in any event. Further, while the emphasis on generally accepted accounting principles (GAAP) set forth in the TAA is essential to the operation of that law, it does not constitute a separate basis of appraisement for imported merchandise; that is, while we must accept information in the form submitted when it is submitted in accordance with GAAP, Customs does not have to appraise imported merchandise on the basis of that information simply because it conforms to GAAP.

In a submission dated April 15, 1983, counsel for the protestant has presented two additional arguments in support of a seven year depreciation schedule. The first of these is that there is very little market for new or used 35 foot containers and that in the absence of an appreciable market, the use of a 7 or 5 year depreciation schedule is a reasonable

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method of appraisement. Secondly, the argument is also presented that section 402(f)(2) of the TAA precludes appraisement at the higher of two alternative values.

In response to these arguments, we are of the opinion that the state of the container market is not necessarily determinative of the appropriate basis of depreciation to be used in the appraisement of containers under the TAA. Customs has a clear obligation to appraise imported merchandise regardless of the market for the imported merchandise (see section 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979). The fact that there may have been a glut in the container leasing industry would not change this obligation.

The argument based on 402(f) that we may not appraise at the higher of two alternate values would, if adopted, lead to the conclusion that all differences of opinion between Customs and the importer would have to be resolved in the importer's favor. The law obviously does not require this result. What 402(f)(2) does is to preclude appraisements based on situations similar to section 402a of the Tariff Act of 1930, that is, foreign value or export value whichever was higher.

We cannot say that your office acted incorrectly in depreciating the containers over 10 years instead of the requested 7 years. Therefore, you are directed to deny this protest.

Sincerely,

[redacted] (Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

District Director of Customs
Seattle, Washington 98174

CODE AND DATE

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE RESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUN 3 1985

CLA-2 CO:R:CV:V
543534 CW

Mr. Ralph C. Meola
Corporate Transportation Manager
Rhone-Poulenc Inc.
P.O. Box 125
Black Horse Lane
Monmouth Junctio New Jersey 08852

Dear Mr. Meola:

This is in response to your letter of April 23, 1985, in which you request a clarification of the amendment to section 152.103(a)(5) of the Customs Regulations (T.D. 84-235), concerning the dutiability of foreign inland freight charges. You state that you have a copy of the February 7, 1985, telex to all field offices which contained interim instructions regarding the implementation of T.D. 84-235.

You ask whether foreign inland freight charges are dutiable under circumstances in which: (1) the terms of shipment are CIF from a related supplier, (2) the charges are separately itemized and claimed and; (3) the amount of freight is both appropriate and reasonable. You have enclosed a copy of a commercial invoice from a related foreign supplier which separately lists the amount of foreign inland freight charges included in the CIF price. You inquire as to whether a document of this type can be used as the basis for excluding foreign inland freight from the price actually paid or payable.

The commercial invoice that you have submitted is not, in itself, sufficient to establish that the foreign inland freight charges reflected thereon are non-dutiable charges. As the February 7, 1985, telex states, it is necessary for the importer to submit a "through bill of lading" (a contract, waybill or invoice) issued by a carrier or forwarder which indicates that that one carrier or forwarder was in sole control of the shipment from the place of manufacture through the interior point of port of exportation to the place where the merchandise enters the Customs territory of the United States. In other words, for the foreign inland freight to be non-dutiable under the circumstances you have described, it would be necessary for a

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through bill of lading to be furnished which indicates that one carrier or forwarder was responsible for both the foreign inland freight and the ocean freight.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

12 MAY 1986

REFER TO

CLA-2 CO:R:CV:V
554015 MBH
727943 LR

Rufus Jarman, Esq.
Barnes, Richardson & Colburn
475 Park Avenue South
New York, New York 10016

Dear Mr. Jarman:

Your letter of April 5, 1985, requested a ruling with respect to the country of origin marking requirements of certain copper alloy blanks as well as a determination as to whether contacts produced from such blanks may be claimed as American components for purposes of item 807.00, Tariff Schedules of the United States (TSUS), if they are exported from and reimported into the United States after assembly.

You describe the instant merchandise as copper alloy blanks, which have been manufactured to appropriate size and shape. The blanks are dedicated to use in the production of contacts which serve to transmit electrical impulses from one electrical device to another. Subsequent to their importation, the blanks are electroplated with precious metals and undergo a number of heating, soaking, and rinsing operations. The extent of this processing and the amount of precious metal that is added depends upon the end use of the electrical contact involved. You state that some of these contacts are sold to original equipment manufacturers, distributors and military departments, while others are used as components in the production of electrical connectors.

You argue that the processing of the merchandise in the United States renders them products of the United States for purposes of item 807, TSUS. In addition, you argue that ITT Cannon is the ultimate purchaser of the imported blanks so that pursuant to section 304 of the Tariff Act of 1930, the contacts made from the blanks need not be marked if sold in the United States. As you know, with respect to each of these issues, the dispositive question is whether the processing of the blanks into contacts constitutes a substantial transformation into a new or different article of commerce having a new name, character or use.

You emphasize that 1) the processing involves a high degree of quality control and expense; 2) that electroplating is essential to render the merchandise suitable for use as electrical contacts; and 3) the amount of electroplating determines the precise use to which the merchandise will ultimately be put.

We have carefully considered the arguments presented in your submission and are unable to agree that a substantial transformation takes place. Firstly, it is significant to observe that the blanks as imported are manufactured to size and shape and are dedicated to use as contacts. Secondly, the blanks could in fact operate as contacts for a period of time, before oxidation would impede their efficiency. Thus it is our view that the electroplating and related operations, while necessary to complete the blanks for commercial use, are more properly considered in the nature of finishing operations on the imported articles, rather than creating a new or different article of commerce. In this regard, we also observe that while the contacts may be used in a variety of different industries, their basic function is the same, to transmit electrical current. Accordingly, we do not view the fact that a single type of blank may be used in a variety of different industries as dispositive.

Finally, we note that in Headquarters Letter, 063117, dated June 28, 1979, involving very similar merchandise, the Customs Service expressed the view that no substantial transformation had occurred. For all of the foregoing reasons, we hold that no substantial transformation is present. Therefore, we conclude 1) that the contacts will not qualify as American components for purposes of item 807 upon reimportation; and 2) that since ITT Cannon is not the ultimate purchaser of the imported blanks, packages containing completed contacts must be marked with the country of origin of the blanks if they are sold in the United States.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Jo Fax 9/6/

SEP 8 [redacted]

ENF 4-02.2 R:E:C
650999 RG

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[redacted]

Dear [redacted]

This is in reference to the proposed waiver of the statute of limitations which you forwarded to this office on behalf of your company. The proposed waiver relates to San Diego District Case No. 78-2501-50123 and waives the period of limitations found in title 19, United States Code, section 1621 for a period of one year beginning August 28, 1978.

The waiver of the statute of limitations is accepted and a copy is enclosed. For your future reference, proposed waivers of the statute of limitations should be submitted in triplicate.

Sincerely yours,

Leonard Lehman

Leonard Lehman
Assistant Commissioner
Regulations & Rulings

Enclosure

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16 APR 1982

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ENF 4-02.2 CO:R:E:C
652806 LR

Dear Sir:

This is in reference to your letter dated October 1, 1981, which forwarded the petition for relief submitted by counsel on behalf of [redacted] in connection with Penalty Case Nos. 78-4701-02425 (Case A) and 79-4701-58814 (Case B).

Case A involves the seizure of 20,873 pieces of men's and women's wearing apparel domestically valued at $192,486 which was entered at J.F.K. Airport under cover of Immediate Delivery No. 8176917 on September 13, 1978. Case B involves a claim for monetary penalty in the amount of $21,670 in connection with the importation of 18,024 pieces of men's shirts entered at J.F.K. Airport under cover of Consumption Entry No. K533433 on August 28, 1978. The merchandise was seized and the claim was assessed pursuant to title 19, United States Code, section 1592 (19 U.S.C. 1592) and 19 U.S.C. 1592, as amended by P.L. 95-410, respectively, because the documents submitted upon entry allegedly contained the material false statement that Dubai was the country of origin when in fact it was India. If, as alleged, the merchandise was made in India, it was subject to quota restrictions and would not have been permitted entry into the commerce of the United States.

The seized merchandise was released on November 6, 1978, and was re-exported upon deposit of a letter of credit in the amount of $32,000.

Petitioner requests remission and in the alternative mitigation of the claim for forfeiture and the monetary penalty based on its primary contention that it never intended to defraud or violate any statutes or regulations. In particular, petitioner maintains that it is not aware that Dubai is not the country of manufacture, that it has always had good relations with Customs, that it knew that quotas for Indian garments similar to the garments in issue were subject to reopening, that there has been no loss of revenue or other adverse effect on the Government, and that it has already been financially penalized.

Before addressing petitioner's claims, we will discuss whether there was a material falsity on the entry documents, an essential element of the alleged violation.

Material Falsity

Under the provisions of 19 U.S.C. 1592, any person who enters or attempts to enter merchandise into the commerce of the United States by means of any document which is material and false may be subject to penalty. As indicated above, the instant penalties are based on the allegation that petitioner's statements on the entry documents with regard to country of origin constituted material falsities. There can be no question that petitioner's statements in this regard were material since they directly affected whether the merchandise

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[redacted]

could be entered into the commerce of the United States. At the time of these two importations, the subject merchandise if manufactured in India was subject to quota restrictions and would not be permitted entry. If, as stated, Dubai was the country of origin, there were no such quota restrictions. Furthermore, we believe that petitioner's statements that Dubai is the country of origin are false. Although there is evidence in the record which supports a determination that either India or Dubai is the true country of origin, the preponderance of the evidence supports the former conclusion.

The evidence supporting the conclusion that Dubai is not the country of origin consists of the following.

The Customs Import Specialist responsible for handling this line of merchandise has indicated that there are no facilities in Dubai for the manufacture of the imported garments. He further reports that the only two importations on record which had ever shown this type commodity having been made in Dubai are the ones involved in these penalty cases. The record further shows that petitioner had previously imported all of its garments from India. In fact, it is reported that a comparison of a shirt allegedly made in Dubai with a shirt made in India revealed that they are absolutely identical and were no doubt produced by the same manufacturer. It is also significant that a close inspection of the garments revealed that underneath the present labels showing "Made in Dubai" were stitches from previously removed labels, indicative of the fact that these labels may have been substituted for previous labels. Also, despite the fact that petitioner imported close to 40,000 garments, the record indicates that there was virtually no contact between petitioner and [redacted] the alleged Dubai manufacturer. The only correspondence presented is a letter of introduction by [redacted] stating that it was aware that petitioner had a quota problem on deliveries from India and that it could manufacture and export garments as per petitioner's specifications and models and a purchase order dated June 15, 1978, for the purchase of 20 different items from the Dubai firm. There is no other written communications regarding the means by which orders were placed or any communications involving specific manufacturing requirements.

In addition to the letter of introduction and the purchase order referred to above, the evidence in the record which supports the opposite conclusion, i.e. that Dubai is the country of origin, consists of a certificate of origin issued by the Dubai Chamber of Commerce and Industry stating that the goods in question "are of fabrics of Indian Origin and garments manufactured in Dubai." Petitioner has also presented proof of payment to [redacted] for one of the shipments.

Upon consideration of the above, we believe that the evidence of record supporting the conclusion that Dubai is not the true country of origin of the subject merchandise is more credible and probable than evidence to the contrary. The statements of the Import Specialist that there are no facilities in Dubai for the manufacture of the imported garments are especially persuasive. Also, the absence of communication between petitioner and the alleged Dubai manufacturer is significant. Accordingly, we find that petitioner's statements that Dubai is the country of origin constitute material falsities.

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Degree of Culpability

The claim for $21,670 (Case B) was based on the preliminary determination that the violation occurred as a result of gross negligence. No preliminary determination has been made with respect to Case A.

For the reasons set forth below, we find that there is insufficient evidence to support either a finding of fraud or gross negligence.

Although it has been established that petitioner's statement regarding country of origin was false, there is no evidence that petitioner had actual knowledge of the true facts, a prerequisite for either a finding of fraud or gross negligence.* Although it is possible that petitioner knew that India was the country of origin and was involved in a scheme to avoid quota restrictions, the record contains no evidence of such knowledge or involvement. It is also possible that petitioner was totally unaware that [redacted] was making misrepresentations to him regarding the country of manufacture. Indeed, the documents presented by petitioner are consistent with the latter interpretation.

After reviewing the record, we are of the opinion that the material falsities were a result of negligence on the part of petitioner. Although petitioner may not have been aware of the fact that the garments were manufactured in India, such lack of knowledge was the result of its failure to use due care is ascertaining the true facts. In view of the fact that petitioner was in the business of importing garments from India and that during the time in question such garments were subject to quota restrictions, we believe that it had an affirmative obligation to verify that the imported garments were not in fact manufactured in India. In these circumstances, petitioner's total reliance on letter of introduction by the Dubai firm was misplaced. Accordingly, petitioner's request for total remission of the penalties is denied.*

Mitigating Factors

As mitigating factors petitioner claims that it has no previous violations, that there has been no loss of revenue or other adverse effect on the Government, and that it has already been financially penalized.

The record supports petitioner's claim of no prior Customs violations. We find this to be a mitigating factor.

Although petitioner is correct in its assertions that there has been no loss of revenue in this case, we cannot consider this to be a mitigating factor. By its very nature, a quota violation usually results in no loss of

*Under the mitigation guidelines, a finding of gross negligence is also proper if it can be established that petitioner acted with a wanton disregard for the relevant facts. Although the record clearly establishes that petitioner failed to use due care to ascertain what the true country of origin was, there is insufficient evidence showing a wanton disregard for the facts.

*In light of our finding that there is insufficient evidence of fraud, petitioner's claim that it knew that quotas for Indian garments similar to the [redacted] garments in issue were subject to reopening is irrelevant.

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revenue. However, it is potentially a very serious violation in that it may result in prohibited merchandise entering the commerce of the United States. Indeed, in this case one of the shipments did enter the commerce of the United States.

With regard to petitioner's claim that it has already been financially penalized, it claims that substantial business was lost because it was unable to fill orders, that costs have been incurred and will be generated in the search for new suppliers, and that money was spent to repack the merchandise for removal from its warehouse area to Customs custody and to reexport the goods back to Dubai. Although there is nothing in the record contradicting these claims, we decline to grant further mitigation on this basis. As indicated above, we believe that petitioner's conduct contributed to the violations in this case and as a result it should bear the resulting financial burdens.

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Conclusion

In light of our findings of negligence and one mitigating factor, the forfeiture is remitted upon payment of $10,266 and the penalty claim is mitigated to $8,668. Upon such payment, the letter of credit should be returned to petitioner.

Please notify petitioner, through counsel, of this decision enclosing a copy of this letter therewith.

Sincerely,

(Signed) [illegible]

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

Area Director of Customs
J.F.K. Airport Area
Jamaica, New York 11430

[redacted]

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

11 AUG 1982

EWF 4-02.2 CO:R:E:C
653016 LR

Dear Sir:

This is in response to your memorandum dated June 9, 1982, which forwarded the petition submitted by counsel on behalf of [redacted] (Philadelphia District Case No. 81-1101-50644).

A claim for $147,277.28 was assessed against petitioner for an alleged violation of title 19, United States Code, section 1592. That statute authorizes the imposition of a penalty against a person who negligently enters merchandise into the commerce of the United States by means of any document which is material and false. In this case, during the period from December 20, 1974, through April 4, 1978, petitioner allegedly negligently entered steel bars into the commerce of the United States pursuant to false invoices. The invoices were false in that they described the merchandise as "shaft forgings for gear boxes" when in fact they were alloyed bars of steel. As a result of the false description, the merchandise was erroneously classified under the provision for parts of gear boxes in item 680.45, Tariff Schedules of the United States (TSUS), rather than under the provision for alloy steel bars in item 608.52, TSUS. There is a reported loss of revenue of $73,638.94 resulting from the misdescription, of which $49,444.84 is an actual loss and $24,194.10 is a potential loss.

In the petition for relief, petitioner requests cancellation or substantial mitigation of the penalty based on two basic claims: first, that the description on the Special Customs Invoice (SCI) was not false; and second, that the company was not negligent.

Petitioner claims that the description of the merchandise on the SCI, "shaft forgings for gear boxes", was not false because each of the imported articles was made by the forging process, the merchandise has the characteristic of a shaft forging both in its imported condition and in its condition as further manufactured, and the merchandise was in fact imported for use as parts of gear boxes. Although petitioner admits that the merchandise consisted of bars of steel rather than parts of a gear box in its condition as imported, it points to the fact that after further processing by [redacted] the ultimate purchaser, the merchandise was to be used either as a shaft in a gear box or as a finished gear. In either case, petitioner states that the imported merchandise in its final form is parts of gear boxes.

The Customs Service does not dispute petitioner's claims that the imported merchandise was made by a forging process or that it would eventually be used for parts of gear boxes. Nonetheless, we disagree with petitioner's conclusion

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that its description of the imported merchandise as shaft forgings for gear boxes was not false within the meaning of title 19, United States Code, section 1592. Merchandise is classified according to its condition at the time of importation. As such, the importer is required by statute to provide Customs with a detailed description of the goods in their imported condition, including the name by which each item is known in the country of production or exportation, in order that Customs may properly classify the merchandise. See Title 19, United States Code, section 1481(a)(3).

In this case, the imported merchandise consisted of round forged steel bars made to specific lengths and diameters for [redacted] Although the merchandise was described on the purchase orders as rough turned forged bars and on the commercial invoice as round steel, petitioner chose to describe it on the SCI's as shaft forgings for gear boxes in accordance with its ultimate use. We believe that this description did not satisfy the requirements imposed by title 19, United States Code, section 1481(a)(3). Petitioner's description created the erroneous impression that the imported merchandise consisted of gear box parts (i.e. shaft forgings) rather than steel bars which would subsequently be made into shaft forgings and gears. We find that petitioner's description was false in that it failed to furnish the description of the merchandise which is required by the statute and which would enable Customs to properly classify it.

Petitioner also claims that it did not act negligently in the preparation of its documents. Petitioner contends that through its employee, [redacted] it did all that could be reasonably expected in order to ascertain its obligations under the classification statutes: 1) it learned the uses to which the merchandise would be used after entry; 2) it consulted with Customs in a consistent manner to determine the classification of the merchandise sold to [redacted] 3) it proffered a TSUS item number identifying a use consistent with the use of the imported merchandise; and 4) it answered the communications from Customs promptly and thoroughly and in such detail as to allow the Customs officer to make a reasonable classification decision. An affidavit from [redacted] attesting to these claims has been submitted.

There is nothing in the record which refutes petitioner's claims concerning its alleged actions taken in connection with the subject entries. However, we disagree with petitioner's conclusion that the company was not negligent in the preparation of the entry documents. As stated above, an importer is required to provide a detailed description of the imported merchandise on the invoices submitted upon entry. Absent a complete description, the Customs Service cannot properly classify the merchandise. In cases such as this, where an importer chooses to adopt the language of a particular TSUS item number as its description of the merchandise rather than the description on the purchase orders or commercial invoices, we believe a prudent importer should first check with a Customs expert to insure that its legal determination regarding classification is proper. Contrary to petitioner's understanding, merchandise is not classified according to its ultimate use. We find that petitioner was negligent in the preparation of the SCI's in that it failed to use due care either in reporting the requisite facts on the invoices, i.e., that the merchandise consisted of steel bars, or in ascertaining its legal obligations.

Upon review of the record, we also find that two mitigating factors are present in this case: cooperation in the investigation and prior good record.

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653016

[illegible] [redacted] [illegible] [redacted] [illegible] [redacted] [

708613

17 MAR 1978

MAR-2-05-R:E:R
708613 AB

[redacted]

Dear [redacted]

This is in reply to your letters of November 23, 1977 and January 31, 1978, concerning the country of origin marking requirements for imported cotter pins. As you indicate, the Customs Service has ruled in CIE 719/67 that cotter pins up to 3/16 of an inch in diameter are excepted from individual marking to indicate the country of origin. You inquire whether cotter pins 3/16 of an inch in diameter and larger are required to be individually marked.

The Customs Service is of the opinion that die stamping appears to be the only feasible method of marking that would survive the handling and distribution process to remain visible until sale to the ultimate purchaser. You suggest that to so mark the cotter pins would damage the structure and strength of the pins since the marking would weaken the pins depending on the length of the pin that would be engaged in a particular use. In certain critical applications, die stamping would detrimentally affect the quality and utility of the cotter pins, creating substantial risk of possible harm.

Accordingly, pursuant to 19 U.S.C. 1304(a)(3)(B), cotter pins of all diameters are excepted from the individual marking requirements since it appears that they cannot be marked prior to shipment to the United States without injury.

GOS

CODE AND DATE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER [redacted]	(7) REVIEWER
SURNAME						[redacted]	
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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

[redacted]

This ruling specifically supersedes C.I.E. 719/67. A copy of this ruling is being circulated to Customs officers at all ports of entry to ensure uniformity in its application.

Sincerely yours,

(Signed) D. D. KAST

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

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CODE AND DATE	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

[redacted]

SEP 15 1978

MAR-2-05-R:E:R
709285 JB

[redacted]

Dear [redacted]

This is in reference to your letter of July 3, 1978, concerning the marking of country of origin of pressure sensitive tapes which your firm imports from Italy and distributes in the United States. You ask if it is necessary for country of origin marking to appear on each core of inner rolls if the individual boxes in which you sell the items bear the origin marking. Your firm sells to the wholesale trade for resale to industrial users and you say the minimum quantity that would be resold to industrial users is one box with individual rolls of tape enclosed.

19 U.S.C. 1304, the "marking statute," provides that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States, with certain exceptions. 19 U.S.C. 1304(a)(3)(D) authorizes an exception from individual marking if the marking of the container in which an article is imported will reasonably indicate the origin of the article to the ultimate purchaser.

If the "industrial users" do not resell the pressure sensitive tapes but employ the items in their business, the firms may be deemed to be the ultimate purchasers and the marking of the individual boxes will suffice to indicate origin marking. If, however, there is any possibility that the "industrial users" resell the pressure sensitive tapes for retail use, the purchaser at retail is the ultimate purchaser and the inner cores of the rolls must indicate the country of origin marking.

709285

607 [redacted]

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[redacted]

We are unable to give you a decision as to the ultimate purchaser of the imported tapes from the information presented. Please communicate with the District Director of Customs at the port of entry of the goods as to the appropriate evidence he may require to identify the ultimate purchaser for consideration of the origin marking exception you request.

Sincerely yours,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

[redacted]

[redacted]

706285

608 [redacted]

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719593

JUN 30 1982

MAR-2-05 CO:R:E:E
719593 FBO

Dear [redacted]

This is in response to your letter of May 27, 1982, concerning the country of origin marking designations for the Republic of Ireland. You state that the United Kingdom Descriptions Department objected to the use of the marking designations "MADE IN IRELAND" or "IRELAND" for goods made in the Republic of Ireland. It is their position that this would lead to the assumption that the goods were manufactured in Northern Ireland and not in the Republic of Ireland.

We note your submission from two American editions of the Webster Dictionary stating that the Island of Ireland is divided between the Republic of Ireland and Northern Ireland. The Republic of Ireland is referred to interchangeably as Ireland or Eire. The latter designation "EIRE" is the Irish word for Ireland and the proper country name. According to the Embassy of Ireland, Ireland is a bi-lingual country as set out in the basic law which is its Constitution.

The use of Ireland and Eire properly identifies the Republic of Ireland and satisfies the country of origin marking requirements for section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), copy enclosed. Since this matter involes the Republic of Ireland, you may wish to bring your problem to their attention as well.

Sincerely,

(Signed)

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

Enclosure

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEC 7 1982

720866

MAR-2-05 CO:R:E:E
720866 DK

Dear [redacted]

This is in reference to your letter of November 19, 1982, concerning the marking of certain contact lens material which one of your clients might wish to import into the United States after intermediate processing in Mexico.

You say that your client contemplates sending the basic acrylic material to Mexico in the form of "buttons" or "blanks. In Mexico, the "button" or "blank" would be subjected to a series of grinding and polishing operations which produce a hard, brittle lens. This lens would then be shipped back to your client in the United States, which would further process the lens into a useable soft contact lens by a hydration process and certain other steps.

One of the questions presented was whether the hard lens returned from Mexico would have to be marked as to the country of origin on the lens itself. We are of the opinion that the hard lens itself could not reasonably be marked to indicate the country of origin, or could not be marked without injury. Accordingly, the hard lenses returned from Mexico may be excepted from individual marking to indicate the country of origin under either 19 U.S.C 1304(a)(3)(A), as articles incapable of being marked, or under 19 U.S.C. 1304 (a)(3)(b), as articles that cannot be marked prior to shipment to the United States without injury.

Sincerely,

(S[illegible] LEWIS

Donald H. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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MAR-2-05 CO:R:E:E
721170 FBO

This ruling concerns the country of origin marking requirements of certain wood carvings.

ISSUE:

Whether the proposed label for wood carvings meets the country of origin marking requirements of 19 U.S.C. 1304.

FACTS:

Presently, the importer is importing various wood carvings which are sold to gift shops throughout the nation. Each item is marked "Made in Phillipines." The importer is the designer of the items and the items are made to their specifications. The importer now seeks approval of a new label which will read "Designs by Noveltex - Miami Inc." and under this "MADE IN THE PHILLIPINES."

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

Section 134.46 of the Customs Regulations states that in any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city of locality in the United States, or the name of any foreign country or locality other

G11

than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legible and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

The suggested label with "Made in the Phillipines" right under "Designs By NOVELTEX-Miami Inc." meets the requirements of Section 134.46 of the Customs Regulations.

HOLDING:

The proposed label for wood carvings meets the requirements of 19 U.S.C. 1304.

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

731170

G12 [redacted]

[redacted]							
CODE AND DATE		(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

AUG 31 1983

MAR-2-05 CO:R:E:E
722742 FBO

This ruling concerns the country of origin marking requirements of [redacted] cosmetic packages.

ISSUE:

Whether the marking described below meets the country of origin marking requirements of 19 U.S.C. 1304.

FACTS:

An importer wishes to import various size cosmetics from Japan that bear the trademark [redacted] on the front of the individual package of cosmetics. On the back side, there is a detailed description of the ingredients and underneath is approximately the same lettering "Made in Japan Dist. By [redacted] Under this, there are various other descriptions in a variety of languages and finally the three cities "New York, Paris, London." The importer wishes to know if Customs will accept this marking.

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended, (19 U.S.C. 1304), provides generally that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the

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English name of the country of origin to an ultimate purchaser in the United States. After examining the samples, we are of the opinion that the marking, itself is adequate.

HOLDING:

The cosmetic packages are in compliance with 19 U.S.C. 1304.

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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[redacted]

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CODE AND DATE						
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SURNAME						

DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-72)

725526

JUN 12 1984

MAR 2-05 CO:R:E:E
725526 HL

[redacted]

Dear [redacted]

This is in reply to your letter of June 1, 1984, requesting approval for a proposed country of origin marking of sweet meats from West Germany.

The wrappers of the subject imported sweet meats will indicate the address of the manufacturer and no other address. The address that does appear will indicate "West Germany" as part of the address. You inquire whether this marking will satisfy the country of origin marking requirements.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, unless excepted, every article of foreign origin or its container must be legibly, permanently and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

In this case, the product wrapping (container) will reach the ultimate purchaser in the United States. The wrapping will contain the country of origin, West Germany, as part of the foreign manufacturer's address. This country of origin appears to be legible, permanent and conspicuous. It is not lost in the foreign street address, but rather appears on a separate line.

We believe that the subject marking reasonably indicates the country of origin to an ultimate purchaser in the United States. We therefore find such marking to satisfy the requirements of 19 U.S.C. 1304.

Sincerely,

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(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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CODE AND DATE	[redacted]	REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

NOV 8 1985

UNITED STATES CUSTOMS SERVICE
1301 CONSTITUTION AVENUE, NW.
WASHINGTON, D.C. 20229

X UNCLASSIFIED

11/7/85

JOHN ATWOOD 566-5765

ALL REGIONAL COMMISSIONERS AND REGIONAL, DISTRICT AND PORT DIRECTORS OF CUSTOMS

SUBJECT: "WALTHER" TRADEMARK (OUR REF. 729120 A)

RE: TELEX AUGUST 27, 1985; HEADQUARTERS ISSUANCE 85-310, DATED JULY 11, 1985; TELEX AUGUST 14, 1985.

729120

AN EARLIER DECISION DENYING ENTRY TO PISTOLS MADE BY MANURHIN BEARING THE WORD "WALTHER" WAS SUSPENDED BY THE ASSISTANT SECRETARY PENDING LITIGATION BETWEEN PRIVATE PARTIES. UPON REVIEW OF FURTHER SUBMISSIONS BY BOTH PARTIES, THE ACTING ASSISTANT SECRETARY HAS CONCLUDED THAT THE STAY IS NO LONGER APPROPRIATE AND THEREFORE IS LIFTED, EFFECTIVE DECEMBER 5, 1985, AT WHICH TIME ENTRY SHALL BE DENIED TO PISTOLS MADE BY MANURHIN (MANUFACTURE DE MACHINES DU HAUT-RHIN) BEARING THE WORD "WALTHER" REGARDLESS OF SIZE, NUMBER OF APPEARANCES, AND WHETHER OR NOT IN COMBINATION WITH THE MANURHIN WATERWHEEL TRADEMARK, THE WORD "LICENSE," OR ANY COMBINATION THEREOF, UNLESS IMPORTED BY, OR UNDER AUTHORIZATION OF, THE U.S. TRADEMARK OWNER, INTERNATIONAL ARMAMENT CORPORATION (INTERARMS).

for DONALD W. LEWIS
DIRECTOR, ENTRY PROCEDURES
AND PENALTIES DIVISION

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DECISION ON DISPUTED CLAIM OF INFRINGEMENT

DATE: MAY 12 1986

REFER TO

CONTROL NO:
CPR-2 CO:R:E:E 729393 km

YOUR REF :
Case No. 85-518612-4

TO:
District Director of Customs
P.O. Box 2112
San Juan, Puerto Rico 00903

COPYRIGHT OWNER: J. Shin Company, Inc.
COPYRIGHT REGISTRATION NO: VA 139-107 and VA 139-106
DATE OF FIRST PUBLICATION: September 1, 1980

PROTECTED ARTICLE (description):

"ICE CREAM DOLLS (GIRL)" and "ICE CREAM DOLLS (BOY)" (Customs Issuance 84-03). Dolls of various heights composed of a soft sculpture and fabric design of toddler children with a plastic ice cream cone on a string around the neck.

IMPORTED ARTICLE (description):

792 dozen "CUTIE KIDS" dolls, little boy and girl dolls approximately 6-7 inches with soft plastic molded faces and hard plastic bodies. The dolls have yarn hair.

DIFFERENCES AND SIMILARITIES NOTED:

The "CUTIE KIDS" dolls appears to be substantially similar, if not identical, to the "ICE CREAM DOLLS" except that they do not have ice cream cones around their necks. The contour of the "CUTIE KIDS" face and hands is nearly identical to that of the "ICE CREAM DOLLS." Their clothing, which includes dresses and bonnets for the girls and coveralls and hats for the boys, is similar to that of the "ICE CREAM DOLLS." Even the clothing color for the little girl, pink, is the same. Except for the lack of the ice cream cone, the only other difference between the goods, is in the feet. Rather than the shapeless feet of the "ICE CREAM DOLLS," the imported items have molded five-toed feet with shoes.

SUBSTANTIAL SIMILARITY TEST: Whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same; Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F.2d 487 (1960). Whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work; Ideal Toy Corp. v. Fab-Lu Ltd., 360 F.2d 1022 (1966). There must have been access to the copyrighted work, as well as substantial similarity not only of the general ideas but the expression of those ideas as well.

DECISION: [X] Infringing - Imported articles subject to seizure, forfeiture and destruction; return to country of export may be permitted by district director if satisfied that importer had no reasonable grounds for believing that his acts constituted a violation of law; bond of copyright owner (if any) returned. (17 U.S.C. 602(b), 603(c); 19 CFR 133.42, 133.44)

[ ] Non-infringing - Imported articles and bond of copyright owner (if any) released to importer.

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Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

APR 7 1986

TMK-3 CO:R:E:E
729427 SO

This ruling concerns the applicability of the prohibitions set forth in section 42 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 440; 15 U.S.C. 1124), against the importation into the United States of goods bearing infringing marks and names, and in 19 U.S.C. 1526(e) against any such merchandise bearing a counterfeit mark (within the meaning of 15 U.S.C. 1127) imported into the United States in violation of the provisions of 15 U.S.C. 1124.

ISSUE:

Would the importation of handbags and luggage bearing a mark suspected of copying the "DESIGN" trademark of Louis Vuitton S.A., a French corporation, applied without authorization of the trademark owner, constitute trademark infringement?

FACTS:

The Area Director of Customs, New York Seaport, requested internal advice as to whether handbags and luggage constructed of dark brown PVC material bearing a design consisting of a repeating pattern using the letter "V," an inverted letter V," a four pointed star similar in structure to the Knights of Malta, and a line of fleur-de-lis designs are confusingly similar to the protected "DESIGN" trademark of Louis Vuitton, which may be described as the letters "L" and "V" superiposed over each other and surrounded by a fleur-de-lis type design. The Vuitton trademark registration is protected by Customs for pocketbooks, handbags, luggage and other items. The Custom House Broker for the importer submitted a memo to our New York office denying that the imported articles infringed the Louis Vuitton trademark, but failed to furnish his reason(s) for reaching that conclusion. A sample handbag was submitted.

LAW AND ANALYSIS:

Section 42 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 440, 15 U.S.C. 1124) prohibits the importation into the United States of merchandise which shall copy or simulate a registered trademark of any foreign manufacturer or trader who is entitled under the provisions of a treaty, convention, declaration, or agreement between the

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United States and any foreign country to advantages afforded by law to citizens of the United States in respect to trademarks, provided, a copy of such trademark registration is filed with the Secretary of the Treasury and recorded in the manner provided by regulations (19 CFR 133.1 - 133.7). A "counterfeit" trademark is defined as a spurious trademark which is identical with or substantially indistinguishable from a registered trademark (19 CFR 133.23a).

Infringement of federally registered marks is governed by the test of whether defendant's use of a similar mark is likely to cause confusion, or to cause mistake, or to deceive. When comparing conflicting marks to determine whether or not they are confusingly similar, it is important to consider the impression the marks as a whole create on the average reasonably prudent purchaser.

Upon comparison of the suspected infringing mark with the Vuitton trademark, we note that the two marks are strikingly similar in appearance. The only differences noted are the absence of the letter "L" superimposed over the letter "V" (or the inverted "V") and minor differences in the shape of some of the figures that make up the fleur-de-lis pattern. We are of the opinion that the ordinary purchaser at retail is likely to be confused by the similarities in the mark that appears on the imported articles and the protected "DESIGN" trademark of Louis Vuitton. However, we are of the opinion that the differences noted above preclude a finding of a "counterfeit" trademark violation, noting the strict manner in which the term "counterfeit" is defined in the law and regulations.

The Vuitton "DESIGN" trademark has been in continuous use since 1905. Consequently, this highly distinctive trademark is strongly associated with the Vuitton business and its reputation for quality products. It appears to us that the importer of the handbags and luggage bearing the suspected infringing mark in question is a latecomer in the industry. In these situations, any doubts regarding the likelihood of confusion should be resolved in favor of the prior user of the mark. The theory behind this is that the newcomer's field of selection of a mark is not so limited as to require the adoption of a mark likely to cause confusion.

In this regard, we note the decision of the Court of Appeals, Ninth Circuit, in the case of Vuitton et Fils S.A. v. J. Young Enterprises, Inc. 212 USPQ 85 (1981), quoted in part below:

> "Vuitton, of course, cannot have a monopoly in producing luggage which has an aesthetically pleasing design or color, but it has created one specific pleasing design, which has been registered as its trademark and which is

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729427

uniquely associated with its line of goods. If it appears that the trademark has secured a secondary meaning in the market place due to its long use and favorable acceptance, Vuitton should be protected in the use of that mark. On the record it appears that Young, as the imitator, is appropriating Vuitton's reputation in the marketplace for Young's own purpose and gain. Nothing prevents Young from constructing or manufacturing its own similar line of luggage with its own unique trademark, and marketing that line without confusing the public about the origin and manufacturer of the goods."

729427

HOLDING:

Entry into the United States of handbags and luggage (described above) bearing marks which are confusingly similar to the registered "DESIGN" trademark of Louis Vuitton is prohibited. Articles detained or seized may be released to the importer if any of the circumstances set forth in sections 133.21(c) or 133.51(b) of the Customs Regulations (19 CFR 133.21(c), 133.51(b)) are applicable.

John F. Atwood
for Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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[redacted]

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CODE AND DATE	(1) INITIATOR [redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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SURNAME							

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73) (Previous editions may be used)

*U.S. GPO: 1984-719-979

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 14 1986

REFER TO
MAR-2-05 CO:R:E:E
729433 SO

Jack D. Mlawski, Esq.
Barnes, Richardson and Colburn
475 Park Avenue South
New York, New York 10016

Dear Mr. Mlawski:

This is in response to your letter of March 6, 1986, on behalf of Trinity Paper & Plastics Corporation, requesting a binding ruling on the country of origin marking requirements applicable to certain disposable plastic bags, to be imported in bulk from Brazil and/or Taiwan. The bags will be sold in marked containers to grocery stores, drug stores and other retail outlets for use in packaging items at the check out counters. You referred to our telephone conversation of February 11, 1986, and asked for confirmation of our informal opinion, that C.S.D. 79-380 would apply under the above facts.

C.S.D. 79-380 concerns the country of orign marking requirements applicable to polyethylene bags and their containers made in Mexico. The importers of those bags intended to use them for packaging their products for sale. We are of the opinion that 19 CFR 134.24(c)(1), the regulation cited in C.S.D. 79-380, quoted below, also applies where there is an intervening sale by the importer of the bags to third parties (the food and drug store chains) who will use the disposable bags to package goods sold at retail. In this situation, the retail outlets are considered to be the "ultimate purchasers" for purposes of meeting the requirements of 19 U.S.C. 1304(a)(3)(D).

> "(c) Imported to be filled- (1) If unmarked. When disposable containers and holders are imported by firms who will fill or package them with various products which they sell, these persons of firms are the "ultimate purchasers" of these containers or holders and they may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D). The outside wrappings or packages containing the containers shall be clearly marked to indicate the country of origin."

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

Samuel A. Brandie

for Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

A9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 23 1986

REFER TO
MAR-2-05 CO:R:E:E
729434 SO

William F. Joffroy, Jr., President
William F. Joffroy, Inc.
Post Office Box 698
Nogales, Arizona 85628-0698

Dear Mr. Joffroy:

This is in response to your letter of March 13, 1986, on behalf of Graphic Creations, Inc. of Tucson, Arizona, concerning the country of origin marking requirements applicable to glass ornaments and glass articles which your client intends to import from Mexico. The ornaments and articles in question will be imported in semi-finished condition for further processing at the Graphic Creations plant in Tucson. Article No. 1 is a "Hummingbird," No. 2 is a "Bluebird on Oval Back," No. 3 is a "Cardinal on Frosted Base," and No. 4 is a "Jewel Box With Flower." Samples were submitted. When imported, the individual articles will not be marked.

19 U.S.C. 1304 provides, in general, that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. Section 134.35 of the Customs Regulations (19 CFR 134.35) provides that articles used in the United States in manufacture which results in articles having a name, character, or use differing from that of the imported articles, will be within the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer in the United States who converts or combines the imported article into a different article will be considered to the the "ultimate purchaser" for purposes of meeting the general requirement of 19 U.S.C. 1304(a) that all articles of foreign origin must be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States. The imported articles would be exempted from marking in this situation. However, the outermost containers of the imported articles shall be marked with the country of origin.

You are claiming that the marking exception set forth in Section 134.35 of the Customs Regulations (19 CFR 134.35) for articles used in the United States in manufacture which results in articles having a name, character, or use differing from

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that of the imported article, applies to article No. 4. Your letter outlines the additional processing which the semifinished jewel box (Article No. 4) undergoes in the United States. These operations are: (1) cut mirror bottom, (2) print mirror, (3) lead mirror, (4) attach the sides to the bottom, (5) cut a 4" octogon lid from clear glass, (6) sandblast a 1/4" border around the lid, (7) lead the lid, (8) add a hinge and two lead stops to the lid, (9) attach flower to lid, (10) plate box, (11) plate lid, and (12) attach lid to box.

We are of the opinion that the additional processing of Article No. 4 referred to above, to be performed by Graphic Creations, Inc., in the United States, amounts to a substantial transformation of the imported article by a process of manufacture which results in articles having a name, character and use differing from that of the imported articles. Accordingly, article No. 4 may be excepted from individual marking pursuant to 19 CFR 134.1(d) and 134.35, so long as the containers in which they are imported are legibly and conspicuously marked to indicate the country of origin, and Customs officers at the port of entry are satisfied that the articles will be used only in the manufacture of finished jewel boxes and not otherwise sold. There would be no need to mark "Made in Mexico" or "Product of Mexico" on the retail boxes for the jewel boxes.

You are not claiming the marking exception set forth in Section 134.35 for articles No. 1, 2, & 3. These articles are all cleaned and chrome plated in the United States. Hooks or suction cups are added. The articles would have to undergo more substantial processing to qualify for the Section 134.35 exemption. However, you are claiming the exceptions in Section 134.32(d) & (g) of the Customs Regulations (19 CFR 134.32(d)(g)) for the articles. These exceptions are granted in cases where the marking of the container will reasonably indicate the origin of an article and where the mark would necessarily be obliterated, destroyed or permanently concealed in the processing.

You stated that the cartons in which the unfinished articles will arrive in the United States will be marked "Assembled in Mexico." You also plan to use the mark "Assembled in Mexico" in letters of comparable size and in close proximity to the Tuscon, Arizona, address of your client, on the retail boxes in which the finished articles will be packed for distribution. Without further information concerning the source of the component parts of each article, we cannot approve the marking "Assembled in Mexico" for use on either package. We note that Section 134.46 of the Customs Regulations (19 CFR 134.46) provides that in cases where the name of any city or locality in the U.S. other than the locality in which the article was manufactured or produced appears on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

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We are also of the opinion that the marking exception in 19 U.S.C. 1304(a)(3)(G) and 19 CFR 134.32(g) would be applicable to articles No. 1, 2, and 3, because any mark placed on them prior to importation would be obliterated or destroyed in the finishing operations to be performed by Graphic Creations, Inc., in the U.S. The retail packages for the finished articles shall be marked to indicate Mexico as the country of origin.

Accordingly, all four glass articles may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D), and 19 CFR 134.32(d) if the outermost containers in which they are imported are legibly an conspicuously marked to indicate the country of origin and Customs officers at the port of entry are satisfied that they will reach the ultimate purchasers in the United States (Graphic Creations, Inc., for article No. 4, and the retail purchasers for articles No. 1, 2, and 3) in packages which are marked with the country of origin in the manner described above. Your client should be prepared to furnish statements or affidavits to this effect for each entry of articles for which exceptions to individual country of origin marking are requested.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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789434

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 27 1986

REFER TO

MAR-3 CO:R:E:E
729451 LR

James S. O'Kelly, Esq.
Barnes, Richardson & Colburn
475 Park Avenue South
New York. N.Y. 10016

Dear Mr. O'Kelly:

This is in response to your letter dated March 26, 1986, on behalf of one of your clients, requesting a ruling on the country-of-origin marking requirements of imported temples and fronts for use in the manufacture of prescription eyewear. A sample temple and front along with a finished pair of eyeglasses produced by your client was submitted.

You indicate that your client imports temples and fronts made in the Republic of South Korea directly from the manufacturer in bulk containers. Following importation, your client ships the temples and fronts to one of their prescription laboratories for use in the production of complete eyewear systems. According to your submission, the frame parts account for approximately 19 percent of the total cost to produce the prescription eyewear and that by far, the more exacting and costly steps are associated with the production, inspection, cleaning and control of the prescription lens. You believe that the imported temples and fronts are exempt from individual marking under section 304(a)(3)(H) of the Tariff Act of 1930, as amended, because they are substantially transformed by your client after importation, and become an integral part of a different article of commerce, namely, prescription eyewear.

Section 304 of the Tariff Act of 1930, as amended, generally requires that all foreign articles imported into the United States be marked to indicate the country of origin to the ultimate purchaser. Section 304(a)(3)(H) provides that articles may be excepted from individual marking requirements if an ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin. Such an exception would be applicable in this case only if your client, and not the consumer, is the ultimate purchaser of the frames.

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Customs has consistently required that imported frames be individually marked with the country of origin where both components (fronts and temples) are imported in a finished condition for assembly in the United States into finished frames; the rationale being that the assembly of the finished frame components does not substantially them into a new and different article of commerce. In such circumstances, the consumer, and not the importer/assembler, is the ultimate purchaser. See Ruling Nos. 728504 and 709266. (That prescription lenses would be made for these frames after importation appears to be implicit in these decisions).

In previous rulings in which Customs held that imported frames were exempt from individual marking, the frames themselves were subject to further processing in the United States before sale to the consumer. (For example, in C.S.D. 80-43, one of rulings you cite, the imported frames were subject to an elaborate dyeing process. In Ruling No. 709551, the imported frames were, among other things, plated to make them resistant to tarnishing). Frames are also exempt from individual marking where a foreign frame component (temple or front) is combined after importation with the other frame component (temple or front) of domestic origin. See 728504. In such circumstances the imported frame component is substantially transformed after importation into an integral component of the finished frame.

In this case, we are of the opinion that the consumer, and not your client, is the ultimate purchaser of the frames. First, both the fronts and temples are imported in a finished condition for assembly in the United States. As indicated above, the assembly of the finished foreign frame components in the United States does not substantially transform them into a new and different article of commerce; nor does the addition of the prescription lens. We believe that the consumer purchasing prescription eyeglasses is in effect purchasing two separate items, the frames and the prescription lens. The consumer generally makes a decision to purchase a particular frame from a display counter after trying it on for fit and styling. Only after the initial decision is made on the frame is it sent to the lab for the addition of the prescription lens. The decision to purchase a particular frame is made separate and apart from the processing involved in the addition of the prescription lens. In view of these circumstances, we find that the consumer is the ultimate purchaser of the frames and is entitled to be informed of its country of origin.

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728451

A14

In accordance with the above considerations, we find that the imported temples and fronts must be individually marked with their country of origin. If the temples and fronts are produced in the same country and are imported together for assembly into a complete frame, we will permit the marking "Frame (country of origin)" on only one of the components.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

729451

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B1

ORIGINATING OFFICE: CO:R:E:E

DISTRIBUTION: P-98

COPYRIGHT

NUMBER: 86-067

EFFECTIVE DATE: APR 25

EXPIRES: INDEFINITE

SUBJECT: "TEN DOLLAR DEFENSE"

REFERENCES: Telex dated March 14, 1986, signed by Donald Lewis, Director, Entry Procedures and Penalties Division

1. PURPOSE

To reiterate and clarify procedures for handling suspected infringing goods where a copyright certificate of registration for those goods is issued and presented after they have been seized or detained.

2. INFORMATION

Goods believed to be, or suspected of, infringing recorded copyrights have been released upon the importer's presentation of a copyright certificate of registration issued by the U.S. Copyright Office after their seizure (133.42, C.R.) or detention (133.43). This action has sometimes been referred to as the "TEN DOLLAR DEFENSE."

To prevent the circumvention of the copyright laws and the Customs regulations, Customs will not consider a certificate of registration of a claim to copyright to constitute irrefutable prima facie evidence of a copyright validity, when suspicious facts and circumstances indicate piratical copying or a suspicion of piratical copying.

3. ACTION

Customs will not automatically release suspected infringing goods upon presentation of a certificate of copyright registration issued after detention or seizure. Rather, when the goods are clearly piratical or clearly suspect, the procedures provided in section 133.42 or 133.43, as appropriate, will be followed.

File: CPR-3-CO:R:E:E
729464 KM

Steven Rich

Chief, Entry, Licensing and
Restricted Merchandise Branch

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CUSTOMS FORM 232G (103183)

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY - 6 1986

REFER TO
MAR 2-05 CO:R:E:E
729494 km

Mr. Jim Scully
Haggar Apparel Company
6113 Lemmon Avenue
Dallas, Texas 75209

Dear Mr. Scully:

This is in response to your letter of April 15, 1986. You have submitted samples of suit jackets and slacks from Haggar and from one of Haggar's competitors, and have asked whether both companies have complied with country of origin marking requirements. Specifically, you have asked whether the labels which appear on each of the articles meet the requirement of 19 U.S.C. 1304 that they be marked in a conspicuous place.

The Haggar garments consist of a pair of blue seersucker slacks and a brown tweed suit jacket. The slacks bear a white label made from natural or synthetic film which is sewn upon the garment and contain the words "Assembled in Mexico of USA Components" in black print approximately 1/12 of an inch in height. These words are located at the bottom of the label about 1/3 of an inch beneath the fabric content. The label is located approximately 1 inch to the left of the Haggar brand label on the rear portion of the waistband.

The Haggar suit jacket bears a fabric label with the words, "Made in Brazil," sewn on the inside center of the neck midway between the shoulder seams. The lettering is in yellow upon a black background and is approximately 1/4 of an inch in height. Another fabric label is sewn over the inside right breast pocket directly beneath the brand label. This marking appears in yellow lettering approximately 1/10 of an inch in size and is directly beneath larger sized lettering regarding the fabric content.

The competitor's garments consist of a pair of grey slacks and a grey jacket. The slacks bear a natural or synthetic fiber label which reads "Assembled in Mexico of Components Made in U.S.A." in black lettering approximately 1/16 of an inch in size. The marking appears along side of, and in the same size as, the lettering regarding fiber content of the garment. The label is located on the inside seam of the lining on the left pocket, approximately 1 inch below the inside waistband.

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The competitor's suit jacket bears a label with lettering similar in content, size and location as that on the slacks. The label is sewn onto the inside center of the neck midway between the shoulder seams. However, this label is located behind and beneath the brand label. The marking label extends down vertically from the neck whereas the brand label is positioned horizontally across the neck so that only about half of the marking label is visible. The rest of the marking label is obscured by the brand label. Another brand label appears on the inside right breast pocket. However, no other country of origin marking label is present on the jacket.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser the English name of the country of origin of the article. See 19 CFR 134.11. The marking must be conspicuous enough so that the ultimate purchaser will be able to find the marking easily and read it without strain. (19 CFR 134.41). The marking must not be covered or obscured and must be visible without disassembling, removing, or changing any parts.

Customs has provided specific marking requirements with respect to certain garments. We have held that shirts, blouses, and sweaters must be marked by means of a fabric label or label made from natural or synthetic film sewn or otherwise permanently affixed on the inside center of the neck midway between the shoulder seams or in that immediate area. (T.D. 54640 (6)). Customs has also allowed this label to be located on coats and suits over or below the inside breast pocket in close proximity to the brand name label, (ORR Ruling 638-69), or on the inner facing of the coat near the fastening devices and brand name label. (L.D. 79-0470).

Customs has also ruled that marking of trouser, jeans and slacks should be made by means of a permanent label affixed in a conspicuous location on the garments, such as the inside of the waistband, and that paper labels sewn or otherwise attached to the garments would not be acceptable. (T.D. 71-264(3)).

We are of the opinion that neither the competitor's slacks nor its suit jackets meet the country of origin marking requirements. The label on the slacks does not comply with Customs

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requirements that it be located on the waistband or other conspicuous place. The label appears inches beneath the waistband and far removed from the waistband's center seam and the brand name label. The lettering is miniscule by comparison with the competitor's brand name label, and the country of origin is lost in other wording regarding the material content and lot number contained thereon. The suit jacket also fails to meet the requirement that marking be conspicuous to the ultimate purchaser. Although the label appears on the inside neck portion of the garment, the country of origin marking is entirely obscured by the brand name label which sits directly in front and on top of it. This label would not be visible to the ultimate purchaser without lifting the brand name label or otherwise removing it. In each case, the marking of the slacks and the jacket would not readily be seen by the ultimate purchaser upon casual inspection at the time of sale.

It appears that both the Haggar slacks and suit jacket, however, do meet Customs marking requirements. The label on the slacks appears on the upper portion of the waistband in close proximity to the brand name label. On the jacket, the country of origin marking label appears in two locations, upon the inside center neck portion and upon the inside pocket directly beneath the brand name label, in large yellow lettering. In both cases, the marking is conspicuously placed so that it would be read easily by the ultimate purchaser without strain.

This Office does not issue decisions or rulings interpreting FTC guidelines. Therefore, we cannot address the question of whether the submitted samples meet the requirements and guidelines under the FTC. It appears, however, that the FTC requirements generally comport with those of Customs regarding placement of labels on jackets and with the general requirement of conspicuousness. For more specific information, we suggest that you call or write to the Federal Trade Commission directly.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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729494

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

COUNTRY OF ORIGIN MARKING RULING
(SUBSTANTIAL TRANSFORMATION)

DATE: MAY - 1 1986

REFER TO
CONTROL NUMBER: 729499

YOUR REF: Letter 4/14/1986

TO: Richard H. Young
Metek Tool
212 Andover Road
Billerica, Mass 01821

IMPORTED ARTICLE: Outer housing or shell for adjustable socket (Metek Grip Socket). The article is a specially designed "adjustable" steel socket shell fitting a standard drive ratchet.

FURTHER MANUFACTURING OR PROCESSING PERFORMED IN THE UNITED STATES:

After importation the shell is combined with six grooved steel pins which are held in place by a plastic retainer ring. The pins are loosely held and are free to tilt and roll so they can fit any shaped nut to which the socket is applied. If the pins are worn or damaged, they can be easily replaced using a needle nose plier. The most significant component of the finished tool is the imported shell. The assembly operation is simple.

APPLICABLE LAW AND CUSTOMS INTERPRETATION: Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), generally requires that every article of foreign origin or its container be marked legibly, permanently, and conspicuously to indicate the name of the country of origin to an ultimate purchaser in the United States. If an imported article will be used in manufacture in the United States, the U.S. manufacturer may be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation of the article. In such case, the imported article is exempt from marking. A substantial transformation occurs when the further manufacturing transforms the imported article into an article having a name, character, or use different from the imported article. If, however, the manufacturing process is merely a minor one which leaves the identity of the imported article intact, there is no substantial transformation and the imported article is not exempt from country of origin marking. See U.S. v. Gibson-Thomsen Co.,Inc., 27 C.C.P.A. 267, C.A.D. 98 (1940); Sections 134.1(d) and 134.35, Customs Regulations. Although each case must be decided on its own facts, the following examples are illustrative of Customs interpretation: No substantial transformation found where further processing in the United States included: combination without further manufacture of imported ax handles with ax heads of U.S. origin; encoding of admission information on the magnetic strip of imported printed admission tickets; attachment of porcelain socket and base to zinc lampholder casting; attachment of handle to screwdriver blade-ratchet assembly; purification and heating of imported raw honey and blending with domestic honey to produce processed honey; and, silk-screening applied to imported shirts. In each case, Customs determined that the further processing did not result in an article with a new name character, or use. Substantial transformation was found where further processing included: grinding and polishing of unfinished forgings to produce scissors; tooling and threading operations performed on imported nut blanks to produce free spinning, vibration resistant locknut; canning process involving processing for preservation and consumption; and, cutting, sewing, and finishing of piece goods to make finished goods. In each case, Customs determined that the further processing resulted in an article with a new name, character, or use.

DETERMINATION:

X No Substantial Transformation: The process(es) described above do not result in a substantial transformation of the imported article. Therefore, the imported article must be legibly, permanently and conspicuously marked to indicate its foreign country of origin.

____ Substantial Transformation: The process(es) described above results in a substantial transformation of the imported article. Therefore, the imported article is exempt from individual marking provided the container in which it is imported is legibly and conspicuously marked with the country of origin, and Customs officers at the port of entry are satisfied that the article will reach the ultimate purchaser (processor) in the original marked containers unopened, and that the article will be manufactured as described above and not otherwise sold.

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Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 12 1986

REFER TO

MAR 2-05 CO:R:E:E
729501 km

Mr. Rolando A. Perez
Vice President
Gator Industries, Inc.
1000 South East 8th Street
Hialeah, Florida 33010

Dear Mr Perez:

This is in response to your letter dated February 12, 1986, regarding country of origin marking requirements for imported unlasted plastic footwear uppers. Your letter has been forwarded by the Chief of the Commercial Operations Branch at the New York Seaport to our office for a ruling. Specifically, you are concerned that the presence of a design of an American flag on the items may be in violation of section 304 of the Tariff Act of 1930, as amended (19 CFR 1304).

Samples of the items have been forwarded to us for examination. The items have no lower portion and are completely exposed at the bottom. The word "Fitness" appears in colored print of red or blue alongside a design of a U.S flag on both sides of the instep portion.

In the United States, the items will be affixed with an injection molded rubber/plastic sole to form a completed athletic shoe.

It is our opinion that the imported unlasted plastic footwear uppers would not be required to be marked with the country of origin. The items have no separate function or identity apart from the completed athletic sport shoe. The shoe uppers cannot be utilized without the addition of the shoe sole. During U.S. processing, the items undergo a transformation which is so substantial that the imported items lose their identity and become part of a new and different product, a shoe.

Therefore, the imported items are exempt from the individual marking requirements of section 1304 (19 U.S.C. 1304) provided the container in which it is imported is legibly and conspicuously marked with the country of origin, and Customs officers at

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the port of entry are satisfied that the article will reach the processor in the original marked containers unopened, and that the article will be manufactured as described herein and not otherwise sold.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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729501

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 12 1986

REFER TO
MAR 02-5 CO:R:E:E
729516 km

Mr. James A. Williamson, Jr.
Executive Vice President
Jaw Manufacturing Co.
P.O. Box 213
Reading, Pennsylvania 19603

Dear Mr. Williamson:

This is in response to your letter dated April 25, 1986, regarding the application of country of origin marking requirements to three hand tools imported as component parts and/or in their partially finished forms.

ISSUE:

Whether components for impact drivers and partially finished screw extractor bodies and ball-joint or tie rod separator forgings, imported from Japan and further processed in the United States, may be excepted from the country of origin marking requirements of 19 U.S.C. 1304. The finished products must be marked unless the domestic processing described herein substantially changes the foreign products.

FACTS:

Jaw Manufacturing Company imports from Japan partially finished parts for three types of hand tools: impact drivers, screw extractors, and ball-joint or tie rod separators. The importer has stated that the domestic processing, described below, represents approximately 50 percent of the cost of each item.

Impact Drivers

1. The Imported Items

The imported items consist of the impact driver outer body, the inner body, and the bit holder. The outer body is a hollow metal cylinder approximately 4 and 1/2 inches in length and 1 inch in diameter. The inner body is a smaller metal cylinder about 2 inches in length and 3/4 inch in diameter, the outer wall of which is cut in a V-shape. A square shaped nodule is present

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at one end. The bit holder is yet a smaller metal cylinder which is square shaped at one end and pentagon shaped at the other. The items are imported in their machined and polished forms.

2. The Domestic Process

In the U.S., the outer body and bit holder are marked with safety instructions and identifying logos or numbers, heat treated, blackened, and/or plated for rust and stress resistance. The inner body is greased and the outer body is reamed, if necessary, so that the inner body can fit securely inside.

The imported parts are then assembled with other U.S. made parts in the following manner: a U.S. made inner spring and the imported inner body are placed inside the imported outer body. A U.S. made holding pin is inserted inside the outer body to hold the inner spring and inner body in place. The V-cut of the inner body is checked for specification compliance. A retainer ring, made in the U.S., is affixed to the outside of the outer body and then a U.S. made retainer spring is inserted inside the bit holder. This unit is then attached to the squared end of the inner body. Finally, the completed impact driver is placed in a plastic pouch for sale.

729516

Screw Extractor

1. The Imported Items

The imported items are screw extractor bodies which are machined on one end. The items are made of metal and range in size to fit drill sizes of 1/8 of an inch to 3/8 of an inch.

2. The Domestic Process

In the U.S., the imported items are stamped with identifying names, part numbers, and/or a safety warning. The items are heat treated and blackened or plated. Finally, the items are tested for size, buffed, and placed in a plastic pouch for sale. No further domestic processing takes place.

Ball Joint or Tie Rod Separator

1. The Imported Items

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The imported items are metal forgings for two types of knurled separators, tie rod separators and ball joint separators. The tie rod separator forgings measure approximately 3/4 of an inch between the forks and 3/4 of an inch in diameter at the handle. Its total length is approximately 13 inches. The ball joint separator forgings are slightly shorter in total length, and have a 15/16 inch opening between the forks and a larger diameter (1 inch) handle.

2. The Domestic Process

In the U.S., the fork tines are ground and polished, stamped with safety warning and identifying marks, heat treated, and zinc plated. The finished separators are then packaged for sale. No further domestic processing takes place.

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that all articles of foreign origin, or their containers imported into the U.S. shall be marked in a conspicuous place with the English name of their country of origin to indicate to an ultimate purchaser in the U.S. the country of origin of the article. Section 134.1(d) of the Customs Regulations describes the "ultimate purchaser" as generally "the last person in the United States who will receive the article in the form in which it was imported." Examples of the "ultimate purchaser" are provided. (19 CFR 134.1(d)). "If an imported article will be used in manufacture, the manufacturer may be the 'ultimate purchaser' if he subjects the imported article to a process which results in a substantial transformation of the article..." (19 CFR 134.1(d)(1)). A "substantial transformation" is said to occur when, as a result of the process performed on an item, it is changed into a new and different article of commerce with a new name, character, or use. If, however, the domestic processing involves only minor adjustments on virtually completed items, substantial transformation is not deemed to take place.

HOLDING:

It is our opinion that the imported items are not substantially transformed by the further processing in the United States. The final identity and character of the finished tools are established by the manufacturing operations performed in Japan. Although the further processing in the United States is

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essential to finishing the imported items, the processing results in neither a loss of identity nor a new and different product having a new name, character or use.

Accordingly, the imported impact driver parts, screw extractor bodies and knurled separator forgings must be individually marked with the country of origin.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

729516

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 28 1986

REFER TO

MAR 2-05 CO:R:E:E
729518 km

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

This is in response to a request dated April 21, 1986, from the Chief, Commercial Operation Branch 3, for a ruling concerning the special marking requirements applicable to imported "antique" clocks that are 35 to 85 years old.

Headnote 4, Part 2E, Schedule 7, TSUS provides special marking requirements for the dials, movements and cases of watches, clocks and timing apparatus. Customs' position regarding country of origin marking requirements for timing apparatus has been to apply the special marking provisions of Schedule 7, notwithstanding the marking exception for articles produced more than 20 years prior to their importation into the U.S. found in Section 304(a)(3)(I) of the Tariff Act of 1930, as amended (19 U.S.C. 1304). The statutory special marking provisions have been determined to be mandatory and cannot be waived. (See Legal Determination 3541-03, 707243 JB, reiterated in 707074 JB). However, deviation from the plain meaning of statutory provisions may be justified under certain circumstances. Such an instance arises where fidelity to a statute's literal terms will produce an absurd result.

The application of the special marking requirements of the Tariff Schedules to old or "antique" watches, clocks and other timing apparatus, would produce an absurd result. The special watch and clock provisions, enacted in 1909, were intended to protect U.S. made watches and clocks from competing foreign made items suspected of unfair trade practices such as mislabeling of the country of origin, mislabeling of the manufacturer, and misrepresenting the number of jewels in the watch movements. The domestic watch and clock manufacturers, for whose benefit the provisions were enacted and the trade problems against which they were to be protected, are no longer in

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existence to the same level and degree today. Moreover, antique or old timing apparatus were clearly not the "competing" foreign made items contemplated in the statute when it was enacted and are even less so today. It is reasonable to assume that the umbrella of protection was intended for newly manufactured watches and clocks, and was not meant to encompass old or antique watches and clocks.

The special marking required under the Tariff Schedules would cause injury and a decrease in value to the items. Furthermore, much of the information required in these complicated marking provisions, such as the name of the manufacturer or purchaser of the watch, clock cases and movements may be difficult, in fact impossible, to locate.

It is our opinion that the application of the special marking provisions of Headnote 4, Part 2E, Schedule 7 to imported clocks which are 35 to 85 years old would not be a reasonable exercise of administrative enforcement of those provisions. Please note that a bill has been introduced in the U.S. Senate to repeal Headnote 4, Part 2E, Schedule 7, TSUS. A copy of this bill, S. 854, is attached for your perusal.

Accordingly, original examples of complete watches, clocks, and timing apparatus whose manufacture has long been discontinued and whose primary commercial value is derived from being regarded as antiques or as items with similar intrinsic value and not primarily bought and sold as utilitarian timepieces, may be excepted from the special marking requirements provided in Schedule 7.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY - 1 1986

REFER TO

MAR-3 CO:R:E:E
729523 LR

Lauren R. Howard, Esq.
Collier, Shannon, Rill & Scott
1055 Thomas Jefferson Street, NW.
Washington, D.C. 20007

Dear Ms. Howard:

This is in response to your letter dated April 2, 1986, on behalf of the National Juice Products Association, which raises an issue relating to compliance with C.S.D. 85-47. Specifically, you ask the Customs Service to authorize processors to mark their retail products to indicate that they "may contain concentrate from Florida and/or Brazil" as opposed to stating more categorically that the product "contains a blend of Florida and Brazilian concentrate". You request that this variation be permitted in addition to the above categorical statement which we have already approved. See Ruling No. 729410, March 19, 1986. Alternatively, you ask that Customs permit the statement: "contains Florida concentrate and may contain concentrate imported from Brazil".

In your opinion the approved statement "contains a blend of Florida and Brazilian concentrate" might pose a problem if a processor had only Florida concentrate available to it for an extended (although finite) period of time; the processor might be charged with misbranding under the Food, Drug & Cosmetic Act if it used this existing packaging, which on its face suggests the presence of both Florida and Brazilian concentrates. You indicate that the only apparent alternatives for the processor would be to ensure that at least a miniscule amount of Brazilian concentrate were added to each retail product or to maintain duplicate labeling inventories.

Although the purpose of our March 19, 1986, ruling permitting alternative markings was to facilitate compliance with C.S.D. 85-47, it was not our purpose to ensure that in every case juice processors would be able to utilize one standardized label. In some instances, such as the situation you raise, this simply may not be possible. In considering alternative marking proposals, Customs must weigh the extent of the deviation from the statutory requirements, the degree of accuracy that is sacrificed as a result of the deviation, and the extent to which the deviation will facilitate compliance with the marking statute. For example, Customs approved the "major supplier rule" (allowing processors to list only their major suppliers of

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foreign manufacturing concentrate) because such method of marking has the overwhelming advantage of eliminating the need for the processors to have numerous labels on hand to be used when there are slight changes in their sources of supply. Customs recognized that such an advantage outweighed the certain degree of accuracy that would necessarily have to be sacrificed by listing only the processor's major sources of supply. In addition, the marking of the major foreign sources of the imported product did not, in our opinion, deviate too far from the statutory requirement of informing the ultimate purchaser of the country of origin.

In our opinion, the "may contain" language you suggest is too far a deviation from the statutory requirement of section 304 of the Tariff Act of 1930, as amended, to inform the ultimate purchaser of the country of origin. While the "may contain" statement is technically more accurate than the categorical statement, it does not actually inform the ultimate purchaser of the country of origin; it merely indicates the possibility that a product may be of foreign origin. We believe that approval of the "may contain" language would render the country-of-origin marking nugatory. If processors are concerned that they might be subject to penalties for misbranding if they used a standardized label indicating the presence of foreign concentrate for retail orange juice products which might in fact contain only domestic-origin concentrate, then they should maintain duplicate labels. Those processors that are ever in a position to use solely domestic concentrate will probably do this anyway.

Finally, we would like to clarify a misunderstanding regarding our approval of the marking "contains a blend of Florida and Brazilian concentrate". In our March 19 ruling we stated that we have no objection to showing that the orange juice is a blend of domestic and imported concentrate, if that in fact is the case. You indicate that this formulation would appear available to processors using any amount of domestic concentrate, just as the marking requirement is, in accordance with C.S.D. 85-47, applicable to retail orange juice products containing any amount of imported manufacturing concentrate. We would agree with your conclusion only in situations where the processor chooses to list all foreign sources of concentrate (and not just his major foreign sources). However, if a processor chooses to

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to adopt the "major supplier" rule and lists only his major foreign sources, it is our position that the Florida content may be indicated only if Florida is similarly a major supplier of concentrate to that processor.

Sincerely,

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

729523

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

MAY 13 1986

REFER TO
ENT-1 CO:R:E:E
729532 JL

Mr. Rick Endresen
Vice President
Exports Inc.
5930 Sixth Avenue South
Seattle, Washington 98108

Dear Mr. Endresen:

This refers to your letter of February 13, 1986, concerning the withdrawal of liquor for use by fishing vessels under Section 10.59, Customs Regulations.

You ask if liquor withdrawn duty-free for use by eligible United States fishing vessels may be given away as gifts to foreign processing vessels which are located outside the 3-mile limit. You note that foreign flag processing vessels are not allowed into the territory of the United States and this serves as a guarantee that the alcoholic beverages will be consumed outside the country.

Legal Determination No. 80-0198, case No. 712953/713478 dated September 15, 1980, held that it was permissable for a supply vessel to withdraw duty-free vessel supplies for use by foreign flag fishing vessels located on the high seas, provided that the vessels on the high seas were engaged in a proper class of trade, that is, they would be eligible to withdraw the vessel supplies free of duty under 19 U.S.C. 1309 in their own right. The ruling also directed that it was necessary that the District Director of Customs be informed for which vessel the supplies were being withdrawn at the time of withdrawal. This is necessary for Customs to determine that the vessels on the high seas are entitled under 19 U.S.C. 1309 to receive the supplies.

Accordingly, it is our opinion that the withdrawal of duty-free liquor by a qualified U.S. fishing vessel for presentation to foreign flag processing vessels on the high seas is permissable provided the recipient vessels are qualified under 19 U.S.C. 1309.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY 22 1986

REFER TO
CPR-3 CO:R:E:E
729541 SO

Mr. George Roberts
District Director
United States Customs Service
335 Merchant
228 Federal Building
P.O. Box 1641
Honolulu, Hawaii 96806

Dear Mr. Roberts:

With your memo of January 2, 1986, you submitted a sample of a "Sunshine Girls" doll, manufactured in China, and asked if it infringes the copyright registration of Hallmark Cards, Inc. (VA 173-401 of 12/5/84) for "RAINBOW BRITE DOLL." Your office detained a shipment of "Sunshine Girls" dolls on suspision of copyright infringement. Pursuant to Section 133.43(c)(1) of the Customs Regulations, the co-author of the copyright protected work and exclusive licensee to use the copyright in the United States, Mattel, Inc., posted the required surety bond and submitted a legal brief in support of their demand that the alleged infringing articles be excluded from entry into the United States.

Our response to your request is contained in the enclosed ruling. Your sample is being returned under separate cover.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

Enclosure

See Next Frame

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAY 22 1986

REFER TO
CPR-3 CO:R:E:E
729541 SO

This ruling concerns whether or not a sample "Sunshine Girls" doll is an infringing importation pursuant to Sec. 602 of the Copyright Revision Act of 1976 (17 U.S.C. 602).

ISSUE:

Would the importation of "Sunshine Girls" dolls, manufactured in China, infringe the copyright registration of Hallmark Cards, Inc., (NO. VA 173-401 of December 5, 1984) for "RAINBOW BRITE DOLL." This copyright has been recorded with the Customs Service for import protection.

FACTS:

The U.S. Customs Service District Office detained a shipment of "Sunshine Girls" dolls on suspicion of piratical copying pursuant to Section 133.43 of the Customs Regulations (19 CFR 133.43). The importer denied copying. Mattel, Inc., the exclusive U.S. licensee of the copyright owner, posted the bond required by Section 133.43 along with a legal brief on the infringement question, and the entire file was sent to Customs Headquarters for a decision as to whether the imported doll infringes the copyright protected "RAINBOW BRITE DOLL."

The RAINBOW BRITE product line has been extensively advertised and promoted (over $34 million in advertising) for the past 2 years. The "Sunshine Girls" doll appeared on the marketplace recently. Each doll is wearing a brightly colored dress with a short skirt and short sleeves. Although both dolls use intense colors in their dress, their costumes are different. The hair of both dolls is constructed of brightly colored yarn (yellow and orange), and is tied with a brightly colored ribbon. Both heads are essentially of the same size, width and height. Both faces are rounded with pouchy cheeks, wide open eyes, high narrow eyebrows, button noses, protruding ears, and small lips cracking a slight smile.

LAW AND ANALYSIS:

The basic test for determining whether there has been an infringement of a copyright is whether substantial similarity exists between two works. The appropriate test for determining whether substantial similarity is present is whether an average

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lay observer would recognize the alleged copy as having been appropriated from the copyrighted work, Ideal Toy Corp. v. Fab-Lu Ltd., 360 F.2d 1022 (1966). Another statement of the test is whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same, Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F.2d 487 (1960). The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by deliberately making trivial or insignificant variations in specific features of the copyrighted work.

Two steps are involved in the test for infringement. There must be access to the copyrighted work and substantial similarity not only of the general ideas but the expression of those ideas as well. Hallmark Cards, Inc. obtained its copyright registration for the "RAINBOW BRITE DOLL" on December 5, 1984. It is apparant that the party that made the "Sunshine Girls" dolls in China had ample opportunity to view the copyrighted work. Even without direct evidence of access to the copyrighted work, the substantial similarity between the works may be so striking as to preclude the possibility that the works were arrived at independently.

Section 602(b) of the Copyright Law (17 U.S.C. 602(b)) provides that, "In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited." Section 603(c) of the Copyright Law (17 U.S.C. 603(c)) provides that, "Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the Customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer has no reasonble grounds for believing that his or her acts constituted a violation of law."

We compared the imported doll with the copyright protected work. Our comparison leaves no doubt that the head of the "Sunshine Girls" doll is a substantial copy of the head of the "RAINBOW BRITE DOLL." The degree of similarity is so striking that one might conclude from the shape of the heads and the facial features that the "Sunshine Girls" doll is an exact mold copy. We consider the differences in the clothing to be insignificant. It is well know that different forms of clothing are made for dolls. The ordinary observer might assume that the Chinese import is a "RAINBOW BRITE DOLL" dressed in an evening dress. The minor differences in the construction of the body

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and in the costume that we noted, appear to us to constitute a deliberate attempt to make minor variations in the appearance of the imported item while preserving a similar aesthetic appeal to the ordinary observer.

In view of the extensive media exposure (over $34 millon in advertising) and the substantial sales volume (18 million units and $179 million in sales) it is inconceivable that a doll manufacturer or distributor in China would not be familiar with and have access to the RAINBOW BRITE dolls. Furthermore, the substantial similarity of the head of the imported doll to the head of the "RAINBOW BRITE DOLL" rules out coincidence and independent creation.

HOLDING:

We are of the opinion that the imported article would be prohibited entry into the United States as infringing on the rights of the copyright owner. The imported merchandise is subject to seizure and forfeiture (17 U.S.C. 603). However, the district director of Customs may allow the return of the imported articles to the country of export, whenever he is satisfied (usually upon consideration of a petition in remission of seizure and forfeiture submitted pursuant to 19 CFR 133.51(a)) that the importer had no reasonable grounds for believing that his act (of importing the infringing dolls) constituted a violation of law. The bond of the copyright owner shall be returned. Copies of this decision may be furnished to all interested parties.

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 27 1986

FILE: ENT-1 CO:R:E:E
729542 JL

TO : All Regional Commissioners and
District Directors of Customs

FROM : Acting Assistant Commissioner
Office of Commercial Operations

SUBJECT: Informal Entry Procedures, Legal Determination 79-0514

Legal Determination 79-0514 (Headquarters ruling 710677, dated November 14, 1979) dealt with the informal entry of farmers' importations under items 813.30 and 813.31, T.S.U.S. The ruling held that importations of farm equipment qualified as "personal effects" of farmers which could be entered under the importer's baggage declaration. The ruling has been misinterpreted in some respects and in other respects did not adequately discuss certain issues raised in the inquiry.

You will be governed by the following when handling accompanying importations by all travelers, including importations of farm equipment or other articles for use in farm businesses. Any portions of Legal Determination 79-0514 which conflict with this memorandum are hereby overruled.

1. Eligibility of importations under items 813.30 or 813.31 TSUS. - The tourist exemptions for merchandise purchased abroad are <u>not</u> available unless the purchases were "acquired as an incident of the foreign journey." The courts have clearly stated that articles ordered prior to the foreign journey do not qualify and, further, when the primary purpose of the journey is to make the purchase, the purchase does not qualify for the exemption.

2. Informal entries and baggage declarations - If the merchandise does not qualify for the tourist exemption, the traveler shall be required to file an informal entry or a formal entry, depending upon the value of the importation. In no case do such importations qualify for entry on the importer's baggage declaration.

3. Other situations - In those cases in which the purchases qualify for informal entry but there is good reason to require a formal entry, do so under the authority of section 143.22, Customs Regulations.

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An example would be farm equipment classifiable as free of duty but subject to an actual use provision under which a certification is to be given by the importer.

4. Purchases by or for corporate or business organizations- Importations made by U.S. residents for business or corporate organizations do not qualify for the personal exemption. These are commercial importations and either informal or formal entries shall be required. However, the privilege of employees reimporting professional equipment and tools of trade owned by their employers which have been taken out of the U.S. for their use abroad is still in effect.

5. Use of the baggage declaration by commercial travelers- The provisions allowing the use of baggage declarations for commercial travelers' samples is to be continued as provided for in the Customs Regulations.

729542

Fred R. Boyett

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

MAY 27 1986

REFER TO
ENT-1 CO:R:E:E
729561 JL

Mr. James E. Nolan, Director
Office of Foreign Missions
Department of State
Washington, D.C. 20520

Dear Mr. Nolan:

This refers to your request for reimbursement of duty paid on accompanied items which arrived in the United States in the mails from Sweden for Mr. Goran Segerlund, a World Bank official assigned to duty in Washington, D.C.

On December 2, 1985, Customs authorized free entry for Mr. Segerlund's sailboat. It is claimed that when the sailboat was unpacked after arrival in the United States, three items were missing. The request for reimbursement is for duties said to have been paid upon the importation of replacements for the missing items.

Mr. Segerlund's sailboat was accorded free entry pursuant to section 148.87(a), Customs Regulations, as baggage and effects authorized under item 820.30, Tariff Schedules of the United States. The term "baggage and effects" is defined in section 148.81(b), Customs Regulations, as including "all articles which were in the possession of a person abroad, and are being imported in connection with his arrival, ..." It is our opinion that the replacement parts were not imported in connection with the arrival of Mr. Segerlund and, obviously, were not in his possession abroad. Therefore, they do not qualify as baggage and effects. Accordingly, your request for reimbursement of duty paid is hereby denied.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 20 1983

REFER TO

CLA-2-05 :S:C:D06:59-375
803529

[redacted]

Dear [redacted]

In your letter of September 15, 1982, you requested the tariff classification for asphalt emulsions from Venezuela.

Four samples have been tested and have the following compositions:

(1) "Emul-Vial" (Anionic Asphalt Emulsion)

a) pure asphaltum	50%
b) red resin vinsol	0.75%
c) sodium hydroxide	0.125%
d) water	49% (approx.)

(2) "Emul-Acid" (Cationic Asphaltic Emulsion "CL60")

a) pure asphaltum	60%
b) tetramine-hydrogenated bait	.7 - 1%
c) hydrochloric acid	.6 - .8%
d) water	38% (approx.)

(3) "Emul-Nova" (Argilloid Asphaltic Emulsion Anionic Type "AM 50")

a) asphaltic cement	50%
b) red resin vinsol	0.75%
c) sodium hydroxide	0.125%
d) bentonite clay	5%
e) water	44% (approx.)

(4) "Nova-Glass-Kote" (Fibrose Asphaltic Argilloid Emulsion of the Anionic Type)

a) asphaltic cement	50%
b) red resin vinsol	0.75%
c) sodium hydroxide	0.125%
d) bentonite clay	5%
e) asbestos fibers	5%
f) water	39% (approx.)

These emulsions are used for roof coverings, street pavements, automobile undercoating, and as rust preventive coating.

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Natural asphalt occurs as lakes, as mixtures or emulsions with sand, clay or water. Petroleum asphalt is derived from crude oil and is marketed as cements and fluxes, emulsions, cutbacks, and road oil.

Emulsions (1), (2), and (3), having in addition to asphalt and water, only surface active agents to assist in solubility, are classifiable under the provisions for asphaltum, bitumen, and limestone-rock asphalt in item 521.11, Tariff Schedules of the United States, and are free of duty.

Emulsion (4) having in addition to asphalt, water, and surface active agents, asbestos fibers, is classified as follows: When in chief value asbestos fiber, would be classified as articles not specially provided for of asbestos under item 518.51, Tariff Schedules of the United States (TSUS), dutiable at the rate of 2.3 percent ad valorem. When in chief value of asphalt, would be classified as undecorated mineral substances and articles of mineral substances not specially provided for under item 523.91, TSUS, dutiable at the rate of 6.2 percent ad valorem.

Articles classifiable under items 518.51 and 523.91, TSUS, which are the products of Venezuela, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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803529

C13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 1 1983

REFER TO
CLA-2-4:S:C:D:58-602
804519

[redacted]

Dear [redacted]

In a letter dated November 2, 1982, you inquired on behalf of your client, [redacted], as to the dutiable status of various chemical mixtures manufactured in Canada and used in the metals processing industry.

A previous request was administratively closed due to insufficient information regarding the chemical components used in these mixtures.

On November 8, 1982 you were advised by telephone that some problem still existed regarding this latest inquiry. In particular, the terms non-ionic surfactant, anionic surfactant and organic acid were not capable of being classified. You were advised again on December 7, 1982 regarding the necessity for this information. On December 15, 1982 we received a letter advising us as to the identity of the non-ionic surfactant and the organic acid. The anionic surfactant was identified as an alkylate hydrophobe which is not sufficient to classify.

The products designated Chem Cote 200, Rust Proofing Compound TB-293, Galvanized Coating TB 342-1, rust inhibitor TB 275, and Zinc Prep are formulated preparations containing a benzenoid surfactant (octylphenoxypolyethoxy ethanol). All of the above are classifiable under the provisions for benzenoid mixtures in item 413.51, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 17.5 percent ad valorem, but not less than the highest rate applicable to any component material. None of the components have a higher rate at this time.

The products designated Liquid-Alk Rust Proofer TB-61-L, Spiral Wash-1(decarb), Carbon X-100, Carbon X-200 and Chem Cote 300 are formulated preparations that contain a surfactant that may be benzenoid derived. When these products are composed in part of a benzenoid surfactant, they are classified under the provisions for benzenoid mixtures in item 413.51, TSUS, and dutiable at the rate of 17.5 percent ad valorem, but not less than the highest rate of duty applicable to any component material. None of the component materials have a higher rate at the present time.

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If the latter products do not contain a benzenoid derived surfactant they cannot be classified because the term alkylate hydrophobe indicated in your letter of December 15, 1982 is not a chemical abstract name that can be classified.

Graintrol, a solution of sodium nitrite, is classifiable in item 421.14, TSUS, and is dutiable at the rate of 15.1 percent ad valorem.

Chem Rinse 20-1, containing chromic acid and phosphoric acid; Black Knight, containing muriatic acid, antimony oxide and ferric oxide; Rust Proofing Compound TB-61, containing sodium nitrite and sodium carbonate are mixtures of two or more inorganic compounds and are classifiable in item 423.96, TSUS, and are dutiable at the rate of 2.5 percent ad valorem.

Chem Spray H.D., containing sodium hydroxide, sodium gluconate, sodium nitrite, sodium carbonate and sodium hexametaphosphate, is a mixture classifiable in item 432.25, TSUS, and dutiable at the rate of 4.4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate of duty appears to be sodium nitrite classifiable in item 421.14, TSUS, and dutiable at the rate of 15.1 percent ad valorem.

Your inquiry does not provide sufficient information for us to issue a ruling letter on the wire drawing soap lubes. Requests for classification rulings regarding chemical and chemical mixtures should contain a complete chemical abstract name for each compound contained in each mixture. If possible a sample should be submitted for each mixture.

This ruling is being issued under the provision of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R 177.1 (a)(1)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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804519

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 26 1983

REFER TO

CLA-2-4:S:C:D6:62-14
804560

[redacted]

Dear [redacted]

In your letters of November 10, 1982 and January 10, 1983, you requested the tariff classification for essence cocoa concentrate and oleoresin vanilla from Mexico.

Based upon the information submitted and our analysis, both products are non-benzenoid solutions of aromatic or odoriferous substances, not containing alcohol, which are used as flavoring extracts.

Essence cocoa concentrate and oleoresin vanilla are classifiable under the provision for flavoring extracts, and fruit flavors, essences, esters, and oils, all the foregoing, not containing alcohol, in item 450.20, Tariff Schedules of the United States, and is dutiable at the rate of 6 percent ad valorem.

Articles classifiable under item 450.20, TSUS which are the products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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D2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 1 1983

REFER TO

CLA-2-04:S:C:D6:64-634
804632

[redacted]

Dear [redacted]

In your letter of November 19, 1982, you requested the tariff classification for four products made in France. The products, with the trade name of Petrogil, are said to be used to manufacture oil based drilling muds.

Petrogil F54, an emulsifier, is composed of amino ethyl-1-heptadecenyl-2-imidazoline, diethalinetriame and olic acid. It is classified under the provisi for non-benzenoid surface-active agents in item 465.95, Tariff edules of the United States (TSUS), and is dutiable at the rate of 4 percent ad valorem.

Petrogil SIV, a viscousifier, is composed of aluminum stearate and calcium carbonate. It is classified under the provision for non-benzenoid mixtures in item 432.25, TSUS, and is dutiable at the rate of 5.2 percent ad valorem. The rate of duty is taken from item 490.32, TSUS, based on the aluminum stearate content in the mixture.

Petrogil RF3, a filtrate reducer, is composed of fatty acids, tall oil, polyphenol and diisopropylbenzene. It is classified under the provision for benzenoid mixtures in item 407.16, TSUS, and is dutiable at 1.1 cents per pound plus 17.3 percent ad valorem. The rate of duty is taken from item 402.36, TSUS, based on the diisopropylbenzene content in the mixture.

Petrogil A46, a wetting agent, is composed of dodecylbenzenesulfonate, isobutanol and diisopropylbenzene. It is classified under the provision for benzenoid wetting agents in item 409.30, TSUS, and is dutiable at the rate of 12.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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D3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 31 1983

REFER TO

CLA-2-04:S:C:D6:65-23
804639

[redacted]

Dear [redacted]

In a letter dated October 7, 1982, you inquired on behalf of [redacted] as to the dutiable status of 46 concrete admixtures manufactured in Canada. You submitted samples of four of the products, and technical information for all of them.

The products named Lubrilith 1, Lubrilith L, 1P, Lubrilith L, 2P, Lubrilith L, 3P, Lubrilith L, 4P, Lubrilith L, 5P, Mastermix 10, Mastermix 30, Mastermix 60, Mastermix 90, Mastermix 250, and Lubrilith are concrete additive mixtures composed in part of benzenoid surface active agents. Functionally, these products are wetting agents and dispersants. They are classifiable under the provision for...wetting agents, dispersants...in item 409.30, Tariff Schedules of the United States (TSUS) and dutiable at the rate of 12.5 percent ad valorem.

As to MB-HC-N, Pozzolith 100-N, Pozzolith 100-R, Pozzolith 100-HE, Pozzolith 122-N, Pozzolith 122-HE, Pozzolith 200-N, Pozzolith 200-N (LL-819), Pozzolith 200-R, Pozzolith 300-N, Pozzolith 322-N, Pozzolith 344-N, Pozzolith 768, Pozzolith 133-N, Pozzolith 355-N, MBL-82, MBL-84 and MBL-83, these products are all mixtures consisting in part of triethanolamine and calcium chloride. Accordingly, these products are classifiable under the provision for mixtures, not specially provided for, in item 432.25, TSUS, and dutiable at the rate of 4.4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be the triethanolamine, which is classifiable under item 425.12, TSUS, and dutiable at the rate of 11.3 percent ad valorem.

The products Mastermix 1, Admixture - LA-10, Pozzolith 300-R, Pozzolith 322-R, Pozzolith 748 and LA-10 are also classifiable under the provision for mixtures, not specially provided for, in item 432.25, TSUS, dutiable at the rate of 4.4 percent ad valorem but not less than the highest rate applicable to any component material. None of the component rates are higher.

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D4

JAN 31 1983

The Pozzolith 100-XR, Pozzolith 122-R and 200-XR are aqueous solutions of hydrolyzed starch, and are provided for under dextrine and soluble or chemically treated starches, in item 493.30, dutiable at the rate of 0.81 cent per pound.

MBL-80 is an aqueous solution of calcium lignin sulfonate. Accordingly, it is classifiable under the provision for lignin sulfonic acid and its salts in item 465.92, TSUS, dutiable at the rate of 2.5 percent ad valorem.

MB-HC is an aqueous solution of sodium glucoheptonate. This chemical is a sodium salt of an organic acid and classifiable as a sodium salt, other, in item 427.04, TSUS, and dutiable at the rate of 4.4 percent ad valorem.

Products MB-VR(12%), MB-VR(20%), MB-AE 10 I, MB-AE 20, and MB-AE 10 are mixtures provided for in item 432.25, TSUS, and dutiable at the rate of 4.4 percent ad valorem but not less than the highest rate applicable to any of the components. None of the components have a higher rate.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

804639

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

D5

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 25 1983

REFER TO

CLA-2-04:S:C:D6:63-686
804893

[redacted]

Dear [redacted]

In your letter of December 20, 1982, you inquired as to the dutiable status of a diazepam pharmaceutical preparation in ampoule form manufactured in Sweden.

You state that in the subject preparation, the active ingredient, diazepam, constitutes only a minor quantity of the product and is not the ingredient of chief value. Therefore, you feel that the preparation is classifiable in item 412.36 of the tariff. In addition, you advise that your company manufactures the diazepam in the United States and supplies it to the foreign vendor who blends it with ingredients of foreign origin. The finished preparation is packed in ampoules and exported to the United States.

Diazepam is a benzenoid drug that is used as a tranquilizer. In the subject preparation it is put up in its usual dosage amount (for injection purposes) and the other ingredients act as diluents and carriers to enhance its efficacy.

Diazepam is listed in the Chemical Appendix to the Tariff Schedules by its Chemical Abstract Service number. Therefore, regardless of its form diazepam is classifiable under the provision for...tranquilizers..., other, in item 412.35, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 30.5 percent ad valorem. There is no reduction in duty allowed since a new and different product is being made in Sweden from the exported product.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D6

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 31 1983

REFER TO

CLA-2-04:S:C:D6:63-09
804941

[redacted]

Dear [redacted]

In a letter dated December 21, 1982, you inquired as to the dutiable status of emulsion splitter AR-52 produced in West Germany.

In your letter you indicate that the product is composed of lauryl pyridium bisulfate and water. It will be used as an intermediate in the manufacture of an oil separation or splitting agent.

Technical literature indicates that lauryl pyridium bisulfate is derived from a benzenoid product and can be used as a germicide, detergent and emulsion breaker.

Emulsion splitter AR-52 is classifiable under the provision for benzenoid products chiefly used as detergents, wetting agents, emulsifiers, dispersants, or foaming agents in item 409.30, Tariff Schedules of the United States, and dutiable at the rate of 12.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

D7

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 24 1983

REFER TO
CLA-2-04:S:C:D6:63-06
804956

[redacted]

Dear [redacted]

In your letter of January 4, 1983, you requested the tariff classification for a Bake a Craft stained glass kit from Hong Kong.

The kit consists of a zinc alloy metal frame, variously colored polystyrene plastic crystals and a plastic suction cup packaged in a cardboard and plastic blister pack.

The frame is available in a variety of shapes and sizes and forms the outline of animals, flowers or other objects. When the kit is used, the spaces in the frame are filled with the plastic crystals and the frame is baked in an oven. The baking melts the plastic into a continuous sheet within the outlined spaces within the frame. This process results in a decorative scene which simulates a stained glass window. The plastic suction cup is used for hanging the stained glass design on windows or mirrors.

The frame is classifiable under the provision for articles of zinc, not coated or plated with precious metal in item 657.80, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 7.6 percent ad valorem.

The polystyrene plastic crystals are classifiable under the provision for plastic materials, other, thermoplastic resins, polystyrene resins...in item 408.84, TSUS, and dutiable at the rate of 0.9 cent per pound plus 9.2 percent ad valorem.

The plastic suction cup is classifiable under the provision for articles not specially provided for, of rubber or plastics, other, other in item 774.55, TSUS, and is dutiable at the rate of 6.9 percent ad valorem.

Articles classifiable under items 657.80, 408.84 and 774.55, TSUS, which are the products of Hong Kong are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

804956

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JAN 25 1983

REFER TO

CLA-2-04:S:C:D6:64-24
804998

Mr. Tadao Arai
11625 Montana Ave. #124
Los Angeles, California 90049

Dear Mr. Arai:

In a letter dated December 30, 1982, you inquired as to the dutiable status of eight flushed bases manufactured in Japan.

The eight flushed bases described in your letter consist of benzenoid toners in a vehicle. The vehicle consists of rosin-modified phenolic resin, iso phthalic alkid resin or modified iso phthalic alkid resin, linseed oil and a solvent. According to your letter these products will be used to manufacture offset and heatset printing inks.

Flushed bases are classifiable under the provision for benzenoid toners in item 410.34, Tariff Schedules of the United States, and dutiable at the rate of 16 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 24 1983

REFER TO
CLA-2-04:S:C:D6:65-32
805030

[redacted]

Dear [redacted]

In a letter dated January 7, 1983, you inquired as to the dutiable status of the chemical Interox DHBP-45-1C/G manufactured in West Germany. You submitted technical literature relative to this product.

The technical information indicates that the Interox DHBP-45-1C/G, in liquid form, and without inert carriers, is 2,5-dimethylhexane 2,5-di-t-butyl peroxide. It is possible that this chemical may be derived from benzenoid sources. However, in a letter to this office dated December 16, 1982, you asserted that this product is not derived from benzenoid sources. Accordingly, a non-benzenoid derived 2,5-dimethylhexane 2,5-di-t-butyl peroxide is classifiable under the provision for other organic compounds, other, in item 429.95, Tariff Schedules of the United States. The rate of duty is ~~4.4 percent~~ ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 24 1983

REFER TO

CLA-2-04:S:C:D6:64-47
805121

Mr. Roberto Garza-Gongora
J.O. Alvarez, Inc.
Tex-Mex Industrial Park
1 Ramos Rd
P.O. Box 1434
Laredo, Texas 78042

Dear Mr. Garza-Gongora:

In a letter dated January 25, 1983, on behalf of your client, Mason Chemical Co., of Chicago, Il., you inquired as to the dutiable status of Maquat SC 18-25% manufactured in Mexico.

Maquat SC 18-25% is N,N-dimethyl-N-octadecyl benzenemethanaminium chloride. It is used as a substantive conditioning, softening and anti-static agent in cream rinse products for the hair.

Maquat SC 18-25% is classifiable under the provision for benzenoid quaternary ammonium salts in item 405.48, Tariff Schedules of the United States, and dutiable at the rate of 8.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 18 1983

REFER TO

CLA-2-4:S:C:D6:62-49
805147

[redacted]

Dear [redacted]

In a letter dated February 1, 1983, you inquired as to the dutiable status of hexane manufactured in Belgium.

Your submitted information states that hexane is composed of less than 50 percent normal hexane with the balance being various C_5 through C_8 hydrocarbons. The typical analysis of the C_5 through C_8 hydrocarbons states that the percentage by weight varies from a minimum of 44.765 percent to a maximum of 56.258 percent.

Accordingly, since the amount of C_5 through C_8 hydrocarbons varies between less than 50 percent and more than 50 percent, the percentage of normal hexane must also vary. Therefore the amount of normal hexane and its classification must be determined on a case by case basis.

Hexane containing by weight not over 50 percent of any single hydrocarbon compound is classifiable under the provision for mixtures of hydrocarbons not specially provided for, derived wholly from petroleum, shale oil, natural gas, or combinations thereof, in liquid form, in item 475.65, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 0.25 cent per gallon.

Hexane containing by weight over 50 percent of any single hydrocarbons compound is classifiable under the provision for mixtures that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas, in item 430.10, TSUS, and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component compound. The highest rate applicable to any component compound is 5 percent ad valorem.

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

805147

D14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

REFER TO
CLA-2-04:S:C:D6:64-53
805165

FEB 24 1983

[redacted]

Dear [redacted]

Your letter of January 31, 1983 concerns the dutiable status of cresolphthalein complexon (sodium salt form), glycyl-glycine and L-malic acid. All are products of Switzerland.

Cresolphthalein complexon, an indicator color, is classified under the provision for other benzenoid colors in item 410.20, Tariff Schedules of the United States (TSUS). The rate of duty is 21 percent ad valorem.

Glycyl-glycine is classified under the provision for other nitrogenous compounds in item 425.52, TSUS. The rate of duty is 7.9 percent ad valorem.

L-malic acid can be produced from natural sources, such as apple juice, and also from synthetic sources which may or may not be of benzenoid origin. L-malic acid which is produced from natural sources or from non-benzenoid synthetic sources is classified under the provision for other organic acids in item 425.99, TSUS. The rate is 5.1 percent ad valorem. L-malic acid which is produced from synthetic benzenoid sources is classified under the provision for other products which are obtained, derived or manufactured in whole or in part from a benzenoid product in item 407.05, TSUS. The rate is 1.7 cents per pound plus 16.8 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1 (a)(1)].

Sincerely

John J. Martuge
Area Director
New York Seaport

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E1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 01 1984

REFER TO:

CLA-2-04:S:C:D6:65-722
808086

[redacted]

Dear [redacted]

In a letter dated December 20, 1983, you inquired as to the dutiable status of a synthetic emulsifying agent trade-named Trial produced in British West Indies. A sample was submitted.

The analysis by our laboratory indicates that Trial, an aqueous solution, is a salt of a sulfated fatty alcohol. Accordingly, the Trial trade-named product is classifiable under the provision for fatty substances of animal or vegetable origin: sulfonated or sulfated, fatty alcohols and salts of fatty alcohols: derived from coconut, palm-kernel, or palm oil, in item 465.45, Tariff Schedules of the United States, and dutiable at the rate of 4.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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E2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 28 1984

REFER TO

CLA-2-04:S:C:D6:65-26
808230

[redacted]

Dear [redacted]

In a letter dated January 3, 1984, you inquired as to the dutiable status of two chemicals, namely butyl ammonium acetate and amino undecanoic acid, produced in Great Britain.

The butyl ammonium acetate is classifiable under the provision for nitrogenous compounds, other, in item 425.52, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 7.9 percent ad valorem.

The amino undecanoic acid is classifiable under the provision for nitrogenous compounds, other, in item 425.04, TSUS, and dutiable at the rate of 4.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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E3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 28 1984

REFER TO
CLA-2-04:S:C:D6:62-31
808249

[redacted]

Dear [redacted]

In a letter dated January 3, 1984, you inquired as to the dutiable status of a car air freshner produced in England.

A car air freshner in the form of a pendant is composed of plastic, aluminum, felt and perfume. It is stated that the perfume is the highest value component in this product.

This car air freshner is classifiable under the provision for any article, not provided for elsewhere in these schedules, in item 799.00, Tariff Schedules of the United States, and dutiable at the rate of 4.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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E4

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 28 1984

REFER TO

CLA-2-04:S:C:D6:64-44
808290

[redacted]

Dear [redacted]

Your letter of January 10, 1984 concerns the dutiable status of toners, developers and coated laminates from the People's Republic of China. Two different samples of each product were furnished.

Both toners are described as consisting of non-nylon thermoplastics, natural rosin, carbon black and nigrosine dye. The developers consist of 5 percent of the above described toners, plus high purity iron powder. Although your letter claims no benzenoid dyes are used, nigrosine is in fact a benzenoid dye.

The coated laminated belts are used with copying machines as photoreceptor material. The samples indicate that the material consists of mylar-aluminum laminate, approximately 10 inches wide, that is wound around the cylinder of a copying machine. The reflected light from the original is focused on a positively charged photosensitive medium (photoreceptor), which causes the neutralization of the positive areas corresponding to the blank areas of the original.

The toners and developers are classified under the provision for benzenoid colors in item 410.22, Tariff Schedules of the United States (TSUS). The rate of duty is 15 percent ad valorem.

The coated laminated belts (photoceptors) are classifiable under the provision for parts of office machines not specially provided for, other, in item 676.52, TSUS, and dutiable at the rate of 4.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John S. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

ES

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 01 1984

CLA-2-04:S:C:D6:63-47
808319

[redacted]

Dear [redacted]

In a letter dated January 19, 1984, you inquired as to the dutiable status of Oncol 10 percent granular produced in Japan.

Oncol 10 percent granular is an artificially mixed benzenoid insecticide that is used to control a number of economically important insects. It will be imported as a 10 percent granular formulation. In the tariff, products of this type fall under the general heading for benzenoid pesticides.

Oncol 10 percent granular is classifiable under the provision for "Pesticides: Other: Other" in item 408.38, Tariff Schedules of the United States, and dutiable at the rate of 0.8 cent per pound plus 9.7 percent ad valorem.

Merchandise of this type is generally subject to the regulations of the Environmental Protection Agency. You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telephone number (202) 382-2090.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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EB

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y

FEB 28 1984

REFER TO

CLA-2-04:S:C:D6:63-73
808340

[redacted]

Dear [redacted]

In a letter dated January 18, 1984, you inquired as to the dutiable status of Vecodur EPP Powder produced in Switzerland.

The product is described as an epoxide powdered coating resin used in coating cans having food and other storage uses.

Vecodur EPP Powder is classifiable under the provision for benzenoid thermosetting resins: epoxy resins in item 409.02, Tariff Schedules of the United States, and dutiable at the rate of 7.8 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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E7

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 28 1984

REFER TO

CLA-2-04:S:C:D6:63-67
808391

[redacted]

Dear [redacted]

In a letter dated January 18, 1984, you inquired as to the dutiable status of Vecodur VP 01 Powder produced in Switzerland.

The product is described as an epoxide powdered coating resin used in coating cans having food and other storage uses.

Vecodur VP 01 Powder is classifiable under the provision for benzenoid thermosetting resins, epoxy resins in item 409.02, Tariff Schedules of the United States, and dutiable at the rate of 7.8 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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E8

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 01 1984

REFER TO:

CLA-2-04:S:C:D6:63-71
808408

[redacted]

Dear [redacted]

In a letter dated January 26, 1984, you inquired as to the dutiable status of fenridazon-potassium solution produced in England.

You state that fenridazon-potassium is an artificially-mixed plant growth regulator (herbicide). It is a benzenoid-based chemical hybridizing agent which inhibits the development of pollen on wheat. In the Tariff products of this type fall under the general heading for benzenoid pesticides.

Fenridazon-potassium solution is classifiable under the provision for "Pesticides, other, other" in item 408.38, Tariff Schedules of the United States, and dutiable at the rate of 0.8 cent per pound plus 9.7 percent ad valorem.

Merchandise of this type is subject to the regulations of the Environmental Protection Agency. You may contact them at 401 M Street SW, Washington, DC 20460, telephone number (202) 382-2090.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 05 1984

REFER TO

CLA-2-05:S:COM:N2:226-122
808737

[redacted]

Dear [redacted]

Your letters of February 2, 1984, and February 15, 1984, requested this office to issue a ruling on the tariff classification of various industrial products, including admixtures, which, when mixed on site in the United States with varying proportions of portland cement, sand and water, impart particular properties to the finished concrete. These products are manufactured in Canada.

Your letter of February 2, 1984, divides the products into two groups designated A and B. Group A categorizes products identified as Gemcrete, Gemcrete Slurry, Gempatch, Gembond, Gemite Fibrous Grout and Sure Flo. It has come to the attention of this office that shipments of the products belonging to Group A have been entered through various ports, including Detroit and Buffalo, and that there has been some disagreement regarding the laboratory analysis and classification of at least one of these products. Under the pertinent Customs Regulations, this office is precluded from ruling on a request concerning the tariff status of merchandise which is the subject of a pending or completed Customs transaction. In a recent telephone conversation, you were advised by National Import Specialist Arlene Arszulowicz that the matter regarding the tariff classification of the products listed in Group A should be resolved by advising your customers to apply to the appropriate Import Specialist at the port at which the merchandise was entered and having jurisdiction over the transaction in question, who will process this matter under the procedures provided for in Part 177, Customs Regulations (19 C.F.R. 177.11).

The products listed in Group B are identified as Thermoshield I, Thermoshield II, Gemite Metal Lath Coating, Gemseal, Gemcoat, Gemite Stucco, Primer 410, Primer 510 and Primer 550. You were advised by telephone that the technical literature and breakdown of component materials submitted are not sufficient for this office to issue a ruling. Requests for rulings must be submitted in accordance with Part 177, Customs Regulations. Your request for a classification ruling should include samples of each product, along with the Chemical Abstract Service (CAS)

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name and number of each component in each product. In particular, you should supply the CAS name for the hydrocarbon absorbed on a clay shown as a component of Thermoshield I, Thermoshield II, Gemite Metal Lath Coating, Gembond Part B, and Gemite Stucco, and the CAS name for each component of the acrylic emulsion shown as a component of Thermoshield II and Gemcoat Part B (Gembond). The information should be detailed and specific. You stated in a recent telephone conversation that some of the individual components used in your products are purchased from various chemical companies and that the information may be confidential in nature. Since the information required must be detailed and specific, you may advise your suppliers that any proprietary information submitted to this office will be handled in a confidential manner.

Based on the information submitted, Thermoshield I is a mixture containing four percent of a benzenoid wetting agent. It is probably classifiable under the provision for benzenoid mixtures in item 413.51, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 15.6 percent ad valorem, but not less than the highest rate applicable to any component material. Without knowing the identity of the hydrocarbon, the highest rate at this time is 15.6 percent ad valorem.

Thermoshield II, Gemite Metal Lath Coating, Gemcoat, and Gemite Stucco are products which contain unidentified component(s). The absence of the necessary information, as stated above, precludes this office from issuing a ruling. Further, we cannot state a probable tariff classification for these products since there is a wide range of tariff provisions which may be applicable depending upon the identity of the unknown component(s).

If you require further assistance regarding the requirements of Part 177, Customs Regulations, please contact A. Arszulowicz, National Import Specialist, telephone number (212) 466-5796.

This portion of this letter is for information only, issued under the provisions of Section 177.1(d)(2) of the Customs Regulations (19 C.F.R. 177.1(d)(2)).

Gemseal is a product described in the literature as a mixture of additives in dry form which, when mixed on site in the United States with portland cement, sand and water, forms a hydraulic cement based, fiber-reinforced material specifically formulated for waterproofing, concrete block surface bonding and as a sealer in mining applications. The submitted component material description states that Gemseal is composed of hydrated lime, calcium stearate, sodium nitrate, methyl cellulose and glass fibers. Gemseal is classifiable under the provision for mixtures, not specially provided for, in item 432.25, TSUS, and dutiable at the rate of 4.2 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be calcium stearate, classifiable under item 490.32, TSUS, and dutiable at the rate of 4.9 percent ad valorem.

808737

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E11

Primer 410, Primer 510 and Primer 550 are all stated to be acrylic emulsions. Accordingly, these products are classifiable under the provision for synthetic plastics materials, acrylic and methacrylic acid resins, other, in item 445.05, TSUS, and dutiable at the rate of 8.6 percent ad valorem.

This portion of this letter is a ruling issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

808737

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 15 1984

REFER TO

CLA-2-04:S:COM:N2:239-151
809537

[redacted]

Dear [redacted]

In your letter of May 7, 1984, written on behalf of [redacted], you requested the tariff classification of crude copper phthalocyanine blue from Argentina.

Crude copper phthalocyanine blue is classified under the provision for copper phthalocyanine in item 406.4400, Tariff Schedules of the United States, and is dutiable at the rate of 19.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 15 1984

REFER TO

CLA-2-04:S:COM:N2:235-218
809624

[redacted]

Dear [redacted]

In a letter dated February 7, 1984, which was received by this office on May 31, 1984, you inquired as to the dutiable status of celestite ore (strontium sulfate) manufactured in Mexico.

Your letter indicates that this product will be used for television faceplates, ferrite ceramic magnets, pigments and fillers. You also indicate that the typical analysis for this ore is 88 percent to 95 percent strontium sulfate.

Based on this information, celestite ore of the type you described is classifiable under the provision for strontium sulfate in item 421.8200, Tariff Schedules of the United States Annotated, and is duty free.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ___

E14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 10 1984

REFER TO

CLA-2-04:S:COM:N2:240-214
809697

[redacted]

Dear [redacted]

In a letter dated May 30, 1984, you inquired as to the dutiable status of Vomox manufactured in British West Indies. A sample of the product was submitted.

The analysis by our laboratory indicates that Vomox is a formulated product consisting of mineral oil, a fatty-acid ester of a polyhydric alcohol, and a sulfonated fatty-acid ester.

Accordingly, Vomox is classifiable under the provision for surface active agents, anionic, other, in item 465.9530, Tariff Schedules of the United States Annotated, and dutiable at the rate of 4.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 19 1984

REFER TO

CLA-2-04:S:COM:N2:235-238
809741

[redacted]

Dear [redacted]

In a letter dated June 4, 1984, you inquired as to the dutiable status of Kortacids and Ketjen Lube 115, 135, and 165 manufactured in The Netherlands.

According to your letter the usual method for manufacturing Ketjen Lube is with the use of benzenoid derived compounds. However, you are now attempting to produce these products without the use of these compounds and would like to know what the rate of duty would be if made with non-benzenoid derived compounds.

Kortacids are classifiable under the provision for organic acids, other in item 425.9940, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4.9 percent ad valorem.

Ketjen Lube 115, 135, and 165, when made without the use of benzenoid chemicals are classifiable under the provision for esters of monohydric alcohols, other in item 428.7260, TSUSA, and dutiable at the rate of 4.2 percent ad valorem.

Ketjen Lube 115 and 135 made with benzenoid derived maleic anhydride and Ketjen Lube 165 made with benzenoid derived fumaric acid are classified under the provision for other products which are derived from benzenoid sources in item 407.0700, TSUSA. The rate of duty is 13.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

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F2

REPLY TO: REGIONAL COMMISSIONER OF CUSTOMS, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 31 1984

REFER TO

CLA-2-04:S:COM:N2-235-286
809919

[redacted]

Dear [redacted]

In a letter dated June 1, 1984, you inquired as to the dutiable status of Javel bleach tablets manufactured in Belgium.

The sample you submitted was analyzed by our laboratory and was determined to contain sodium chlorite and adipic acid. Adipic acid can be benzenoid derived. The literature attached indicates that the product is used as a household bleach.

Javel bleach tablets when made with adipic acid which is benzenoid derived is classifiable under the provision for mixtures containing compounds which are benzenoid derived in item 407.1610, Tariff Schedules of the United States Annotated, and dutiable at the rate of 1.7¢ per pound plus 13.6 percent ad valorem.

Javel bleach tablets when made with adipic acid which is not benzenoid derived is classifiable under the provision for mixtures not specially provided for in item 432.2500, Tariff Schedules of the United States Annotated, and dutiable at the rate of 4.2 percent ad valorem but not less than the highest duty applicable to any component material. The component material with the highest rate is the adipic acid which is classifiable in item 425.9960, TSUSA, and is dutiable at the rate of 4.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

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53

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 1 1984

REFER TO
CLA-2-04:S:COM:N2-235-301
809971

[redacted]

Dear [redacted]

In a letter dated June 21, 1984, you inquired on behalf of your client, [redacted], as to the dutiable status of a Hydroceel Unit manufactured in Canada.

According to the literature submitted with your inquiry, the product is a tube of polyvinyl chloride approximately three feet long and 1½ inches in diameter. It is sealed at both ends but is punctured along its surface. The tube contains calcium silicate. The tube is used in pianos and other similar applications to minimize moisture. It also acts to absorb moisture when moisture content is too high.

Based on this information, the Hydroceel Unit is classifiable under the provision for non-enumerated articles in item 799.0000, Tariff Schedules of the United States, and dutiable at the rate of 4.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

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54

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 2 1984

REFER TO
CLA-2-04:S:CO:N2:239-317
810005

[redacted]

Dear [redacted]

Your letter of June 22, 1984 concerns the dutiable status of a product of Japan which you describe as toluene di-isocyanate e-caprolactum polymer.

This product which you state is used in the manufacture of polyurethane films is classifiable under the provision for benzenoid heterocyclic compounds other in item 406.4200, Tariff Schedules of the United States Annotated. The rate of duty is 13.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 2 1984

REFER TO

CLA-2-04:S:COM:N2:235-341
810035

[redacted]

Dear [redacted]

In a letter dated July 6, 1984, you inquired as to the dutiable status of 3-heptan-2-1, 6-(ethylthio) manufactured in Japan.

According to your letter you believe the compound indicated above is classifiable in item 429.6020 as a sulfur compound. 3-heptane-2-1, 6-(ethylthio) is a compound with two functional groups. It has a sulfur functional group and a ketone functional group. Headnote 1, Subpart D, Part 2, Schedule 4 states: "... Any organic compound which is described in more than one functional group is classifiable in the first group in which it is described."

Ketones appear before sulfur compounds.

Therefore, 3-heptan-2-1, 6-(ethylthio) is classifiable under the provision for ketones in item 427.6430, Tariff Schedules of the United States Annotated, and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 30 1984

REFER TO

CLA-2-04:S:COM:N2:238-328
810076

[redacted]

Dear [redacted]

In a letter dated June 27, 1984, you inquired as to the dutiable status of Yun-Wu tea manufactured in The People's Republic of China.

The Yun-Wu tea is packed in filter bags containing licorice, lotus seeds and West Lake Yun-Wu tea (without sugar). It is intended to curb smoking.

Yun-Wu tea is classifiable under the provision for drugs in dosage form in item 440.0000, Tariff Schedules of the United States Annotated, and dutiable at the rate of 4.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20585, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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57

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 2 1984

REFER TO

CLA-2-04:S:COM:N2:239-359
810166

[redacted]

Dear [redacted]

In a letter dated June 25, 1984, you inquired as to the dutiable status of para-chlorophenyl n-butyl acetonitrile which is manufactured in Japan.

Para-chlorophenyl n-butyl acetonitrile which is also called 2-(4-chlorophenyl) hexane nitrile is classifiable under the provision for other benzenoid nitrile function compounds in item 405.6200, Tariff Schedules of the United States Annotated. The rate is 13.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 2 1984

REFER TO
CLA-2-04:S:COM:N2:236-372
810196

[redacted]

Dear [redacted]

In a letter dated July 9, 1984, you inquired as to the dutiable status of a mouse, roach, and fly trap manufactured in Canada.

The inquirer advises that these traps will be used in bakeries, restraurants, etcetera. Also supplied is the following breakdown by value:

	Glue	Cardboard	Plastic
Roach Trap	20%	80%	--
Mouse Trap	60%	40%	--
Fly Trap	30%	50%	20%

The roach and fly traps, in chief value of cardboard, are classifiable under the provisions for other articles of pulp, of papier-mache, of paper, of paperboard, or of any combination thereof, not specially provided for, in item 256.9080, Tariff Schedules of the United States Annotated, and dutiable at the rate of 6.5 percent ad valorem.

The mouse trap, in chief value of glue, is classifiable under the provision for articles not specially provided for: of gelatin, glue, or combinations thereof in item 792.1040, (TSUSA) and dutiable at the rate of 4.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

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F9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 4 1984

REFER TO

CLA-2-04:S:COM:N2-239-457
810420

[redacted]

Dear [redacted]

In your letter dated August 7, 1984, written on behalf of your client, [redacted], you requested the tariff classification of a product of Israel which you call High Flash Aromatic Solvent - GPI 100.

The product is classified under the provision for benzenoid solvents in item 407.0900, Tariff Schedules of the United States Annotated (TSUSA). The rate is 10.6 percent ad valorem but not less than the highest rate applicable to any component material. Based on its alkylbenzene content the rate will be 0.9 cent per pound plus 17.3 percent ad valorem which is taken from item 402.3600 TSUSA.

Articles classifiable under item 407.0900, TSUSA which are the products of Israel are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

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F10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 4 1984

REFER TO
CLA-2-04:S:COM:N2:235-472
810460

[redacted]

Dear [redacted]

In a letter dated August 10, 1984, you inquired as to the dutiable status of fumaric acid, produced from non-benzenoid sources, by [redacted]

Your inquiry includes a flow chart prepared by [redacted] and a statement from [redacted]. which indicates that the maleic anhydride they sell to [redacted] is made from butane. [redacted] uses this maleic anhydride to manufacture fumaric acid which they sell to you.

Fumaric acid made in this manner is not benzenoid derived and is classifiable under the provision for organic acids: other, in item 425.9960, Tariff Schedules of the United States Annotated, and dutiable at the rate of 4.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

for J. Martuge

John J. Martuge
Area Director
New York Seaport

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F11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 4 1984

REFER TO
CLA-2-04:S:COM:N2:235-475
810468

[redacted]

Dear [redacted]

In a letter dated August 7, 1984, you inquired on behalf of your client, [redacted] as to the dutiable status of butene-1, also known as butylene. The country of origin is unknown.

According to the specifications submitted with your inquiry, this product is 99 percent butene-1.

Based on this information, butene-1 is classifiable under the provision for Hydrocarbons, butylene, in item 429.5025, Tariff Schedules of the United States Annotated (TSUSA). The duty rate is determined by the country of origin. Products of most favored nations and products of certain Communist controlled nations are free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

F12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 31 1984

REFER TO

CLA-2-04:S:COM:N2:239-494
810526

[redacted]

Dear [redacted]

In your letter of August 10, 1984, you requested the tariff classification of four chemicals from England.

When produced from benzenoid sources the products thiophen-2-acetic acid, thiophen-2-aldehyde, thiophen-2-carbonyl chloride and thiophen-2-carboxylic acid are classified under the provision for other benzenoid derived products in item 407.0700, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 13.5 percent ad valorem.

When produced from non-benzenoid sources thiophen-2-acetic acid and thiophen-2-carboxylic acid are classified under the provision for other acids in item 425.9940, TSUSA, with the rate of 4.9 percent ad valorem; thiophen-2-aldehyde is classified under the provision for other aldehydes in item 427.5800, TSUSA, with the rate of 6.9 percent ad valorem and thiophen-2-carbonyl chloride is classified in the provision for acyl halides in item 427.3000, TSUSA, with the rate of 4.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

DEC 13 1984

REFER TO
CLA-2-07:S:COM:N2:236-774
811338

[redacted]

Dear [redacted]

In your letter of November 2, 1984, you requested the tariff classification of a child's toothbrush, a plastic rinse tumbler, and a plastic holder for the tumbler from Hong Kong.

Toothbrushes are classifiable under the provision for toothbrushes in item 750.4040, Tariff Schedules of the United States, Annotated (TSUSA), and dutiable at the rate of 0.27 cent each plus 5.3 percent ad valorem. Effective January 1, 1985, the rate of duty will be 0.25 cent each plus 4.7 percent ad valorem.

The plastic rinse tumbler with plastic holder are classifiable under the provision for household articles not specially provided for, of rubber or plastics, in item 772.1500, TSUSA, and dutiable at the rate of 5.3 percent ad valorem. Effective January 1, 1985, the rate of duty will be 4.7 percent ad valorem.

Articles classifiable under item 772.1500, TSUSA, which are the products of Hong Kong are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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F14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK N Y

DEC 13 1984

REFER TO
CLA-2-04:S:COM:N2:236-785
811397

[redacted]

Dear [redacted]

Your letter of October 25, 1984 concerns the dutiable status of Viva Planta - 100 percent Natural 'Earthworm Manure' Fertilizer from Canada.

Viva Planta - 100 percent natural 'Earthworm Manure' fertilizer is classifiable under the provision for manures in item 480.1000, Tariff Schedules of the United States Annotated, (TSUSA) and is free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

G1

DEPARTMENT OF THE TREASURY

U.S CUSTOMS SERVICE

NEW YORK N.Y

CLA-2-07:S:COM:N2:221-786
811464

DEC 1 1984

[redacted]

Dear [redacted]

In your letter dated November 12, 1984, you inquired about the dutiable status of a product known as "Simpliflos" from the Republic of South Africa.

A blister packed sample and the manufacturer's component material cost breakdown were submitted with your inquiry. The furnished breakdown indicates the Simpliflos dental flosser is in chief value of plastic. The flosser consists of a molded blue acrylonitrile styrene copolymer plastic dispenser, the cylindrical handle of which contains a 68.5 meter supply of nylon dental floss. The dispenser is not refillable, and may be used anywhere by anyone as an aid to proper dental hygiene.

It measures 6-1/4 inches long, including a 3 inch handle that can be rotated either to hold the floss taut, or to allow the user to thread it through and across the arms of a one by one inch U-shaped head portion having a stainless steel cutter at its base. The dispenser is hand held by the user while flossing, after which the used floss is cut and discarded. The dispenser measures 1/2 inch wide at its base, tapers to 3/4 inch at the center and then narrows to 1/4 inch at the tip.

Please be advised that each blister packed dental flosser unit should be legibly, permanently and conspicuously marked to indicate the country of origin.

The Simpliflos dental flosser is classifiable under the provision for articles not specially provided for, of rubber or plastics, other, other, in item 774.55[illegible] Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 6.5 percent ad valorem. Effective January 1, 1985, the rate will be 6.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, N.Y.

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for Roger J Salvestri
John J. Martuge
Area Director
New York Seaport

211464

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G3

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JAN 11 1985

REFER TO
CLA-2-01:S:COM:N2:232-940
811745

811745

Mr. Ellis Newman
Ellis Newman Enterprises
116 Atkinson Road
Rockville, Centre, NY 11570

Dear Mr. Newman:

In your letter dated November 13, 1984, which was received by this office on December 11, 1984, you inquired about the dutiable status of Can-Am Crystals from Canada.

Can-Am Crystals are a granular mixture composed of 85 percent by weight cane sugar and 15 percent by weight dextrose. This product is destined to be sold at the retail level for household use and will be imported in 2 kilogram (4.4 pound) bags. A photo of the retail package was included with you inquiry.

Can-Am Crystals are classifiable under the provision for edible preparations, not specially provided for, in item 183.0500, Tariff Schedules of the United States, and dutiable at the rate of 10 percent ad valorem. Since this product will be packaged for retail sale at the time of importation it is not restricted under the current quota restraint system on sugar and sugar containing products.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(i)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

FEB 28 1985

REFER TO
CLA-2-04:S:COM:N2:239-941
811747

Ms. Karla R. Armenti
Kluber Lubrication Corp.
Grenier Industrial Airpark
Manchester, N.H. 03103

Dear Ms. Armenti:

In a letter dated November 28, 1984, you requested the dutiable status of five samples of lubricants which are manufactured in West Germany.

The submitted samples are identified as follows:

1. Isoflex Super LDS 18
2. Staburags NBU 30
3. Staburags NBU 30G
4. Staburags NBU 4 Altemps
5. Syntheso XOL 12

Isoflex Super LDS 18, a yellowish-brown grease, is a mixture in part of mineral oil (approximately 10 percent by weight), fatty acid salts, an organic ester of a monohydric alcohol and a small amount of a benzenoid antioxidant.

Staburags NBU 30, a yellow grease, contains over 50 percent mineral oil and over 10 percent by weight of a salt of a fatty acid.

Staburags NBU 30G, a black grease, contains less than 50 percent of a mineral oil and over 10 percent by weight of a salt of a fatty acid. Information you submitted indicates that it also contains a benzenoid antioxidant.

Staburags NBU 4 Altemps, a creamish grease, contains over 50 percent mineral oil and over 10 percent by weight of a salt of a fatty acid.

Syntheso XOL 12, a pale yellow liquid, is a mixture composed in part of a fatty acid ester, benzotriazole and a barium salt. Your information states that the product also contains a benzenoid surfactant and an alkyl cresol.

Staburags NBU 30 and Staburags NBU 4 Altemps would both be classified under the provision for greases containing over 10 percent by weight of the salts of fatty acids in item 475.6000, Tariff Schedules of the United States Annotated (TSUSA), at the rate of 0.7 cent per

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pound plus 6.8 percent ad valorem.

Syntheso XOL 12 is classified under the provision for mixtures in part of a benzenoid chemical in item 413.5100, TSUSA. The rate of duty is 13.7 percent ad valorem but not less than the highest rate applicable to any component material. Based on benzotriazole, which is dutiable under item 406.3900, TSUSA, the rate of duty is 1.7 cents per pound plus 16.2 percent ad valorem.

Isoflex Super LDS 18 and Staburags NBU 30G are classified under the provision for mixtures in part of a benzenoid chemical in item 407.1610, TSUSA, at the rate of 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. Since the benzenoid components have not been fully identified the applicable rate cannot be determined.

This ruling is being issued under the provision of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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811747

66

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

FEB 26 1985

REFER TO
CLA-2-04:S:COM:N2:238-1004
811954

Mr. A.J. Spatarella
Assistant Traffic Manager
Kanematsu-Gosho (U.S.A) Inc.
One World Trade Center, Suite 4811
New York, NY 10048

Dear Mr. Spatarella:

In your letter of December 26, 1984, you requested the dutiable status of eight "Schreck" brand cleaning agents from Japan.

"Schreck" 100KG and 101KG are aqueous mixtures consisting in part of non-benzenoid organic compounds, including an organo-silicon compound and mono and tri ethanolamine. Both products are classified under the provision for mixtures, not specially provided for in item 432.2500, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The highest rate applicable is for mono and tri ethanolamine classified under the provision for nitrogenous compounds in item 425.1200, TSUSA, and dutiable at the rate of 11.3 percent ad valorem.

"Schreck" 201 is an aqueous solution containing a non-benzenoid organic acid (phosphoric type). It is classified under the provision for other organic acids, in item 425.9960, TSUSA, and dutiable at the rate of 4.7 percent ad valorem.

"Schreck" 301 and 305 are mixtures in aqueous solutions consisting in part of non-ionic benzenoid surface active agents. They are classified under the provision for benzenoid surface active agents in item 409.3060, TSUSA. "Schreck" 501 is a mixture in an aqueous solution consisting in part of an ionic benzenoid surface active agent. It is classifiable under the provision for benzenoid surface active agents in item 409.3080, TSUSA. "Schreck" 301, 305 and 501 are dutiable at the rate of 10.1 percent ad valorem.

"Schreck" 500KG is a mixture in an aqueous solution. It is stated that it contains sodium benzoate. It is classified under the provision for benzenoid mixtures in item 413.5100, TSUSA, and dutiable at the rate of 13.7 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

"Schreck" 600A, KG is a mixture composed essentially of ethers of polyhydric alcohols (ethylene glycol and propylene glycol). It is classifiable under the provision for other mixtures of two or more organic compounds in item 430.2040, TSUSA. It is dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate is ethylene glycol classified in item 428.3400, TSUSA, dutiable at the rate of 12.4 percent ad valorem. G7

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

This merchandise may be subject to the regulations of the United States Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street S.W., Washington, D.C., 20460, telephone (800) 424-9065.

Sincerely,

John J. Martuge
Area Director
New York Seaport

811954

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

68

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

FEB 27 1985

CLA-2-04:S:COM:N2:235-112
812334

Mr. James Chang
Energy & Chemical Systems
Machinery Division
Nissho Iwai American Corporation
1211 Avenue of the Americas
New York, NY 10036

Dear Mr. Chang:

In your letter dated January 24, 1985, you inquired about the dutiable status of aerosol type silicone spray's, TSM 6801, TSM 6811, YGS 6007 from Japan.

According to your letter these products contains polyalkylsiloxane, silicon dioxide, chlorotrifluoroethane, dichlorotrifluoroethane. They are used in the release of molds used in spinning nylon and polyester fibers.

The products described above are classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

69

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

REFER TO
CLA-2-04:S:COM:N2:238-119
812363

FEB 27 1985

Mr. Daniel Szymanski
Manager Export and Distribution Planning
Searle Laboratories
1100 Kirk Street
Elk Grove, Ill. 60007

Dear Mr. Szymanski:

In your letter dated January 30, 1985, you inquired about the dutiable status of disopyramide phosphate from England.

Disopyramide phosphate, your tradename "Norface", is classifiable under the provision for other benzenoid cardiovascular drugs, not pro~~vided for~~ in the Chemical Appendix to the Tariff Schedules in item 412.1200 Tariff Schedules of the United States, and dutiable at the rate of 8 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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G10

[redacted]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAR 12 1985

REFER TO

CLA-2-02:S:COM:N2:232-147
812465

Mr. John A. van Raalte
Gerard Monney International (U.S.A.)
P.O. Box 2036
Princeton, NJ 08540

Dear Mr. van Raalte:

Your letter of February 8, 1985 concerns the dutiable status of carbonated and non-carbonated mineral water from France.

Carbonated mineral water and non-carbonated mineral water are classifiable under the provision for all mineral waters, natural, imitation, or artificial in item 166.1000, Tariff Schedules of the United States Annotated. The rate of duty is 1.5 cents per gallon.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time the merchandise is imported. If a ruling letter is received after the filing of such docments, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

G11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 07 1985

REFER TO
CLA-2-04:S:COM:N2:235-160
812510

Mr. M.N. Wood
Sales Manager
Trade Line Company
26 South Calvert Street, Suite 1000
Baltimore, MD 21202

Dear Mr. Wood:

In your letter dated February 12, 1985, you inquired about the dutiable status of Tipp-Ex Solvent Thinner from West Germany.

According to your letter this product is used to thin Tipp-Ex liquid correction fluid.

Tipp-Ex Solvent is classifiable under the provision for mixtures which are in part hydrocarbon and derived from petroleum, not specially provided for in item 432.1000, Tariff Schedules of the United States Annotated, and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be trichloroethane classifiable under item 429.4700, Tariff Schedules of the United States Annotated, and dutiable at the rate of 18 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

G12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

MAR 11 1985
NEW YORK, N.Y.

MAR 07 1985

REFER TO

CLA-2-04:S:COM:N2:239-51
812644

Mr. Chun Shen Wang
Cheng Feng Enterprises Co., Ltd.
50 Cheng Kung Rd. Rm:806
Tainan, Taiwan

Dear Mr. Wang:

In your letter dated February 4, 1985, you inquired about the dutiable status of sixteen pigments from Taiwan.

The following pigments are classified under the provision for other benzenoid toners in item 410.3200, Tariff Schedules of the United States Annotated, (TSUSA), and are dutiable at the rate of 22.8 percent ad valorem:

Pigment Red	53:1
Pigment Red	48:1
Pigment Red	48:2
Pigment Red	57:1
Pigment Red	22
Pigment Orange	16
Pigment Orange	13
Pigment Yellow	12
Pigment Yellow	13
Pigment Yellow	14
Pigment Yellow	55
Pigment Green	7
Pigment Blue	15:1 (chlorinated)
Pigment Blue	15:3

Pigment Red 48:3 is provided for by name in item 410.2800, TSUSA, and is dutiable at the rate of 11.3 percent ad valorem.

Pigment Blue 15 and the unchlorinated form of Pigment Blue 15:1 are classified under the provision for other benzenoid toners in item 410.3400, TSUSA, and are dutiable at the rate of 15 percent ad valorem.

The rates furnished in this letter apply only to importations of the pigments. If you want to know the tariff status of pigment prepartions you must furnish composition and use information for each.

G13

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This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

812644

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

G14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

APR 0 9 1985

REFER TO
CLA-2-04:S:COM:N2:240-283
812857

Mr. David W. Odden
C.J. Tower & Sons
128 Dearborn Street
Buffalo, New York 14207

Dear Mr. Odden:

In your letter of March 11, 1985 on behalf of Daminco, Inc., 977 Pantera Drive, Mississauga, Ontario L4W 2W6, you asked for information about the tariff status of a product trade-named Dadex MGC, from Canada.

Based on the information contained in your inquiry, Dadex MGC is monoglyceride citrate, a reaction product of a fatty monoglyceride (obtained from refined safflower oil) and citric acid. Accordingly, Dadex MGC is classifiable under the provision for fatty substances of animal or vegetable origin: not sulfonated or sulfated: fatty-acid esters, ethers, and ether-esters of polyhydric alcohols: other, in item 465.1000, Tariff Schedules of the United States Annotated. The rate of duty is 1.2 cents per pound and 5.3 percent ad valorem.

This ruling is being issued under the provision of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of appropriate Customs officer handling the transaction.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

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A3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 05 1985

REFER TO

CLA-2-04:S:COM:N2:238-301
812893

Ms. Cynthia Zirkle
Director of Regulatory Affairs
Optopics Laboratories Corporation
P.O. Box 210
Fairton, New Jersey 08320

Dear Ms. Zirkle:

In your letter dated March 11, 1983, you inquired about the dutiable status of pilocarpine hydrochloride and tetrahydrozaline hydrochloride in bulk powder forms from Italy.

Pilocarpine hydrochloride is a non-benzenoid cholinergic (ophthalmic), alkaloid drug, which will be used in the formulation of sterile ophthalmic solutions.

Pilocarpine hydrochloride is classifiable under the provision for non-benzenoid synthetic, alkaloids in item 437.2080, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4 percent ad valorem.

Tetrahydrozaline hydrochloride is a benzenoid adrenergic drug which will also be used in the formulation of sterile ophthalmic solutions.

Tetrahydrozaline hydrochloride is classifiable under the provision for benzenoid imidazoline derivatives, provided for in the chemical Appendix to the Tariff Schedules in item 411.0800, TSUSA, and dutiable at the rate of 7.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

These products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 1 1985

REFER TO

CLA-2-04:S:COM:N2:235-323
812959

Mr. Allan J. Spilner, Manager
Rohm and Haas Company
Independence Mall West
Philadelphia, PA 19105

Dear Mr. Spilner:

In your letter of March 15, 1985, you requested the tariff classification of Fore, a chemical mixture manufactured in France. You indicated that the product functions as a pesticide.

Based on the chemical breakdown information which you provided, Fore is classifiable under the provision for mixtures not specially provided for: other: pesticides, in item 432.1500, Tariff Schedules of the United States Annotated. The rate of duty for item 432.1500 is 4 percent ad valorem but not less than the highest rate applicable to any component material. Based on the chemical breakdown information which you provided, the highest rate applicable to any component material is 7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Pesticides are subject to the regulations and requirements of the Environmental Protection Agency (EPA). Questions about EPA requirements and regulations should be addressed to Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, telephone number 202-382-4134.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

AS

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 1 1985

REFER TO

CLA-2-04:S:COM:N2:235-326
812962

Mr. Alan J. Spilner, Manager
Rohm and Haas Company
Independence Mall West
Philadelphia, PA 19105

Dear Mr. Spilner:

In your letter of March 15, 1985, you requested the tariff classification of Dithane FZ, a chemical mixture manufactured in France. You indicated that the product functions as a pesticide.

Based on the chemical breakdown information which you submitted, Dithane FZ is classifiable under the provision for mixtures not specially provided for: other: pesticides, in item 432.1500, Tariff Schedules of the United States Annotated. The rate of duty for item 432.1500 is 4 percent ad valorem but not less than the highest rate applicable to any component material. Based on the chemical breakdown information which was provided, the highest rate applicable to any component material is 11.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Pesticides are subject to the regulations and requirements of the Environmental Protection Agency (EPA). Questions about EPA requirements and regulations should be addressed to the Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, telephone number (202) 382-4134.

Sincerely,

John J. Hartuge
Area Director
New York Seaport

A6

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 03 1985

REFER TO

CLA-2-04:S:COM:N2:235-337
813003

Mr. S.R. Patel
Manager, Technical Services
Midwest Alloys and Technology, Incorporated
2056 Happy Lane
St. Louis, MO 63125

Dear Mr. Patel:

In your letter dated March 4, 1985, you inquired about the dutiable status of INT 101 flux from Belgium.

According to your letter, this product is used in submerged arc welding.

INT 101 flux is classifiable under the provision for mixtures of two or more inorganic compounds in item 423.96, Tariff Schedules of the United States, and dutiable at the rate of 1.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A7

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 12 1985

REFER TO

CLA-2-04:S:COM:N2:239-358
813061

Ms. Maureen Hannah
HAV International Freight Corporation
45 John Street
New York, New York 10038

Dear Ms. Hannah:

In a letter of March 26, 1985, written on behalf of your client, Kentak Information System, Incorporated, you asked about the dutiable status of a dry imaging powder from Japan.

The technical data, submitted with your letter, indicates that the product, which is used with photocopiers, consists, of a toner and a developer. The toner is composed of a styrene butadiene copolymer, carbon black, an azoic dye and silica. The developer is composed of a styrene butadiene copolymer, carbon black, an azoic dye, silica and a metallic based carrier.

The toner and developer described above are classifiable under the provision for other benzenoid colors, dyes, stains and related products in item 410.2200, Tariff Schedules of the United States Annotated. The rate of duty is 15 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

AS

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
APR 1 1985

REFER TO
CLA-2-04:S:COM:N2:240-388
813148

Mr. Max F. Schutzman
Whitman & Ransom
522 Fifth Avenue
New York, New York 10036

Dear Mr. Schutzman:

On April 4, 1985, this office received technical information and "dumbbell" specimens with respect to a tariff classification ruling for TOSO-CSM TS 320, a chlorosulphonated polyethylene product manufactured in Japan. This information was submitted in response to our letter of January 31, 1984 which, among other things, stated that we could not issue a ruling for the TOSO-CSM TS 320 due to insufficient information.

Our laboratory has completed its testing of the product, and the results indicate that TOSO-CSM TS 320 meets the tariff definition of synthetic rubber. Accordingly, this product is classifiable under the provision for synthetic rubber in item 446.1557, Tariff Schedules of the United States Annotated, dutiable at the rate of 0.8 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 16 1985

REFER TO
CLA-2-04:S:COM:N2:240:394
813161

Ms. Arlene Kunkel
Chugai International Corp.
500 Fifth Avenue, Suite 1121
New York, NY 10110

Dear Ms. Kunkel:

Your letter of March 27, 1985 concerns the dutiable status of L-Tyrosine from Japan.

As requested by this office in previous correspondence, you have submitted a flow chart on the letterhead of the foreign manufacturer indicating the successive steps in the production of the L-Tyrosine. The flow chart shows that the product is derived from non-benzenoid and natural sources.

Accordingly, the subject L-Tyrosine manufactured by Nippon Kayaku Co., Ltd., Japan is classifiable under the provision for nitrogenous compounds: amino acids in item 425.0455, Tariff Schedules of the United States Annotated, dutiable at the rate of 4.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 02 1985

REFER TO

CLA-2-04:S:COM:N2:236-447
813348

Mr. E. Otrompke
W.R. Filbin & Co., Inc.
Box 33062
Detroit, Michigan 48232-3062

Dear Mr. Otrompke:

In your letter dated April 16, 1985 you inquired in behalf of your client Colortech about the dutiable status of a Titanium Dioxide Color Concentrate number 11030-12 B-White from Canada.

The color concentrate is composed of 45% Titanium Dioxide, 25% Calcium Carbonate, 0.01% Ultramarine Blue, and 29.99% Linear Low Density Polyethylene Resin.

Color Concentrate #11030-12 B-White is classifiable under the provision for pigments, titanium dioxide in item 473.7000, Tariff Schedules of the United States, and dutiable at the rate of 6.4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 02 1985

REFER TO

CLA-2-07:S:COM:N3G:342-625
813438

Mr. Robert Temkin
Halsey Import Corporation
51 Halsey Street
Newark, New Jersey 07102

Dear Mr. Temkin:

In your letter of April 17, 1985, you requested the tariff classification of a plastic air freshener device from Taiwan. A sample of the fragrance container was submitted with your request.

The air freshener consists of an inner plastic container filled with a liquid fragrance and an outer cover in an attractive soft tone finish. The outer cover has slotted openings and is designed to rotate over the inner container to an open or closed position. The air freshener is approximately 4 inches in height and 2-1/2 inches in diameter. You state in your letter that the article is in chief value of plastics.

The air freshener is classifiable under the provision for household articles not specially provided for, of rubber or plastics, in item 772.1500, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4.7 percent ad valorem.

Articles classfiable under item 772.1500, TSUSA, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

A12

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 31 1985

REFER TO

CLA-2-07:S:COM:221-509
813493

Ms. Linda J. Rodriguez
Performance Trading
343 East Jefferson Boulevard
Los Angeles, CA 90011

Dear Ms. Rodriguez:

In your letter dated April 17, 1985, which was received on May 1, 1985, you inquired about the dutiable status of a soap dispenser and soap refills from Korea.

Samples accompanied your letter and have been retained by this office. The dispenser is a box-like plastic container, approximately 8¼ inches tall, 2-3/4 inches wide, and 3 inches deep, filled with a packet containing 1000 rectangular-shaped soap "leaves". The leaves are dispensed, one at a time, through a slot in the front of the container by pushing a lever on the bottom. The product has two pressure sensitive strips on the back, for mounting it to a wall, and a clear plastic window just above the slot, to indicate when the supply of soap leaves is low. The soap refill box contains 1000 soap leaves. The refill package and the soap contained within the dispenser are separately classified.

The dispenser is classifiable under the provision for articles not specially provided for, of rubber or plastics... other... other, in item 774.5595, Tariff Schedules of the United States Annotated, (TSUSA) and dutiable at the rate of 6.1 percent ad valorem.

However, your inquiry does not provide enough information for us to give a classification ruling on the soap leaves. Your request for a classification ruling should include a complete list of all the ingredients in the soap; the full chemical name of each component should be provided. In addition, your request should indicate the value per pound of the soap.

In your letter, you express the opinion that the soap should be classified in item 466.5595, TSUSA. Since there is no item 466.5595 in the Tariff Schedules, we assume that you intended to indicate item 466.1500, TSUSA. This provision would be correct only under the circumstances described below.

If the soap contains salts of fatty acids obtained from natural oils, fats and greases, and if the value of the soap is over 20 cents per pound, it would probably be classifiable under the provision for toilet soap: valued over 20 cents per pound, in item 466.1500, TSUSA, and would be dutiable at the rate of 0.5 cents per pound plus 4 percent ad valorem. The rate of duty for merchandise classifiable in item 466.1500 is temporarily reduced to 0.4 cents per pound plus 2.8 percent ad valorem under item 947.26.

A13

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

If the soap contains salts of fatty acids obtained from natural oils, fats and greases, and if the value of the soap is not over 20 cents per pound, it would probably be classifiable under the provision for toilet soap: valued not over 20 cents per pound, in item 466.1000, TSUSA, and would be dutiable at the rate of 0.3 cents per pound plus 3.3 percent ad valorem.

Merchandise classifiable in items 466.1500, 466.1000 and 774.5595, TSUSA, which is produced is South Korea would be duty free under the Generalized System of Preferences upon compliance with all applicable regulations.

With respect to the dispenser, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)). For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations (19 C.F.R. 177.1(d)(2)).

If you require further assistance regarding the requirements of Part 177, Customs Regulations, please contact Mr. Jacob Bunin, National Import Specialist Assistant, telephone number (212) 466-5742.

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

813493

A14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 30 1985

REFER TO

CLA-2-04:S:COM:N2:235-524
813547

Mrs. A. Van Doorn
Library
DSM, Marketing Centre Chemicals & Polymers
P.O. Box 43, 6130 AA
Sittard, Netherlands

Dear Mrs. Van Doorn:

In your letter dated April 12, 1985, you inquired about the dutiable status of a mixture of methylvalinonitril and toluene from the Netherlands.

A mixture of methylvalinonitril and toluene is classifiable under the provision for mixtures, not specifically provided for in item 432.1000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

P.S. Please find included, a copy of our letter to you regarding a previous inquiry on different products.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAY 29 1985

REFER TO

CLA-2-04:S:COM:N2:240-566
813672

Mr. Mark N. Wood
Inter-Trade Associates
8991 Yellow Brick Road
Baltimore, Maryland 21237

Dear Mr. Wood:

In your letter dated April 25, 1985, you inquired about the dutiable status of Tipp-Ex liquid correction fluid from West Germany. A sample was submitted.

Tipp-Ex liquid correction fluid contains titanium dioxide, polyacrylic resin, polyphosphate and water. It is sold for retail in a small plastic container which has a brush applicator attached to the inside of its cap. Tipp-Ex is used as a "white-out" to correct typographical errors.

Tipp-Ex liquid correction fluid is classifiable under the provision for synthetic plastics materials, acrylic and methacrylic acid resins, other, in item 445.0520, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 7.8 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

B2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 13 1985

REFER TO

CLA-2-04:S:COM:N2:235-513
813720

Mrs. A. Lumpkin
J. F. Lumpkin, Custom House Broker
P.O. Box 4189
North Little Rock, AR 72116

Dear Mrs. Lumpkin:

In your letter dated May 5, 1985, on behalf of your client, Strong Manufacturing Company, you inquired about the dutiable status of Neopor from West Germany. According to the manufacturer this product is used to make cellular concrete.

Based on information contained in the manufacturer's letter as to the chemical components in this product, Neopor is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be butylene glycol classifiable under item 428.30, Tariff Schedules of the United States, and dutiable at the rate of 11.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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B3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK N.Y.

JUN 04 1985

REFER TO

CLA-2-04:S:COM:N2:235-585
813724

Mr. G. Barberio, C.A., Comptroller
Devoe-Holbein (Canada) Inc.
175 Bouchard Blvd.
Dorval, Quebec H9S 1A9 Canada

Dear Mr. Barberio:

In your letter dated May 10, 1985, you inquired about the dutiable status of various chemical mixtures from Canada.

According to your inquiry these products are all used in the recovery of toxic heavy metals from waste solutions.

Vitrokele 566 products are classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

Vitrokele 524, 553 and 592 products are classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be 3-aminopropyltriethoxysilane classifiable under item 425.5290, Tariff Schedules of the United States Annotated, and dutiable at the rate of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

B4

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 11 1985

REFER TO

CLA-2-04:S:COM:N2:237-594
813733

Mr. Ken Thom
General Manager
Chemac Industries, Inc.
9-368 Industrial Avenue
Kelowna, British Columbia
Canada V1Y 7E8

Dear Mr. Thom:

In a letter dated May 7, 1985, you inquired about the tariff classification of Quick-N-Easy Deodorant manufactured in Canada.

Quick-N-Easy Deodorant is packaged in a plastic envelope which contains 28 ml. The contents of the envelope are designed to combat undesirable odors when splashed on the carpet of a car.

The breakdown of ingredients which you submitted indicates that this product contains a perfume oil, isopropyl alcohol, water and a surfactant. Only a very small amount of surfactant (.05 percent) is present in the product.

Quick-N-Easy Deodorant is classifiable under the provision for aromatic or odoriferous substances containing no alcohol or not over 10 percent alcohol by weight: artificial mixtures in item 460.8520, Tariff Schedules of the United States Annotated, and is dutiable at the rate of 5.5 cents per pound plus 4.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

BS

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 17 1985

REFER TO
CLA-2-07:S:COM:N2:221-599
813750

Mr. G.E. Tonkin
Customs/Market Access Officer
USA Marketing Division
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canada

Dear Mr. Tonkin:

In your letter dated May 7, 1985, on behalf of Polybrand Inc., Brantford, Ontario, you inquired about the dutiable status of rigid polyurethane foam products from Canada.

A sample of unfaced polyurethane insulation board accompanied your letter, and has been retained by this office. The sample is made of an expanded plastic material which, when compressed, does not return to its original shape. Your letter refers to four product lines made from this type of plastic: large buns or blocks, ready for fabrication, board in standard and special sizes, pre-cut parts and shapes, made to specification, and pipe covering, for nominal pipe size 1/2 inch to 44 inches.

The buns, blocks, board, and pipe coverings are classifiable under the provisions for expanded, foamed, or sponge rubber or plastics, and articles not specially provided for wholly or almost wholly of such rubber or plastics: not flexible, in item 770.3000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 6.1 percent ad valorem.

However, your inquiry does not provide enough information for us to give a classification ruling on the pre-cut parts and shapes. Your request for a classification ruling should include a description of these products. Indicate where they will be used and what they will be used for.

Based upon the information you submitted, the pre-cut parts and shapes would probably be classified under the provision for expanded, foamed, or sponge rubber or plastics, and articles not specially provided for wholly or almost wholly of such rubber or plastics: not flexible, in item 770.3000, TSUSA, with duty at the rate of 6.1 percent ad valorem.

B6

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

With respect to the buns, blocks, board, and pipe coverings, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1). For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations (19 C.F.R. 177.1(d)(2)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

813750

B7

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 2[illegible] 1985

REFER TO

CLA-2-04:S:COM:N2:240-618
813773

Mr. Ted H. Pope
Soil Seal Corporation
1111 W. Sixth Street
Los Angeles, California 90017

Dear Mr. Pope:

In your letter dated May 7, 1985, you inquired about the dutiable status of Soil Seal Concentrate from West Germany.

Soil Seal Concentrate is a surface erosion control and dust abatement product composed of an acrylic emulsion polymer, including additives.

The Soil Seal Concentrate is classifiable under the provision for synthetic plastics materials: acrylic and methacrylic acid resins, other, in item 445.0520, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 7.8 percent ad valorem.

Regarding your request for the tariff classification of your product under the Brussels Tariff Nomenclature (BTN), the United States Customs Service is not authorized to render tariff classifications under the BTN. To obtain such information, please contact the consulate or embassy of the country to which you contemplate exporting the Soil Seal Concentrate.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for J. Martuge

John J. Martuge
Area Director
New York Seaport

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B8

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 19 1985

REFER TO

CLA-2-04:S:COM:N2:235-609
813779

Mr. W. Buehrer
Traffic Manager
Toyomenka (America) Inc.
Alcoa Building, One Maritime Plaza
San Francisco, CA 94111

Dear Mr. Buehrer:

In your letter dated May 13, 1985, you inquired about the dutiable status of crude toluene from Japan.

The specifications in your letter have been examined and discussed with the technical staff of the New York Customs Laboratory. It is our opinion that the product you call crude toluene is not toluene following parameters set up by the Customs Service.

This conclusion is based on the fact that the distillation range indicated in you inquiry does not meet those of the ASTM and is therefore not a recognized grade of toluene (industrial and nitration).

For these reasons we believe the product you call crude toluene is classifiable under the provision for mixtures, not specifically provided for in item 432.10, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

B9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 17 1985

REFER TO

CLA-2-04:S:COM:N2:238-606
813783

Mr. Tom Marriott
SMR Corporation
704 W. Bay Street
Tampa, Florida 33606

Dear Mr. Marriott:

In your letter of May 17, 1985, you inquired about the dutiable status of four effervescent tablet products containing vitamins from West Germany. The products, their composition and classifications are as follows:

Multivitamins with minerals and aspartame is composed of citric acid, sodium bicarbonate, sorbitol, tricalciumphosphate, magnesium carbonate, iron saccharade, natural colors, natural and artificial flavors, aspartame, vitamins A, thiamin, B6, niacin, pantothenic acid, biotin, C, D, E (d-alpha tocopherol), and vitamins B_2, B_{12}, and folic acid which are benzenoid derived.

Aspirin with Vitamin C is composed of sodium bicarbonate, citric acid, acetyl salicylic acid and vitamin C.

Both the multivitamin with minerals and aspartame and aspirin with vitamin C are classifiable under the provision for other benzenoid drugs in item 412.7000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 6.9 percent ad valorem.

Vitamin C is composed of citric acid, sodium bicarbonate, sorbitol, vitamin E (d-alpha tocopherol), natural flavors, natural colors and aspartame.

Vitamin E is composed of citric acid, sodium bicarbonate, sorbital, vitamin E (d-alpha tocopherol), natural flavors, natural colors and aspartame.

Both the vitamin C and E tablets are classifiable under the provision for non-benzenoid vitamins in item 438.0100,TSUSA,... tablets ..., and dutiable at the rate of 3.3 percent ad valorem.

? Probably Benzenoid

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

B10

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REPLY TO AREA DIRECTOR OF CUSTOMS NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

213783

811

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 11 1985

REFER TO

CLA-2-04:S:COM:N2:235-628
813809

Mr. L. L. Barnhart
Transportation Department
Hercules Incorporated
Hercules Plaza
Wilmington, Delaware 19894

Dear Mr. Barnhart:

In your letter dated May 10, 1985, you inquired about the dutiable status of a byproduct stream from West Germany. According to your letter this commodity is a byproduct of the production of nylon 66 and that you believe it to be classifiable in item 425.5290, Tariff Schedules of the United States Annotated.

Item 425.5290, TSUSA, provides for single compounds. The product you describe in you inquiry contains bis-hexamethylenetriamine, hexamethylenediamine and other amines as well as sodium hydroxide. It is our opinion that this product is more accurately described as a mixture.

As such this mixture, when produced from non benzenoid sources, is classifiable under the provision for mixtures, not specially provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be bis-hexamethylenetriamine classifiable under item 425.5290, Tariff Schedules of the United States Annotated, and dutiable at the rate of 7.9 percent ad valorem.

When produced from benzenoid sources this product is classifiable under the provision for mixtures in whole or in part of any product provided for in Schedule 4, part 1, subpart B, Tariff Schedules of the United States Annotated, in item 407.1610, TSUSA. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. Based on the hexamethylenediamine which is provided for by name in item 406.9200, TSUSA, the rate of duty would be 20.8 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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B12

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

413809

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

B13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 17 1985

REFER TO

CLA-2-04:S:COM:N2:235-652
813883

Mr. E.Y. Ueda, Product Manager
Sekisui American Corporation
1800 W. Blancke Street, P.O. Box 598
Linden, New Jersey 07036

Dear Mr. Ueda:

Your letter of May 6, 1985 concerns the dutiable status of a disposable chemical hand warmer from Japan.

The sample, a commercially labeled packet, consists of an envelope containing two individual packets separated by a breakable plastic seal. Instructions state that when the seal is broken and the components are mixed, heat is generated.

The disposable chemical hand warmer is classifiable under the provision for nonenumerated products, other: in item 799.00, Tariff Schedules of the United States. The rate of duty is 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

B17

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JUN 17 1985

REFER TO
CLA-2-04:S:COM:N2:238-658
813893

Mr. David W. Maehling
Purchasing
Gowan Company
P.O. Box 5696
Yuma, AZ 85364

Dear Mr. Maehling:

In your letter dated May 21, 1985, you inquired about the dutiable status of cupric hydroxide w.p. (wettable powder) from France.

Cupric hydroxide w.p. is an agriculture fungicide formulation containing 85.55 percent cupric hydroxide, 3.0 percent sodium naphthalene formaldehyde condensate, 3.0 percent sodium diisopropyl naphthalene sulphonate, 2.0 percent hydrated silica, and 6.45 percent kaolinite clay. Sodium naphthalene formaldehyde condensate and sodium diisopropyl naphthalene sulphonate are benzenoid anionic surfactants (dispersants).

Cupric hydroxide w.p., is classifiable under the provision for benzenoid mixtures in item 413.5100, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 13.7 percent ad valorem, but not less than the highest rate applicable to any component material. In this case, none of the component materials have a rate higher than 13.7 percent.

This ruling is being issued under the provision of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

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This merchandise may be subject to the regulations of the Environmental Protection Agency. You may contact them at 401 M. Street, S.W., Washington, D.C. 20460, telephone (202) 382-2090.

Sincerely,

John J. Martuge
Area Director
New York Seaport

813893

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 21 1985

REFER TO

CLA-2-04:S:COM:N2:235-675
813920

Mr. E. J. Zaccone, President
The Forum Group
152 Cedar Drive
Old Tappan, NJ 07675

Dear Mr. Zaccone:

In your letter dated May 24, 1985, you inquired about the dutiable status of various cosmetic products from Korea or Taiwan.

Nail polish correcting pens containing elthyl alcohol, butyl acetate, ethyl acetate, amyl acetate and ispropyl myristate are classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be butyl acetate classifiable under item 428.52, Tariff Schedules of the United States, and dutiable at the rate of 15.9 percent ad valorem.

Facial cleansing pads of manmade fibers are classifiable under the provision for non-woven fabrics of manmade fiber in item 355.25, Tariff Schedules of the United States. The rate of duty is 4 percent ad valorem.

The United States currently has bilateral agreements and consultation mechanisms with many countries throughout the world, under which the importation of textiles and products thereof are controlled.

To administer these agreements, textile products are grouped under category numbers used in monitoring shipments. The category designations are derived from the item numbers under which the merchandise is classified in the Tariff Schedules of the United States Annotated (TSUSA).

Facial cleaning pads of manmade fibers fall within textile category designation 669. As a product of Korea or Taiwan this merchandise is presently subject to visa requirements based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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Import restraints are administered by the U.S. Customs Service under directives of the Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, D.C. 20230. Further advice or information pertaining to those agreements may be obtained from the Chairman of that committee.

An empty cylindrical, purse type, atomizer in chief value of plastic is classifiable under the provision for articles not specially provided for, of plastic, other, other in item 774.5595, Tariff Schedules of the United States Annotated, and dutiable at the rate of 6.1 percent ad valorem.

Articles classifiable under item 432.25, TSUS, which are the products of Korea or Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Articles classifiable under item 774.5595, TSUS, which are the products of Korea are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

813920

c4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 24 1985

REFER TO

CLA-2-04:S:COM:N2:235-712
814037

Mr. W.G. Thonack
Accounts Manager
Biddle Sawyer Corporation
2 Penn Plaza
New York, NY 10121

Dear Mr. Thonack:

In your letter dated June 4, 1985, you inquired about the dutiable status of a microencapsulated ethyl alcohol called Ethicap, from Japan.

According to the literature submitted with your inquiry, this product contains 60 percent ethyl alcohol, 35 percent silcon dioxide and 5 percent moisture. The product will be used to preserve food by releasing alcohol vapor.

Based on this information Ethicap is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate of duty.

Because of its ethanol content, this product may be subject to the Internal Revenue Code.

We therefore advise that you contact:

Bureau of Alcohol, Tobacco and Firearms
Regional Office
#6 World Trade Center
New York, N.Y. 10048

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

814037

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

c6

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 26 1985

REFER TO

CLA-2-04:S:COM:N2:235-721
814060

Mr. W.T. Reisen Import Specialist
Stauffer Chemical Company
Westport, Conn 06881

Dear Mr. Reisen:

In your letter dated June 10, 1985, you inquired about the dutiable status of various organic chemicals from Japan.

Trimethyl gallium, triethyl gallium, triethyl aluminum, tri-isobutyl aluminum, triethyl indium, tetraethyl tin, dimethyl zinc, and trimethyl aluminum are classifiable under the provision for other organic chemicals in item 429.95, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JUL 01 1985

REFER TO

CLA-2-04:S:COM:N2:235-742
814139

Mr. D. W. Maehling, Purchasing
Gowan Company
P.O. Box 5696
Yuma, Arizona 85364

Dear Mr. Maehling:

In your letter dated June 3, 1985, you inquired about the dutiable status of non-benzenoid derived malathion from Italy.

Malathion produced from non-benzenoid sources is classifiable under the provision for esters of a marohydric alcohol in item 428.7250, Tariff Schedules of the United States Annotated, and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

c8

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 01 1985

REFER TO

CLA-2-04:S:COM:N2:238-750
814149

Mr. David Nakamura, President
Dana Enterprises International, Inc.
1440 S. Saratoga-Sunnyvale Road
San Jose, CA 95129

Dear Mr. Nakamura:

In your letter of May 30, 1985, you asked for information about the tariff status of a "Pacifier" from Japan.

The product is a plastic artificial cigarette with holder containing small pellets permeated with "natural peppermint oil", "peppermint oil", "spearmint oil" and "L-menthol". It is to be used as a pacifier for people who have stopped smoking.

Your inquiry does not contain enough information for us to issue a tariff classification ruling. Requests for rulings must be submitted in accordance with Part 177, Customs Regulations. Your request for a classification ruling should include a manufacturer's chemical process flow chart showing exactly how and from what source the L-menthol was made.

Based upon the information you submitted, the "Pacifier" would probably be classified under the provision for other benzenoid drugs in item 412.7000, Tariff Schedules of the United States, with duty at the rate of 6.9 percent ad valorem.

If you require further assistance regarding the requirements of Part 177, Customs Regulations, please contact National Import Specialist Cornelius Reilly, telephone number (212) 466-5770.

This is an information letter, issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 30 1985

REFER TO

CLA-2-04:S:COM:N2:240-999
814790

Mr. Patrick J. Corboy
Austin Chemical Company, Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631-3434

Dear Mr. Corboy:

In your letter of July 9, 1985, received in this office on July 31, 1985, you furnish additional information on the egg phosphatidyl choline you intend to import from Japan. You have requested a tariff classification ruling for this material, which you contend should be classified as a drug.

The technical information you have submitted indicates that the egg phosphatidyl choline can be used as a liposome to encapsulate drugs for controlled release, contrast media for diagnostic imaging and reagents for use in laboratory tests. It appears that the most imminent commercial potential for the liposomes is the encapsulation of diagnostic agents and encapsulation of drugs.

For a substance to be classified under the provision for crude drugs, advanced, in item 439.30, it must meet the definition of Headnote 2, Part 3 of Schedule 4, which states, in part: For the purposes of the tariff schedules, the term "drugs" means those substances whether natural or synthetic, having therapeutic or medicinal properties and chiefly used as medicine or as ingredients in medicine.

The egg phosphatidyl choline does not fall within the tariff schedule definition of drugs since it does not have therapeutic or medicinal properties. It is a surface active agent that is used as an emulsifier, and is chemically a fatty acid ester of a polyhydric alcohol.

Therefore, the egg phosphatidyl choline is classifiable under the provision for fatty substances of animal origin, not sulfonated or sulfated, fatty acid-esters, ethers, and ether-esters of polyhydric alcohol, other, in item 465.1000, Tariff Schedules of the United States Annotated. The rate of duty is 1.2 cents per pound, plus 5.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

C10

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

814790

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

C11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 30 1985

CLA-2-04:S:COM:N2:235-1037 REFER TO
814895

Mr. B. Deahl, Customs Clearance Group
Mitsubishi International Corp.
520 Madison Avenue
New York, NY 10022

Dear Mr. Deahl:

In your letter dated August 1, 1985, you inquired about the dutiable status of MA-1 Catalyst from Japan.

According to your inquiry, the product is a homogenous mixture of vanadium pentoxide, silicon dioxide, chromium trioxide and boron trioxide, and is in chief value of the vanadium pentoxide.

Based on this information, MA-1 Catalyst is classifiable under the provision for mixtures of two or more inorganic compounds in chief value of vanadium compounds, in item 423.94, Tariff Schedules of the United States, and dutiable at the rate of 9.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

C12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

AUG 30 1985

REFER TO

CLA-2-04:S:COM:N2:235-1067
814963

Mr. D.J. Winkle, Traffic Department
The Mogul Corporation
P.O. Box 200
Chagrin Falls, OH 44022

Dear Mr. Winkle:

In your letter dated August 8, 1985, you inquired about the dutiable status of a pesticide from West Germany.

According to your letter the product will be used as a water treatment in cooling towers.

A mixture of 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one with water is classifiable under the provision for mixtures of two or more organic compounds in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem, but not less than the highest rate applicable to any component compound. The highest rate applicable is for 2-methyl-4-isothiazolin-3-one classifiable under the provision for nitrogenous compounds, other, in item 425.52, Tariff Schedules of the United States, and dutiable at the rate of 7.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

For information concerning exports, we suggest you write to:

U.S. Department of Commerce
International Trade Administration
26 Federal Plaza
New York, NY 10278

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
AUG 30 1985

REFER TO
CLA-2-04:S:COM:N2:235-1064
814966

Ms. E. Rolla, Purchasing Department
Mendell Company Inc.
Route 52
Carmel, NY 10512

Dear Ms. Rolla:

In your letter dated August 5, 1985, you inquired about the dutiable status of dicalcium phosphate anhydrous from England.

Dicalcium phosphate anhydrous is classifiable under the provision for dicalcium phosphate in item 418.28, Tariff Schedules of the United States, and dutiable at the rate of 1.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 24 1985

REFER TO

CLA-2-04:S:COM:N2:236-1230
815418

Mr. Oswaldo Anez
Aliflor Corp.
6055 Northwest 82 Ave.
Miami, Florida 33166

Dear Mr. Anez:

In your letter dated August 23, 1985, you inquired about the dutiable status of Aliflor porous ceramic growing medium from Venezuela.

Aliflor, in the shape of a pebble, is man made from clay. Fired at a temperature of 2000° F, it turns into a ceramic, forming thousands of tiny air pockets having the ability to initiate capillary action, supplying stored water to plant roots. Aliflor's high water absorption supplies water to roots on demand while maintaining excellent root aeration. When mixed with soil, Aliflor prevents compactions, promotes drainage, and prevents root rot. It's low thermal conductivity inhibits rapid soil temperature fluctuations.

For tariff purposes the term "fertilizer" is not limited to materials defined as such in scientific journals but has been held to include any substance that increases the productivity of the soil. According, Aliflor ceramic growing medium, (pebbles), is classifiable under the provision for other substances used chiefly for fertilizers in item 480.8095, Tariff Schedules of the United States, and is free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 28 1985

CLA-2-04:S:CO:N2:238-1224
815447

Mr. Bjorn Hjerdin
Marketing Manager
Milk Food
P.O. Box 42
S-260 23 Kagerod, Sweden

Dear Mr. Hjerdin:

In your letter dated September 12, 1985, you inquired about the dutiable status of "Yogovit" powder from Sweden.

"Yogovit" powder, contains viable bacteria (stated to be streptococcus thermophillus and lactobacillus bulgaricus). It is a skimmed milk yogurt powder that is used as a starter culture in various food products. It is also used for prophylatic use in powder or tablet forms as a means of obtaining a controlled intake of yogurt bacteria.

"Yogovit" powder is classifiable under the provision for other, ferments in item 437.4980, Tariff Schedules of the United States, and dutiable at the rate of 5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fisher Lane, Rockville, Maryland 20857, telephone number (212) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 01 1985

REFER TO
CLA-2-04:S:COM:N2:238-1241
815468

Mr. Richard Poirer
Purchasing Agent
Iroquois Chemicals Corporation
Second Street West
P.O. Box 399
Cornwall, Ontario, Canada K6H 5T1

Dear Mr. Poirer:

In your letter dated August 16, 1985, you inquired about the dutiable status of eleven coating products from Canada.

Permacoat 450, Brushing permacoat 452, Polishing permacoat 453 and NPG-permacoat 455 are pink liquids containing a benzenoid synthetic thermosetting plastic material, inorganic pigments and organic solvents. They dry to a tacky translucent film at room temperature. They are classifiable under the provision for benzenoid thermosetting polyester resins, unsaturated in item 409.10, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 0.7 cent per pound plus 9 percent ad valorem.

649-800 line superguard, 660-071 sealer, 660-073 sealer, 701-700 line permaflex, 740-057 sealer, 740-104 sealer and 770-700 line lustreguard are liquid surface-coating products which contain no pigments or pigment-like materials, and dry (harden) to transparent or translucent films. They are classifiable under the provision for varnishes, other in item 474.4600 TSUSA, and dutiable at the rate of 1.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D3

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telephone number (800) 424-9085.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815468

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
NOV 01 1985

REFER TO

CLA-2-04:S:COM:N2:235-1256
815472

Mr. J. C. King
Hydre-King Incorporated
3661 West Ox Road
Fairfax, Va. 22033

Dear Mr. King:

In your letter dated September 17, 1985, you inquired about the dutiable status of OKO tire sealant from the United Kingdom.

According to your letter this product is introduced into the tire through the valve stem. It is said to contain synthetic fibers, monoethylene glycol, sodium nitrite and a di minimus amount of dichlorophen.

Based on the information, OKO tire sealant is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be the synthetic fibers classifiable under item 389.6270, Tariff Schedules of the United States Annotated, and dutiable at the rate of 8 cents per pound plus 11 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D5

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
OCT 24 1985

REFER TO

CLA-2-04:S:COM:N2:235-1261
815497

Mr. W. T. Reisen
Import Specialist
Stauffer Chemical Company
Westport, Conn. 06881

Dear Mr. Reisen:

In your letter dated September 18, 1985, you inquired about the dutiable status of Crystex Insoluble Sulfur (oil treated) and Crystex Insoluble Sulfur (regular grade) from Japan.

Crystex Insoluble Sulfur (oil treated) is classifiable under the provision for mixtures, not specifically provided for in item 432.10, Tariff Schedules of the United States, and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

Crystex Insoluble Sulfur (regular grade) is classifiable in item 415.45, TSUS, and free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

OCT 24 1985

REFER TO
CLA-2-04:S:COM:N2:240-1284
815555

Ms. L. Cavorti
Traffic Department
Centerchem, Inc.
660 White Plains Road
Tarrytown, New York 10591

Dear Ms. Cavorti:

In your letter dated July 8, 1985 and received by this office on September 30, 1985, you inquired regarding the tariff classification of two chemicals produced in Spain, I.S. ricinoleate and sitosteryl complex. Your ruling request included a sample of each product. These samples have been analyzed by the U.S. Customs Laboratory.

The I.S. ricinoleate is isostearyl ricinoleate, a non-benzenoid fatty ester, not sulfonated or sulfated. This product was derived from castor oil. I.S. ricinoleate is classifiable under the provision for fatty substances, not sulfonated or sulfated, and not specially provided for: esters of vegetable origin: other, in item 490.9400, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 4 percent ad valorem.

The sitosteryl complex is beta sitosterol acetate, a carboxylic acid ester of a monohydric alcohol. It is classifiable under the provision for esters of monohydric alcohols and organic or inorganic acids (except hydrogen sulfide and hydrogen halide acids): other, in item 428.7250, TSUSA, and is dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 13 1986

REFER TO

CLA-2-07:S:COM:N3:223-1433
815973

Mr. John Boni
Director
Wind Trading
Via Zen. 35 - P.O. Box 73
48023 Marina di Ravenna
Italy

Dear Mr. Boni:

In your letter dated October 31, 1985, you inquired about the dutiable status of an enduro safety jacket and a mo-tex overall from Italy. Samples of each article were submitted and are being returned as you requested.

The enduro jacket is a woven jacket of man-made fibers with a zippered front opening that also has snap fasteners. This jacket has one large breast pocket which is velcro-closed and two snap-fastened pockets below the waistline. At the waist level on each side are velcro straps fitted through "D" rings which can tighten the jacket around the waist. On the bottom edge of the jacket, directly under the straps, several inches of elastic are sewn into this hem. A circular metal piece with holes in it is fastened under each armhole. The long sleeves have ribbed knit cuffs.

In addition, this garment has a removable pad that extends from the bottom of the neck to cover the deltoid muscle. This pad is made of two layers of high density open cell foam which is in turn stitched to a hard piece of molded plastic. Velcro is used to hold these pads in place over each shoulder. Pads of the same materials but shaped to cover the ulna in the forearm as well as the elbow fit into velcro-closed pockets present in each sleeve.

This jacket shows special design for enduro racing. Furthermore, the pads previously described which form an entirety with the jacket, provide a very substantial protection against the hazards of enduro racing. Enduro racing is one of the forms of competitive motorcycle racing and is, for Customs purposes, a sport.

Accordingly, the enduro jacket is properly classifiable under the provision for sport, athletic, gymnastic or playground equipment, not specially provided for, in item 735.2058, Tariff Schedules of the United States Annotated, (TSUSA) and is dutiable at the rate of 5.04 percent ad valorem.

D8

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Sample number 2 is a man's full length coverall featuring a zippered front opening, 2 slash pockets below the waistline with leather trim, 2 leather patch pockets in the chest area, a leather front yoke, sleeves of leather and textile and a leather collar. You indicate that the component of chief value is the leather.

Assuming the leather is in chief value and the textile weighs over 50 percent of the weight of the article, the coverall is classifiable under the provision for other wearing apparel not specially provided for, of leather, in item 791.7484, TSUSA, and dutiable at the rate of 6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

815973

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
FEB 13 1986

REFER TO
CLA-2-07:S:COM:N3:223-2030
816552

Ms. Laura Cobb
Assistant Buyer
ERO Industries, Inc.
5940 W. Touhy Avenue
Chicago, Illinois 60648

Dear Ms. Cobb:

In your letter dated December 4, 1985, you inquired about the dutiable status of a polypropylene webbed strap for use with a knee board from Taiwan.

Your submitted sample is a 2 inch wide woven strap that is 50-1/2 inches long. One end of this strap has a 1-1/4 inch deep loop. Starting 5 inches from this end, 21-1/4 inches of foam padding covered with a knit fabric are sewn securely onto one side of the strap and overlap the other side. The other side of the strap has a 14-1/2 inch long strip of male velcro starting 14 inches from the strap end with the 1-1/4 inch loop. On the same side that has the male velcro, a 14-7/8 inch strip of female velcro is securely sewn. The space between the male and female velcro is 4-1/2 inches. The other end of the female velcro overlaps the seam of a 3-5/8 inch loop at the opposite end of the strap.

When this strap is used with the knee board, the 1-1/4 inch loop is permanently attached to a bracket on one side of the knee board. The free end of the strap is inserted through another bracket on the other side of the board. The strap is then folded back toward the permanently mounted side. Since the velcro strips are on top, when the strap is folded, they can be adjusted to accommodate users of different sizes. The foam faces down towards the board and somewhat cushions the user. The user rides the board in a kneeling position so that the strap passes over the user's thighs. Both hands are free to grasp a tow rope pulled by a boat. The strap holds the user securely to the board while the user is being pulled, but releases quickly in the event of an accident such as the board flipping over.

Riding the knee board is a sport or athletic activity. This strap is dedicated to use on the knee board. Furthermore, the sole use of this strap is with the knee board. In addition, the knee board could not be used without the knee strap because the user would be pulled off the board. Consequently, this strap functions as an integral constituent part of the knee board.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D10

Articles classifiable under item 705.8300, TSUSA, which are the products of Macau and Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

816552

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 13 1986

REFER TO

CLA-2-07:S:COM:N3D:225
816760

Mr. Joel K. Simon
Serko, Simon & Abbey
One World Trade Center, Suite 3371
New York, NY 10048

Dear Mr. Simon:

In your letter dated January 3, 1986, on behalf of your client, Impulse Ltd., you inquired about the dutiable status of a time machine racer from Hong Kong.

The time machine racer is a toy car, approximately 5-1/4 inches long and 1-1/2 inches high, with a friction operated motor. In the hood of the car is a stop-watch module which measures the length of time, in seconds and fractions of a second, it takes for the car to reach a certain point. The timing mechanism starts when the car is released and stops when the front bumper strikes a solid object such as a wall.

The time machine racer is classifiable under the provision for toys, not specially provided for, having a friction or weight operated motor, in item 737.9515, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 8.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 10 1986

REFER TO

CLA-2-07:S:COM:N3-D:224-56
816789

Mr. Joel K. Simon
Serko, Simon & Abbey
One World Trade Center
Suite 3371
New York, N.Y. 10048

Dear Mr. Simon:

In your letter of January 9, 1986, you requested, on behalf of your client, Impulse, Ltd., the dutiable status of an article called "Butterfly Magic." The country of origin is not known.

Butterfly Magic consists of a large multicolored plastic butterfly, a doll about six inches high, a comb for the doll's hair, a paper pull-apart story and several plastic accessories such as a scepter.

The butterfly figure can be removed from its small stand. The doll can be placed on the back of the butterfly or it can be played with separately. The child, playing with the doll, butterfly, and accessories, can read the story which is relevant to them.

The various components are separately classifiable. The butterfly figure is classifiable under the provision for other toy figures of animate objects in item 737.40, Tariff Schedules of the United States (TSUS).

The doll is classifiable under the provision for other dolls, and parts of dolls including doll clothing, in item 737.24, TSUS.

The toy accessories, such as the scepter, are classifiable under the provision for toys, and parts of toys, not specially provided for in item 737.95, TSUS. The colorfully decorated comb, the toothed portion of which measures about 1-1/2 inches by less than one inch, is also classifiable in 737.95, TSUS, as a toy acccessory, chiefly used for amusement. Headnote 1 of Schedule 7, part 5, subpart E of the Tariff Schedules noted.

The duty rate for the above articles is determined by the country of origin. Articles classifiable under items 737.40 and 737.95, TSUS, which are products of most favored nations, are dutiable at the rate of 8.3 percent ad valorem. Articles classifiable under tiem 737.24, TSUS, which are products of most favored nations, are dutiable at the rate of 12.7 percent ad valorem. Products of certain Communist controlled nations are dutiable at the rate of 70 percent ad valorem. Products of

D13

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certain developing countries may be entitled to duty concessions. A complete listing of countries may be found in General Headnote 3, Tariff Schedules of the United States (19 U.S.C. 1202).

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

816789

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D14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 20 1986

REFER TO
CLA-2-04:S:COM:N1:238-18
816805

Mr. Jeff A. Murray
Air Import Manager
Gar International
140 Main Street
El Segundo, Ca 90245

Dear Mr. Murray:

In your letter dated January 6, 1985, on behalf of Allergan Pharmaceuticals, you inquired about the dutiable status of levobunolol hydrochloride from the Netherlands.

Levobunolol hydrochloride is a benzenoid anti-adrenergic, beta-blocker drug. Scientific literature indicates that it has beta-sympatholytic activity.

Levobunolol hydrochloride is classifiable under the provision for benzenoid autonomic drugs, other, in item 412.0400, Tariff Schedules of the United States Annotated, and dutiable at the rate of 8.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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E1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 20 1986

REFER TO

CLA-2-04:S:COM:N1:238-23
816815

Mr. Nick Kato
Manager - Chemicals
Amsak Corporation
41 Orchard Street
P.O. Box 517
Ramsey, NJ 07446

Dear Mr. Kato:

In your letter of January 6, 1986, you requested the tariff classification of "Kycizer 4" (ortho/para Toluene sulfonamide) from the Republic of Korea.

"Kycizer 4" is a benzenoid derived mixture of toluene sulfonamide in a ratio of 40 percent ortho and 60 percent para.

"Kycizer 4" is classifiable under the provision for benzenoid products chiefly used as plasticizers in item 409.3450, Tariff Schedules of the United States Annotated, and dutiable at the rate of 0.3 cent per pound plus 17.7 percent ad valorem.

Articles classifiable under item 409.3450, TSUSA, which are the products of the Republic of Korea are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents at the time this merchandise is imported If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Environmental Protection Agency, Office of Pesticides and Toxic Substances. You may contact them at 401 M. Street, S.W., Washington, D.C. 20460, telephone number (800) 424-9085.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

John J. Martuge
Area Director
New York Seaport

E2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 24 1986

REFER TO

CLA-2-04:S:COM:N1:240-42
816889

Ms. Peggy McAvoy
F.W. Myers & Co. Inc.
RFD., Wellesley Island
Alexandria Bay, New York 13607

Dear Ms. McAvoy:

In your letter dated January 10, 1986, you inquired on behalf of Insul/Crete Co., Inc. of Ontario, Canada, about the dutiable status of an Insul/Crete Exterior Insulation System from Canada. You submitted descriptive literature and samples of some of the products which comprise the System.

The modifier for cement has been analyzed by our laboratory as an aqueous suspension of polybutyl acrylate, a non-benzenoid acrylic acid resin. This resin is classifiable under the provision for synthetic plastics material, acrylic and methacrylic acid resins, other, in item 445.0520, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 7.1 percent ad valorem.

The laboratory analysis indicates that Flex Float Finish material is an aqueous suspension of gravel and polybutylacrylate. It is a non-benzenoid acrylic acid resin, classifiable under the provision for synthetic plastics material, acrylic and methacrylic acid resins, other, in item 445.0520, TSUSA, and dutiable at the rate of 7.1 percent ad valorem.

The fiberglass reinforcing mesh is an open, leno woven textile fabric of man-made glass fiber yarns. The mesh is approximately 1/4 inch square, and has been lightly coated with an acrylic plastic substance which helps stabilize the mesh, protects the glass yarns from the alkalinity in the cement, and imparts a noticeable stiffness to the fabric. The fiberglass reinforcing mesh is classifiable under the provision for woven fabrics, of man-made fibers, coated with less than 70 percent by weight of rubber or plastics materials, in item 355.8220, TSUSA, and dutiable at the rate of 2 cents a pound, plus 9.6 percent ad valorem.

The chopped fiberglass strands, 1/2 inch long, are added to the base coat material, sand and cement to impart strength to the base coat. The strands are treated for protection against alkalinity. The fiberglass strands are classifiable under the provision for glass in bulk, in item 540.7100, TSUSA, and dutiable at the rate of 6.8 percent ad valorem.

E3

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The zink (zinc) control joints are used in construction of the exterior insulation system employing stucco. The joints are 10 feet in length, are placed in intervals of no more than 20 lineal feet, and are used to prevent cracking in the panel that is normally associated with stucco. The zinc joints are classifiable as articles of zinc, not coated or plated with precious metal, in item 657.8000, TSUSA, and dutiable at the rate of 6.2 percent ad valorem.

The iron or steel wire screen-like control joints, used in construction of the exterior insulation system employing stucco, are classifiable under the provision for articles of iron or steel, not coated or plated with precious metal: other articles, in item 657.2590, dutiable at the rate of 6.2 percent ad valorem.

The nylon or other plastic screws trade-named Fastacks, as well as individual plastic washers, are classifiable under the provision for articles not specially provided for, of rubber or plastics, other in item 774.5595, TSUSA, and dutiable at the rate of 5.7 percent ad valorem.

The rigid vinyl trim beads, in lengths of ten feet, and having slots, are classifiable under the provision for articles not specially provided for, of rubber or plastics, other, in item 774.5595, TSUSA, and dutiable at the rate of 5.7 percent ad valorem. If this trim does not have slots, it is classifiable under the provision for film, strips....and other profile shapes...of plastics...other, other, in item 771.5500, TSUSA. The rate of duty for this unslotted trim is 6.3 percent ad valorem.

The articles trade-named Fas'ners are nylon or other plastic expandable anchor shells with threaded nails which are used to permanently secure Styrofoam Rigid Insulation Board to substrates. The nails have slotted heads and have unthreaded, sharply pointed, tapered ends.

The Fas'ners, consisting of the plastic expandable anchor shell and threaded nail, constitute an entirety for tariff purposes when imported together, and are classifiable according to the component material of chief value. Thus, if the Fas'ners are in chief value of iron or steel, they are classifiable under the provision for other articles of iron or steel, not coated or plated with precious metal, in item 657.2590, TSUSA, dutiable at the rate of 6.2 percent ad valorem. If the Fas'ners are in chief value of the plastic, they are classifiable under the provision for articles not specially provided for, of rubber or plastics, other, in item 774.5595, TSUSA, dutiable at the rate of 5.7 percent ad valorem.

816889

E4

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

Regarding the Colour Choice Sealer, stated to be a generic acrylic enamel, your inquiry does not provide sufficient information for us to issue a ruling for this product. Requests for rulings must be submitted in accordance with Part 177, Customs Regulations. Therefore, please submit the chemical name of this product, and the percentage of each substance comprising it. If a sample is available, please send it to this office.

With the exception of the Colour Choice Sealer, this is a ruling issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

688918

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

ES

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 10 1986

REFER TO

CLA-2-07:S:COM:N3D:223
816902

Ms. Dorothy D. Negard
Dorell Imports
Lakeview Drive
RFD 2 Box 186
Yorktown Hgts., NY 10598

Dear Ms. Negard:

In your letter of January 14, 1986, you requested the tariff classification of various gloves and mittens from Norway. Noting that the descriptive literature shows different gloves from the samples you submitted, we can only reply to the classification of the samples, which are being returned as you requested.

Style 82 is a cross-country ski glove with unlined nappa leather palm and fingers. The back of the hand and thumb are made of a ribbed knit nylon/cotton fabric. Open mesh fourchettes extend from the inner side of the index finger to the inner side of the little finger. Leather reinforcement is sewn over the inside seam of the thumb as well as the side seam and outside seam of the index finger. A one inch wide elastic strap with a velcro closure secures this glove around the wrist.

Style 82A is identical to style 82 except for 2 features. In the first place, style 82A has leather fourchettes. Secondly, this glove has a thin layer of foam insulation bonded to a 100% merino wool knit lining that is used underneath the fabric areas of this glove. Nevertheless, this glove is still lightweight and the back of the hand is still of a breathable material.

Style 82B is similar to style 82A except for the fact that style 82B is completely lined with a thin layer of knit pile 100% merino wool fabric. The character of this lining is such that this glove, also, is lightweight with a breathable back.

Style 102A is a winter bicycle glove with nappa leather palm and fingers. The back of the hand and thumb along with the fourchettes use a knit nylon/cotton fabric. The palm is padded on the outside and covered with leather. Leather reinforcement is sewn over the inside seam of the thumb as well as the side seam and outside seam of the index finger. This glove is lined with the same material in the same area as style 82A. You state that this glove also has a Goretex interlining. A one inch wide elastic strap with a velcro closure secures this glove around the wrist.

E6

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You describe style 83 as a roller ski glove. This glove has a leather palm and fingers. The back of the hand and the thumb as well as the fourchettes are made of an open mesh fabric. A piece of leather that is roughly "T" shaped is sewn over the mesh so that the top of the "T" is across the knuckles. The bottom of the stem of the leather "T" holds the female portion of the velcro closure that secures the one inch wide elastic strap wrist-tightener. In addition, leather reinforcement is sewn over the inside seam of the thumb as well as the side seam and outside seam of the index finger.

The sport of roller skiing is practiced in the summer, generally over the same slopes that are used for alpine skiing in winter. Roller skis, however, permit the participant to progress down the grass covered slopes in a manner similar to an alpine skier. Since this glove is unlined, the leather palm would provide a good grip for the roller skier. The mesh back provides the greater ventilation needed for a summer sport. The "T" on the back of the hand not only helps the glove to retain its shape so the palm cannot bunch up and cause blisters, but also protects the user's hand from abrasion in the event of a fall. The leather reinforcement on the index finger and thumb protect these seams from wear or splitting resulting from the use of the poles. Based on the cumulation of these features, style 83 shows design for use in the sport of roller skiing.

816902

You describe style 87B as a mountain hiking sport mitten. This mitten has a goat leather palm and thumb with a woven man-made fabric back and an applied woven man-made cuff. The wrist is elasticized and has a hook and clasp. This mitten is boa lined, except for the applied cuff. This mitten has no features which show design for use in sports to distinguish it from traditional winter gloves worn for warmth.

You describe style 88B as a sport hiking mitten. This mitten has a goat leather palm and thumb, man-made fabric back, leather reinforcement over the inner side seam, velcro closed elastic strap, and is fully lined. A textile label on the elastic strap ornaments this mitten. This mitten has no features which show design for use in sports to distinguish it from traditional winter gloves worn for warmth.

Style 90D, described in your brochure as a ski glove, is an all goat leather glove that is also fully lined. This glove has a 4 inch gauntlet with elastic gathers on one side and a zipper closure on the back to hold it closely around the wrist. Leather reinforcement is sewn across the palm. A hook and clasp is placed toward the end of the gauntlet.

Style 92D, described in your brochure as a ski glove, is an all goat leather, fully lined mitten with leather reinforcement across the palm. This mitten has a 4 inch gauntlet with elastic gathers and a

E7

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zipper closure in the side seam to hold it closely around the wrist. A hook and clasp is placed toward the end of the gauntlet.

In the case of Stonewall Trading Company v. United States, 64 Cust. Ct. 482, C.D. 4023 (1970), the Customs Court held that certain vinyl gloves were properly classifiable under the provision for other ski equipment, in item 734.97, TSUS (now item 735.06, TSUS). These gloves were found to have the following characteristic:

1. a hook and clasp to hold the gloves together;

2. an extra piece of vinyl stitched along the thumb portion to meet the stress caused by the flexing of the knuckles when the skier grasps the ski pole;

3. an extra piece of red colored vinyl with padding reinforcement and inside stitching, which is securely stitched across the middle of the glove where the knuckles bend and cause stress; and

4. cuffs with an elastic gauntlet to hold the gloves firm around the wrist, so as to be waterproof, and to keep it securely on the hand.

Style 90D and 92D lack an extra piece of vinyl stitched along the thumb portion and any discernible padding reinforcement across the back of the knuckles. Noting the absence of these features, styles 90D and 92D are not properly classifiable under the provision for other ski equipment in item 735.06, TSUS.

Consequently, Styles 90D and 92D are classifiable under the provision for gloves of leather, men's lined, not seamed wholly or in part by hand, valued over $26 per dozen pairs, in item 705.5800, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 17.3 percent ad valorem.

Schedule 7, Part 1, Subpart C, Headnote 2(b) states that any leather component shall be disregarded unless the area of such leather is over 50 percent of the external surface area of the gloves exclusive of applied cuffs.

Accordingly, if the leather covers more than 50 percent of the surface area exclusive of applied cuffs, styles 87B and 88B are classifiable under the provision for leather gloves, in item 705.5800, TSUSA, and are dutiable at the rate of 17.3 percent ad valorem. If the leather covers less than 50 percent of the surface area, style 87B is classifiable under the provision for gloves of man-made fibers, not knit, in item 704.9000, TSUSA. The rate of duty is 14 cents per pound plus 15.7 percent ad valorem. Style 88B would be classifiable under the provision for gloves of man-made fibers, ornamented, in item 704.3215, TSUSA, and is dutiable at the rate of 21.7 percent ad valorem.

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E8

Styles 82, 82A, and 82b are classifiable under the provision for cross-country ski equipment in item 735.0460, TSUSA, and are dutiable at the rate of 4.2 percent ad valorem.

Style 83, the roller ski glove, is classifiable under the provision for skis and ski equipment...other: other: in item 735.0660, TSUSA, and is dutiable at the rate of 5.9 percent ad valorem.

Style 102A, the bicycle glove, is classifiable under the provision for ...other gloves, not provided for elsewhere in this subpart, specially designed for use in sports, in item 735.0700, TSUSA, and is dutiable at the rate of 5.2 percent ad valorem.

This ruling is being issued the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

For your information, the samples you submitted are not legally marked for the purpose of Section 304 of the Tariff Act of 1930, as amended [19 U.S.C. 1304]. One of each pair of gloves should be marked with a sewn in label showing the country of origin.

Sincerely,

John J. Murtagh

John J. Murtagh
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

816902

E9

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

FEB 28 1986

REFER TO

CLA-2-04:S:COM:N1:235-51
816935

Mr. M. Vogt, City Manager
Fritz Companies, Incorporated
1722 QQ South Glenstone
Springfield, Missouri 65804

Dear Mr. Vogt:

In your letter dated January 13, 1986 on behalf of your client, Foreign Accents, you inquired about the dutiable status of U.C. Anti-glare spray from South Africa.

According to your letter the product contains trichloroethane, xylene, polyethylene wax, acrylic resin and the propellant Freon 22.

U.C. Anti-glare is classifiable under the provision for mixtures, not specifically provided for in item 432.10, Tariff Schedules of the United States, and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be trichloroethane, classifiable under item 429.47, Tariff Schedules of the United States, and dutiable at the rate of 18 percent ad valorem.

Your letter requests that we review item 429.51, TSUS, as a possible area for classification. Item 429.51, TSUS, is a provision for single compounds. Since U.C. Anti-glare is a mixture, it cannot be classified in item 429.51, TSUS.

Please note that this product may be in violation of the U.S. Environmental Protection Agency regulations. For information concerning this matter, you may contact them at:

U.S. Environmental Protection Agency
Office of Pesticides and Toxic Substances (EN342)
Washington, D.C. 20460

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816935

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E11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 26 1986

REFER TO

CLA-2-04:S:COM:N1:235-55
816959

Kettlitz-Chemie Gmbh & Co. KG
Postfach 80, D-8859 Rennertshofen
West Germany

Dear Sirs:

In your letter dated November 8, 1985 and received on January 24, 1986, you inquired about the dutiable status of certain chemicals from West Germany.

According to your earlier letter and information received from Akron Chemical Company these products are used in rubber processing.

Based on the information contained in your letter of November 8, 1985 concerning the chemical components of this product, Dispergator FL is classifiable under the provision for mixtures, not specifically provided for in item 432.25, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be classifiable under item 490.32, Tariff Schedules of the United States, and dutiable at the rate of 4.4 percent ad valorem.

Dispergator KB, OX and Kezadol GR are classifiable under the provision for mixtures, not specifically provided for in item 407.16, Tariff Schedules of the United States, and dutiable at the rate of 1.7¢ per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be classifiable under item 402.36, Tariff Schedules of the United States, and dutiable at the rate of 0.6¢ per pound plus 17.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

E12

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
FEB 26 1986

REFER TO

CLA-2-04:S:COM:N1:235-61
816987

Mr. E.J. Corboy
Austin Chemical Company Incorporated
8410 West Bryn Mawr Avenue
Chicago, IL 60631-3434

Dear Mr. Corboy:

In your letter dated January 16, 1985, you inquired about the dutiable status of tetrahydro thiophene-3-one from England. According to your letter this compound is derived from methyl thioglycolate and methyl acrylate.

Tetrahydro thiophene-3-one produced in this way is classifiable under the provision for ketones, other in item 427.64, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 26 1986

REFER TO

CLA-2-04:S:COM:N1:239-71
817037

Mr. S. J. Schmidt
Sun Chemical Corp.
4605 Este Avenue
P.O. Box 32067
Cincinnati, OH 45232

Dear Mr. Schmidt:

In your letter dated January 21, 1986, you inquired about the dutiable status of a product from France.

The product is a mixture of approximately 25 percent crude copper phthalocyanine, 75 percent sodium chloride and a small amount of calcium chloride.

This mixture is classifiable under the provision for mixtures in whole or in part of any of the products provided for in Schedule 4, part 1 subpart B in item 407.1610, Tariff Schedules of the United States Annotated, and dutiable at the rate of 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. Based on the crude copper phthalocyanine, which is dutiable in item 406.4400, TSUSA, the rate of duty would be 18.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

E14

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 24 1986

REFER TO

CLA-2-04:S:COM:N1:240-74
817041

Mr. Spiro T. Kappatos
Vice-Consul (Commercial)
New Zealand Consultate General
630 Fifth Avenue
New York, NY 10111

Dear Mr. Kappatos:

In your letter dated January 23, 1986, on behalf of New Zealand Perlite Ltd., you inquired about the dutiable status of various decorating coating products from New Zealand. Technical information was submitted for our review.

The Granular Marble products are 100 percent acrylic resins mixed with marble aggregates, and are used for exterior coating to decorate and protect concrete and masonry. They are available for trowel and spray applications.

Featurecoat is a dry blend decorative coating material comprising fine fillers, inert fibers, pigments and polyvinyl alcohol binders. It is available for trowel or roller applications.

Coralcote ceiling spray is a dry blended decorative material incorporating fine fillers, inert fibers, pigments and polyvinyl alcohol binders suitable for spray application.

Rivinterior decorative plaster comprises acrylic co-polymer resins, and fine fillers, inert fibers and pigments. It is available for trowel, roller or spray applications.

Rivotex decorative plaster comprises acrylic co-polymer and graded natural aggregates, inert fibers and pigments, and is made available for spray or trowel applications.

Perlcast, an exterior and interior coating for decorating and protecting concrete and masonry walls, is 100 percent acrylic and very fine graded marble suitable for spray application.

The Granular Marble, Rivinterior, Rivotex and Perlcast are classifiable under the provision for synthetic plastics material, acrylic and methacrylic acid resins, other, in item 445.0520, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 7.1 percent ad valorem.

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Featurecoat and Coralcote are classifiable under the provision for synthetic plastics material, vinyl resins, polyvinyl alcohol resins, in item 445.4200, TSUSA, dutiable at the rate of 3.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

As you requested, we are returning the data sheets and product information.

Sincerely,

John J. Martuge
Area Director
New York Seaport

Enclosures

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817041

F2

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
FEB 27 1986

REFER TO

CLA-2-04:S:COM:N1:238-81
817065

Ms. Cynthia Zirkle
Director of Regulatory Affairs
Optopics Laboratories Corporation
P.O. Box 210
Fairton, NJ 08320

Dear Ms. Zirkle:

In your letter dated January 28, 1986, you inquired about the dutiable status of chlorothiazide and methyldopa in 250 mg. tablet forms from Shanghai, China.

Chlorothiazide is a benzenoid diuretic drug.

Chlorothiazide in tablet form is classifiable under the provision for benzenoid drugs, other:, it is a Product provided for in The Chemical Appendix to the Tariff Schedules in item 412.6700, Tariff Schedules of the United States Annotated, and dutiable at the rate of 7.8 percent ad valorem.

Methyldopa is a benzenoid antihypertensive drug.

Methyldopa in tablet form is classifiable under the provision for benzenoid autonomic drugs, other:, it is a Product provided for in The Chemical Appendix to the Tariff Schedules in item 412.0200, Tariff Schedules of the United States Annotated, and dutiable at the rate of 9.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

John J. Martuge
Area Director
New York Seaport

F3

REPLY TO AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 20 1986

REFER TO

CLA-2-04:S:COM:N1:238-80
817066

Ms. Cynthia Zirkle
Director of Regulatory Affairs
P.O. Box 210
Fairton, NJ 08320

Dear Ms. Zirkle:

In your letter dated January 28, 1986, you inquired about the dutiable status of indomethacin 25 mg. capsules and diazepam 5 mg. tablets from Shanghai, China.

Indomethacin is a benzenoid anti-inflamatory drug.

Indomethacin in bulk powder or capsule form is classifiable under the provision for benzenoid nonhormonal anti-inflammatory agents, other in item 412.2250, Tariff Schedules of the United States Annotated, and dutiable at the rate of 7.6 percent ad valorem.

Diazepam is a benzodiazepine derivative that has achieved wide use as an anti-anxiety agent.

Diazepam is classifiable under the provision for benzenoid tranquilizers, other, and is provided for in the Chemical Appendix to the Tariff Schedules, in item 412.3500, Tariff Schedules of the United States Annotated, and dutiable at the rate of 22.2 percent ad valorem.

Merchandise of this type may be subject to the regulations of the Food and Drug Administration and the Drug Enforcement Agency. You may contact them as follows:

Food and Drug Administration	Drug Enforcement Agency
5600 Fishers Lane	1405 I Street NW
Rockville, Md. 20857	Washington, D.C. 20230
telephone (202) 443-3380	telephone (202) 633-1000

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

F4

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817066

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

FS

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 26 1986

REFER TO

CLA-2-04:S:COM:N1:236-84
817087

Mr. E. Otromke
W.R. Filbin & Co., Inc.
2436 Bagley Ave.
Detroit, Michigan 48216-1885

Dear Mr. Otromke:

In your letter dated January 23, 1986 you inquired on behalf of your client, Colortech Inc., about the dutiable status of a color concentrate from Canada.

The import under consideration is a color concentrate consisting of 40 percent titanium dioxide, 30 percent calcium carbonate, and 30 percent linear low density polyethylene resin. This concentrate is used by the plastic industry to color plastic film (shopping bags, garbage bags) or plastic objects (bottles, toys). We assume the titanium dioxide pigment is ground to 325 mesh size.

Titanium Color concentrates are classifiable under the provision for titanium dioxide pigments in item 473.7000, Tariff Schedules of the United States, and dutiable at the rate of 6.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

F6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

FEB 20 1986

REFER TO

CLA-2-04:S:COM:N1:240-96
817151

Ms. Catherine Eskenazi
Saas University Tower Centre
4505 La Jolla Village Drive
San Diego, California 92122

Dear Ms. Eskenazi:

In your letter dated February 4, 1986, you inquired about the dutiable status of Nail Hardener concentrate from Japan.

Nail Hardener concentrate is applied to the nails, leaving a clear base coat which hardens the nails.

Nail Hardener concentrate is classifiable under the provision for cosmetics and other toilet preparations: not containing alcohol, manicuring preparations, in item 461.4037, Tariff Schedules of the United States Annotated, and dutiable at the rate of 5.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
FEB 27 1986

REFER TO

CLA-2-04:S:COM:N1:236-102
817162

Ms. Andrea Crowdis
Colortech, Inc.
8011 Dixie Road
Brampton, Ontario, Canada L6T 3V1

Dear Ms. Crowdis:

In your letter dated January 30, 1986, you inquired about the dutiable status of "19900 Black Color Concentrate" from Canada.

The prospective import, "19900 Black Color Concentrate" consists of 40% carbon black, approximately 10-15% calcium carbonate, 42-48% polyethylene resin, 0.5-1.5% titanium dioxide, 0.5-1.5% red iron oxide, and 0.5-1.5% additional mixed pigments. The import will be used to color shopping bags, garbage bags, bottles, and toys.

"19900 Black Color Concentrate" is classifiable under the provision for pigments, not specially provided for in item 473.8820, Tariff Schedules of the United States, and dutiable at the rate of 3.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 11 1986

REFER TO

CLA-2-07:S:COM:N3G:346-
817262

Mr. Richard E. Chorey
R.G. Barry Corporation
P.O. Box 129
Columbus, Ohio 43216

Dear Mr. Chorey:

In your letter dated January 30, 1986, you inquired about the dutiable status of a woman's slipper, product of Mexico.

Inspection of the unnumbered sample submitted with your inquiry indicates that this is a woman's all terry fabric slipper, closed toe, closed back slip-on with elastic fabric binding at the topline, foam backed tricot lining, terry/foam insole, and a stitched-on unit molded rubber/plastic shell sole. It is noted that the sides of the shell sole overlap the upper by 1/4 inch and this would be considered a foxing-like band for Customs purposes.

Therefore, your sample slipper as presently constructed is classifiable under the provision for footwear which is over 50% by weight of fiber, rubber and plastic and over 10% by weight of rubber and plastic; which has a foxing-like band almost wholly of rubber or plastic applied or molded at the sole and overlapping the upper; and which is, we assume, valued for Customs purposes not over $3.00 per pair, in item 700.6400, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 48 percent ad valorem.

With reference to the question raised in your letter, if the band on the sole overlapped the upper by quite a bit less than 1/4 inch and the rest of the construction remained the same, classification would probably be in item 700.5900, TSUSA, and dutiable at the rate of 37.5 percent ad valorem. The "1/4 inch" rule in TD83-116 would not necessarily apply since your slipper does not have the type of unit molded sole contemplated.

With respect to your submitted sample, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1 (d)(2)].

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817262

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F10

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 10 1986

REFER TO

CLA-2-07:S:COM:N3D:225
817270

Mr. Charles A. Fust
P.O. Box 49887
Sarasota, Florida 33578

Dear Mr. Fust:

In your letter dated January 31, 1986, you inquired on behalf of Heritage Church and Missionary Fellowship, Inc., about the dutiable status of a doll from the Peoples Republic of China.

A sample of a talking Susie Moppet doll was submitted with the inquiry. The doll has a plastic molded head surrounded by yellow yarn hair. The body is composed of textile material, whereas, the hands are made of molded plastic. The arms and legs are stuffed with polyester fiber. The torso contains a talking mechanism which is activated by pressing the doll's stomach. The mechanism is surrounded by solid polyurethane foam on the front and back, and fiber filling on the sides. The doll is wearing a red dress with white lace trim and a white ruffled slip. Shoes and socks are worn on the feet.

The doll is not considered to be stuffed. In order to be considered "stuffed" for tariff classification purposes, such merchandise must be "crammed full" or stuffed to distension with filler material. The type of material used to accomplish the "stuffing" or filling out of the "skin" must be traditional type filling materials. The shape of the torso is not imparted by the stuffing but rather by the talking mechanism. The presence of the device is readily apparent to the touch.

The Susie Moppet doll is classifiable under the provision for other dolls in item 737.24, Tariff Schedules of the United States, and dutiable at the rate of 12.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

FIL

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 0 9 1986

REFER TO

CLA-2-07:S:COM:N3C:341
817289

Ms. Gail T. Cumins
Sharretts, Paley, Carter and Blauvelt, P.C.
80 Broad Street
New York, NY 10004

Dear Ms. Cumins:

Your letter of February 12, 1986, on behalf of Canon U.S.A. Inc., requested this office to rule upon the tariff classification of a camera carrying bag from Taiwan.

The sample submitted is a "waist bag" type of accessories carrying bag which has an exterior surface consisting entirely of woven nylon with the exception of plastic piping and a small triangular plastic ornament. The carrying strap is also woven from man-made fibers. The interior has one central compartment, a small accessory case and an a full length side pocket with a velcro flap closure. The bag is closed by means of a nylon coil zipper. It appears that the bag is in chief value of man-made textile materials.

Although you claim that the carrying bag is specifically designed, marketed and retailed with the AS-6 camera we do not believe that this bag is of a "type ordinarily sold at retail "with its contents, the camera and its accessories. Furthermore, it cannot be considered an entirety with the camera since the bag retains its own identity. Whether imported with a camera or alone, it would be separately classifiable.

The carrying bag is classifiable under the provision for luggage, of other textile materials, other, in item 706.4152, Tariff Schedules of the United States. The rate of duty is 20 percent ad valorem.

Tariff item number 706.4152 falls within textile category designation 670-L. As a product of Taiwan this merchandise is currently subject to visa and quota restraints based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

MAY 0 9 1986

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817289

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 14 1986

REFER TO

CLA-2-07:S:COM:N3G-346
817306

Mr. William Becker
Sporto Corp./Gold Seal Rubber Co.
65 Sprague Street
Boston, Mass. 02137

Dear Mr. Becker:

In your letter of February 13, 1986, you requested this office to rule on the tariff classification of a woman's casual shoe, product of the Peoples Republic of China.

Inspection of the sample submitted with your inquiry, Style No. W2100-00, indicates that this is an unlined woman's A-line fabric casual, with elastic at the top of the vamp, heel tab, and a rubber calendered sole which appears to have been cemented and vulcanized to the upper. When we cut this sample across the vamp, it was apparent that this shoe has a "rolled sole" construction which means that the sole is cut from a flat sheet of calendered rubber which is forced up and over the fabric upper at the edges by the application of heat and pressure during its attachment to the upper.

It appears that the "roll up" or overlap on your sample is more than 1/4 inch, and this would be considered a foxing-like band. Customs Headquarters has ruled that while a vertical overlap of less than 1/4 inch in unit molded footwear is usually presumed not to constitute a foxing-like band, this would not apply to rolled sole footwear since a different construction method is involved. Even if the overlap on this rolled sole footwear were less than 1/4 inch, it would still be considered a foxing-like band.

Therefore, your sample is classifiable under the provision for footwear which is over 50% by weight of fiber, rubber and plastic and at least 10% by weight of rubber or plastic; which has a foxing-like band almost wholly of rubber or plastic applied or molded at the sole ansd overlapping the upper; and which is, we assume, valued for Customs purposes not over $3.00 per pair, in item 700.6400, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 48 percent ad valorem. If valued for Customs purposes over $3.00 but not over $6.50 per pair, classification would be in item 700.6700, TSUSA, and dutiable at the rate of 37.5 percent ad valorem, plus 90 cents per pair.

F14

This ruling is being issued under the provision of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

817306

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

G1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 11 1986

REFER TO

CLA-2-06:S:COM:NIB:113-257
817470

Mr. Robert Reid
General Manager
Alaska Pro-Chemicals
Box 4-2934
Anchorage, Alaska 99509

Dear Mr. Reid:

In your letter dated February 10, 1986, you inquired about the dutiable status of "Mosquito Vapes" and vape refill mats from Japan.

Your letter indicates there are two different types of vape sets that you are interested in. One type is for household indoor use; the other is referred to as "car vape" used for autos, boats, and the like. A sample of model A-1003 was submitted with your inquiry. It consists of a small portable, convector heater which operates on a 120 volt circuit. Attached is an electrical line cord with a male plug. A heating element within the device rests under a grille-like feature. A mat impregnated with a mosquito repellent is inserted through the grille opening. The heater contains a very-low heat energy device to warm the mat and release the repellent.

The car vape, you state, is identical in principle to model A-1003, differing only in its cosmetic design. It operates on 12-24 volts, and is designed for other than household use.

The merchandise will be imported as kits, consisting of a convector heater and 12 mats impregnated with mosquito repellent. Refill packages of 30 mats will also be imported.

The household convector heater, whether imported with or without impregnated mats is classifiable under the provision for electro-thermic kitchen and household appliances, in item 684.2080, Tariff Schedules of the United States, and dutiable at the rate of 5.7 percent ad valorem.

The car vape, whether imported with or without impregnated mats is classifiable under the provision for electrical articles and electrical parts of articles, not specially provided for: Other: Other, in item 688.4280, Tariff Schedules of the United States, and dutiable at the rate of 4.1 percent ad valorem.

Your inquiry does not provide enough information for us to give a classification ruling on the allethrin packets/mats when imported separately. Your request for a classification ruling should

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include a complete list of all chemical compounds including the inert ingredients. Please furnish the name of each compound using the Chemical Abstract Service terminology, the percentage of each in the mixture, and if possible its use in the mixture.

If you require further assistance regarding the above requirements please contact National Import Specialist Joseph Di Maria at area code 212-466-5769.

With respect to model A-1003 and the car vape, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

G3

817470

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

APR 24 1986

REFER TO

CLA-2-04:S:COM:N1:239-176
817521

Mr. J. M. Cruz
Hercules Incorporated
Hercules Plaza
Wilmington, DE 19894

Dear Mr. Cruz:

In your letter of February 28, 1986 you requested the tariff classification of a product of the Netherlands called Resin Oil, C-9 Stream Resin Feed. In subsequent letters dated March 11, 1986 and March 26, 1986 you furnished additional information and you state that the product is also known as Super Heartcut Distillate Resin Oil.

The breakdown which you have furnished does not identify all of the components of the product. However, based on the components which are identified, it appears that the product is a mixture of hydrocarbons. A number of these hydrocarbons are classified in Schedule 4, part 1, subpart B, Tariff Schedules of the United States Annotated (TSUSA). Headnote 1, Schedule 4, part 10, TSUSA reads as follows:

> 1. Any product described in this part and also in part 1 of this schedule is classifiable in said part 1, except fuel oils, motor fuel, and lubricating oils and greases, containing by weight not over 25 percent of any product described in said part 1.

Resin oil, C-9 Stream Resin Feed is classified under the provision for mixtures in whole or in part of any of the products provided for in Schedule 4, part 1, subpart B, TSUSA, in item 407.1910. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. Depending on the value, a higher rate of duty could be 0.6 cent per pound plus 17.3 percent ad valorem from item 402.3600, TSUSA, based on the alkylbenzene content.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the

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documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817521

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

GS

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 30 1986

REFER TO
CLA-2-06:S:COM:N1B:113-288
817547

Mr. Daniel Mardinger
President
Monster Cone Inc.
P.O. Box 81
Pointe Claire/Dorval
Quebec, Canada H9P 2K5

Dear Mr. Mardinger:

In your letter dated March 3, 1986, you inquired about the dutiable status of an electric ice cream cone baker, cone mix and cones from Canada.

A photograph of a "Monster" electric cone baker, and literature concerning the cone mix (batter) and cones were submitted with your inquiry. The cone baker is an electro-thermic appliance resembling a waffle iron, except that the depth of the heads are smaller. The device contains a thermostat with an off and on setting, and is used in making ice cream cones.

The "Monster" cone mix consists of flour, sugar (approximately 30 percent), satured soya oil shortening, eggs, vanilla and almond flavors, and glucose. The "Monster" cones (ice cream cones) are made from the above mentioned mix.

The "Monster" cone mix is classifiable under the provision for other flour mixes in item 183.0100, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 10 percent ad valorem. The product containing 30 percent sugar by weight, is subject to quota restrictions in item 958.17, TSUS.

However, your inquiry does not provide enough information for us to give a classification ruling on the "Monster" cone baker and the "Monster" cones. Your request for a classification ruling should include the electric cone baker's dimensions and weight. For the cones, a complete description of the manufacturing process is necessary.

Based upon the information you submitted, the "Monster" electric cone baker would probably be classified under the provision for other portable electro-thermic kitchen and household appliances, in item 684.2040, Tariff Schedules of the United States, with duty at the rate of 5.7 percent ad valorem. The "Monster" cones would probably be classified under the provision for biscuits, cake, cakes, wafers and similar baked products ..., in item 182.2000, Tariff Schedules of the United States, with duty at the rate of 0.4 percent ad valorem.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

With respect to the "Monster" cone mix, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

817547

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 27 1986

REFER TO
CLA-2-03:S:COM:N3G:341
817557

Mr. Julius Milkes
Import Coordinator
Alco Products, Inc.
4201 N.W. 77th Avenue
Miami, Florida 33166

Dear Mr. Milkes:

In your letter dated March 6, 1986, you inquired about the dutiable status of a lunch box with flask from Taiwan.

The submitted sample is a lunch box constructed of molded plastic. The lunch box measures 8-1/2 inches by 7 inches by 4 inches with a plastic carrying handle. Inside of the box there is a plastic insulated flask which fits into an area defined by a small plastic divider molded into the bottom and top of the lunch box. The box is closed by means of a plastic latch.

The lunch box with flask is classifiable under the provision for Luggage, whether or not fitted with bottle, dining, drinking, manicure, sewing, traveling, or similar sets, of other materials, in item 706.6245, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 20 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

APR - 4 1986

REFER TO
CLA-2-01:S:COM:N1:232-186
817572

Mr. Robert Lumpert
Max Felchlin Inc.
Main Street 63
CH-6430, Schwyz, Switzerland

Dear Mr. Lumpert:

In your letter dated March 4, 1986, you inquired about the dutiable status of a chocolate powder from Switzerland.

A sample of the product which is labelled HA 11E Chocolate Powder was received. The product is a fine brown powder. It consists by weight of 56 percent sugar, 24 percent chocolate liquor, 18 percent cocoa butter and 2 percent moisture. It will be packed in bags of 2.5 kilograms.

The HA 11E Chocolate Powder is classifiable under the provision for sweetened chocolate, in any other form, other than for consumption at retail as candy or confection, not containing butterfat or other milk solids, in item 156.3045, Tariff Schedules of the United States Annotated, and dutiable at the rate of 5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

69

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 0 9 1986

REFER TO

CLA-2-03:S:COM:N3G:341
817677

Mr. Michael Waldschlager
Brooks Controller
Bro Shoes, Inc.
9341 urtland Drive
Rock rd, MI 49351

Dear Mr. Waldschlager:

Your letter of March 6, 1986 requested this office to rule upon the tariff classification of a shoe bag from Taiwan.

The submitted sample is a shoe bag measuring 11 inches X 15 inches with a drawstring closure. It is constructed of non-woven polypropylene fabric and is designed to contain shoes while traveling.

The shoe bag, whether or not imported with footwear, is classifiable under the provision for Luggage and handbags, of textile materials, other, in item 706.4152, Tariff Schedules of the United States Annotated. The rate of duty is 20 percent ad valorem.

Tariff item 706.4152 falls within textile category designation 670. As a product of Taiwan this merchandise is subject to visa requirements and quota restraints based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

G10

John J. Martuge
Area Director
New York Seaport

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 15 1986

REFER TO
CLA-2-01:S:COM:N1E:228-208
817682

Mr. Joseph C. Shediack, Jr.
Foote & Jenks
1420 Crestmont Avenue
Camden, NJ 08103

Dear Mr. Shediack:

In your letters dated March 7, 1986 and March 12, 1986, you inquired about the dutiable status of "Fonds" from West Germany.

Twelve samples were examined and disposed of. The products are dry mixes consisting of gelatin, sugar, flavoring, coloring and spices. The submitted component cost breakdown indicated that all types of "Fond" were in chief value gelatin. They will be imported in 125 and 150 gram foil packets, and prepared by mixing with cold water and whipped, unsweetened fresh cream. The mixed product will be used as a cake filling and topping.

This merchandise is classifiable under the provision for edible preparations not specially provided for ... of gelatin, in item 182.9000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

G11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 0 3 1986

REFER TO

CLA-2-07:S:COM:N3D:223
817708

Mr. Ken Bray
President
Webco
P.O. Box 1253
San Bruno, CA 94066

Dear Mr. Bray:

In your letter of March 12, 1986, you requested the tariff classification of the "Web" from Korea or Hong Kong. You submitted a sample and descriptive literature with your request.

The "Web" is a swimming glove with a woven man-made fabric palm and nylon spandex back. The palm fabric is vinyl coated on the inside. A semi-circular section is cut away on the back of the wrist and secured by a velcro strap. This glove is webbed between all the fingers and the thumb. The fingertips are open on the "Web" so that this glove may be worn with only the fingertips exposed or so that the entire first joint is free, the position depending upon how much web space is desired.

You describe this glove as a hand fin for swimmers. The webbing displaces 2.6 time more water than the hand alone which allows for a more powerful stroke and greater speed. The greater water displacement strengthens the muscles used in a variety of swimming strokes. For this reason, the "Web" has been endorsed as a training aid for swimming by a former Olympic coach.

Accordingly, since this glove helps propel a swimmer while not interfering with established swimming techniques as well as helping develop the muscles needed for swimming, the "Web" swimming glove shows design for use in the sport of swimming.

The Web is classifiable under the provision for other sport gloves in item 735.0700, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 5.2 percent ad valorem.

Articles classifiable under item 735.0700, TSUSA, which are the products of Hong Kong are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

G12

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817708

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

G13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 30 1986

REFER TO

CLA-2-01:S:COM:N1E:232-219
817740

Ms. Cheryl J. McCulloch
Twelve Stone Flagons, Ltd.
1411 Grandview Avenue
Pittsburgh, PA 15211

Dear Ms. McCulloch:

In your letter dated March 10, 1986, you inquired about the dutiable status of a beverage product called La Pomme Prisoniere to be imported from France.

The sample of La Pomme Prisoniere which you submitted consists of a whole mature apple surrounded by calvados in a glass bottle. Calvados is a brandy distilled from fermented apple juice which in this case has an alcohol content of 80 proof or forty percent by volume. It is our understanding that the bottles are affixed to apple trees just after the trees have bloomed and set fruit in such a way that the apples grow to maturity within the bottles. The bottles are then filled with the apple brandy. It is your intention to import this product in both 250 milliliter and one liter bottles.

While you have described the glass bottles as decanters, the 250 milliliter sample that you submitted is not supplied with a separate glass or metal stopper to replace the shipping cork and does not appear to be an unusual container or fit for reuse after the contents have been consumed. Accordingly, the glass bottles that this beverage will be imported in will be treated as ordinary packing and not subject to the assessement of any additional duties.

La Pomme Prisioniere is classifiable under the provision for Brandy other than Pisco, Singani, or Slivovitz packed in containers holding not over one gallon and valued at over 13 dollars per fluid gallon in item 168.7800, Tariff Schedules of the United States, and is dutiable at the rate of 59 cents per proof gallon. In addition to import duty this product will also be subject to Federal Excise Tax at the rate of $12.50 per proof gallon under 26 U.S.C. 5001.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

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If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

817740

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

44

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 11 1986

REFER TO

CLA-2-04:S:COM:N1:236-227
817764

Mr. John H. Grebe, Purchasing Director
Ampacet Corp.
250 South Terrace Ave.
Mount Vernon, New York 10550

Dear Mr. Grebe:

In your letter dated 3/17/86, you inquired about the dutiable status of pigment color concentrates from Canada.

Per your request, we are confirming classifications and duty rates for the following color concentrates

Inorganic Color Concentrates in non-benzenoid mediums --

Pigment	Classification	Duty
Carbon black	473.0400	Free
Titanium Dioxide	473.7000	6.2% ad valorem
Cadmium	473.8820	3.2% ad valorem
Chrome Yellow	473.1200	3.9% ad valorem
Molybdenum Orange	473.1800	3.9% ad valorem
Iron Oxides (Synthetic)	473.30	3.9% ad valorem
Iron Oxides (Natural)	473.40	7.8% ad valorem
Ultramarines	473.8400	1.5% ad valorem
Iron Blue	473.2800	3.7% ad valorem

Benzenoid pigments in non-benzenoid plastics (resins) --

All	410.3400	15% ad valorem

Duty is based upon the F.O.B. value, point of shipment, unless purchased ex-factory (at factory door).

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

John J. Martuge
Area Director
New York Seaport

AS

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 23 1986

REFER TO

CLA-2-04:S:COM:N1:236-230
817765

Mr. Andrew Gerard
Import Manager
Accelerated Shipping Corp.
54 Stone Street
New York, NY 10004

Dear Mr. Gerard:

Your letter of March 20, 1986, written in behalf of your client, The Mearl Corp. concerns the dutiable status of "titanium coated mica." Your inquiry does not identify the country of origin of this merchandise.

"Titanium coated mica" when imported as pigment grade, 325 mesh (44 micon) is classifiable under the provision for pigments, titanium dioxide, in item 473.7000, Tariff Schedules of the United States. The duty rate is determined by the country of origin. Products of most favored nations are dutiable at the rate of 6.2 percent ad valorem. Products of certain Communist controlled nations are dutiable at the rate of 30 percent ad valorem. Products of certain developing countries may be entitled to duty concessions. A complete listing of countries may be found in General Headnote 3, Tariff Schedules of the United States (19 U.S.C. 1202).

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

A6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 1 1986

REFER TO

CLA-2-04:S:COM:N1:235-228
817772

Mr. C. W. Altringer
Attorney in fact
Norman G. Jensen, Incorporated
P.O. Box 278
Portal, N. Dakota 58772

Dear Mr. Altringer:

In your letter dated March 14, 1986 on behalf of your client Saskatoon Chemicals, you inquired about the dutiable status of calcium hypochlorite from Canada.

According to your letter a typical analysis for this product would indicate that it contains approximately 70 percent calcium hypochlorite and 18.2 percent sodium chloride.

Based on the information contained in your letter, this calcium hypochlorite is classifiable under the provision for calcium compounds in item 418.22, Tariff Schedules of the United States, and dutiable at the rate of 2.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A7

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

MAY 20 1986 -2-07:S:COM:N3D:224
817782

Mr. Bill McGehee
Import Traffic Manager
House of Lloyd, Inc.
11901 Grandview Road
Grandview, MO 64030

Dear Mr. McGehee:

In a letter dated March 12, 1986, you inquired as to the dutiable status of a Formula Race Set manufactured in Hong Kong.

Your sample, No. 20-030, is a battery operated remote control road race set consisting of two plastic cars, two individual push button hand control units, a track layout including two cross-over and eight curved track sections, and a number of fence accessories. The set is powered by four "C" cell batteries which are not included with the imported article.

It is your belief that the Formula Race Set is classifiable in item 734.20, Tariff Schedules of the United States (TSUS), the provision for game machines including games having mechanical controls for manipulating the action.

This race set is not a game as that term is defined for tariff purposes. The term "game" has reference to a competitive activity or contest conducted according to rules with the participants in direct opposition to each other. Examination of the sample indicates that the hand controls are of an on/off switch type. They merely start and stop the cars. Unlike rheostat or variable speed controllers that allow for manipulation and speed control by the players, these controls cannot be manipulated so as to increase or decrease the speed of the toy vehicles. The hand control on/off switch limits the actual control on the part of the players. Consequently, it is our position that the element of competition is lacking when two people use this road race set.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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Accordingly, the Formula Race Set cannot be considered a game within the purview of that term as used in item 734.20, TSUS. It is our opinion that the race set is chiefly used for amusement and is classifiable under the provision for other toys, not specially provided for, in item 737.95, TSUS, dutiable at the rate of 8.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817782

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A9

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

REFER TO

APR 24 1986

CLA-2-04:S:COM:N1:235-225
817798

Mr. H. Sunakoda
Classification Manager
James J. Boyle & Co.
311 South Spring Street
Los Angeles, Calif. 90013

Dear Mr. Sunakoda:

In your letter dated March 19, 1985, on behalf of your client Sumitomo Corporation of America you inquired about the dutiable status of a disposable chemical handwarmer from Japan.

According to the sample submitted, the product is one plastic bag inside another. The inner bag may contain carbon, sodium chloride and iron oxide.

Disposable chemical handwarmers of this type are classifiable under the provision for nonenumerated products in item 799.00, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

MAY 15 1986 CLA-2-01:S:COM:N1E:228-234
817805

Mr. John R. Gardiner
Euro Commodity Trading
Leeds House
2 High Street
Ruskington, Lincolnshire NG34 9DT England

Dear Mr. Gardiner:

In your letter dated March 10, 1986, which was received on March 25, 1986, you inquired about the dutiable status of a dehydrated apple mix from England.

An ingredients breakdown accompanied your letter. The product is said to consist of 56.6 percent granulated sugar, 33.01 percent dried apple flakes, 8.96 percent instant corn starch, 1.41 percent citric acid, and .02 percent potassium sorbate. The imported, dry mix will be sold to the bakery trade.

This merchandise is classifiable under the provision for edible preparations not specially provided for other, in item 183.0520, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 10 percent ad valorem.

Articles classifiable in item 183.05, TSUS, containing over ten percent by dry weight of sugars derived from sugar cane or sugar beets, are currently subject to quota restrictions in item 958.18, TSUS.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR 15 1986

REFER TO

CLA-2-04:S:COM:N1:240-239
817850

Mr. John H. Grebe
Ampacet Corp.
250 South Terrace Avenue
Mount Vernon, NY 10550

Dear Mr. Grebe:

Your letter of March 17, 1986 concerns the dutiable status of polyethylene and polypropylene synthetic plastics material from Canada.

You request classification of 45 chemicals that are to be added to polyethylene or polypropylene as extenders, antioxidants, dispersants, etcetra. As you were recently advised by Raymond A. Valdez, National Import Specialist, it is not necessary to classify each product that may be added to a resin. What is important is that the polyethylene and polypropylene resin that you contemplate importing meets the tariff definition of the term "synthetic plastics material." This term embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which an antioxidant, color, dispersing agent, emulsifier, extender, filler, pesticide, plasticizer, or stabilizer may have been added. These products contain as an essential ingredient an organic substance of high molecular weight; are capable, at some stage during processing into finished articles, of being molded or shaped by flow; and are solid in the finished article.

These synthetic materials may be in solid, semi-solid, or liquid condition such as flakes, powders, pellets, granules, solutions, emulsions, and other basic crude forms not further processed.

Polyethylene and polypropylene are classifiable under the provision for synthetic plastics materials. Polyethylene in item 445.3000, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 12.7 percent ad valorem; polypropylene in item 445.5200, TSUSA, dutiable at the rate of 12.8 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A12-

already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817850

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
APR 23 1986

REFER TO

CLA-2-04:S:COM:N1:238-247
817882

Mr. Daniel Szymanski
Manager, Traffic Services
Searle Laboratories
1100 Kirk Street
Elk Grove, IL 60007

Dear Mr. Szymanski:

In your letter dated March 19, 1986, you inquired about the dutiable status of haloperidol from France.

Haloperidol is a benzenoid derived drug that is indicated for use in the management of manifestation of psychotic disorders. It will be imported in tablet form.

Haloperidol is classifiable under the provision for benzenoid ... psychotherapeutic agents, other, other, in item 412.3600, Tariff Schedules of the United States Annotated, and dutiable at the rate of 16.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 28 1986

REFER TO

CLA-2-01:S:COM:N1E:228-250
817890

Mr. G. E. Tonkin
Market Entry Section
USA Marketing Division
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario K1A 0G2 Canada

Dear Mr. Tonkin:

In your letter dated March 20, 1986, on behalf of Freshground Industries, Ltd, Brampton, Ontario, you inquired about the dutiable status of rice cakes from Canada.

A sample package of "plain" rice cakes, and empty containers for three other varieties accompanied your letter. The sample cakes were examined and disposed of; the empty containers were retained by this office. The products are made from a combination of whole grain brown rice and white rice, placed into a mold and subjected to high heat and air pressure. This procedure puffs the rice, which, by virtue of natural starches in the food, sticks together in the molded, disk shape. In addition to the rice, "garlic flavored" cakes contain less than two percent by weight of garlic powder, salt, and sesame seeds. "Sesame salted" cakes contain less than two percent of salt and sesame seeds. "Five grain" rice cakes contain approximately 1.1 percent each of sesame seeds, barley, cornmeal, and cracked wheat.

The rice cakes are classifiable under the provision for biscuits, cake, cakes, wafers, and similar baked products..., in item 182.2000, Tariff Schedules of the United States Annotated, and dutiable at the rate of 0.4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

B1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 30 1986

REFER TO

CLA-2-1:S:COM:N1E:228-255
817919

Mr. Jeff Brookner
21205 Roscoe Boulevard, #8
Canoga Park, CA 91304

Dear Mr. Brookner:

In your letter dated March 27, 1986, you inquired about the dutiable status of food supplements from Mexico.

Five products are named in your letter: Bee Propolis, Royal Jelly, Spirulina, Super Oxide Dismutase (SOD), and Primrose Oil. In a telephone conversation with National Import Specialist Stanley M. Hopard on May 16, 1986, you stated the Bee Propolis will be imported in either of two forms: "natural", in the condition as removed from the hive, or in bottles containing capsules, tablets, or liquid extract. The Royal Jelly will be imported in "raw" condition, as removed from the hive, in dark glass bottles. It will be further processed after importation. Spirulina will be imported in bulk, in plastic bags or cans. You plan to market the spirulina in these containers.

Bee Propolis is classifiable under the provision for other articles not provided for elsewhere in the Tariff Schedules in item 799.0000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 3.9 percent ad valorem.

Royal Jelly, imported in bulk containers, is classifiable under the provision for animal substances, crude, not specially provided for... other, in item 191.1800, TSUSA, and dutiable at the rate of 2.5 percent ad valorem.

Spirulina and Primrose Oil are classifiable under the provision for edible preparations not specially provided for... other in item 183.0520, TSUSA, and dutiable at the rate of 10 percent ad valorem.

Articles classifiable in items 183.05, 191.18, and 799.00, TSUS, which are the products of Mexico, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

However, your inquiry does not provide enough information for us to give a classification ruling on Super Oxide Dismutase (SOD). Your request for a classification ruling should include the Chemical Abstract Service (CAS) name and number, trade names, the complete chemical composition, a sample of the product in its imported condition, and a description of the chief use of this product in the United States.

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With respect to Bee Propolis, Royal Jelly, Spirulina, and Primrose Oil, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

817919

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

APR 24 1986

REFER TO

CLA-2-04:S:COM:N1:235-257
817931

Mr. J. E. Brady
Executive Vice President
Bill White, Inc.
5859 West Century Blvd, Suite 1422
Los Angeles, Calif. 90045-6589

Dear Mr. Brady:

In your letter dated March 23, 1986, on behalf of your client, Nichimen America, you inquired about the dutiable status of high performance fluorocarbon oil from Japan.

According to your letter this product is a high quality, special purpose lubricant.

Based on the information supplied in your letter it is classifiable under the provision for ethers of a polyhydric alcohol in item 428.47, Tariff Schedules of the United States, and dutiable at the rate of 12.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

BY

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

MAY 6 1986

CLA-2-04:S:COM:N1:238-254
817933

Mr. Frank Prackler
Harold I. Pepper Co., Inc.
9 Murray Street, Suite 11 East
New York, NY 10007

Dear Mr. Prackler:

In your letter dated March 31, 1986, on behalf of Lonza, Inc., you inquired about the dutiable status of niacin, animal nutrition grade T.R. from Switzerland.

The submitted sample, a cream colored powder, is a formulated product containing essentially niacin, rosin esters and polyethylene wax. It is used as a veterinary nutrition product.

Niacin, animal nutrition grade T. R. is classifiable under the provision for "Vitamins: Synthetic: Niacin: other" in item 437.8207, Tariff Schedules of the United States, and dutiable at the rate of 3.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

APR [illegible] 1986

REFER TO

CLA-2-01:S:COM:N1:229-262
817938

Mr. Frank R. Bailey
Bailey, Inc.
1932 Lebanon Street
Hyattsville, MD 20783

Dear Mr. Bailey:

In your letter of March 25, 1986, on behalf of Patricia Marull of 5727 Western Avenue, N.W. in Washington, D.C. 20015, you inquired about the dutiable status of several food products from Venezuela.

These products are listed in your letter as "Colonial Cafe", "El Carupanero" brand Tuna in Hot Sauce, "Albacore Tuna", "Sardines in Tomato Sauce", "Margarita" brand Tuna in brine, and "Sardinella Anchovia in Vegetable Oil". One sample of each product was forwarded with your inquiry.

"Colonial Cafe", according to the package label, consists of 100 percent pure, natural coffee. The sample, a soft plastic pouch pack, contained 500 grams of ground roast coffee.

"El Carupanero" brand Tuna in Hot Sauce, packed by Propisca S.A., consisted of a 7 ounce (net weight) tin of tuna fish in vegetable oil and salt, with a small amount of vegetables (carrot, onions, and chili pepper) packed at the top of the can.

"Albacore Tuna", packed by Propisca S.A., consisted of a 7 ounce (net weight) tin of albacore tuna packed in vegetable oil and salt.

"Margarita" brand tuna in brine, packed by Alimentos Margarita, C.A., consisted of six and one-half ounce tin of tuna, packed in water and salt.

"Sardines in Tomato Sauce", packed by Propisca S.A., consisted of a 14.5 ounce (net weight) tin of sardines packed in a tomato sauce with vegetable oil and salt. These sardines had been headed, but did not appear to be either skinned or boned.

"Sardinella Anchovia", packed by Propisca S.A., consisted of a tin (70 grams, net weight) of skinless fish fillets in vegetable oil.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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"Colonial Cafe" is classifiable under the provision for Coffee, crude, roasted, or ground, whether or not the caffeine has been removed...Roasted or ground in item 160.1040, Tariff Schedules of the United States (TSUS), and free of duty.

The documentary requirements of the International Coffee Agreement are currently suspended due to the current price of coffee in the world market. Should the requirements of the International Coffee Agreement be reinstituted at some future date, then a proper International Coffee Organization Certificate will be required at the time of entry of such merchandise.

"El Carupanero" brand Tuna in Hot Sauce, and "Albacore Tuna" are both classifiable under the provision for Tuna fish, prepared or preserved in any manner, in oil, in airtight containers, in item 112.9000, TSUS, with duty at the rate of 35 percent ad valorem.

"Margarita" brand Tuna in Brine is classifiable under the provision for Tuna fish, prepared or preserved in any manner, not in oil, in airtight containers. If packed in containers weighing with their contents not over 15 pounds each, and within the quota for an aggregate quantity entered in any calendar year not to exceed 20 percent of the United States pack of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, then this tuna is classifiable in item 112.30, TSUS, and dutiable at the rate of 6 percent ad valorem. If entered after the tariff rate quota period has closed, classification would be in item 112.34, TSUS, with duty at the rate of 12.5 percent ad valorem.

"Sardines in Tomato Sauce", containing added vegetable oil, are classifiable as Sardines...neither skinned nor boned...not smoked under the provision for Fish, prepared or preserved in any manner, in oil, in airtight containers. If valued not over 18 cents per pound (including weight of immediate container), classification of this product will be in item 112.5400, TSUS, with duty at the rate of 14.3 percent ad valorem. If valued over 18 but not over 23 cents per pound (including weight of immediate container), classification will be in item 112.6200, TSUS, with duty at the rate of 20 percent ad valorem. If valued over 23 but not over 30 cents per pound (including weight of immediate container), classification will be in item 112.7300, TSUS, with duty at the rate of 15 percent ad valorem. If valued over 30 cents per pound (including weight of immediate container), classification will be in item 112.8200, TSUS, with duty at the rate of 15 percent ad valorem.

"Sardinella Anchovia" skinless fillets in vegetable oil are classifiable as Sardines...skinned or boned under the provision for Fish, prepared or preserved in any manner, in oil, in airtight containers. If valued not over 18 cents per pound (including the weight of the immediate container),

817938

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B7

classification will be in item 112.5400, TSUS, with duty at the rate of 14.3 percent ad valorem. If valued over 18 but not over 23 cents per pound (including weight of immediate container), classification will be in item 112.6600, TSUS, with duty at the rate of 20 percent ad valorem. If valued over 23 but not over 30 cents per pound (including weight of immediate container), classification will be in item 112.7400, TSUS, with duty at the rate of 30 percent ad valorem. If valued over 30 cents per pound (including weight of immediate container), classification will be in item 112.8600, TSUS, with duty at the rate of 20.5 percent ad valorem.

Importations of tuna and fish and other fish species may be subject to special regulations or requirements administered by other U.S. government agencies. Inquiries regarding such regulations or requirements should be addressed to the following offices:

Protected Species Division
National Marine Fisheries Service
Department of Commerce
3300 Whitehaven St., N.W.
Page 2 Bldg., Room 172
Washington, D.C. 20235

and

U.S. Food and Drug Administration
Division of Regulatory Guidance
HFF 314, 200 C Street, S.W.
Washington, D.C. 20204

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817938

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

B8

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 0 2 1986

REFER TO

CLA-2-02:S:COM:N1:230-261
817939

Ms. Aurora Goderich
Action Broker
5200 W. 104th Street
Los Angeles, CA 90045

Dear Ms. Goderich:

In your letter dated March 11, 1986, on behalf of Sunburst Creations Ltd. of Barnaby, B.C., Canada, you inquired about the dutiable status of a wooden flower from Taiwan.

A sample of the wooden flower was submitted. It has the rough shape of a tulip. It is made of solid wood. The head is painted gray and the stem is painted mint green. The wooden flower will be used as a decoration.

The article possesses only the general shape of a flower. It does not contain sufficient detail and does not look enough like a flower to be considered an artificial flower. Consequently, it is not classifiable under the provision for artificial flowers in item 748.2100, Tariff Schedules of the United States Annotated (TSUSA).

This wooden flower is classifiable under the provision for articles not specially provided for, of wood, in item 207.0080, TSUSA, and dutiable at the rate of 5.5 percent ad valorem. Taiwan is presently excluded from eligibility for duty free treatment under the Generalized System of Preferences for articles classifiable under item 207.0080, TSUSA.

The ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R.177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

REFER TO

MAY 0 9 1986
CLA-2-03:S:COM:N3-G:345
817979

Mr. Steve Schneider
Orient-Western
65 Rockaway Avenue
P.O. Box 27205
San Francisco, CA 94127

Dear Mr. Schneider:

Your letter of March 3, 1986, received in this office April 4, 1986, requested this office to rule upon the tariff classification of various cases from Korea. Your samples will be returned as requested.

You have submitted seven items for a Tariff classification ruling. All the items are of woven man-made fibers, and are described as follows:

1) Compass Case, 3-3/4 inches wide by 6-1/4 inches long when fastened by a velcro closure. It has a belt loop to be worn on the belt a transport a compass and a hole for a lanyard so it can be worn around the neck.

2) Compass Case, 3-1/4 inches wide by 4-1/2 inches long when fastened by a velcro closure. It has a belt loop to be worn on a belt to transport a compass.

3) Ammunition Case, 5-1/2 inches wide by 4-1/2 inches long when fastened by a velcro closure. It has a belt loop to be worn on a belt to transport shotgun shells.

4) Pen holder, 1-1/2 inches wide by 5-3/4 inches long, with a lanyard to be worn around the neck to transport two pens.

5) Flashlight Pouch, 2-1/8 inches wide by 6-3/4 inches long when fastened by a velcro closure. It has a belt loop to be worn on a belt to transport a flashlight.

6) Pencil case, 3-1/4 inches wide by 8-1/2 inches long with a zipper closure, to protect and transport pencils.

7) Protective case for removable car radio, 8-1/2 inches wide by 10-1/2 inches long with a zipper closure, carrying straps, and a front pocket with a velcro closure. The case is used to transport a radio back and forth from a car to a secure place.

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Items 1 through 5 are classifiable under the provision for Articles not specially provided for, of man-made fibers, other, in item 389.6270, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 4 cents per pound plus 10 percent ad valorem.

Item 6 is classifiable under the provision for Flatgoods, of textile materials except cotton in item 706.3900, TSUSA. The rate of duty is 20 percent ad valorem.

Item 7 is classifiablue under the provision for Luggage of textile materials, other, item in 706.4152, TSUSA. The rate of duty is 20 percent ad valorem.

Tariff item 706.3900 falls within textile category designation 670-F. Tariff item 706.4152 falls within textile category designation 670-L. As a product of Korea these items are subject to visa requirements and quota restraints based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817979

B11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 09 1986

REFER TO
CLA-2-04:S:COM:N1:236-281
818067

Mr. J. A. Wall
Manager
Norman G. Jensen, Inc.
P.O. Box 365
Oroville, Washington 98844

Dear Mr. Wall:

In your undated letter (received this office April 9, 1986), you inquired about the dutiable status of "Deep Lustre Instant Silverware Cleaner" from Canada.

The prospective import, a silverware cleaner kit, consists of 200 grams of rock salt and one 2" x 5" zinc bar. The rock salt is dissolved in 4 litres of hot water with the zinc bar and tarnished item placed in contact with each other in the hot salt solution. The instructions state that the "deep lustre bar" will detarnish gold, silver, silverplate, sterling, and platinum.

"Deep Lustre Instant Silverware Cleaner" is classifiable under the provision for blackings, powders, liquids, and creams for polishing and cleaning, all the foregoing in immediate containers holding not over 10 pounds each in item 493.1000, Tariff Schedules of the United States, and dutiable at the rate of 2.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B12

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 14 1986

REFER TO

CLA-2-07:S:COM:N3D:225
818069

Ms. Donna L. Shira
Sharretts, Paley, Carter & Blauvelt, P.C.
Eighty Broad Street
New York, N.Y. 10004

Dear Ms. Shira:

In your letter dated April 7, 1986 on behalf of your client, Tonka Corporation, you inquired about the dutiable status of a Pound Puppies Newborns Puppy Pack from Taiwan or China.

A sample of the Pound Puppies Newborns Puppy Pack was submitted with your inquiry, and is being returned to you as requested. The article, item number 7813, measures 4 1/2 inches in height, 7 inches in width and 11 1/2 inches in length. The pack is made of a beige fabric outer surface and an orange fabric inner surface. A handle is attached to the top of the pack with velcro closures on the front and sides. The sides, composed of plastic material, have an open grid formation with 3/4 inch square openings. The article is used as a toy accessory with the Pound Puppies Newborns stuffed dogs.

Pound Puppies Newborns Puppy Pack, item no. 7813, is classifiable under the provision for other toys in item 737.95, Tariff Schedules of the United States, and dutiable at the rate of 8.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

B13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 02 1986

REFER TO
CLA-2-02:S:COM:N1:230-291
818096

Mr. Ron Eckstam
Eckstam, Fitzsimmons & Associates, Inc.
14276 23rd Avenue North
Plymouth, MN 55441

Dear Mr. Eckstam:

In your letter of April 7, 1986, you requested the tariff classification of wooden flowers from Taiwan, Hong Kong, Japan and Korea.

The flowers come in several shapes and are used as room decorations. The sample submitted is made of solid wood and is painted red and green. It has a two-dimensional head shaped like an upside-down heart. It has a simple straight round stem which connects to block-like leaves. The sample is only a rough representation of a flower.

Wooden flowers represented by your sample are classifiable under the provision for articles not specially provided for, of wood, in item 207.0080, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 5.5 percent ad valorem.

Articles classifiable under item 207.0080, TSUSA, which are the products of Hong Kong and Korea are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

REFER TO

MAY 14 1986 OEA-2-04:S:COM:N1:238-284
818099

Mr. Paul M. Szutowicz
Agvar Chemicals Inc.
145 East 27th Street
New York, NY 10016

Dear Mr. Szutowicz:

In your letter dated April 1, 1986, you inquired about the dutiable status of "Saca" (7-Amino-3-((1-sulfomethyl-1H-tetrazol-5-yl) thio) methyl)-3-cephem-4-carboxylic acid, monosodium salt, monohydrate) from Austria.

"Saca" is a synthetically derived non-benzenoid product that has some antibiotic properties. It will be used in the manufacture of cephalosporin type antibiotics.

"Saca" is classifiable under the provision for non-benzenoid antibiotics, other, in item 437.3250, Tariff Schedules of the United States Annotated, and dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 13 1986

REFER TO
CLA-2-04:S:COM:N1:239-283
818100

Mr. S.D. Hoskins
Interox Chemicals Ltd.
P.O. Box 7
Warrington, Cheshire, England WA4 6HB

Dear Mr. Hoskins:

In your letter of March 14, 1986, you inquired about the tariff classification of the monomer and polymer of caprolactone from England.

When produced from benzenoid sources caprolactone monomer is classified under the provision for other products which can be produced from benzenoid sources in item 407.0600, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 13.5 percent ad valorem.

When produced from non-benzenoid sources caprolactone monomer is classified under the provision for other lactones in item 429.1200, TSUSA. The rate of duty is 4.1 percent ad valorem.

When produced from benzenoid sources a polymer of caprolactone is classified under the provision for benzenoid, thermoplastic, saturated polyester plastic material in item 408.6800, TSUSA. The rate of duty is 1.4 cents per pound plus 9 percent ad valorem.

When produced from non-benzenoid sources a polymer of caprolactone is classified under the provision for other non-benzenoid thermoplastic resin in item 445.5630, TSUSA. The rate of duty is 1 cent per pound plus 8 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 13 1986

REFER TO

CLA-2-07:S:COM:N3D:225
818109

Mr. W. C. McGehee
House of Lloyd, Inc.
11901 Grandview Road
Grandview, MO 64030

Dear Mr. McGehee:

In your letter dated April 2, 1986, you inquired about the dutiable status of "My Little Angel Nite Light" from Hong Kong.

A sample of "My Little Angel Nite Light" was submitted with your inquiry. The article, a figure of a little angel, has a plastic molded head with painted hair, eyes and mouth. The body is composed of a blue fleece material. A long gown gives shape to the torso and concealment of legs. A soft stuffing material is contained in the gown. A white collar and blue ribbon are affixed to the gown. Iridescent wings are attached to the back of the doll. A zipper is sewn on the back of the gown which conceals an illumination apparatus contained in the torso of the doll. The head lights up when the torso of the doll is squeezed. You state in your letter that you feel the proper classification of the article is in item 683.4280, TSUSA, under the provision for electrical articles. The article is not capable of staying illuminated throughout the night. The doll does not have an on or off switch, but merely lights up when squeezed. The article is a doll with an illumination feature. There is insufficient stuffing surrounding the apparatus, therefore, the doll is considered unstuffed for tariff classification purposes.

My Little Angel Nite Light is classifiable under the provision for other dolls in item 737.2400, Tariff Schedules of the United States Annotated, and dutiable at the rate of 12.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

C3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 09 1986

REFER TO

CLA-2-07:S:COM:N3D:225
818141

Mr. Jim Schaeffer
F.W. Meyers & Co., Inc.
One World Trade Center, Suite 3211
New York, NY 10048

Dear Mr. Schaeffer:

In your letter dated April 11, 1986, on behalf of your client, Montgomery Ward Importing Inc., you inquired about the dutiable status of a Hide-n-Sleep Play Tent from Taiwan.

A sample of a Hide-n-Sleep Play Tent was submitted with your inquiry and is being returned to you, as requested. The tent is made of 100 percent nylon and is designed to be assembled on a mattress. Included are 16 poles which support the nylon fabric. The tent has a zippered front and vent holes for comfort and safety. It is intended to be used by children for indoor play. The article is chiefly used for the amusement of children.

The Hide-n-Sleep Play Tent is classifiable under the provision for other toys in item 737.95, Tariff Schedules of the United States, and dutiable at the rate of 8.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

c4

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 2 2 1986

REFER TO

CLA-2-04:S:COM:N1:235-309
818238

Mr. G. Brunell
A. N. Derringer, Inc.
30 West Service Road
Champlain, NY 12919-9703

Dear Mr. Brunell:

In your letter dated April 11, 1986, on behalf of your client Optical Moulding Systems, you inquired about the dutiable status of a lens cleaner and sealers from Canada.

According to your letter, Dipcoat and Dipcoat AA are similar except that Dipcoat does not contain the surfactant.

Dipcoat is classifiable under the provision for mixtures, not specifically provided for in item 432.28, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

Dipcoat AA is classifiable under the provision for benzenoid mixtures, in item 413.54, Tariff Schedules of the United States, and dutiable at the rate of 11.9 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

Unbelieveable Lens Cleaner is classifiable under the provision for benzenoid mixtures, in item 413.54, Tariff Schedules of the United States, and dutiable at the rate of 11.9 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be methanol classifiable under item 427.97, Tariff Schedules of the United States, and dutiable at the rate of 18.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

818238

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C6

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

REFER TO

MAY 14 1986

CLA-2-04:S:COM:N1:235-312
818297

Ms. R.L. Kent
Manager Marketing Services
Centerchem, Inc.
660 White Plains Road
Tarrytown, NY 10591

Dear Ms. Kent:

In your letter dated April 9, 1986, you inquired about the dutiable status of squalane from Spain. Your letter indicates that the product you intend to import is produced from olive oil.

Based on this information squalane is classifiable under the provision for hydrocarbons, other in item 429.56, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C7

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

REFER TO

MAY 14 1986

CLA-2-07:S:COM:N3D:225
818301

Mr. Edward Ackerman
Siegel, Mandel & Davidson, P.C.
One Whitehall Street
New York, NY 10004

Dear Mr. Ackerman:

In your letter dated April 17, 1986, on behalf of your client Coleco Industries, Inc., you inquired about the dutiable status of a Cabbage Patch Baby Blanket from Hong Kong.

A sample of the Cabbage Patch Baby Blanket was submitted. The blanket is made of a soft fleeced fabric with a knit fabric trim. The blanket measures 17 1/2 inches by 17 1/2 inches. It is to be used as an accessory with the 12 inch Cabbage Patch Babies line. The blanket is too small for use with actual infants.

The Cabbage Patch Baby Blanket is classifiable under the provision for other toys in item 737.95, Tariff Schedules of the United States, and dutiable at the rate of 8.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 19 1986

REFER TO

CLA-2-06:S:COM:N1B:112-526
818380

Mr. Daniel G. Rusche
Walmark Inc.
15494 Briar Ridge Circle
Fort Myers, FL 33912

Dear Mr. Rusche:

In your letter of April 1, 1986, you requested the tariff classification of a battery operated key finder from Taiwan.

The Sonic Key Chain is powered by two button type batteries. It is comprised of a plastic module which houses a receiver that activates at a certain audible frequency, a keychain for holding keys and two batteries. By whistling the built in receiver is activated and makes a beeping sound for a short period of time. This item is used as an aid in finding misplaced keys.

The Sonic Keychain module is classifiable under the provision for other audible signalling apparatus, which is electrical in item 685.7038, Tariff Schedules of the United States, and dutiable at the rate of 2.9 percent ad valorem.

The keychain is classifiable under the provision for jewelry and other objects of personal adornment: Other ..., in item 740.38, Tariff Schedules of the United States, and dutiable at the rate of 13.1 percent ad valorem.

The batteries are classifiable under the provision for primary batteries, in item 682.9500, Tariff Schedules of the United States, and dutiable at the rate of 5.7 percent ad valorem.

Articles classifiable under items 685.7038 and 682.9500, TSUS, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

818380

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAY 2 8 1986

REFER TO

CLA-2-01:S:COM:N1:229-350
818471

M. P. Gagnon, President
Corporation D'Investissement Maurice-Pierre Gagnon
4413 Girouard
Montreal, Quebec, Canada h4a 3e5

Dear Ma. Gagnon:

In your letter of April 11, 1986, you requested the tariff classification two margarine products from Canada.

These margarines will contain either a 100 percent soya oil base or a 100 percent base of other vegetable oils, and will be imported in one pound, two pound, four pound, four kilo, and thirteen kilo sizes. These margarines will consist, by weight, of hydrogenated vegetable oil (80 percent), water (16 percent), salt (2.8 percent), whey powder (1.4 percent), soya lecithin (0.2 percent), mono and diglycerides (0.1 percent), sodium benzoate (0.1 percent), vitamin A palmitate, vitamin D3, BHA - BHT, and artificial flavor and natural color.

These 100 percent vegetable oil margarines are both classifiable under the provision for other oleomargarine and butter substitutes in item 116.3040, Tariff Schedules of the United States (TSUS), with duty at the rate of 7 cents per pound.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

C11

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 15 1986

REFER TO

CLA-2-07:S:COM:N3G:341
818472

Mr. John J. Brinckerhoff
Intercon Research Associates Ltd.
1219 Howard Street
Evanston, IL 60202

Dear Mr. Brinckerhoff:

In your letter dated April 17, 1986, you inquired about the dutiable status of various polyethylene bags and printed sheets from France.

The samples submitted consist of nine handle and two tee shirt bags, one carrier bag, dozens of bundle bags and printed sheets of polyethelene. They will be imported in various sizes and shapes and their construction ranges from low to high density polyethylene. It is to be noted that eight of the bags have handle slots punched into their bag bodies while one has a separate rigid double plastic handle. Furthermore, the tee shirt bags have a self-material double handle while the carrier bag and bundle bags have none. The bags are of the type provided or sold by retailers to their customers. All the bags, excluding the tee shirt and bundle bags, display the name or other proprietary feature of the retailer.

The printed polyethelene sheets, coming in rolls, will be utilized in the packaging of frozen food and bathroom products and in the automatic wrapping machines for direct mailing to consumers. Printed on each roll at regular intervals are the trademarked product brand names, product descriptions, preparation instructions, and magnetic ink marks. The marks are read by an electric eye, which triggers a mechanism that cuts, folds, and seals the plastic around the various items in accordance with the location of the marks. Therefore, the merchandise at issue serves as protective packaging during the course of transportation and/or enhances the saleability of the product.

The polyethylene bags are classifiable under the provision for articles not specially provided for, of rubber or plastics, in item 774.55, Tariff Schedules of the United States, and dutiable at the rate of 5.7 percent ad valorem.

The printed polyethylene sheets are classifiable under the provision of containers of rubber or plastics, with or without their closures, chiefly used for the packing, transporting, or marketing of merchandise in item 772.20, Tariff Schedules of the United States, and dutiable at the rate of 3.6 percent ad valorem.

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On reviewing the presented bags, it is determined that only one of the bags is properly marked with the country origin. Section 304 of the Tariff Act of 1930, as amended (19 USC 1304), requires in general that every article of foreign origin must be legibly, permanently, and conspicuously marked to indicate the English name of the country of origin. Therefore, upon importation, all your imported items must be in compliance with the above regulation.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

818472

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C13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAY 14 1986

REFER TO
CLA-2-03:S:COM:N3G:345
818478

Mr. Michael R. Toole
Assistant Import Manager
Fritz Companies, Inc.
40 Exchange Place
New York, N.Y. 10005

Dear Mr. Toole:

In your letter of April 29, 1986, you requested the tariff classification of a wrist wallet from Taiwan. Your inquiry is on behalf of a Multi Toys Corporation, Fort Lee, New Jersey.

The submitted sample, style number 1365, is a wrist wallet of woven fabric, measuring approximately 7-1/2 inches long by 2-1/4 inches wide. It has a zipper closure in the center for carrying miscellaneous articles and velcro tabs at each end. It has an applique with the name "L.A. GEAR" glued on the front of the wrist wallet.

When in chief value of cotton, the wrist wallet is classifiable under the provision for Ornamented articles not specially provided for, of textile materials, of cotton, other in item 386.0430, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 25 percent ad valorem.

When in chief value of man-made fibers, the wrist wallet is classifiable under the provision for Ornamented articles not specially provided for, of textile materials, other, of man-made fibers, in item 386.1343, TSUSA, and dutiable at the rate of 12.5 percent ad valorem.

Articles classifiable under item 386.1343, TSUSA, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

818478

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 28 1986

REFER TO

CLA-2-01:S:COM:N1:229-366
818611

Mr. Philippe Bonnet
Fromagerie Clemente Inc.
54 rue Principale
Saint-Damase, Quebec, Canada JOH 1JO

Dear Mr. Bonnet:

In your letter dated April 25, 1986, you inquired about the dutiable status of two fresh cheeses from Canada.

The cheeses, designated Faisselle St-Damase and Fontainebleau, are unripened cheeses made from pasteurized cow's milk. Faisselle St-Damase consists of creamy fresh, white curd. The label on a sample container of 125 grams indicates a moisture content of 84 percent and a fat content in the finished cheese of 3.2 percent. Fontainebleau, which is made by whipping Faisselle St-Damase, appears, on examination of a sample, to have a smooth even texture. Fontainebleau cheese may be imported plain or flavored with various fruit purees.

Faisselle St-Damase and Fontainbleau cheeses are both classifiable under the provision for other cheeses, and substitutes for cheese in Part 4C of Schedule 1 Tariff Schedules of the United States (TSUS). If valued not over 25 cents per pound, these cheeses are classifiable in item 117.7555, TSUS, with duty at the rate of 5 cents per pound. If valued over 25 cents per pound, these cheeses are classifiable in item 117.8855, TSUS, with duty at the rate of 10 percent ad valorem.

Articles classified in items 117.7555 and 117.8855 are subject to quota quantity restrictions listed in item 950.10D in part 3 of the Appendix to the Tariff Schedules. Additionally, an import license, issued to the importer by the United States Department of Agriculture, would be required at the time such merchandise is entered for consumption in the United States.

Inquiries regarding licensing procedures and requirements for quota purposes may be addressed to the following office:

Head, Diary and Import Group
Dairy, Livestock and Poultry Division
Foreign Agricultural Service
U.S. Department of Agriculture
Washington, D.C. 20250

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Inquiries regarding other Department of Agriculture requirements may be addressed to:

U.S. Department of Agriculture
A.P.H.I.S., Veterinary Services
Federal Building, Room 838
Hyattsville, MD 20782

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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DEPARTMENT OF THE TREASURY
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UNITED STATES CUSTOMS SERVICE

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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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047355	66A11	047535	369F01
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051423	299E04	051597	370A12
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051463	207B02	051608	348B12
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051476	121E03	051618	164A14
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051481	52B12	051627	320F02
051485	273A10	051631	1D04
051502	270F05	051633	17B14
051505	441C08	051634	441E13

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051655	348B13	051057	320F09
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051658	67F11	051067	320F10
051672	411B08	051068	441B03
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051689	370A13	051080	108G13
051691	250D09	051081	207B06
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051695	273B01	051903	139D11
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051708	116B12	051909	283B03
051711	1D07	051913	441B06
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051734	283A14	051924	159B05
051735	185G04	051925	186A03
051748	105G07	051926	451B06
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051753	320F08	051929	17C10
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051760	91E03	051933	441B08
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051794	207G05	051940	441B14
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052549	68F05
052552	1F02
052552	65E11
052559	370B07
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052568	186B10
052569	186B12
052571	46F01
052572	467B03
052585	186B14
052591	154D01
052593	250E05
052595	320G10
052597	121B09
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052610	164C09
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052624	61B03
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052858	118G07
052867	164C14
052868	186C11
052870	116A05
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052875	153F06
052878	17E02
052879	17E05
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052881	66F02
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052892	273C09
052896	105C09
052897	111G05
052905	164D02
052906	370C05
052908	151D10
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053011	299G07
053012	443C05
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053252	273D03	053479	57C13
053253	250F09	053482	411C07
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053257	54D05	053486	443E12
053259	227G13	053492	116D13
053264	208C02	053496	114D14
053267	164E02	053502	273D08
053271	69D10	053507	443E13
053272	150A07	053511	208C05
053274	443E04	053515	17F11
053278	2A09	053518	443F01
053279	321A05	053519	443F03
053281	443E05	053522	443F05
053284	17E12	053523	443F06
053285	17E14	053524	208C06
053286	17F02	053525	17F14
053287	62F04	053526	300A04
053288	508C03	053527	17G01
053289	131E04	053532	300A06
053291	2A11	053533	443F07
053293	2A12	053539	451B09
053294	2A13	053546	283C05
053295	17F04	053549	411C09
053303	17F07	053551	443F10
053306	273D04	053552	508C04
053313	273D05	053554	496B01
053320	208C04	053556	140G08
053323	250F11	053558	101G06
053326	321A07	053563	164E05
053327	17F09	053563	186D13
053329	411C05	053570	2B04
053338	370D01	053571	127E12
053340	443E06	053573	283C06
053346	186D11	053575	17G03
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053637	164E07
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053651	273D10
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053907	186E09	054015	300B03
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053921	18A12	054027	186F09
053924	186E11	054028	121C01
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053931	186E13	054035	443G13
053934	45D03	054039	69F02
053935	321B04	054040	487A13
053936	186F01	054042	321B14
053937	2C06	054045	2C09
053938	208C14	054046	63E05
053940	128E03	054048	444A04
053941	603C07	054049	186F10
053950	2C07	054053	300B06
053950	61F10	054054	411D01
053952	370D11	054055	208D03
053953	321B06	054057	508D03
053956	321B08	054064	164F06
053957	321B10	054069	131A11
053959	321B12	054076	122F08
053968	164E13	054080	273E05
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054131	321C02	054223	508D05
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054137	116B09	054225	18B09
054137	155G08	054227	69G04
054140	53B04	054235	508D07
054141	228A14	054238	321C04
054148	300B09	054238	393C08
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054152	370E02	054247	508D09
054154	208D09	054248	427B09
054156	496B02	054253	300B13
054160	444A07	054255	59B03
054162	164F08	054255	106D06
054163	164F09	054260	228B05
054164	228B01	054262	18B11
054166	411D02	054269	32E03
054168	186F12	054270	2D01
054172	451C01	054271	122A12
054173	444A08	054272	164F14
054176	300B10	054274	138G11
054177	444A11	054275	186G01
054179	34F11	054277	262A10
054181	53E12	054279	186G02
054182	250G07	054284	115A03
054183	159D04	054285	451C06
054185	545B05	054286	164G02
054186	186F14	054287	45C11
054189	57E03	054288	18B13
054189	112B11	054289	59D05
054196	138G09	054290	228B07
054198	451C02	054297	393C10
054199	370E03	054298	508D10
054201	451C03	054305	262A12
054202	228B03	054307	250G08
054204	164F11	054315	60C11
054205	393C06	054317	478A08
054205	444A12	054319	596A07
054207	155G07	054320	228B08
054209	300B11	054321	208D13

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054337	18C01
054339	200E01
054346	155C06
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054386	18C03
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054395	131A13
054396	151C03
054409	60C04
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054459	2D07
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054462	2D10
054463	393C13
054474	478A09
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054476	370E07
054481	148D09
054482	407D01
054484	283C11
054489	57A08
054490	370E08
054492	300C07
054493	200D14
054494	173D12
054501	427B14
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054507	18C06
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054521	283C13
054522	262A14
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054530	529A10
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054534	496B03
054536	300C08
054537	273E10
054540	262B02
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054585	2E02
054586	18C11
054587	18C14
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054589	164G07
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054592	411D09
054593	411D11
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054605	564A12
054606	451C13
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054609	2E03
054610	2E04
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054612	2E07
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054654	250G14
054656	115A05
054657	370E13
054658	130G14
054664	411D14
054669	370E14
054671	18D09
054672	18D12
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054684	411E03
054686	159D12
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054705	411E05
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054726	393D04
054727	208E08
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054729	2F02
054730	2F05
054731	151F09
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054738	18F02
054745	187A05
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054781	564B01	054877	152B14
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054786	586A13	054887	2B12
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054789	110G01	054892	187A10
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054806	69F12	054918	50C03
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054810	393D06	054920	187A12
054812	104F01	054926	3A13
054813	394A03	054926	108D04
054820	2B05	054930	3B01
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054824	55B03	054931	49C04
054826	251A05	054933	3B04
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054830	508E02	054947	508E07
054831	69F09	054948	3B08
054836	246B02	054952	19A11
054836	251A08	054952	187A14
054839	411E07	054954	102C02
054843	300D02	054954	131D02
054845	508E04	054956	3B10
054846	18F14	054958	164G11
054846	119E09	054959	321D05
054852	74B10	054960	3B11
054853	2G09	054960	187B03
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054989	3C05
054990	3C09
054991	19B10
054992	3C12
054993	3C14
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054995	3D02
055000	3D03
055001	19B14
055002	3D05
055003	411E10
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055012	3D09
055016	3D11
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055040	3E08
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055063	273F02
055065	3F04
055065	187C02
055066	84C12
055074	508E12
055076	3F05
055078	3F08
055079	125B13
055084	19D06
055084	187C04
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055090	508E14
055092	19D08
055094	19D09
055096	3F09
055098	187C06
055099	19D11
055101	273F04
055104	19D13
055107	19E02
055112	411F01
055115	228B12
055119	19E04
055121	3F11
055122	273F05
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055172	72E12
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055179	102B14
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055185	147E12
055190	20A03
055193	164G13
055194	20A05
055195	20A13
055199	39A10
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055203	132A08
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055252	536A03
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055256	451D03
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055258	86A03
055259	20D12
055260	20D14
055260	20E02
055263	451D05
055264	20E04
055266	187D01
055267	141A03
055267	187D03
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055271	370F05
055272	20E07
055276	165A06
055277	37D14
055277	123B09
055278	37E04
055279	20E10
055281	20E13
055281	187D09
055282	44B06
055289	74G06
055290	63E10
055291	451D06
055292	88G06
055293	20F02
055294	407B02
055295	39B05
055296	109A05
055299	20F06
055301	20F08
055302	109E02
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055319	20G02	055385	321D11
055319	165A09	055387	40C05
055321	208E14	055388	75D11
055325	87A06	055390	64E03
055330	251A11	055390	124A04
055331	39B08	055391	42G05
055334	42F01	055392	74C06
055336	44B09	055394	187D12
055337	78C03	055396	508F02
055342	44B11	055398	133F02
055343	37E08	055399	50G01
055344	50G12	055400	40C07
055344	54F08	055401	64A09
055345	39A12	055404	46D04
055345	54D12	055405	187E01
055345	165A12	055406	54C10
055346	36F05	055407	141A13
055347	39B10	055409	63A14
055349	427C04	055411	44C08
055352	55C09	055411	51E12
055355	42F04	055412	133F06
055356	44B12	055413	148D13
055356	51F06	055428	63A11
055357	42F05	055429	84E08
055358	46D11	055429	187E06
055360	40B10	055437	88G09
055361	141A09	055438	51E05
055362	42F08	055439	50C07
055364	138C14	055440	78B07
055365	39B13	055441	46C01
055366/055386	79E09	055442	141B03
055368	52E05	055443	79D09
055369	40B14	055444	81F08
055371	52D13	055445	187E10
055372	39C04	055446	87F06
055373	47E10	055447	55C06
055374	42G01	055450	54F03
055375	44C01	055451	48F08
055375	51F01	055452	54D09
055376	44C03	055453	55B01
055377	62D09	055475	48C02
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055483	64A06
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055491	165A13
055492	78B02
055493	106D02
055500	411E09
055502	411F06
055507	411F08
055508	69F14
055512	1B05
055513	69G02
055516	19C12
055516	151D02
055524	37E11
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055528	69F05
055531	21A06
055533	411F11
055535	69F07
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055543	151A09
055545	571A13
055555	4A08
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055557	411F14
055561	4A13
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055588	121E08
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055634	102C06
055635	40C12
055652	85B03
055668	55D09
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055679	251B04
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055684	103C06
055687	87A10
055691	115D09
055691	119A13
055691	123A12
055694	110D07
055698	411G03
055703	110D01
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055841	370G04	055988	321E06
055842	273F06	055989	411G12
055845	411G04	055993	283E04
055852	427C10	055994	545B13
055853	300C14	055996	508F07
055854	283E03	055998	393E06
055858	508F03	055999	412A03
055862	208F06	056000	141B06
055866	273F07	056003	496B08
055869	208F09	056005	370G12
055874	411G07	056007	187F07
055884	300D04	056008	147F04
055887	321E03	056010	251B09
055892	300D06	056012	159D14
055899	529B02	056018	4B07
055901	246B10	056022	4B08
055902	603C13	056024	4B09
055907	393D14	056026	187F09
055908	370G05	056030	321E08
055913	273F09	056033	451D09
055915	273F10	056034	165B03
055920	208F11	056036	165B04
055923	273F11	056037	370G13
055925	228C10	056038	273F12
055930	508F04	056039	155D01
055931	487B06	056042	411G14
055932	262B08	056046	4B11
055933	370G06	056046	165B05
055934	300D07	056047	4C01
055935	508F05	056047	251B10
055942	370G08	056049	283E07
055947	370G09	056050	300D10
055954	300D08	056053	300D12
055955	393E02	056054	300D13
055958	427C12	056055	81D11
055968	508F06	056055	187F10
055969	603D02	056063	21B10
055970	411G09	056064	571B04
055976	370G11	056066	262B12
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056087	4C05
056090	451D11
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056113	586B04
056114	596A09
056116	451D12
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056122	4C09
056123	21B12
056123	105F01
056127	118A04
056128	4C11
056132	120B05
056133	208G01
056136	4C13
056144	165B09
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056147	4D01
056151	273F13
056152	571B05
056156	21B14
056157	228C14
056158	165B11
056160	138G13
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056164	155C08
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056205	165B14
056208	155D03
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056212	165C02
056216	451D14
056217	308F08
056221	4D07
056229	4D09
056230	159E01
056231	412A05
056232	412A06
056233	21C09
056236	21C11
056236	165C03
056237	4D10
056240	4D13
056243	412A08
056247	586B06
056248	262C01
056253	412A10
056255	187G01
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056263	4E03
056264	4E04
056264	187G03
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056266	586B07
056268	4E06
056270	283E08
056271	34F08
056271	57A05
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056298	300E02
056299	251C01
056303	451E03
056304	4F05
056305	412A14
056309	4F09
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056317	451E05
056318	21C13
056319	586B08
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056328	321E11
056331	300E04
056333	4F14
056337	412B01
056338	451E06
056341	451E07
056343	4G02
056347	187G04
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056366	21C14
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056389	5A11
056390	300E07
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056395	5A14
056396	5B01
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056397	208G02
056399	412B03
056400	5B02
056401	300E07
056403	521B08
056411	147F05
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056420	5B05
056422	564B07
056425	5B07
056430	451E08
056432	5B08
056433	5B10
056437	5B12
056438	5B14
056441	5C02
056442	451E09
056443	187G06
056444	165C06
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056473	5C13	056544	5F12
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056476	5D01	056545	5F13
05o478	451E10	056546	5F14
056480	5D03	056547	5G01
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056487	262C03	056549	5G03
056488	5D06	056550	5G05
056490	5D08	056552	5G06
056492	5D09	056556	5G08
056493	5D10	056558	5G10
056499	5D11	056559	5G11
056500	21D03	056561	5G12
056500	187G10	056564	6A03
056502	5D13	056565	6A05
056503	251C02	056568	21D09
056506	187G12	056569	21D10
056507	5D14	056570	251C05
056509	21D05	056574	6A07
056510	21D06	056576	6A08
056512	5E03	056577	6A09
056513	412B04	056582	6A10
056515	165C07	056583	6A11
056515	188A04	056584	6A13
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056524	5E08	056595	6B06
056526	5E10	056596	6B07
056528	5E11	056597	6B08
056529	5E12	056598	6B09
056531	5E13	056599	6B10
056533	5F01	056600	6B11
056534	5F03	056602	6B12
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056537	5F08	056604	21D11
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056625	165C11	056687	6F09
056626	6C11	056688	6F10
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056630	6C14	056692	6F13
056631	6D01	056693	6G01
056632	6D03	056694	6G02
056633	102B01	056697	300E08
056635	6D04	056703	6G03
056637	370G14	056705	251C07
056638	6D05	056708	6G05
056639	21D14	056709	6G07
056644	6D07	056711	6G08
056645	6D08	056714	6G10
056646	6D09	056716	21E07
056647	6D10	056718	6G11
056648	6D11	056719	6G12
056649	39C07	056720	7A03
056650	6D12	056722	371A05
056653	6D13	056727	165C14
056654	21E03	056728	7A05
056656	6D14	056729	7A06
056658	6E01	056730	7A07
056659	6E02	056733	7A08
056660	21E03	056737	7A09
056661	6E03	056739	7A10
056662	6E04	056739	165D01
056664	6E05	056740	7A12
056666	6E07	056742	7A13
056667	21E04	056743	7A14
056668	6E08	056745	7B02
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056762	7C01
056763	7C02
056764	21E09
056765	7C03
056768	7C05
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056770	7C09
056772	7C11
056773	7C12
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056775	165D03
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056781	7D03
056781	188A09
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056796	7D10
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056837	545C03
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056862	8A03
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056932	8D08
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056936	21G05
056939	8D11
056940	21G10
056942	273G02
056943	21G11
056944	8D13
056945	8D14
056946	21G13
056947	8E01
056948	22A03
056949	83C06
056949	188A11
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056952	8E03
056953	22A05
056955	8E05
056958	8E06
056959	8E07
056960	8E08
056962	22A06
056965	22A08
056966	8E09
056968	8E11
056970	22A11
056971	8E13
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057036	251C09
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057050	22C09
057054	22C10
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057061	9A03
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057115	451E13
057118	22E04
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057124	22E05
057125	22E07
057127	9B03
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057128	9B06
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057130	44D06
057131	22E08
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057132	22E09
057133	22E10
057136	22E11
057137	321F03
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057144	61E07
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057175	22G04
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057179	22G05
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057181	165D11
057182	22G07
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057184	55G13
057187	148E02
057191	22G09
057196	155C11
057197	22G11
057199	22G13
057200	55F08
057201	22G14
057203	23A03
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057255	39D07
057255	105D08
057256	23B08
057259	81C05
057261	165D12
057262	23B13
057263	23B14
057266	545C04
057270	85A08
057270	85B12
057272	23C01
057273	23C04
057274	508F10
057277	23C05
057279	188B02
057280	563G02
057281	23C06
057282	23C07
057283	23C08
057284	39D09
057287	23C09
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057289	23C10
057292	23C11
057293	50F11
057294	23C12
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057296	43A08
057297	262C05
057298	43A10
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057316	23D02	057394	147F07
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057318	23D04	057399	39E13
057319	451F07	057400	23E07
057320	44D10	057402	23E08
057322	23D07	057403	23E09
057323	39D13	057404	39E14
057325	23D08	057406	153F05
057326	188B06	057407	47B03
057327	188B07	057415	78F05
057329	48A11	057416	44D14
057333	39D14	057419	39F01
057334	23D09	057424	23E10
057337	23D10	057426	64A05
057340	23D11	057426	188B10
057342	380E14	057427	44E02
057345	39E01	057428	39F02
057346	43A12	057430	23E11
057349	23D12	057430	188B11
057349	43A13	057431	39F03
057351	64D13	057433	39F04
057352	63B03	057435	39F05
057355	23D13	057437	23E12
057356	83E14	057439	82D08
057357	43A14	057449	251C11
057360	23D14	057451	58G10
057362	39E06	057452	39F07
057368	23E01	057453	39F08
057369	23E02	057453	165E02
057372	150C13	057461	39F09
057373	23E04	057464	39F10
057374	78E03	057466	39F11
057375	63E06	057467	84C10
057376	44D12	057468	55F04
057376	188B09	057474	39F14
057377	53A08	057478	83E12
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057489	39G02	057591	55G07
057490	393E10	057597	47E13
057494	55D04	057621	51E09
057495	106D12	057621	63G12
057498	48C06	057626	44E06
057499	39G03	057626	188C11
057503	39G07	057627	321F06
057503	101A03	057628	47E11
057504	47E06	057629	83E08
057505	99A11	057630	262C06
057506	55E14	057631	51G04
057513	39G08	057632	487C01
057515	39G09	057633	61G07
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057516	188B14	057654	64A03
057517	148E03	057654	188C12
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057520	87D14	057673	451F10
057522	165E05	057677	86C14
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057528	47F03	057680	165E10
057528	165E07	057681	44E07
057531	126C13	057684	89F01
057533	56B04	057689	48C10
057534	508F11	057689	165E11
057536	107F12	057693	48B03
057537	39G10	057698	47A03
057540	563G03	057698	63G07
057541	47F01	057701	64D09
057549	147F09	057706	50F03
057552	55C14	057707	55E11
057553	208G05	057710	63G06
057554	64A04	057713	87E03
057556	251C12	057724	64D08
057559	88B14	057732	147F11
057559	188C03	057733	46A09
057560	52D05	057737	46A04
057562	188C05	057739	165E14
057564	56D03	057763	89C03
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057811	82G10
057812	86G13
057813	75D09
057814	52G14
057817	86D06
057828	78C14
057821	221F12
057829	508F12
057830	412B06
057832	188D09
057836	82F02
057842	451F13
057844	393E11
057845	86D03
057846	48A03
057850	412B08
057851	88B11
057857	48C14
057859	393E13
057860	83C08
057864	137B03
057868	451F14
057873	61G04
057874	47E08
057875	50E13
057876	84D03
057878	75D08
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057925	50C10
057931	273G07
057932	79C06
057934	82E12
057938	48B06
057939	412B09
057940	48D01
057942	188D10
057943	111E11
057945	84D01
057945	188D11
057947	58E12
057948	73D12
057958	273G09
057961	88B05
057963	44A06
057964	105D02
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057973	78D13
057974	56C14
057975	73E14
057977	56C13
057978	81C14
057979	109A03
057979	165D06
057983	188D13
057986	74E01
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058018	262C07	058121	283E11
058019	393F02	058122	246B12
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058023	228D04	058125	274A06
058028	683D06	058128	246B13
058029	111G03	058130	53B07
058030	91D02	058132	106G06
058031	278F09	058133	393F07
058033	508F13	058134	427D06
058036	321F08	058136	412C02
058037	91D05	058137	188E01
058037	91E07	058139	529B12
058038	300F04	058140	251D04
058039	228D05	058142	586B10
058041	165F05	058143	57C12
058042	508G01	058144	393F08
058046	273G13	058146	300F08
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058051	208G10	058150	153F11
058052	412B10	058151	289A03
058058	135F11	058156	228D08
058059	300F07	058157	289A06
058060	508G04	058159	135F13
058061	508G06	058163	165F06
058063	274A03	058167	321F10
058066	262C10	058167	412C05
058070	106F06	058168	104E04
058071	103E12	058171	251D06
058072	393F05	058172	283E13
058076	106E11	058173	165D10
058079	412B14	058175	76B10
058080	496B11	058177	545C05
058087	393G14	058182	188E03
058090	60D08	058183	508G08
058091	228D07	058185	508G09
058093	536A06	058186	188E04
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058279	509A03	058356	9D10
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059245	33A11	059365	25B04
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059250	24G06	059370	25B05
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059656	27B01
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059669	43C14
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059673	27B11
059678	27B13
059680	27B14
059681	40E13
059682	262D09
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059729	27D12	059795	509C14
059731	74D13	059796	52G06
059733	27D13	059796	188G07
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059736	74D04	059801	28A13
059738	27E06	059802	48E08
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059744	27E14	059815	58C12
059746	63C11	059818	28B11
059748	79D06	059819	28B14
059751	27F05	059820	63G01
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059757	509C12	059824	58B06
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059761	43D04	059826	38B07
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059763	27F09	059853	28C11
059764	51C13	059855	28C14
059766	27F13	059857	43D13
059767	62E05	059858	44F08
059768	27G02	059862	28D04
059771	27G03	059864	38B10
059772	38B04	059867	28D07
059775	63G04	059870	51A11
059777	27G06	059871	40A03
059779	27G08	059872	251G03
059780	27G10	059873	28D10
059781	38B06	059876	28D14
059782	147G04	059879	115C03
059783	28A03	059882	115C01
059784	28A06	059883	28E03
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059906	52G03	060005	54E04
059907	28F02	060007	63E02
059908	58C09	060008	74A11
059909	40F12	060015	88B09
059910	28E10	060016	87D12
059911	452A04	060017	86F14
059914	28F06	060018	86A03
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059923	209C11	060021	87C12
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059926	28F09	060023	86F10
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059941	209C12	060029	84G09
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059955	52F08	060054	63B08
059957	48B14	060063	74F07
059958	47B03	060065	110F07
059964	44G01	060068	79A10
059965	40A09	060085	90B08
059972	38D03	060102	50A14
059973	50B03	060110	394B01
059977	301A05	060120	108F11
059978	317E04	060122	43E08
059981	54E07	060132	44G07
059982	125E07	060139	371D05
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060223	63D14
060224	189B04
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064789	169C02
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064798	577E02
064801	192G10
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064814	252F06
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064822	157B07
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064932	169D12
064932	193C01
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064934	173F04
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064939	169E01
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070216	454C04	070366	375G07
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000899	259C09	000965	259F10
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Choco-MILK

(No Report)

JBB-9
DJW-9
CSK-9

JUN 1 2 1972
NCB 464.11 SO
020378

[redacted]

Dear [redacted]

In your letter of May 19, 1972, and associated correspondence, you ask the tariff classification and rate of duty applicable to a cocoa drink in powder form, made in Mexico where it is known as "Choco Milk." You furnished 2 sample packets of the product which you intend to import in 14 oz. and 29 oz. tins. You also supplied the formula, the method of manufacture, and the cost percentages of each ingredient. The product is mainly composed of granulated sugar, cocoa powder, and skimmed milk powder. The other ingredients, approximately 2 percent of the product, are vitamin supplements and essences. The vitamin substances are in such minimum percentages as to have no therapeutic value per se, and, therefore, do not affect the classification.

The product described above is classifiable under the provision for edible preparations, not specially provided for, in item 182.95, Tariff Schedules of the United States (TSUS), with duty at the rate of 10 percent ad valorem. As this product is in chief value of sugar, an additional duty of 0.53 cent per pound of total sugars would apply pursuant to item 901.00, TSUS.

If the merchandise contains butterfat, it could be subject to the quota restrictions contained in item 950.16, TSUS, or item 950.23, TSUS, copies enclosed. If the merchandise were subject to either of the above quota provisions, it would, in effect, be prohibited from entering the United States, since there is no established quota quantity for Mexico.

Sincerely yours,

(Signed) J.W. [illegible]

[redacted] Acting Director
Division of
Classification and Value

A3 [redacted]

020378

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[redacted]

AUG 22 1974

CLA-2:R:CV:V
332.1 RG
033238
400133

Dear [redacted]

571444

This is in reference to your correspondence of March 14, 1974, which raised several questions concerning the assembling of automobiles in a foreign trade zone.

You first inquired as to the dutiable status of foreign machinery entered into a foreign trade zone for the purposes of assembling the automobiles. Machinery which is brought into a foreign trade zone for use as manufacturing equipment is dutiable at the time of entry. Material which is to become part of the automobile is not dutiable until brought into the Customs territory.

Secondly, you inquired as to the applicability of local sales tax requirements on United States goods purchased for use within a foreign trade zone. We suggest that you contact Mr. John J. DaPonte, Executive Secretary, Foreign-Trade Zones Board, United States Department of Commerce, Washington, D.C. 20230, for an answer to this question.

033238

Finally, you indicate that automobiles will be assembled using privileged status United States materials and foreign materials of a non-privileged status, and you inquire as to the proper basis for determining dutiable value when entering the complete automobile into the commerce of the United States. You suggest that only the value of the foreign components should be considered. We cannot agree.

When non-privileged foreign merchandise and privileged U.S. material are combined in a zone, it is proper to apportion the labor costs between the privileged and non-privileged merchandise in accordance with their relative values. See section 146.43(a), Customs Regulations and T.D. 53493(2). Therefore, the dutiable value of the non-privileged foreign materials will be the sum of their value prior to manipulation

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[redacted]

or manufacture and the proportionate part of the cost of manipulation or manufacture attributable to them. This decision is in accord with our telegram to you of May 20, 1974, and our letter to you of May 30, 1974 (R:CV:V 332.1 FM 400084).

Sincerely yours,

(Signed) Alfred G. Scholle

for Salvatore E. Carmagno
Director
Classification and Value Division

[redacted]

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

A5

[redacted]

033327

APR 18 1974

CON-2-06:R:CV:S JR
535.2
033327

Dear [redacted]

In your letter of March 18, 1974, you inquire concerning the dutiable status of antiques, the age requirements for the articles to be considered antiques, and the dutiable status of articles not meeting the age requirements for antiques. You also inquire whether import duties would be assessed on antiques entered into Canada from the United States and exported from Canada to the United States.

Ethnographic objects made in traditional aboriginal styles and made at least 50 years prior to their date of entry, and other antiques made prior to 100 years before their date of entry, are free of duty under item 766.25, Tariff Schedules of the United States (TSUS). These items may be entered duty-free even though such articles have been repaired or renovated, as long as there has been no change in their original form or character. However, item 766.20, TSUS, provides that an antique which has been repaired with a substantial amount of additional material within 3 years prior to importation will be assessed a duty on the value of the repairs at the rate which would apply to the article itself in its repaired condition if it is not within the purview of the provisions for antiques.

Please note, item 766.30, TSUS, provides that any article imported for sale and claimed to be classifiable as an antique under item 766.25, TSUS, and thereafter determined not to be authentic in respect to the antiquity claimed is subject to a duty of 12.5 percent ad valorem in addition to any other duty imposed on such article under the tariff schedules.

Articles that do not fulfill the age requirements necessary to be considered antiques are classifiable under the many items in the tariff schedules. Without more information regarding the particular articles to be imported we are unable to determine specific rates of duty. There are more than 8,000 classifications in the tariff schedules. A copy of the Tariff Schedules of the United States Annotated can be purchased, and instructions for doing so can be found in the enclosed pamphlet entitled "United States Import Requirements."

	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
CODE	THIS DOCUMENT MAY BE RELEASED TO THE							
CODE	PUBLIC _____						A6	
DATE								

CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-8-73)

[redacted]

033327

Antiques imported into the United States from either Canada or the Netherlands are treated the same. There is no special exemption for antiques imported from Canada. As for the rates of duty on articles exported from the United States to Canada, we suggest you write for this information to the Deputy Minister of National Revenue, Customs and Excise Appraisal, Connaught Building, Mackenzie Avenue, Ottawa, Ontario, Canada K-1A0L5. We do not have Canadian rates of duty available to us.

Enclosed for your information is a copy of the pertinent provisions of the tariff schedules and the headnotes thereto, Customs Regulations pertaining to antiques, and other information concerning United States import requirements.

Sincerely yours,

(Signed) R. X. ARNOLD

for

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

Enclosures

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

[redacted]

A7

[redacted]	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER

CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-8-73)

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

140.50

DEC 18 1975

REFER TO
CLA-2:R:CV:MC
037736 CM

037736

[redacted]

Dear [redacted]

Your letter of December 3, 1974, concerns the tariff status of a potato mixture called "Ras," a product of the Netherlands. This potato mixture will be imported in powder form and will be used in a special machine to make ready-to-eat french fried potatoes. You indicate that the merchandise has been entered under items 140.50 and 140.70, Tariff Schedules of the United States (TSUS).

The manufacturer, [redacted] has stated in its letter dated September 13, 1974, that the composition of the Ras Super Fry Flour is 96.5 percent dried boiled (dehydrated) potato powder, 0.5 percent salt, and 3 percent of sodium caseinate, dried egg white and soya meal. The powder is mixed with water and is then deep fat fried automatically in the machine.

In decision on the classification of potato mixes, we have stated that the provisions for potatoes dried, desiccated or dehydrated whether or not reduced in size or reduced to flour is limited by the parenthetical phrase "(but not otherwise prepared or preserved)," and that such merchandise is classifiable under item 140.50, TSUS, dutiable at the rate of 1.3 cents per pound. If reduced to flour, it is classifiable under item 140.70 TSUS, dutiable at the rate of 1.2 cents per pound.

The above provisions would include dried, desiccated, or dehydrated potatoes which have certain chemicals added in minute quantities to the potatoes. These chemical additives are present in the finished product in only trace amounts which total substantially less than 1 percent by weight and are for purpose of serving as an emulsifier, a non-brown agent, or sequestering agent to prevent impurities from spotting, and as an anti-oxidant.

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REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

[redacted]

In a decision involving dehydrated potatoes with milk products in powder form added to the granules, we have determined that the potato product is something more than dehydrated potatoes, the something more (skim milk powders) being the deliberate result of a preparation and/or preservation process in amounts exceeding the allowance considered reasonable. This addition does constitute preparation for the purposes of item 141.81, TSUS. It is our position to classify such merchandise under the provision for other vegetables (whether or not reduced in size), otherwise prepared or preserved, other, in item 141.81, TSUS.

For this purpose the classification of the instant merchandise is considered to contain food materials as well as chemicals which serve as an emulsifier, a non-browning agent, or sequestering agent. The fry flour consisting of the ingredients as stated herein, is classifiable under the provision for other vegetables (whether or not reduced in size), otherwise prepared or preserved, other, in item 141.81, TSUS, dutiable at the rate of 17.5 percent ad valorem.

Sincerely yours,

James W. O'Neil

Salvatore E. Caramagno
Director
Classification and Value Division

037736

THIS DOCUMENT MAY BE RELEASED TO THE

A9

FEB 13 1975

CLA-2:R:CV:S
037885 JR

037885

[redacted]

Dear [redacted]

Your letter, postmarked December 5, 1974, concerns the assessment of duty in the amount of $17.20 on a chest claimed to be one hundred years old, imported from Canada. You suggest that the chest was qualified for duty-free entry as an antique under the provision for the free entry of antiques made one hundred years prior to the date of entry, in item 766.25, Tariff Schedules of the United States (TSUS).

It is our understanding that the article in question entered without an affidavit or certification of any kind as to the article's antiquity. A Customs official, with expertise in this field, determined that the article was not one hundred or more years of age and was thus not qualified for treatment under item 766.25, TSUS. It was classified under the provision for articles not specially provided for, of wood, in item 207.00, TSUS, and assessed an 8 percent ad valorem duty amounting to $7.20.

The additional $10 referred to in your letter constitutes a charge by your broker, [redacted] This is not an assessment by Customs.

In the future, we suggest that some type of certification be supplied with articles being imported in order to assist Customs officials with establishing antiquity. Although a certification is not conclusive as to the question of antiquity, it does assist Customs officials with their determination.

We are enclosing for your information certain pamphlets and materials relating to United States import requirements that should be of assistance for future shipments.

Sincerely yours,

(signed) E. Z. Arnold

for Salvatore A. Caramagno
Director
Classification and Value Division

Enclosures (11)

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A9

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

352.80

JAN 19 1976

REFER TO
CLA-2:R:CV:MC
043363 PR

043363

The Honorable
Hugh Scott
United States Senate
Washington, D.C. 20510

Dear Senator Scott:

In your letter of December 9, 1975, you request that the tariff classification of certain synthetic netting used exclusively for mushroom growing be changed from item 358.14, Tariff Schedules of the United States (TSUS), to a duty-free provision for agricultural equipment. I assume that the duty-free provision to which you refer is item 666.00, TSUS, which covers on-farm equipment for the handling or drying of agricultural or horticultural products, and agricultural and horticultural implements not specially provided for elsewhere in the tariff schedules.

You indicate that the netting is used to hold growing compost beds and in conjunction with net puller machines to remove spent compost after the crops are grown and harvested. Without a sample and a complete description, the proper tariff status of the netting cannot be definitely ascertained.

However, assuming that the netting in question is in chief value of textile materials, it is prevented from being classified in item 666.00 because of Headnote 1 (copy enclosed) to Part 4, Schedule 6, TSUS, wherein item 666.00 is located, which specifically excludes belts and belting, and articles of textile materials from coverage by the provisions contained in Part 4.

Item 358.14, TSUS, covers other belting and belts, for machinery, of man-made textile fibers, and provides for duty, depending on the country of origin, either at the column 1 rate of 12.5 cents per pound plus 15 percent ad valorem or at the column 2 rate of 45 cents per pound plus 65 percent ad valorem. Column 2 rates of duty are applicable to products of those countries listed in General Headnote 3(e), TSUS, copy attached. Column 1 rates of duty are applicable to products of all other countries.

If the netting is imported in material lengths and then cut to size, it would probably be classifiable under the provision for other netting in the piece, not ornamented, made on a machine other than a Mechlin (or Malines) machine, in item 352.80, TSUS, with duty either at the column 1

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rate of 12 percent ad valorem, or at the column 2 rate of 90 percent ad valorem. If the netting is imported already cut to the sizes and shapes in which it will be used, it would probably be classifiable in either item 358.14, if it is to be used as belting or belts, or, if not, then under the provision for other net articles of textile materials not specially provided for, in item 386.08, TSUS, with duty either at the column 1 rate of 25 percent ad valorem or at the column 2 rate of 90 percent ad valorem.

I appreciate your concern about the agricultural industry within your state. However, I am without authority to administratively waive or modify any of the provisions or requirements of the Tariff Schedules of the United States. In order to allow duty-free entry to the netting in question, the tariff schedules would have to be amended by the Congress.

If I can be of further assistance in this or other matters, please do not hesitate to call on me.

Sincerely yours,

G. R. Dickerson

Acting Commissioner of Customs

Enclosures (3)

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A12

8 DEC 1976

CLA-2:R:CV:MB
044054 I

[redacted]

Dear [redacted]

This is in further consideration of your letters of January 29, 1976 and September 21, 1976, regarding the applicability of General Headnote 3(a), Tariff Schedules of the United States (TSUS), to certain garments made in the United States Virgin Islands. A sample of one garment, ladies slacks No. 11200, was submitted.

You state that you intend to manufacture the garments in St. Croix, Virgin Islands, from fabric (bolt goods) imported there from United States supplier. You also intend that no foreign bolt goods (fabric) will be used to manufacture the garments. However, style No. 11200, is manufactured from Japanese-made cotton fabric. You also state that other materials, including waistbands, zippers, and thread will be products of the United States.

As you are aware, articles imported into the Customs territory of the United States from the Virgin Islands are subject to duty at the rates set forth in column 1, TSUS. However, General Headnote 3(a), provides, in part, for free entry into the Customs territory of the United States for articles grown or produced in the Virgin Islands, as well as articles manufactured or produced there which (1) do not contain foreign materials valued at more than 50 percent of the final appraised value of the manufactured articles, (2) come directly into the Customs territory of the United States from the Virgin Islands, and (3) are not prohibited by quota limitations or otherwise. The test for determining whether an article manufactured or produced in the Virgin Islands contains foreign materials valued at more than 50 percent of its final appraised value is set forth in section 7.8(d), of the Customs Regulations, copy enclosed.

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1933

[redacted]

It is our opinion, that garments completely manufactured in the Virgin Islands from fabric (United States or foreign) imported there (the operations include cutting the fabric into components and sewing those components together, and sewing in the linings, waistbands, and zippers into completed garments) will result in a product considered "manufacture or produced" in the Virgin Islands within the scope of General Headnote 3(a), TSUS. Accordingly, the garments can enter the United States free of duty under General Headnote 3(a), TSUS, provided the 50 percent value limitation of the statute is met, and further provided there is compliance with section 7.8 of the Customs Regulations (copy enclosed).

Please note that General Headnote 3(a)(ii) provides that:

> "In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 percent, no material shall be considered foreign which, at the time such article is entered, may be imported into the customs territory from a foreign country, other than Cuba or the Philippine Republic, and entered free of duty."

Sincerely yours,

A. Isaacs
for Salvatore N. Caramagno
Director
Classification and Value Division

Enclosures

[redacted]

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[redacted]

A14 1933

CODE AND DATE	(2) INITIATOR	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER	(8) REVIEWER
SURNAME							
CODE AND DATE	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER	
SURNAME							

DEPARTMENT OF THE TREASURY - U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-16-73) (Previous editions may be used)

MAR 19 1976

CLA-2:R:CV:MS
044113 I

[redacted]

Dear [redacted]

In your letter of February 6, 1976, on behalf of [redacted] you ask if General Headnote 3(a), Tariff Schedules of the United States (TSUS), is applicable to long and short sleeve shirts, T-shirts, and tank tops made in Guam. The samples submitted show the articles in their finished condition and in the condition in which the foreign articles are imported into Guam.

Exhibits A and B, attached to your letter, set out the condition in which the articles are imported into Guam and the operation performed to them in Guam. With the exception of the tank top, we have previously held that, in order to qualify as an article manufactured or produced in Guam, the following minimal operations must be performed in Guam to the following designated articles:

A. Long sleeve shirts (blouses).

1. Shoulder seams (2) must be sewn from the neckband to the point where the sleeves are sewn to the body of the shirts. The shoulder seams may be sewn only at the point where they are attached to the neckband when imported into Guam.

2. The sleeve cuffs must be sewn to each sleeve. The sleeves may be imported in a tubular condition (sewn, but minus the cuffs).

3. Each sleeve must be sewn to the body of the shirt at each shoulder.

4. All side seams must be sewn to form the body of the shirt. The three separate panels forming the body of the shirt may be sewn to the neckband when imported into Guam. Hemline at bottom of shirt is sewn.

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[redacted]

5. The buttonholes must be made in Guam.

B. Short sleeve shirt (blouse)

1. Same as long sleeve shirt, except that in place of sleeve hem must be sewn.

C. Long sleeve T-shirt

1. Both shoulder seams must be sewn to join the front and back panels. However, the panels may be sewn to the rockband when imported into Guam.

2. Both side seams must be sewn forming the body of the T-shirt.

3. The hem must be sewn at the bottom of the T-shirt body.

4. The sleeves must be imported in a flat condition and sewn to the shoulders. Sleeve hem must be sewn.

5. If neckbands and sleeve bands are separately made in a country other than Guam, they may be imported into Guam and sewn to the body of the T-shirts there.

D. Short sleeve T-shirt

1. Same as long sleeve T-shirt

E. Tank Top

1. Front and back panel must be sewn together at shoulder and sides.

2. Neck and sleeve bands, if made in a country other than Guam, must be sewn tothe body of the garment in Guam.

Because the company is presently operating in Guam and exporting goods to the United Staes under General Headnote 3(a), TSUS, we are not enclosing

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[redacted]

a copy of the law or the Customs regulations. We are also in receipt of a new manufacturer's statement satisfactorily setting forth all other pertinent information.

A copy of this letter if being sent to Customs officials in Guam.

Sincerely yours,

(Signed) R. X. [illegible]LD

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

[redacted] DOCUMENT MAY BE RELEASED TO THE

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CODE AND DATE	[redacted]		(5) REVIEWED	(6) REVIEWED	(7) REVIEWED	(8) REVIEWED	(9) REVIEWED
SURNAME	[redacted]						
CODE AND DATE		(10) REVIEWED	(11) REVIEWED	(12) REVIEWED	(13) REVIEWED	(14) REVIEWED	(15) REVIEWED
SURNAME							

DEPARTMENT OF THE TREASURY-U.S. CUSTOMS SERVICE

CORRESPONDENCE APPROVAL AND CLEARANCE

Form 100 (11-18-73)
(Previous editions may be used)

044900/044901

JUL 0 5 1976

CLA-2:R:CV:MSP
044900
044901 AI

Area Director of Customs
New York, New York 10048

Director, Classification and Value Division

Applicability of General Headnote 3(a), TSUS, to certain garments imported from Guam. Internal Advice No. 37/76.

In your memorandum, dated February 18, 1976, you requested internal advice with regard to the applicability of General Headnote 3(a), TSUS, to certain merchandise imported from Guam.

The Classification and Value Division has issued rulings to certain manufacturers located in Guam, regarding the applicability of General Headnote 3(a), TSUS, to certain garments made in Guam and exported to the United States.

An investigation into the operations in Guam was requested by the ports of San Francisco and New York. The significant information developed by the investigation is as follows:

1. No verification of the actual assembly operations performed on the merchandise in question could be obtained. The officers of the corporation stated that they were not familiar with the production aspects of the business.

2. No inspection of the operation in Guam was performed on the merchandise covered by the entries listed in the addendum.

3. The procedures supporting the issuance of the Certificate of Origin were inadequate to insure that the merchandise in question was subjected to sufficient operations on the island. When verifying the certificate, Guamanian Customs officials merely attempted to determine whether the articles were 100 percent finished when entering the island. The "degree of completion" was not a concern of Guamanian Customs.

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4. The manufacturer does in fact maintain machinery on its facilities with which clothing can be fully manufactured.

From the foregoing information it is clear that the importers have complied with all the legal requirements for duty-free entry by providing the government with all the documentation mandated by Section 7.8 of the Customs Regulations. Most importantly, they have submitted Certificates of Origin verified by Guamanian Customs officials. It has been our practice to accept those documents as conclusive proof of origin. Nothing on the face of these documents indicates that they do not reflect the true facts. In addition, no evidence has been developed in the course of the investigation which conclusively demonstrates that the documents are false.

A similar situation was involved in Internal Advice No. 331/75, where the issue concerned the country of origin of certain CPO shirts. The basis for the determination that the shirts were dutiable at the column 2 rates of duty was (1) the Austrian manufacturer failed to cooperate with the investigation by failing to obtain documents from the Austrian government which would have established the condition of the goods when they entered Austria, (2) there was no convincing evidence that production facilities were available in Austria for this operation, and (3) the parties had a past history of importing from one country and claiming another as the country of origin. The ruling held that since the importor had supplied all the documents legally required and no direct evidence existed indicating that the documents were fraudulent, the articles should be dutiable as claimed by the importer.

Accordingly, viewing the file in its present condition, it is clear that the importers have satisfied all the documentation requirements and that there is no direct evidence which indicates that the documents are false or that the goods were not in fact a product or manufacture of Guam. Accordingly, there is no legally sustainable reason to disbelieve the documents.

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0174980/0174901

047980/827961

We note that the value limitation of the statute is not involved in this determination.

We further note that if there are additional entries which fall within the purview of this determination, they can be treated in the same manner as the entries noted in the addendum.

[redacted]

Salvatore E. Caramagno

Attachment

[redacted]

B6

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OH98/OH90

ADDENDUM

[redacted]

The following entries cover merchandise described as ladies shirts and ladies shirts and vests.

ENTRY NO.	DATE OF ENTRY	PORT	IMPORTER
135685	6/11/74	NY	[redacted]
138580	7/05/74	NY	
57609	7/30/74	NY	
58016	7/31/74	NY	
222317	10/05/74	NY	
55883	5/13/74	NY	

[redacted]

The following entries cover merchandise described as sweaters, ladies nylon tops, blouses and body suits.

ENTRY NO.	DATE OF ENTRY	PORT
6078	8/03/73	New York
19135	10/17/73	New York
23582	11/13/73	New York
23409	11/05/73	New York
23408	11/08/73	New York
23230	11/13/73	New York
24386	11/19/73	New York
23877	11/13/73	New York
22318	11/06/73	New York
32554	12/28/73	New York
34554	1/07/74	New York
31681	1/03/74	New York
43692	3/06/74	New York
58031	5/22/74	New York

87

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ADDENDUM

[redacted]

The following entries cover merchandise described as nylon knit halters, acrylic knit shirts, nylon knit tops, ladies knit tops, knit pullovers, and laides knit turtlenecks.

ENTRY NO.	DATE OF ENTRY	PORT
22574	11/15/73	New York
25876	12/10/73	New York
61034	6/30/74	New York
27774	12/26/73	New York
127635	7/24/74	New York
58905	5/30/74	New York
25276	12/01/73	New York
25877	12/08/73	New York
25878	12/14/73	New York
38353	2/24/74	New York
K127365	7/31/74	JFK New York
K131266	7/31/74	JFK New York
KF23434	2/19/74	JFK New York
KF23436	2/19/74	JFK New York
KF23437	2/19/74	JFK New York
KF23438	2/19/74	JFK New York
KF23439	2/19/74	JFK New York
KF23440	2/19/74	JFK New York
KF23435	2/19/74	JFK New York
K127592	7/31/74	JFK New York
KF23414	2/24/74	JFK New York

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111.12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JAN 23 1979

REFER TO
CLA-2:R:CV:MC
046703 CM

046703

[redacted]

Dear [redacted]

This is in reference to your inquiry regarding the tariff status of herring in 50 kilo barrels, apparently the product of a country or area entitled to the reduced rate of duty.

We assume that the herring are either salted or pickled, and are commonly imported in barrels or half barrels. It is also assumed that the herring are not in airtight containers.

On the basis of the above the herring in barrels are classifiable as herring, salted or pickled, whether or not whole, but not otherwise prepared or preserved, and not in airtight containers, in bulk or in immediate containers weighing with their contents over 15 pounds each, in item 111.32, Tariff Schedules of the United States (TSUS), and are free of duty.

If otherwise prepared or preserved in any manner, not in oil, in airtight containers weighing with their contents over 15 pounds each, they are classifiable in item 112.12, TSUS, dutiable at the rate of 0.5 cent per pound; or if otherwise prepared or preserved in any manner, in oil, in airtight containers whether or not weighing with their contents over 15 pounds each, classifiable in item 112.46, TSUS, dutiable at the rate of 12.5 percent ad valorem.

Copies of the tariff provisions set forth herein are enclosed. The column 1 rate of duty is explained in General Headnotes 3(e) and (f), TSUS.

We apologize for taking so long to answer your inquiry and hope that our delay has not caused you any inconvenience.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

Sincerely yours,

James W. O'Neill

Salvatore E. Caramagno
Director
Classification and Value Division

Enclosures

B7

799.00

SEP 2 1977

CLA-2:R:CV:MSP
048348 SC

(051850 is correct NO.)

[redacted]

In your letter of April 25, 1977, on behalf of [redacted] you inquire as to the tariff classification of streptococcus and gonococcus test kits. It is assumed that the merchandise in question is of Swedish manufacture.

Descriptive literature indicates that the [redacted] gonococcus test is a rapid co-agglutination test performed on glass slides for the identification of N. gonorrhoeae that have been primarily identified as oxidase positive colonies in cultures. Specific antibodies to N. gonorrhoeae are bound to the cell wall of staphylococci. When N. gonorrhoeae is mixed with this reagent, antigens in the gonococcal cell wall bind specifically to the anti-gonococcus antibodies, producing heavy co-agglutination. When bacteria other than N. gonorrhoeae are mixed with the reagent, no co-agglutination occurs. You indicate that the gonococcus test consists of the gonococcus reagent, a control reagent, a buffer substance, and instructions for use.

Descriptive literature further indicates that the [redacted] streptococcus test is for the differentiation of streptococci into Lancefield groups A,B,C, and G in samples taken from humans. Differentiation of streptococci into Lancefield groups (5) is important for the treatment as well as the prognosis of the individual patient. Antibodies to groups A,B,C, and G respectively are bound to the cell surface of dead staphylococci. When a sample containing streptococci belonging to one of these groups is mixed with its specific reagent, the antigens on the cell surface of the streptococci bind to the corresponding antibodies forming a heavy co-agglutination lattice. You indicate that the streptococcus test consists of a kit containing several streptococcus reagents, a buffer substance, and instructions for use.

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5184

[redacted]

It is our opinion that the merchandise described is classifiable under the provision for articles not provided for elsewhere in the tariff schedules, in item 799.00, Tariff Schedules of the United States, dutiable at the rate of 5 percent ad valorem.

Sincerely yours,

(Signed) R. X. ARNOLD

Salvatore R. Caramagno
Director
Classification and Value Division

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

048348/851850

184.75

JAN 27 1972

NCB 401.5 T
017349

[redacted]

Dear [redacted]

This is in reply to your inquiry of December 15, 1971, on behalf of [redacted] about the dutiable status of grain screenings shipped to the United States in pellet form.

No samples and no information as to the method of manufacture was submitted but it is assumed that a binding agent is used in making the pellets. The Bureau has previously ruled that grain screenings pelleted with Lignosite as a binder are classifiable under the provision for other animal feeds in item 184.75, Tariff Schedules of the United States (TSUS). The Bureau has also previously ruled that hay which has been compressed into pellet form is also classifiable under the provision for other animal feeds in item 184.75, TSUS. These products were precluded from classification under the so called provision for grain screenings and hay because the addition of binders and/or compressing them into pellet form resulted in the creation of another product.

In view of the above, the grain screenings in question are probably classifiable under the provision for other animal feeds and ingredients therefore in item 184.75, TSUS, with duty at 7.5 percent ad valorem.

Sincerely yours,

(Signed) J.W. O'NEIL

ACTING
Director
Division of
Tariff Classification Rulings

B12

[redacted]

661.90

JUL 21 1977

CLA-2:R:CV:MS
049813 JM

[redacted]

Dear Mr. [redacted]

In your February 15, 1977, letter you requested that we ascertain the tariff classification for a photo micronaizer particle size analyzer (PMS-1000) which is made in Japan. Descriptive literature was submitted.

The analyzer is designed to measure the particle size distribution of particulate materials. It consists of three units: (1) a photo-extinction measuring unit, (2) a logarithmic recorder unit, and (3) a centrifuge.

The analyzer is designed to function based on photo-extinction principles and sedimentation techniques in analyzing particle size. More specifically, a beam of light is passed through particles in suspension. The light beam scatters and is absorbed by the suspended material. The variation in the intensity of the light is measured by a photo cell. The variation is compared with the intensity of a pure liquid. The comparison, when computed with certain other factors, produces a determination of particle size. The centrifuge is designed to accelerate natural sedimentation and to reduce the adverse affects of natural convection and Brownian motion in the measurement of fine particles.

An important consideration in the classification of the article in question is whether or not the article is an optical instrument. In Engis Equipment Co. v. United States, 62 Cust. Ct. 29, C.D. 3670 (1969), the United States Customs Court defined the characteristics whch are necessary to qualify a device as an optical instrument for tariff purposes. First, the device must function in such manner that employment of its optical features is dominant or primary, as compared to the role of its other components. Second, the device's optical elements must be essential to its operation, that is, it cannot be operated in the intended manner without the optical components. Third, the optical instrument must act upon, deal with, or route the rays of light. Finally, the optical system of the device must aid human vision or create for inspection a picture or image of some object.

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[redacted]

It does not appear that the article in question fully meets the criteria set forth in Ragis, particularly with regard to the fourth criterion.

Accordingly, we are of the opinion that the photo-extinction measuring unit and the logarithmic recorder unit are both classifiable in item 712.49, Tariff Schedules of the United States (TSUS), as non-optical electrical measuring and analyzing instruments, with duty at the rate of 10 percent ad valorem."

The centrifuge, although a part of the overall PMS-1000 analyzer, is more specifically provided for as a centrifuge, per se, in item 661.90, TSUS, with duty at the rate of 5-1/2 percent ad valorem. Therefore, classification of the centrifuge in item 661.90, TSUS (rather than in item 712.49, TSUS, as a part of the electrical measuring and analyzing instrument in question) is required by General Interpretative Rule 10(ij), TSUS. Rule 10(ij) states that a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part elsewhere in the TSUS.

Sincerely yours,

(Signed) R. X. ARNOLD

for the Salvatore E. Carmagno
Director
Classification and Value Division

[redacted]

[redacted]

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049813

AUG 2 6 1977

CLA-2:R:CV:MS
051694 SC

[redacted]

Dear Mr. [redacted]

In your letter of April 4, 1977, on behalf of [redacted], you inquire as to the tariff status of spectrofluorimeters produced in England. Subsequent correspondence and various brochures initiated by [redacted] have also been received for our examination.

Information before this office indicates that even though descriptive literature depicts numerous instruments, you are primarily interested in the following:

1. FC100 Fluoricord Spectrofluorimeter
2. FM100 Fluoripoint Spectrofluorimeter
3. SFR100 Ratio Recording Spectrofluorimeter

Accordingly, our reply will be limited to the merchandise named above. The subject instruments are used in fluorescence analysis. The method appears to be closely related to spectrophotometer analysis, in which the amount of light absorbed characteristically is used to measure samples.

On the basis of the information submitted, it is our opinion that the merchandise described is classifiable under the provision for electrical measuring, checking, and analyzing instruments and apparatus in item 712.49, Tariff Schedules of the United States, dutiable at the rate of 10 percent ad valorem.

Sincerely yours,

[redacted]

(Signed) R. X. ARNOLD

Salvatore I. Ceramagno
Director
Classification and Value Division

For the

[redacted]

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APR 6 1978

CLA-2:R:CV:MC
052298 LCS

[redacted]

Dear [redacted]

This is in reply to your letters of May 23 and August 26, 1977, in which you requested information regarding the tariff status of cordage of man-made fibers and the identical cordage with eye-splices on one or both ends, manufactured by your associated mill in the Republic of the Philippines.

You stated that the cordage is within the definition of cordage of stranded construction provided in Headnotes 1(a) and (b), Schedule 3, Part 2, Tariff Schedules of the United States, (TSUS), being constructed of 3 or more strands, each strand of 2 or more yarns of man-made fibers (i.e., polyproplyene or nylon), and has been properly classified upon importation in the United States under the provision for cordage of man-made fibers in item 316.60, TSUS, dutiable as a product of the Philippines at the reduced column 1 rate of duty of 12.5 cents per pound plus 15 percent ad valorem.

052298

This classification provides no problem for you; however, you state that, at times, pursuant to a request from a customer, you order and your associated mill in the Philippines provides the identical cordage, cut to a specific length, with eye splices in one or both ends. Upon entry into the United States, this merchandise is classified under the provision for other articles of textile materials not specially provided for, not ornamented, of man-made fibers, other than artificial flowers or of knit or pile or tufted construction, in item 389.62, TSUS, dutiable as a product of the Philippines at the reduced column 1 rate of duty of 25 cents per pound plus 15 percent ad valorem.

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[redacted]

It is your position that: the mere addition of an eye splice at the end or ends of a specific length of cordage, the cordage being otherwise identical in all respects of cordage classifiable in item 316.68, TSUS, in no way supports the change in either the classification or the resultant rate of duty; and, irrespective of the splice or splices, the merchandise remains cordage "... within the fullest meaning of Schedule 3, Part 2, Sub-sections [sic, Headnotes] 1(a), (b) and (d)." Additionaly, in support of your position, you stated that "... there is no value added, for the reasons that such splices (eyes) are supplied by the factory free of charge, that is to say, the basic cost to us of the rope is the same, whether a splice (eye) is included or not."

Based on your position, you request our review and confirmation of your interpretation that classification in item 389.62, TSUS, of lengths of cordage (rope) with eye splices in one or both ends "... was not and is not intended to cover cordages in any case and, more specifically, that it does not relate to the type of cordage (stranded, man-made, with or without eye splices) ..." in which you are interested.

We do not agree with your interpretation of these 2 provisions of the tariff schedules.

The term "cordage" is defined in the above-cited Headnotes as "... assemblages of textile fibers or yarns, in approximately cylindrical form and of continuous length, ..., designed and chiefly used as an end product, and comprising cable, rope, cord, and twine.. [emphasis supplied]."

As is readily apparent from this definition, in conjunction with the other cited Headnotes, merchandise in chief value of man-made fibers which conform to these definitional requirements is, as you indicated, properly classifiable under the provision for cordage of man-made fibers in item 316.68, TSUS, at the rate of duty applicable thereto.

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055298

However, with regard to the specific issue raised in your inquiry (i.e., the different classification applied to such cordage with eye splices at the end or ends of specific lengths thereof), classification under this provision is precluded by the specific language of the Headnote quoted in part above, in that the merchandise (i.e. specific lengths of cordage with eye splices at one or both ends) is neither "... of continuous length .." nor does it retain its identity as "... cable, rope, [or] cord ...". Headquarters, United States Customs Service has consistently held that the mere cutting of cordage to specific lengths for specific uses, in and of itself, constitutes a change in condition significant enough to require a change in classification. The additional processing of such merchandise by the addition of an eye splice in the end or ends thereof further dedicates the end product to a specific use and, dispite your contention that this is done without additional charge by your associated mill, constitutes both an advance in value and condition over and above the cutting to specific lengths, thereby further removing it from the "generic" description as cordage. It has, by virtue of additional processing or manufacturing become a new and difference article of commerce.

Accordingly, absent any further information concerning the exact nature of the use to which such merchandise is ultimately destined, classification of the provision other articles provided for of textile materials, man-made fibers, other than of knit or pile or tufted construction in 389.62, TSUS, dutiable as a product of the Philippines at the reduced column 1 rate of duty of 25 cent per pound plus 15 percent ad valorem is completely proper.

With regards to that part of your inquiry wherein you indicated that "... it is imperative that the rate of duty to be assessed be formly established and clearly known at the time that the original commitment is made for any given importation [of specific length of cordage with one or two eye splices at the end or ends thereof]," Headquarters, United States Customs Service, has consistently so treated such merchandise at least since 1971.

052298

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[redacted]

Additionally, your inquiry raises a subsidiary issue which we believe requires further examination. You indicated that your supplier, which you referred to as an "associated mill," supplies the subject eye splices to you "free of charge." Since we believe this situation could conceivable constitute an element of value, properly subject to duty, we have forwarded a copy of your inquiry and this reply to the Value Branch, Classification and Value Division, here at Headquarters for direct reply to you concerning this issue. Additionally, we have also circulated a copy of this ruling to all District Directors of Customs for their consideration with regard to the classification aspect on any pending (unliquidated) or future entries of merchandise of this nature.

Sincerely yours,

(Signed) James W. O'Neil

Salvatore E. Caramagno
Director
Classification and Value Division

052298

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

C C SEP 19 1977

CLA-2:R:CV:MC
052842 CH L.8

[redacted]

Dear Mr [redacted]

This concerns your letter of July 29, 1977, as to the tariff status of alfalfa grown in Canada and shipped to the United States in cube form. Your request is on behalf of [redacted]

The alfalfa is harvested and then chopped into 1-1/4 inch lengths. The product is next pressed through restricted openings by press wheels to form small cubes. The cubed article is sold as alfalfa for animal fodder in the same manner as baled hay. They are referred to as "mini bales." The hay in the bales may be pried apart to restore the individual pieces (chopped) of alfalfa.

In C.J. Tower & Sons v. United States, 31 Cust. Ct. 108, C.D. 1553, the court considered alfalfa meal as hay since the eo nomine designation in the tariff act, without limitation, includes all forms of the article as long as they are recognizable as such.

The sample submitted was found to consist of individual pieces of hay. The merchandise as presented by the sample is classifiable under the provision for hay in item 184.30, Tariff Schedules of the United States (TSUS), and is free of duty.

Sincerely yours,

(Signed) James W. O'Neil
Salvatore E. Carapagno
Director
Classification and Value Division

[redacted]

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9/19/77

cb

MAR 3 1978

CLA-2:R:CV:MC
053941 LR

[redacted]

Dear [redacted]

This is in reply to your letter of October 12, 1977, requesting a classification ruling on a woolen scarf from Uruguay. The submitted sample is a woven wool scarf measuring approximately 58 inches in length, including a 2 inch self-fringe on either end, and 14 inches in width. The lengthwise edges are unhemmed.

The fringed edges constitute ornamentation for tariff purposes. Therefore, the scarf which you have submitted is properly classifiable under the provision for other ornamented scarfs in item 372.10, Tariff Schedules of the United States (TSUS), and dutiable at a rate of 30 percent ad valorem.

You also inquire as to the duty which would be imposed on rolls of fabric measuring 56 inches in width and approximately 70 to 80 yards in length. According to your description, there are 4 inch sections appearing at regular 58 inch intervals, running the width of the fabric, in which the filling yarns have been omitted. Presumably, these sections indicate cutting lines for the scarfs and will form the fringe when cut. If, in addition to these cutting lines, there are repeated patterns or lines of demarcation to indicate cutting lines running the length of the fabric, such fabric is similarly classifiable under the provision for other ornamented scarfs in item 372.10, TSUS, and dutiable at a rate of 30 percent ad valorem.

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[redacted]

In the absence of repeated patterns or lines of demarcation, the fabric as described is classifiable under the provisions for woven wool fabrics, according to its value. If valued not over $1.26-2/3 per pound, it is classifiable in item 336.50, TSUS, with duty at the rate of 35.3 cents per pound plus 60 percent ad valorem. If it is valued over $1.26-2/3 but not over $2 per pound, it is classifiable in item 336.55, TSUS, with duty at the rate of $1.135 per pound. If the fabric is valued over $2 per pound it is classifiable in item 336.60, TSUS, with duty at the rate of 37.5 cents per pound plus 38 percent ad valorem.

The merchandise described above may be subject to international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of the letter with your inquiry.

Your sample is being returned under separate cover.

Sincerely yours,

(Signed) James W. O'Neil

Salvatore E. Carangno
Director
Classification and Value Division

053941

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CLA-2:R:CV:MC
854725 JE

The Honorable
William S. Cohen
House of Representatives
Washington, D.C. 20515

JAN 6 1978

Dear Mr. Cohen:

With your letter of December 21, 1977, you enclosed a letter from [redacted] of [redacted] Son, concerning the tariff classification of canned clams from Canada.

[redacted] states that he does not believe the 14 percent rate of duty is justified because there is no United States clam industry, to speak of.

Canned clams may be imported under the provision for clams in airtight containers, if razor clams (siliqua patula), in item 114.01, Tariff Schedules of the United States (TSUS), dutiable at 3.5 percent ad valorem. Other clams in airtight containers are classifiable in item 114.05, TSUS, dutiable at 14 percent ad valorem. Further, pursuant to headnote 1, Part 3E, Schedule 1, TSUS, the ad valorem duty provided for in item 114.05, TSUS, is assessed on the American selling price of like or similar articles produced in the United States. Fresh, chilled or frozen clams not in airtight containers are free of duty under item 114.10, TSUS.

All merchandise imported into the United States is dutiable on its total value and quantity unless specifically exempted. There is no exemption for clams in airtight containers.

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While we appreciate [redacted] point of view, the Customs Service, as an administrative agency, has no authority to make any changes or grant any waivers in the provisions of the tariff schedules. Your constituent may wish to contact the Office of the Special Representative for Trade Negotiations at 1800 G Street, N.W., Washington, D. C. 20506. That office is presently conducting tariff negotiations under the so called "Tokyo Round."

If we can be of further assistance to you, please feel free to call on us.

Sincerely yours,

(Signed) Robert E. Chasen

Commissioner of Customs

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE · CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

054725

CLA-2 CO:R:CV:S
055814 M

055814

DEC 0 9 1980

[redacted]

Dear [redacted]

In your letter of August 25, 1980, on behalf of [redacted] you asked about the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to certain specialty articles of merchandise that are exported to Canada for printing in the form of advertising messages according to individual customer needs, and returned to the United States.

It is stated that the merchandise will consist of such specialty articles as plastic office products, ball point pens, and cigarette lighters, made of either plastic or metal or a combination of both. The advertising messages will be applied by various methods of printing and lettering.

Item 806.20, TSUS, provides for an import duty to be assessed on the value of repairs or alterations that are made abroad on articles exported for that purpose. Generally, the described printing of advertising messages constitutes neither a repair nor alteration within the meaning of item 806.20, TSUS, but instead is considered a part of the total processing, a finishing operation that is performed abroad.

In this respect, printing an advertisement on articles exported for that purpose creates a new and different article of commerce. The imported printed articles are not the same commercially as unprinted articles and may be offered for sale in different markets to different classes of buyers. The foreign printing process has created a new and different article of commerce, with new characteristics and uses, and is thus beyond the alterations provision of item 806.20, TSUS.

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Further, unless printing is performed on articles in conjunction with the assembly provisions under item 807.00, TSUS, and bears a direct relation to the assembly, since it is also stated that components of specialty articles may be exported for assembly and printed, the printing is not considered incidental to the assembly. No allowances can be made under item 807.00, TSUS, for components that are printed abroad with advertising logos or other messages. The described foreign printing constitutes a non-assembly step, contrary to the requirements of item 807.00, TSUS.

Sincerely,

(Signed) R. X. ARNOLD

for the Harvey B. Fox
Director, Classification
and Value Division

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[redacted]						
[redacted]						

JAN 28 1981

CLA-2:CO:R:CV:G
055902 EH

055902

District Director of Customs
U.S. Customs Service
P.O. Box 9516
El Paso, Texas 79985

Dear Sir:

This concerns your request under the internal advice procedure (No. 181/80), on behalf of the importer, [redacted] and its agent [redacted] concerning the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain metal cans and covers exported to Mexico for use in the assembly of electronic noise filters.

ISSUE:

Assuming that item 807.00, TSUS, remains applicable on the merits of assembling other components making up the described filters, the only issue for determination herein is whether the punching of holes in the cans for eyelets and screws, and the trimming of covers for certain model cans are operations considered incidental to the assembly process.

FACTS:

As stated by the importer in its request for a ruling on the drilling of holes in different locations on the metal cans, the following operations are listed as part of the assembly operation:

1) Can punched and eyeletted, insulated wire fed thru the holes.

2) Can punched and screws inserted through the holes for screw terminals.

3) Can punched and terminals eyeletted to the can.

In addition to the described hole-drilling operations, the importer also claims the trimming of metal covers used in certain

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filter models to be incidental to the main assembly process. In the request for internal advice, it is stated that the assembly descriptions previously filed by the importer showed that prior to 1975, holes were punched in the cans before exportation.

055902

CONTENTIONS:

The importer claims that the holes cannot be punched in the cans before exportation but must be punched abroad as an incident to assembly. It is claimed in the request for internal advice that the holes must be punched before exportation since making holes in the cans amounts to a substantial change not considered incidental to the assembly.

LAW AND ANALYSIS:

It has previously been the practice to preclude tariff treatment under item 807.00, TSUS, whenever holes were made in exported components. However, in Rudolph Miles v. United States, C.A.D. 1202, it was held that burning slots and drilling holes in steel Z-beams to permit proper alignment for assembly did not produce such a substantial change in the beams as to constitute further fabrication. The foreign processing of the beams was held to be a part of the assembly under item 807.00, TSUS. In view of this precedent, we are now of the opinion that similar holes made in components to facilitate assembly may also be regarded as assembly operations. In this respect, since the holes are drilled in the metal cans at the time of assembly in order to determine the location of the holes, as claimed by the importer, this drilling of holes should also be regarded as not so substantial as to constitute a fabrication.

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Accordingly, since the holes in question are made solely to accommodate eyelets and screws essential to the assembly of the components, punching holes will not preclude tariff treatment of the cans under item 807.00, TSUS. Slight trimming of the metal covers, of course, is also considered a step incidental to the assembly process and eligible for item 807.00 tariff relief.

Sincerely,

(signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TR[redacted]RVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-13-73)

055902

COLLECT - COLLECT 055969

U.S. CUSTOMS SERVICE
OFFICE OF REGULATIONS AND RULINGS R UNCLASSIFIED
WASHINGTON, D.C.

12-4-80

x

ARTHUR L. ISAACS 566-5727

DEC 0 4 1980

055969

[redacted]

RETEL 11-19-80. WE ARE GIVING FULL CONSIDERATION TO YOUR CONTENTIONS RE TUNA QUOTA. HOWEVER, WE HAVE HELD THAT CANNED TUNA FROM AMERICAN SAMOA CHARGEABLE AGAINST TARIFF - RATE QUOTA IN ITEM 112.30, TSUS.

(Signed) R. X. ARNOLD
RUSSELL ARNOLD
CHIEF
SPECIAL CLASSIFICATION BRANCH

[redacted]

D2

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056449

MAY 09 1978

CLA-2:R:CV:MA
056449 HL

[redacted]

Dear [redacted]

In a letter to you dated April 7, 1978, file No. 056449 HL, we advised you concerning the tariff status of jewelry.

We stated that articles classifiable under the provision for jewelry in item 740.38, Tariff Schedules of the United States (TSUS), produced in Hong Kong may be entitled to duty-free treatment under the Generalized System of Preferences (GSP).

This is to further advise you that articles classifiable under item 740.38, TSUS, from Hong Kong are no longer entitled to GSP treatment. We are enclosing a copy of revised General Headnote 3(c), TSUS, indicating the exclusion of item 740.38, TSUS, from GSP treatment.

Sincerely yours,

[redacted] Arthur P. Schifflin

For Salvatore E. Caramagno
Director
Classification and Value Division

Enclosure

[redacted]

See Next Frame
D04 D3

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DEPARTMENT OF THE TREASURY — PROVAL AND CLEARANCE Form 100 (11-15-75)

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APR 07 1978
CLA-2:R:CV:MA
056449 HL

056449

[redacted]

Dear [redacted]

This is in reference to your letter of March 2, 1978, concerning the tariff status of jewelry from Australia, Hong Kong, Taiwan, and the Philippines.

We are enclosing copies of the Tariff Schedules of the United States (TSUS), relating to jewelry. Note that items 740.05 and 740.10, TSUS, cover precious jewelry. In particular, item 740.05, TSUS, covers articles of silver (including rolled silver) valued not over 18 dollars per dozen pieces or parts. Item 740.10, TSUS, covers all other precious articles, including gold jewelry and silver jewelry valued over 18 dollars per dozen pieces or parts. Thus, articles of silver jewelry valued at 3 dollars each from a non-Communist country would be classifiable under item 740.10, TSUS, and dutiable at the column 1 rate of duty of 12 percent ad valorem.

Items 740.30, and 740.38, TSUS, cover nonprecious jewelry and other objects of personal adornment not covered by the precious jewelry catagories. Costume jewelry would probably be classifiable under either item 740.30 or 740.38, TSUS, depending upon value. Shell Jewelry would be likewise classifiable.

Pursuant to the Generalized System of Preferences (GSP), various products from certain eligible developing countries have been granted free entry. Articles classifiable under items 740.05, 740.10, 740.30, and 740.38, TSUS, which have been produced in Taiwan and the Philippines, and articles classifiable under items 740.05 and 740.38, TSUS, which have been produced in Hong Kong are included among the eligible articles and entitled to free entry under GSP, if otherwise qualified. Articles classifiable under items 740.10 and 740.30, TSUS, from Hong Kong are excluded from GSP treatment. We are enclosing a copy of general Headnote 3(c), TSUS, which sets forth the requirements under GSP.

A certificate of origin, also known as Form A, indicating country of origin for obtaining GSP treatment, is usually obtained from the seller in the country of exportation.

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DEPARTMENT OF THE TREASURY—U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

[redacted]

In compliance with your request, we are enclosing pamphlets discussing United States Import Requirements and additional information.

Sincerely yours,

(Signed Arthur P. Schiffin

for Salvatore E. Caramagno
Director
Classification and Value Division

Enclosures

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-13-73)

[redacted]

058028

JAN 1 3 [redacted]

CLA-2:R:CV:MSP
058028 AB

[redacted]

Dear [redacted]

In your letter of December 12, 1977, you request "permission" to export toilet soap and bay rum from the Virgin Islands to the United States. You state that you manufacture these articles in the Virgin Islands. The bay rum is processed from bay extract and alcohol, and the soap is processed from coconut oil and alkali. Samples were submitted for our examination. You do not indicate the origin of the materials.

Articles imported into the United States directly from the Virgin Islands may be exempt from duty under General Headnote 3(a), Tariff Schedules of the United States (TSUS). In pertinent part, General Headnote 3(a) states that articles may be accorded duty-free status if they are manufactured or produced in the Virgin Islands and if they do not contain foreign materials to the value of more than 50 percent of their total value. The requirements of section 7.8, Customs Regulations, copy enclosed, must also be met.

You have not provided us with sufficient information to determine whether the requirements of General Headnote 3(a) have been satisfied. However, Customs officials in the Virgin Islands should be able to advise you whether you have met the requirements if you provide them with an adequate description of the manufacturing processes, the value and origin of the components, and cost of processing.

If you have any questions concerning internal-revenue taxes and import restrictions on alcoholic products, you should contact the Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

Sincerely yours,

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(Signed) R. X. ARNOLD

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Salvatore P. Carnevano
Director
Classification and Value Division

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058752

FEB 15 1979

CLA-2:R:CV:MSP
058752 PC

[redacted]

Dear [redacted]

In your letter of December 8, 1978, on behalf of [redacted], you asked about the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to balloons that are exported to Canada for printing, and returned to the United States.

A small sample printed balloon was submitted, bearing the printed logo "Bank of Montreal" thereon. It is stated that both the small balloons which appear to be printed for advertising purposes, and the ink used in the printing are exported from the United States. The printing process performed in Canada involves a silk-screening procedure.

Partial exemptions may be made under item 806.20, TSUS, which provides for a duty to be assessed on the value of repairs or alterations performed abroad on articles exported for that purpose, provided that the foreign operations do not result in new or commercially different articles, different in name, value, appearance, size, shape, or use, from that which was exported. In the described circumstances, however, a new product, a balloon advertisement, emerges from the foreign inking and printing process, which did not exist before.

Inflating the balloons also succeeds in advertising the printed name or logo thereon and this is the purpose of the printing - to create a new and different article, different in value, appearance, and commercial use from that which was exported. Thus, the foreign printing is said to have created a new, designated article of commerce, which is beyond the alterations provision of item 806.20, TSUS.

With respect to the application of item 806.20, TSUS, to the T-shirts referred to in your letter that are exported

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for printing small crested school designs thereon, unlike the printed balloons, printing a school insignia is not intended to advertise a commercial product or establishment. The insignificant printing on the shirt does not give it a new name or use.

Accordingly, in the absence of any other partial exemption from the payment of duty that might be applicable in the circumstances, the printed balloons would be subject to duty on the total value and quantity when returned to the United States.

Sincerely,

(Signed) R. X. ARNOLD

for the Salvatore E. Caramagno
Director
Classification and Value Division

058752

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DEPARTMENT [redacted] CE CORRESPONDENCE APPROVAL AND CLEARANCE

Form 100 (11-15-73)

309.66

MAR 23 1978

CLA-2:R:CV:MC
059062 MG

059062

[redacted]

Dear [redacted]

This is in reply to your letter of January 5, 1978, concerning the tariff status of plastic strips which you state are waste products from the manufacture of carpet backing. The country of origin is Canada. Samples were submitted.

The samples are colored strips which you state are polypropylene. These strips are over 0.06 inch but not over 1 inch in width and do not appear to be over 0.01 inch in thickness. You indicate that the strips were originally intended to be used as carpet backing and are either spool ends or are not up to specification. After importation into the United States, the strips will be converted into a sorbent for use in the recovery of heavy, viscous oils which have been spilled on water.

Merchandise as represented by the submitted samples is classifiable under the provisionsfor waste of man-made fibers, not advanced, other, in item 309.66, with duty at the rate of 2.5 percent ad valorem.

The merchandise described above may be subject to international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

Sincerely yours,

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(Signed) James W. O'Neil

Salvatore E. Carannagno
Director
Classification and Value Division

[redacted]

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DEPARTMENT OF THE TREASURY-U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-18)

062827

DEC 3 1979

CLA-2:RRUCMA
062827 E

District Director of Customs
U.S. Customs Service
300 S. Ferry Street
Terminal Island, San Pedro 90731

Sir:

In an informal memorandum dated October 17, 1979, Mr. Kass of your office asked whether certain tungsten ore imported under entry No. 78-145869 of December 16, 1978, should be classified under item 601.54 or 603.45, TSUS.

Headquarters records disclose the following:

a. In a letter dated August 26, 1975, (041529), to [redacted] counsel for [redacted], he was informed that scheelite concentrates from Thailand and Canada which had undergone roasting, and in some cases, leaching with hydrochloric acid, were classifiable under item 603.45, TSUS.

b. On February 17, 1976, in connection with a claim of an established and uniform practice of classifying natural scheelite concentrates under item 601.54, TSUS, made by [redacted] supported such classification even though noting that the recent Executive Order 11888 of November 24, 1975, which designated Thailand as a beneficiary developing country would be to its advantage.

c. On March 1, 1978, (044372) Headquarters informed [redacted] that an established and uniform practice did exist to classify the concentrated natural scheelite ores in item 601.54, regardless of the processes used to concentrate them, and that future entries of natural scheelite will continue to be

[redacted]

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classified under item 601.54, TSUS, and artificial scheelite will be classified under item 603.45, TSUS.

Since the merchandise covered by entry No. 78-145869 is understood to be natural scheelite, it should be liquidated under item 601.54, in conformity with Headquarters letter of March 1, 1978. Headquarters letter of August 26, 1975, is revoked, and Headquarters letter of March 1, 1978, to [redacted] is considered compliance with Section 177.9(d), Customs Regulations.

Sincerely,

(Signed Arthur P. Schifflin

Salvatore E. Caramagno
Director
Classification and Value Division

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[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 159 (11-15-73)

062827

MAY 21 1979

063046

CLA-2:R:CV:MSP
063046 EM

[redacted]

Dear [redacted]

In your letter of May 2, 1979, you asked about the applicability of item 806.30, Tariff Schedules of the United States (TSUS), to large sheets of aluminum metal that will be imported for the purpose of processing in the United States.

You explained that the aluminum sheets or coils will be slit, trimmed, cut to size, and finally sold to customers in the United States for use as plates in the offset printing industry.

Under item 806.30, TSUS, any article of metal (except precious metal) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing, may be entered with duty on the cost or value of the processing abroad, upon compliance with the Customs Regulations.

If the described imported aluminum sheets are made abroad from raw material aluminum of American origin exported in ingot, billet, or similar form, the provisions of item 806.30, TSUS, could be applicable if further processed here.

On the other hand, sheets made from foreign-made metal if imported into the United States and further processed here before being sold for final use would fail to comply with the requirements of the tariff provision.

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In this respect, we are enclosing a copy of item 806.30, TSUS, and the regulations governing importations thereunder.

Sincerely,

(Signed) R. X. ARNOLD
Salvatore E. Caramagno
Director
Classification and Value Division

Enclosure

[redacted]

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D13

063016

19579

853.10
851.10

063118

JUL 12 1979

CLA-2:R:CV:MSP
063118 FJD

[redacted]

Dear [redacted]

In your letter of June 26, 1979, you request information regarding the importation of certain flameproofed wool cool uniform garments that are manufactured in New Zealand. You requested that we consider item 861.10, Tariff Schedules of the United States (TSUS), to allow these garments and future replacement garments to enter free of duty.

Since item 861.10, TSUS, covers imported drawings and plans and similar articles, we believe you wanted to refer to item 853.10, TSUS, which covers lifeboats and life-saving apparatus. In general, life-saving apparatus imported for the use of an institution established to encourage the saving of human life is entitled to duty-free treatment under the provisions of item 853.10, TSUS. However, the provisions of item 853.10, TSUS, are not applicable in this situation.

The Customs Service has previously ruled, in similar cases, that in order for an institution to qualify under the duty-free provisions of item 853.10, TSUS, as "an institution established to encourage the saving of human life," such an institution must be established for the purpose of rescuing people. We have ruled that clothing worn by members of a bomb squad to protect themselves, and not to save others, does not meet the requirements of item 853.10, TSUS.

Consequently, the articles in question are not classifiable in item 853.10, TSUS, as the wearing of the flameproofed clothing by the police helicopter pilots and observers appear to be primarily for their own protection.

Sincerely,

[redacted]

(Signed) R. X. ARNOLD

for Salvatore E. Carpagno
Director
Classification and Value Division

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[redacted]							

063182

JUL 19 1979

CLA-2:R:CV:MSP
063182 TFC

[redacted]

Dear [redacted]

In your letter of July 9, 1979, you request information regarding the applicability of General Headnote 3(a), Tariff Schedules of the United States (TSUS), to certain pumps which you plan to produce in the United States Virgin Islands. Brochures and a parts list were submitted.

The articles are described as self-priming rotary vane type pumps, precision made from high grade carbon, stainless steel, and plastic. The most popular uses are in the beverage equipment industry, welding, refrigeration, cleaning, dosing technology, medical research, and food stuff manufacture. The pumps are manufactured in one basic size weighing approximately 330 grams.

As you know, General Headnote 3(a), TSUS, provides in pertinent part for duty-free treatment of:

> Articles the growth or product of [an insular] possession, or manufactured, or produced in any such possession from materials, the growth, product, or manufacture of any such possession or of the Customs territory of the United States . . .

In determing whether an article is manufactured or produced in an insular possession within the scope of General Headnote 3(a), TSUS, a new and different article of commerce must result from the operation performed in the insular possession.

In your letter you fail to discuss the assembly or manufacturing process which will take place in the Virgin Islands. However, assuming that the pumps are assembled from components detailed in your parts list and imported

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into the Virgin Islands in 2 or more separate shipments so that no shipment of components could be classifiable as an unassembled unfinished pump, General Headnote 3(a), TSUS, would be applicable to the importation of these goods providing they do not contain foreign materials valued at more than 50 percent of the final appraised value and there is compliance with the pertinent regulations.

For your information, we are enclosing a copy of Duty Preferences Accorded United States Insular Possessions which sets forth further information for entry under General Headnote 3(a). We are also enclosing a copy of section 7.8, Customs Regulations, which governs such entry.

Sincerely,

(Signed) R. X. ARNOLD

Salvatore D. Caramagno
for the Director
Classification and Value Division

Enclosures

[redacted]

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DEPARTMENT OF THE TREASURY - U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

063218

AUG. 03 1979

CLA-2:R:CV:MSP
063218 TFC

[redacted]

Dear [redacted]

In your letter of July 26, 1979, you provide additional information on the assembly and testing operations of self-priming rotary vane type pumps. You request information regarding the applicability of General Headnote 3(a), Tariff Schedules of the United States (TSUS), to the pumps which will be assembled in the United States Virgin Islands from parts imported in separate shipments from Europe and the United States.

You describe the assembly operation as follows: carbon pump chambers are placed into a plastic housing and fastened through retaining pins. The motor with special carbon vanes is then inserted into the chamber. The carbon vanes are either spring loaded or kept under pressure against the pump pressure chamber by pins. Sealing rings and pressure retaining sealants are then placed onto the shaft of the motor and this entire subassembly is inserted into the housing. An "O" ring is then placed on the shaft and the pump is closed with a front panel. A ball bearing racer is then placed on the other end of the shaft.

The pumps are tested for pressure limitations under certain volume output. The pumps are further tested for pressure relief through the bypass adjustable mechanism and for leaks around the shaft, front panel, etc.

Based on the this description of the operations to be performed in the Virgin Islands and the information provided in your initial letter of July 9, 1979, the pumps would be accorded duty-free treatment under General Headnote 3(a), TSUS, providing they do not contain foreign materials valued at more than 50 percent of the final appraised value. The entry must also comply with section 7.8, Customs Regulations, copy enclosed.

Sincerely,

E3

[redacted]

(Signed) R. X. ARNOLD

Salvatore E. Caramagno
Director
Classification and Value Division

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CODE AND DATE						
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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

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063296

SEP 27 1979

CLA-2:R:CV:MSP
063296 TPC

[redacted]

Dear [redacted]

In your letter of August 21, 1979, you submitted additional information on certain chemicals you wish to import into the United States under the provisions of General Headnote 3(a), Tariff Schedules of the United States (TSUS).

The chemicals which are the subject of your inquiry are Sodium Sulfathiazole and Sulfmethazine. The ingredients and procedures for the production of these chemcials are as follows:

1. SODIUM SULFATHIAZOLE FROM SULFATHIAZOLE ACID

Water, sodium hydroxide, and sulfathiazole acid are combined in a tank. The mixture is maintained at 60 C and mixed well until clear. The mixture is then filtered while hot (if necessary) and poured into pans to solidify. When hard, the mixture is crushed and dried to 7 - 9 percent moisture, milled, and then packed for shipment. The product is Sodium Sulfathiazole.

2. SULFALMETHAZINE FROM SULFAGUANIDINE

Water, acetic acid, sodium hydroxide, sulfaguanidine (93 percent), and acetylacetone are combined in a reactor. The mixture is heated to its boiling point and allowed to boil with agitation for 24-36 hours. The mixture is then purified by solubolizing it with soldium hydroxide, and filtering and recrystallizing it from the water. The pure crystals are collected, dryed, milled, and then packed for shipment. This process yields Sulfamethazine.

We are now satisified that the production of Sodium Sulfathiazole and Sulfamethazine as described requires a

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chemical change in the component materials utilized and would result in articles the manufacture or product of the Virgin Islands within the meaning of General Headnote 3(a), TSUS. Accordingly, these articles would be eligible for duty-free importation into the United States provided the value limitations are met and there is compliance with the pertinent regulations.

Sincerely,

(Signed) R. X. ARNOLD

Salvatore E. Caramagno
for the Director
Classification and Value Division

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 109 (11-13-73)

MAR 14 1980

CLA-2:RRUCGC
064471 KDJ

[redacted]

Dear [redacted]

We have your letter of February 15, 1980, regarding the dutiable status of a bag to be imported from Japan.

The sample you mentioned was not received. You state that the bag is made of poly/vinyl/alcohol and is designed for hospital use. Contaminated linen will be placed in the bag and deposited directly into a washing machine. The water then dissolves the bag completely.

On the basis of the information submitted, we would classify the bag under the provision for articles of plastic under item 774.55, Tariff Schedules of the United States, with duty at the rate of 8.5 percent ad valorem.

Sincerely,

(Signed Arthur P. Schifflin

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUN 0 4 1980

CLA-2:RUCSC
064760 EM

064760

[redacted]

Dear [redacted]

In your letter of April 3, 1980, on behalf of [redacted] you asked for information about the tariff status of certain steel wire mesh that is produced in Canada from steel wire exported from the United States for that purpose.

Descriptive brochures were submitted. It is explained that a roll of single strand stainless steel wire weighing from 300 to 600 pounds, is exported to Canada where it is converted into mesh cage material measuring 16-1/2 inches wide, with each mesh opening measuring 1 by 1/2-inch. The foreign process consists of passing a series of 31 line wires spaced 1/2-inch apart, through welding heads. Another series of horizontal stay wires each 17 inches long, is laid across the line wires at 1-inch intervals and the two wires are welded together automatically by the weld heads. This process is repeated continuously until a roll of mesh wire measuring about 450 feet is made. The formed wire mesh is trimmed to a width of 16-1/2 inches, with 3/4-inch of the horizontal stay wires overhanging on each side. The wire mesh is then wound into rolls with the stay wires on the outside and returned to the United States in 450-foot rolls.

Upon return, the rolls are loaded into cage-forming machines and in a series of hammers, the machine bends the 3/4-inch overhang and simultaneously forms the mesh into a cylindrical shape. A stainless steel seam strip is then crimped over the bent stay wires to hold rigid the round shape of the cage. Mesh cages are cut to specified lengths, ranging from 8 to 19 feet. Upon removal from the cage machines, stainless steel top and bottom caps are crimped over the ends of the cages.

The mesh cages are used to provide a rigid support for fabric filter bags used as particle collectors for pollution control systems in foundries, cement, chemical processing, and power plants, etc. The bags are merely mounted over the cylindrical mesh cages.

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Item 806.30, Tariff Schedules of the United States (TSUS), applies only to articles of metal that are exported for further fabrication in the foreign country and again upon return to the United States, upon compliance with the regulations.

In this respect, the conversion of stainless steel wire, exported as a raw material, into wire mesh abroad with trimming to width, and forming the returned wire mesh from a semi-finished product in 450-foot rolls into finished mesh cages ready for final use, appear adequate to comply with the further processing requirements, sufficient to satisfy the tariff provision.

Accordingly, the described operations performed on the wire adequately meet the requirements of further processing under item 806.30, TSUS, and the material imported could qualify upon compliance with pertinent regulations.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief
Special Classification Branch

[redacted]

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[redacted]

15 DEC 1980

CLA-2:RRUCGC
064878 ICB

064878

[redacted]

Dear [redacted]

We have your letter of April 18, 1980, regarding the dutiable status of oyster flavored sauce, a product of Hong Kong.

Two samples were submitted, a 5 pound (80 ounce) tin and and8 ounce bottle sealed with a metal cap. Both samples are marked to show the contents as oyster extractives, water, salt, starch and acetic acid colored with caramel.

This merchandise is classifiable under item 114.55, Tariff Schedules of the United States (TSUS), as shellfish juices in airtight containers with duty at the rate of 3.9 percent ad valorem. As products of Hong Kong the sauces are entitled to duty-free treatment under the Generalized System of Perferences (GSP) upon compliance with all applicable regulations.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief
General Classification Branch

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 103 (11-15-73)

DEC 24 1980

CLA-2:RRUCV
065343 BS
TAA#

065343

District Director of Customs
Nogales, Arizona 85621

Director, Classification and Value Division

Internal Advice No. 110/80; Dutiability of Certain Expenses Incurred by a U.S. Parent Corporation in Connection with Its Subsidiary's Assembly Operation in Mexico

ISSUE:

Whether certain expenses incurred by a parent corporation in the United States in connection with a subsidiary's assembly operation in Mexico are dutiable assists under constructed value and/or computed value.

FACTS:

The parent ("X") sends U.S. components to its subsidiary assembler ("Y") in Mexico. The components are assembled into finished products and then returned to the United States to X under the provisions of item 807.00, Tariff Schedules of the United States (TSUS). A transfer price is paid by X to Y.

The parent incurs certain costs which the District Director's office believes should be treated as dutiable assists under the constructed value basis of appraisement. The costs are described as follows:

1) X conducts an annual physical inventory of all inventory material that is in Y's possession, to meet IRS and accounting requirements. Because it is not economical or feasible for X to send its own employees to Mexico to conduct the physical inventory, most of the work is performed by Y's employees. The additional costs incurred by Y are recovered from X in the form of higher transfer prices for the assembled merchandise.

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X points out that the inventory is only consigned to Y and, therefore, ownership remains in X; and that there is no legal or accounting requirement that Y conduct a physical inventory of material owned by another company. Further, X is of the opinion that the physical inventory is not necessary to Y to perform its function, but is merely a service performed by Y for X.

2) Approximately every 18 months, X sends its auditors to review Y's books and records to confirm that they are maintained in accordance with X's accounting requirements. The cost of this audit is not billed to Y by X. This audit is in addition to the cost of an annual audit incurred by Y.

In X's opinion, the costs of the audit are not dutiable because the audit is not performed to assist the assembler but to assure X that the books are maintained in good order and that certain accounting requirements are met. Further, the audit is not requested by Y, but is imposed by X.

3) Personnel from X's U.S. operation make periodic visits to Y's plant to review, discuss, assist, and audit "work already performed" as opposed to actually performing work for Y. X believes that these costs should not be treated as dutiable expenditures of Y.

4) X's employees in the United States periodically make telephone calls to Y in connection with various aspects of the assembly work. X believes that these costs should not be considered dutiable general expenses of Y.

In the opinion of our Nogales office, all of these costs are dutiable general expense assists for the reason that such expenditures are normal costs of doing business. Under this theory, it is assumed that such costs would have been incurred by the assembler (as a "usual" general expense) had not the importing parent borne the expense.

Our New York office agrees that the costs incurred for the annual inventory and 18-month audit should be considered part of the assembler's general expenses and, therefore, should be dutiable under TSUS item 807.00. However, it is that

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office's opinion that neither the expenses incurred by X for periodic visits to review, discuss, assist, and audit "work already performed," nor the cost of telephone calls to its subsidiary, should be treated as dutiable assists. This view is equally applicable to merchandise appraised under constructed value or computed value.

065312

LAW AND ANALYSIS:

a) Constructed Value - Section 402(d)(2), Tariff Act of 1930, as amended, includes as part of constructed value "...an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States..."

In C.I.E. 7/73, dated March 1, 1973, Headquarters set forth a listing of the various elements which usually enter into the determination of statutory constructed value (or cost of production) for merchandise assembled in Mexico under item 807.00, TSUS. In the category under "General Expenses," we included such costs as building rent, telephone, fire and liability insurance, administrative salaries, and auditing expenses.

In ORR Ruling 73-0092, dated April 4, 1973, we held that the costs incurred by a parent firm in auditing a Mexican assembler were a necessary expense of conducting that operation and should be included in the assembler's general expenses.

The Olga Company v. United States, 71 Cust. Ct. 42, C.D. 4468 (1973), concerned the dutiable consequences of the cost of certain trips to the Mexican assembler's plant by the plant manager of the U.S. parent. The purpose of the trips was to check on the quality of the assembler's work.

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The court in that case held that such costs were neither costs of fabrication essential to the production of the merchandise nor general expenses of the assembler. Accordingly, such costs were held to be nondutiable.

b) Computed Value - (We assume, for the purposes of this ruling, that transaction value for the subject merchandise cannot be found under sections 402(b) or 402(c), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979; and that computed value (section 402(e) of the Act) is the proper basis of appraisement due either to the importer's choosing or because deductive value (section 402(d)) is also inapplicable.)

Included in computing this basis of appraisement are: 1) Profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States; and, 2) any assist, if its value is not otherwise included elsewhere.

Under section 402(h) of the new law, an assist is defined as any of the following items that the buyer of imported merchandise provides directly or indirectly, and free of charge or at reduced cost, for use in the production of or the sale for export to the United States of the imported merchandise:

1) Materials, components, parts, and similar items incorporated in the imported merchandise;

2) tools, dies, molds, and similar items used in producing the imported merchandise;

3) merchandise consumed in producing the imported merchandise;

4) engineering, development, artwork, design work, and plans and sketches that are undertaken outside the United States.

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065343

HOLDING:

a) Constructed Value

1) Annual Physical Inventory - This cost was actually incurred by the subsidiary and not by the U.S. parent, although the expense was recovered in the transfer price. Accordingly, no assist was involved under either the new or the old law.

In our opinion, a physical inventory would be a usual general expense of an assembler or producer. We see no difference whether or not X retained legal title to the components at the time of the inventory. Accordingly, such cost should be considered a dutiable general expense of Y.

2) Audit - Under prior Headquarters rulings, supra, an audit has been considered to be a usual general expense of the foreign assembler or producer. However, in the instant case, if X can establish that the 18-month audit is primarily for its benefit and is duplicative of the annual audit which Y incurs, we would not consider such cost to be a usual general expense of the assembler and, therefore, not a dutiable assist.

3) Review of Work by U.S. Personnel - We do not consider these costs to be a usual general expense of the assembler nor a cost of fabrication since they were undertaken for the parent's benefit and after the work was performed. See The Olga Co., supra. Rather, these costs are general expenses of the parent.

4) Telephone Costs - Similarly, the cost of telephone calls made by the parent in the United States to the subsidiary are general expenses of the U.S. company, and cannot be attributed to the assembler. A different finding might result if X paid for the phone service used by Y in Mexico.

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b) Computed Value

Under the new law, it is apparent that none of the involved expenditures fall within any of the assist categories, supra. Therefore, the costs incurred by X for the 18-month audit, telephone calls, and employee trips to the Mexican assembler are not dutiable. As in the case under constructed value, however, the costs incurred by Y for the inventory are dutiable general expenses, if in accord with the generally accepted accounting principles of Mexico, the country of assembly.

It is noted that in a recent case (C.D. 4867), the Customs Court held that general expenses incurred by a parent corporation in the United States could not be imputed to the subsidiary foreign assembler. This case, however, is currently being appealed, and therefore, the decision is not final. Until a final decision has been rendered, Customs will adhere to its current position that certain general expenses may be imputed as assists.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

APR 0 9 1981

CLA-2:CO:R:CV:S
067112 EM

[redacted]

Dear [redacted]

In your letter of February 11, 1981, on behalf of [redacted], you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain component aluminum frame strips proposed to be exported to Mexico for assembly into luggage which is returned to the United States.

Luggage will be returned following the assembly operations in Mexico from fabricated components of United States origin. One of the exported components that forms the frame of the luggage is a pre-cut aluminum strip that is about 45 inches long and 1-1/4 inches wide, with 18 pre-punched holes of various sizes and shapes.

Although exported in straight form, the strip is placed in a jig and formed by hand into a basic rectangular shape. Following this, the strip is removed and placed in two smaller jigs in order to further refine the rectangular shape more precisely. These operations are said to consume about 25 seconds per frame prior to assembly along with other components into finished luggage.

With respect to a foreign assembly, item 807.00, TSUS, provides for the assembly of an article from components that are exported in condition ready for assembly without further fabrication.

In support of your claim that the forming operations performed in Mexico on the exported aluminum strips would be considered incidental to assembly, you compared the horizontal coils made from exported spooled magnet wire in General Instrument Corporation v. United States, C.A.D. 1128. Wire that was used to make horizontal coils for T.V. deflection yokes was despooled from a supply spool and formed into the primary shape of a horizontal coil by a winding machine. The wire was further taped to prevent unraveling, cement dipped, dried, and precision shaped by machine pressing to fit the contours of a plastic liner on which it was subsequently mounted. The steps performed on the exported wire were considered to be assembly steps within the meaning of item 807.00, TSUS,

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and the spooled wire was held to be capable of immediately entering into the assembly process to make the imported yokes. The operations performed on the wire were held necessary to the assembly process since the wire was already a finished product that could not have been exported in the described coil forms, but only on spools. The spooled wire was merely transferred to another wound form as part of the assembly process. In this respect, operations performed abroad on the spooled wire were considered to be assembly steps rather than a fabrication.

On the other hand, the described aluminum strips were exported in an unfinished state when they left the United States and were not capable of immediately entering into the assembly process. Further work was required to shape the strips to the specialized rectangular scale before they were ready for the luggage pattern. The described forming and shaping operations are considered too substantial and remote from the assembly process to be considered an incidental part thereof. Unlike the winding of the coil, the bending of the strips is not an assembly operation. In this respect, the shaping operations performed on the metal strips are fabricating steps performed in preparation of a component for subsequent assembly. Generally, the cases construing the meaning of the phrase "fabricated components" in terms of narrow materials such as wire exported in rolls and merely cut to length abroad include the General Instrument cases, C.A.D. 1062, 1106, 1128, and C.D. 4468.

Fabricating or non-assembly steps performed on exported components between the time of arrival abroad and the assembly merely show that the exported components were not "in condition ready for assembly without further fabrication."

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

See: 6/4/81 067290

067112

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F3

CLA-2:CO:R:CV:S
067242 AI

APR 29 1981

067242

[redacted]

Dear [redacted]

In your letter of April 17, 1981, you ask about the tariff status of platinum jewelry made in Taiwan from metal exported from the United States.

Platinum jewelry is classifiable under item 740.10, Tariff Schedules of the United States, at the rate of 10.6 percent ad valorem. If the product of Taiwan, it is eligible for GSP treatment, provided the direct costs of processing are not less than 35 percent of the appraised value of the jewelry imported. You indicate that the labor cost would only be about 7 percent.

It does not appear from the facts set forth in your letter that the value of the metal can be used to compute the 35 percent requirement. Only if the platinum if first transformed into another article, such as wire, can its value be included.

Copies of our publications "Exporting to the U.S." and "GSP information" are enclosed for your further information.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

Enclosures

[redacted]

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

SEP 2 3 1981

CLA-2:CO:R:CV:S
067496 AI
X 067497 AI

067496

[redacted]

Dear [redacted]

In your letter of August 27, 1981, you inquired concerning the tariff status of an electronic module to be imported into the Virgin Islands for incorporation into certain quartz watch movements being manufactured there.

You state that you intend to import the module through New York, pay the duty, and ship it to the Virgin Islands. You believe that the cost of the module and the duty paid in the United States should not be included as part of the landed cost.

Under Danish Law No. 64 of April 1, 1914, as amended, continued in force in the Virgin Islands of the United States by section 4 of the Act of March 3, 1917, as amended (48 U.S.C. 1395), and section 36 of the Act of June 22, 1936 (48 Stat. 14061), merchandise of foreign origin imported into the Virgin Islands from the Customs territory of the United States is dutiable regardless of whether duty was paid on its entry into the Customs territory of the United States.

In the circumstances, there is no way in which we could allow the entry of the foreign-made module into the insular possession without the payment of duty or authorize the exclusion of its cost in computing the dutiable status of the finished movement which will be imported into the United States.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

CLA-2:CO:R:CV:S
067592 EM

DEC 16 1981

067592

[redacted]

Dear [redacted]

In your letter of November 6, 1981, you asked for information about the tariff status of surplus military vehicles and spare parts that had been exported from the United States during the period of World War II under certain lend-lease or other types of foreign agreements, and are now being returned to the United States.

You explained that the vehicles and parts therefor are purchased from a foreign government but during the course of years it was found necessary to overhaul and rebuild the equipment in order to maintain it in an operable and serviceable condition for the purpose, probably military, intended by the foreign government. It is claimed that since the vehicles and spare parts had been exported in a new condition, any rebuilding program performed abroad on the vehicles could never restore the exported articles to their original new condition.

With respect to the return of American goods, item 800.00, Tariff Schedules of the United States (TSUS), provides for the free entry of products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad.

Generally, American goods may be returned under item 800.00, TSUS, provided that the articles have not been advanced in value or condition but were merely maintained to keep them in their original serviceable condition. This would include the overhaul of vehicles abroad in order to maintain them in working condition. The repair and maintenance includes also replacing parts and accessories with foreign-made parts, such as tires, carburetors, batteries, etc., which are in the nature of running repairs. It is assumed that the vehicles are not rebuilt specifically for the purpose of upgrading them for resale in the United States.

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Further, with respect to the kind of evidence adduced to prove claims of American goods returned, it is incumbent upon the importer to produce documentary or other satisfactory evidence that would be acceptable to Customs officers at the port of entry, to show that the articles being imported are American goods which are being returned under the free entry provisions of item 800.00, TSUS.

In this respect, any questions arising as to what constitutes satisfactory evidence to prove claims of American goods returned rests ultimately with the discretion of the District Directors of Customs at the various ports of entry.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

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067660

FEB 22 1982

CLA-2:CO:R:CV:S
067660 EM

Dear [redacted]

This has reference to your letters of January 21, and February 8, 1982, concerning the free entry of Canadian-made Fire Fighters Turnout Gear under the provisions of item 853.10, Tariff Schedules of the United States (TSUS). This was the subject of a previous letter dated October 22, 1981, 068879.

Sample swatches of the fabric material used and a single-page brochure describing the turnout gear worn by fire fighters, were submitted. Briefly, item 853.10, TSUS, provides for the free entry of lifeboats and life-saving apparatus that would be imported by an institution established to encourage the saving of human life.

In this respect, however, the governing headnotes provide that the articles covered thereunder (including lifeboats and life-saving apparatus, among others) must be exclusively for the use of the institutions involved, and not for distribution, sale, or other commercial use within 5 years after being entered. Copies of these tariff provision are enclosed.

From this standpoint, since the fire fighting equipment is not being imported directly by or for the use of such an institution, but instead the proposed importations are for commercial sale and distribution, in these circumstances the provisions of item 853.10, TSUS, are clearly foreclosed from applying to the proposed importations of the fire fighting gear.

Further, in the absence of any other exemption or partial exemption that might be applicable in the circumstances, it appears that the imported merchandise would be dutiable on total quantity and value as set out in the previous letter.

Sincerely,

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(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

[redacted]

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[redacted]						

DEPARTMENT OF [redacted] CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUN 2 9 1982

CLA-2 CO:R:CV:V
067854 KW

[redacted]

In your letter of May 28, 1982, you indicate that you are engaged in the process of tempering glass in Colombia and inquire whether this processing constitutes a substantial transformation for Generalized System of Preferences (GSP) purposes.

In Guardian Industries Corporation v. United States (1982) Slip Op. 82-4, the Court of International Trade held that the tempering of glass made it into a new and different article and exceeded an alteration for the purposes of item 806.20, Tariff Schedules of the United States. A copy of this decision is enclosed.

In view of this judicial interpretation, we are of the opinion that the tempering of glass is a sufficient processing to constitute a substantial transformation of the glass for the purposes of GSP.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

[redacted]

[redacted]

067999

NOV 08 1982

CLA-2:CO:R:CV:S
067999 EM

Dear [redacted]

In your letter of October 5, 1982, on behalf of [redacted] you asked about the applicability of item 806.20, Tariff Schedules of the United States (TSUS), to certain articles of wearing apparel that would be exported to Canada for a silk-screen printing process and returned to the United States.

A brochure-type descriptive page showing T-shirts, tank tops, and sweatshirts, with certain words and insignia printed thereon, was submitted. You explained that cotton/polyester T-shirts, sweatshirts, sweatsuits, and hats would be exported to Canada for imprinting designs and lettering on the articles. The Canadian process is described in terms of preparing artwork and burning the artwork on a silk screen, mounting the silkscreen on a machine, inking the silkscreen and forcing the inked design onto the textile article and finally, heat curing the inked design in order to implant it into the fibers of the garments.

Item 806.20, TSUS, provides for an import duty to be assessed on the value of repairs or alterations that are made abroad on articles exported for that purpose.

It is contended that the foreign printing of descriptive logos, slogans, and various insignia does not result in a major change in the garment itself, since the garment may be worn whether printed or unprinted. However, printing generally is considered neither a repair nor an alteration under the provisions of item 806.20, TSUS. A printed garment is different from an unprinted one and the printing of words or designs thereon generally creates a new and different article of commerce. Printed garments are often offered for sale as novelty items in different markets and to different classes of buyers. As such; therefore, the foreign printing operations have created a different article of commerce, regardless of where it may be sold.

Moreover, the printing operations generally constitute a finishing of the garment performed in the course of manufacture, the last step in the total process of producing the printed garment. In this respect, depending on customer needs, the garments are not considered finished products until they undergo the final printing and then they become ready for marketing and sale as specialty items displaying a slogan, advertising, or other message.

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Accordingly, since the printed garments would not be eligible for item 806.20 tariff relief because the printing is more than a mere alteration, and as there are no other provisons of the tariff schedules under which an exemption from the payment of duty could be granted, the imported garments would be subject to duty on the total quantity and value under the appropriate provisions of the tariff schedules.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

[redacted]

See C.D. 4755

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0679999

JUN 23 1982

CLA-2 CO:R:CV:S
069614 EM

069614

Dear [redacted]

In your letter of December 15, 1981, you asked for information about the tariff status of certain explosive ordnance disposal (E.O.D.) suits that are manufactured in Canada from component materials of United States origin.

The imported suits will consist of a unique design of protective apparel for use by either police or military bomb disposal squads. The raw materials used in fabricating the suits consist of multi-layers of Kevlar and Nomex materials, both containing man-made fibers made in the United States. The special helmet used in conjunction with the suits has a polycarbonate molded shell covered with several layers of Kevlar and a final outer layer of Nomex. The face visor of the helmet is made of thermoplastic sheet laminates.

With respect to the fabrication of the suits from component raw materials of United States origin, there appears to be no exemption or partial exemption that might apply from the payment of duty when the suits are imported into the United States. Item 807.00, Tariff Schedules of the United States (TSUS), only applies with respect to fabricated United States components that are designed to be fitted together with other components in an assembly process, with no operations performed thereon except the attachment of the components to form the imported articles. This provision of the tariff schedules is inapplicable, however, where finished goods are manufactured from raw materials. This constitutes a fabricating, not an assembly process. In the circumstances, this tariff provision would be inapplicable to the imported suits.

Further, item 853.10, TSUS, provides for the free entry of lifesaving apparatus when imported for the use of an institution established to encourage the saving of human life. Generally, fire and police departments, and the military services, are not qualifying institutions established to encourage the saving of human life since their purposes is to fight fires and maintain order. However, if conceivably specially trained units have been established within these organizations for the purpose of rescuing people, these units might qualify as such institutions established to encourage the saving of human life. But where use is made of wearing apparel by members of a bomb squad or some other unit designed to protect the members of the units, and not to save others, this would not be sufficient to permit entry under item 853.10, TSUS. In these circumstances, this tariff provision would also be inapplicable to the imported suits.

F12

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In the absence of any other applicable exemption or partial exemption from the payment of duty, the specially designed bomb suits would be classifiable under the provision for articles not specially provided for, of man-made fibers, in item 389.62, TSUS, with duty at the rate of 21 cents per pound plus 14 percent ad valorem.

Sincerely,

(Signed) R. X. ARNOLD
Russell Arnold
Chief, Special
Classification Branch

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC_____

[redacted]

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CODE AND DATE						
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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

069614

1 JUL 1982

CLA-2 CO:R:CV:G
069845 JH

Dear Sir:

Re: Decision on the Application for Further Review of Protest No. 1001-1-010368 Dated August 28, 1981, Concerning the Classification of Canned Pilchard From Peru

FACTS:

The product known as pilchard (sardinops sagax), a product of Peru, is canned in 6.5 ounce cans. The canned product is called "chunk style Pilchard" and is said to be processed from the loin portion of the fish with no vascular dark meat or muscle present.

ISSUE:

Whether the canned pilchard in issue is classified as other herring in item 112.10, Tariff Schedules of the United States (TSUS), if not packed in oil, or 112.46, TSUS, if packed in oil; or whether it is classifiable as sardines, other, in item 112.23, TSUS, if not in oil, or 112.86 if packed in oil; or alternatively whether it is classifiable as other fish in item 112.36 or 112.94, TSUS, if not regarded as herring

LAW AND ANALYSIS:

On behalf of the petitioner, it is argued that the term "sardine" has no scientific definition, but has to be construed in accordance with the common and commercial meaning. In reliance on such commercial meaning it is urged that "sardine" would exclude the full grown pilchard - 10 to 12 inches in length - the type of fish in issue here and refer only to the immature pilchard. Several cases are cited, as well as definitions from various tariff studies in furtherance of this argument. It is contended

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that from all of these sources it may be concluded that the term "sardine" applies to any number of different fish families, notably the herring, provided that they are the appropriate size and canned in the customary manner. It is claimed that the 1948 Summaries of Tariff Information refer to sardines as "the young of the pilchard" and small fish of the herring; and it is asserted further that the fish in issue is too large and too mature to be considered a sardine in the commercial meaning of the word. The fish in question is 10 to 12 inches in length and is cut into chunk style for canning. In addition to these arguments, copies of advertising material were submitted to show that the product is marketed in certain areas of the country in 6.5 ounce cans as chunk style pilchard and advertised as a tuna substitute. Also a statement was received from a marketing consultant dealing in canned fish commodities to the effect that the common understanding of sardines is the small whole fish which is canned and not the type of product here in question.

The petitioner's argument is that the imported product is not commonly or commercially known as "sardines" by virtue of its size and the manner in which it is processed, packed and marketed.

We agree that the term "sardine" does not have a scientific meaning and is to be defined on the basis of the common or commercial usage. Far from being one particular species of fish, it is understood that the term "sardine" could describe about 125 different species. No one identification necessarily being definitive of the product as a whole, since there is no uniform definition of "sardine." Although usually thought of as being packaged in small cans with the individual fish more or less intact, it is not uncommon for larger sardines to be packaged in larger cans either in the manner described or in chunk style.

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While advertising copy and canned labels were submitted to show that the product is considered a pilchard, it is noted that other firms can the same product, also from Peru, and label it as "chunk sardines." Although the 1948 Summaries of Tariff Information may have referred to sardines in its discussion of paragraph 718(a), Tariff Act of 1930, as "canned small fish," it also stated in its discussion of paragraph 718(b) that sardines are pilchards among other species, and that "although the products are generally labeled sardines, a small part of the domestic pack and indeterminate quantity produced abroad are labeled "pilchards." Thus, the labeling of the cans as reflected in the advertising copy on record, as "chunk pilchard" is not determinative of a commercial designation, but most probably reflects the trade appeal in a particular locale.

In fact, the 1968 Summary of Trade and Tariff Information, in its discussion of canned sardines, states that not only is the pilchard considered a sardine but while the sea herring is packed in "quarter" cans with label weight of 3 3/4 ounce, "pilchards are mostly packed in containers with a label weight of 15 ounces." These larger cans, of course, are usually packed with sardine larger than the ones seen in the 6.5 ounce can. The 1968 Summaries also note that Portuguese pilchards packed in olive oil comprise almost the entire pack of sardines produced in Portugal and that the Portuguese canned sardines in oil are often skinned and boned.

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In the Fishery Leaflet "129" published by the Fish and Wildlife Service in 1945, the topic was "the Pacific Sardine Fishery." The subject was the commercial fishing of the "Pacific Sardine or Pilchard." In describing the sardine's development, the article notes that "juvenile sardines when 3 to 5 inches in length are caught in large numbers for tuna bait," but when the sardines have grown to about 7 inches in length "they make their first appearance in the regular commercial fishery." The leaflet goes on to state that when the fish are 10 inches in length they are aggressively sought by commercial fishermen. The leaflet in no way indicates there is limitation on the sardine designation based on length. In fact, the only reference to size limitation is the caution that over fishing will result in a smaller fish being the only one available. The fish classification expert for the Fish and Wildlife Service states that the definition of the pilchard as a sardine in that article has not changed in the intervening years. The Encyclopedia Britannica (1976 edition) in its discussion of sardines states that the sardinops sagax is called "sardine" in the United States and "these fish are about 10 to 12 inches in length."

Thus, it is not believed that the petitioner has established a commercial definition of sardines which has a meaning which was general (extending over the entire country), definite (certain of understanding), and uniform (the same everywhere in the country). Hutchinson Brokers, Inc. A/C Thos. P. Gonzalez Corp., Plaintiff v. United States, Slip Op. 81-108. While this product may be known as a pilchard in some marketing areas, it is definitely known as sardine in others; and although the more popular form of the canned sardine may involve a small fish which is more or less intact in a small can, this does not exclude a larger fish which may or may not be whole in the can or in chunk style.

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069845

HOLDING:

Therefore, the chunk style pilchard in issue if not packed in oil is classified in item 112.22 (112.23) as a sardine or if in oil, item 112.86.

You are directed to deny the protest in full. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

The protest file is enclosed herewith.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

Area Director of Customs
New York Seaport
New York, New York 10048

Enclosure

068845

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 07 1983

REFER TO
CLA-2:CO:R:CV:S
071018 SC

071018

Dear [redacted]

In your letter of May 24, 1982, on behalf of [redacted] you inquire as to the tariff classification of a Micro-Fone IA Credit Authorization Device, a product of Belgium.

The merchandise in question is described as a versatile terminal device intended to reduce significantly the risk of fraud to which merchants are exposed in authorizing credit card transactions. We note that the Micro-Fone IA (hereinafter referred to as M-F1A) is an enhanced version of the [redacted] Micro-Fone Credit Card Verfication Device, the subject of Internal Advice 47/82. The M-F1A is likewise designed to send alpha-numeric inquiries over voice-grade telephone lines to a host credit card (or check cashing) authorization computer such as that of the major credit cards. All of the M-F1A's inquiries and responses are transmitted in digital form to or through a modem (both the M-F1A and the host computer with which it communicates are equipped with modems) over the public telephone network. (The modem converts digital data to analogue form for transmission, and converts the analogue data back to digital form at the receiving location). The M-F1A, too, is equipped with a handset for voice communication, when necessary. It is also equipped with a calculating capability (addition and subtraction). In fact, the instant merchandise can add and subtract up to eight digits. Even though the M-F1A has been equipped with a telephone handset, a telephone number can neither be manually dialed, nor can telephone numbers and labels be stored when this feature is in operation. It does not appear that the device is an accounting, computing, or other data processing machine.

Schedule 6, Part 4, Subpart G, Headnote 2(b), Tariff Schedules of the United States (TSUS), provides:

> For the purposes of this subpart --
>
> * * *
>
> (b) a "calculating mechanism" is one designed to perform one or more of the four arithmetical operations, i.e., addition, subtraction, multiplication, and division.

Inasmuch as the M-F1A possesses a calculating capability, it is unlike its predecessor, the ordinary Micro-Fone, the subject of IA 47/82, in that it is more than mere telegraph apparatus.

GS

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Accordingly, we conclude that the M-F1A described is classifiable under the provision for calculating and similar machines incorporating a calculating mechanism, other, in item 676.25, TSUS, dutiable at the rate of 4.9 percent ad valorem.

Sincerely,

Russell Arnold
Chief, Special
Classification Branch

[redacted]

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671017

071147

JAN 3 1 1983

CLA-2:CO:R:CV:S
071147 KW

Dear [redacted]

Your letter of December 20, 1982, addressed to our New York office, has been referred here for reply concerning the application of item 806.30, Tariff Schedules of the United States (TSUS), to aluminum extrusions and sheets processed in Canada.

You indicate that the foreign operations consist of welding, hole drilling, and other processing to manufacture skylight components. Upon return to the United States, these components will be anodized. You inquire whether these operations will constitute further processing within the meaning of the statute.

We are of the opinion that the drilling of holes in Canada and the anodizing upon return may be considered further processing so as to entitle the articles to tariff treatment under item 806.30, TSUS, upon compliance with the regulations.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

[redacted]

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[redacted]

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 160 (11-15-79)

DATE: FEB 15 1984

FILE: CLA-2 CO:R:CV:G
073826 c

TO : Area Director of Customs
New York, New York 10048

FROM : Director, Office of Regulations and Rulings

SUBJECT: Your Memorandum Dated December 2, 1983 (File No. CLA-2-03 S:C:D7-76-JS) Relating to the [redacted] Chief Value Inquiry

In the above referenced memorandum you set forth those costs which should be included in any chief value determination as follows:

(a) Raw materials, including unrecoverable waste.

(b) Production workers' salaries including salaries of inspectors/supervisors.

(c) Fringe benefits for workers including bonuses, retirement fund, housing allowances, free meals and free transportation.

(d) Pro-rated share of the rental or amortization cost of all machinery used. "All machinery used" is defined as that which either touches the component or produces something, e.g. heat or steam which changes the components.

(e) The pro-rated cost of energy, i.e. oil or electricity, and repairs for the machinery.

As you know, representatives of major shoe importers, including [redacted] and the [redacted], have been actively involved in the disposition of this issue. They have been successful in convincing members of Congress, Treasury officials, and me, that the guidance they received from Customs as to which costs to include in CMCV was incomplete and misleading. We have created the appearance that we are making up the rules as we go along. In the future, we must issue clear complete guidelines and stick to them.

There is no ideal resolution of this issue, however, the best resolution appears to be along the lines of the form which [redacted] distributed in 1981.

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Therefore, with respect to liquidation of entries of the footwear in issue which have not become final, it is our position that the costs set forth above by you as being relevant in a chief value determination are modified as follows:

(1) Cost or value of materials - we will accept importer cost data for leather and rubber/plastics material, without regard to cost figures for those materials submitted by other manufacturers, unless you have tangible evidence that the data submitted are false.

(2) Cost of Processing - we will include actual labor costs and fringe benefits which are paid in cash such as sick pay, holiday pay, overtime and any other benefit paid in cash. We will not include in component material of chief value determinations those fringe benefits in the form of services (day care, company picnics, transportation, housing etc).

(3) General Expenses - we will not include depreciation of machinery or energy costs in arriving at a chief value determination. We will include costs of molds if, as I understand it, foreign producers have been collecting these costs.

It is requested that you circulate this decision to all ports in order to insure that all importers are treated equally.

It should be noted that the criteria set forth above will be effective until 90 days from the date on which clear and complete guidelines on the matter are issued.

JOHN P. SIMPSON

John P. Simpson

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

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Tex Regs

51302

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 5 1984

REFER TO
CLA-2 CO:R:CV:G
074992 PR

[redacted]

Dear [redacted]

This is in reply to your letter of September 26, 1984, concerning the quota status of garments imported from Mexico. The merchandise has been made from Italian fabric which was cut into garment parts in the United States after importation under item 864.05, Tariff Schedule of the United States (TSUS) - - temporary importation under bond. The garment parts were then sent to Mexico to be assembled into completed articles. You believe that under interim Section 12.130, Customs Regulations, T.D. 84-171, the completed garments are products of the United States and, therefore, not subject to Mexican quota restraints.

While the assembly in Mexico is an item 807.00, TSUS, type of situation, the merchandise is precluded from 807 treatment by Headnote 1(d), Subpart 1B, Schedule 8, TSUS.

The proviso in Section 12.130(a)(2) that the rule of origin in that section does not change the "foreign article" status of textiles and textile products under Headnote 2, Part 1, Schedule 8, TSUS, was inserted into the new regulation to ensure that there is no confusion about the country of origin for textile restraint purposes in 807 type situations where imported merchandise may, without the application of Headnote 2, be considered a product of the United States and, therefore, not be subject to the textile restraint program.

The background material in T.D. 84-171 clearly states that the purpose of the new regulations is to prevent circumvention or frustration of various multilateral and bilateral agreements to which the United States is a party. The negotiations for those agreements have continually recognized the existence of 807 type operations and the limits negotiated have been based on and are intended to cover that trade. The intent of the President in issuing E.O. 12475, the authority on which the new regulations is predicated, was to insure that the bilateral agreements were effectuated consistent with those negotiations. To interpret the regulations in the manner you suggest would frustrate the express intent of the negotiated agreements.

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Accordingly, it is the position of the Customs Service that, under the factual situation described above, the proviso in Section 12.130(a)(2) operates to confer Mexican origin on the subject merchandise for quota and visa purposes.

Sincerely,

Margaret M. O'Rourke

for Robert P. Schaffer
Assistant Commissioner
(Commercial Operations)

079992

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

08 JAN 1985

CLA-2:CO:R:CV:G
075017 PR

[redacted]

Dear [redacted]

This is in reply to your letter of October 3, 1984, on behalf of [redacted], concerning the country of origin for tariff purposes of certain sweaters.

Three factual situations were presented. In each of the factual situations the yarns from which the sweaters are knit originated in a country not otherwise involved in the manufacture of the sweaters.

In the first factual situation, the front panel of the sweater is knit in China while the rest of the manufacturing or processing operations are performed in Hong Kong. In the second factual situation, the back panel and sleeves are knit in China while the rest of the manufacturing and processing operations are performed in Hong Kong. In the third factual situation, the front and back panels are knit in China while the sleeves, collar, and accessories are knit in Hong Kong and the rest of the processing on the sweaters is also performed in Hong Kong. In this last set of facts, we assume that the sleeves are long sleeves and that the collar is a major portion of the garment.

Pursuant to interim section 12.130, Customs Regulations, which is currently under review, under all three factual situations, the sweaters, when imported into the United States, would be considered to be products of Hong Kong and would require a Hong Kong visa or export license.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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G12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JAN 10 1985

REFER TO
CLA-2:CO:R:CV:G
075190 PR

Philip S. Gallas, Esq.
Mandel & Grunfeld
2000 L Street, N.W.
Washington, D.C. 20036

Dear Mr. Gallas:

This is in reply to your four requests of November 8, 1984, on behalf of Crystal Knitters, concerning the country of origin of certain sweaters. Each of the requests involves similar but differing factual circumstances concerning the manufacture of sweaters. In each of the factual circumstances presented, either a back panel or a front panel or one of those two panels and two sleeves are knit in China from yarn produced in Taiwan. The rest of the garment is knit in Hong Kong also from yarn produced in Taiwan. All other stages in the manufacturing process of the subject sweaters occurs in Hong Kong.

Under the facts as presented, pursuant to interim section 12.130, Customs Regulations, which is currently under review, Hong Kong would be the country of origin of the subject sweaters in each of the factual circumstances described. Accordingly, since the merchandise is a product of Hong Kong, it would require a Hong Kong visa or export license upon its importation into the United States.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

G13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 27 1984

CLA-2:CO:R:CV:G
074412 PR

Gilbert Lee Sandler, Esq.
Sandler & Travis, P.A.
Rivergate Plaza
444 Brickell Avenue
Miami, Florida 33131

Dear Mr. Sandler:

This is in reply to a letter dated June 8, 1984, from your client, Buckeye Cellulose Inc., and further submissions by you on their behalf, concerning the tariff classification of certain materials to be used in the manufacture of disposable hospital articles. Our ruling on the matter is enclosed.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 27 1988

REFER TO
CLA-2:CO:R:CV:G
074412 PR

074412

This ruling concerns the tariff classification of certain materials to be used in the manufacture of disposable hospital articles.

ISSUE:

The issue presented is whether the subject merchandise is classifiable (1) as a textile fabric for tariff purposes under the provision for other textile fabrics, including laminated fabrics, not specially provided for, of man-made fibers, in item 359.50, Tariff Schedules of the United States (TSUS), or (2) in Schedule 2, TSUS, as either reinforced paper, in item 253.35, TSUS, or as an article of reinforced paper in item 256.87, TSUS, or (3) as an article of textile materials not specially provided for, in item 389.62, TSUS.

FACTS:

The merchandise in question will be used to make disposable surgical drapes and surgical gowns. A number of samples were submitted to Customs. Each of the samples consists of multi-layers, with one layer being common to all samples. That one layer itself consists of two layers-- a layer of wood pulp fiber tissue paper which appears to have been made on an unmodified paper making machine and a layer of spun bonded man-made fibers. Those two layers are bonded or laminated together to form reinforced paper. Most of the

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samples are made of three distinct layers of materials: (1) the layer of reinforced paper, (2) a layer of plastic film, and (3) a spun bonded layer of nonwoven man-made fibers. Except for one sample, all the numerous samples submitted of these three-layer materials have the layers joined in a similar manner. The film and the nonwoven fabric are joined to the reinforced paper by thin parallel lines of adhesive, approximately two inches apart. Between the lines of adhesive there is no bonding or joining of the three distinct layers. One three-layer material appears to be slightly different than the others in that the plastic film appears to be lightly laminated entirely to the reinforced paper while the nonwoven fabric is joined to that combination in the same manner as the other samples. A sample of a two-layer material was also submitted. That sample consists of a layer of reinforced paper and a layer of man-made fiber nonwoven spun bonded fabric. These two layers are also joined by lines of adhesive at two-inch intervals.

LAW AND ANALYSIS:

In order to be classifiable in Schedule 3, TSUS (item 359.50 or item 389.62), the merchandise must either fall within the definition of the term "textile materials," as defined in Headnote 2, Schedule 3, TSUS, or be an article in chief value of a "textile material."

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Here, since the competing provisions include reinforced paper or articles of reinforced paper, the textile layer in the reinforced paper portion of the materials, which causes that paper to be "reinforced paper," cannot be used to justify the classification of the merchandise as a textile material. It is an integral part of the reinforced paper and is attributable thereto for all purposes.

To justify classification in item 359.50, reliance must be placed on the independent spun bonded man-made fiber fabric which is joined to the reinforced paper by the parallel lines of adhesive. In order for the spun bonded layer to cause the entire material to be considered a textile material, it is necessary that it be "laminated" to the other layers. Otherwise the combination of the various layers of materials forming the single material would not fall within the purview of Headnote 2, Schedule 3. However, the court has ruled in C. J. Tower & Sons of Buffalo, Inc. v. United States, 62 Cust. Ct. 643, C.D. 3840 (1969), that the word "laminating" means the bringing together of two layers into permanent union so that the final product will be an integral article, and the word "laminated" means composed of layers of firmly united materials. In applying those definitions to the subject merchandise, it is clear that a textile fabric which is merely attached at two inch intervals to other layers of material cannot be said to have been laminated to those materials. Accordingly, the subject merchandise is not a textile material within the purview of Headnote 2, Schedule 3.

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The next step in determining the classification of the subject merchandise is to ascertain whether the combination of the layer of reinforced paper with additional layers of material will cause the entire composite to be considered reinforced paper. Customs ruled on November 1, 1974, 036036, and on July 21, 1981, 065674, that reinforced paper could consist of one or two layers of tissue paper, a layer of textile fabric, and a layer of plastic film. However, while not clear in the earlier ruling, the later ruling expressly states that all the layers were present when the reinforced paper came into existence. The situation involving the separate existence of a layer of reinforced paper which is combined, but not laminated, with layers of other materials has not, to our knowledge, been ruled upon.

It is a cardinal rule of statutory construction that tariff acts are drafted according to the meaning given their terms by the trade and commerce of this country. Meyer & Lange v. United States, 6 Ct. Cust. Appls. 181, TD 35436 (1915). In order to establish a commercial designation of a tariff term, it must be shown that the term has a meaning which is general (extending over the entire country), definite (certain of understanding), and uniform (the same everywhere in the country). Rohm & Haas Co. v. United States, 5 C.I.T. 218 (1983). In this regard, information received by Customs has satisfied us that that the subject merchandise is not generally and uniformly known in the trade and commerce of this country as "reinforced paper."

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074412

Since the subject merchandise is neither a textile material nor reinforced paper, but is comprised of components of both, the subject material is classifable according to its component material of chief value. Even if the merchandise is in chief value of the partially attached man-made fiber spun bonded fabric, it would not be classifiable in item 359.50 since that provision provides for textile fabrics. The subject merchandise consists of a textile fabric combined with a reinforced paper layer and, in most instances, a layer of sheet plastics material. Since these layers are not firmly united and, therefore, are not "laminated," the materials do not form a "textile fabric."

HOLDING:

The subject merchandise, assuming it is not in chief value of plastics, is classifiable, if in chief value of the reinforced paper (paper tissue plus textile nonwoven) layer, under the provision for other articles of reinforced paper not specially provided for in item 256.87, TSUS, or, if in chief value of the partially attached spun bonded fabric, under the provision for other articles of textile materials not specially provided for, of man-made fibers, in item 389.62, TSUS. Surgical drapes and gowns made in whole or in part of the subject material are also classifiable according to their component material of chief value. However, without a

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detailed cost breakdown and samples in their condition as imported, we are unable to rule on their tariff status.

Harvey B. Fox
Director, Classification
and Value Division

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074412

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DEC 7 1984

REFER TO

CLA-2:CO:R:CV:G
075329 PR

[redacted]

Dear [redacted]

This is in reply to your letter of December 3, 1984, on behalf of [redacted], concerning the country of origin of certain sweaters.

According to your submission, 66,000 sweaters were contracted for prior to August 3, 1984. Subsequent to that date, the contract was modified to provide for a reduction of 18,000 sweaters, to 48,000 sweaters, but with a redistribution of the style numbers so that the contract price remained approximately the same. The sweater panels were knit in China and exported to Hong Kong prior to October 31, 1984. Sufficient documentation has been submitted to support all of the above assertions.

Under interim Section 12.130, Customs Regulations, the assembly in Hong Kong of sweater parts knit in China would not change the country of origin of those parts for quota, visa, and export license requirements. However, under a limited exception to that regulation, published in the August 29, 1984, Federal Register, section 12.130 is not applicable to merchandise contracted for in writing prior to August 3, 1984, and exported from the country of origin, as defined in that regulation, prior to October 31, 1984. Merchandise which qualifies for the exception is subject to the rules of origin in effect prior to September 7, 1984, the effective date of section 12.130. Under the origin rules applicable prior to September 7, the assembly of all the major panels of a sweater was sufficient to change the country of origin of the sweaters from the country of knitting to the country of assembly.

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____ NO

Accordingly, if individual unattached sweater panels, a fact which is not made clear in your submission, were shipped from China to Hong Kong for completion into finished sweaters, under the limited exception to interim section 12.130, the sweaters which are the subject of your inquiry would be considered a product of Hong Kong for quota, visa, and export license purposes.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

075329

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A11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUN 18 1986

REFER TO
CLA-2 CO:R:CV:G
075539 JGH

075539

District Director of Customs
Duluth, Minnesota 55802

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3601-4-000288, Classification of a "Crude Butadiene Stream"

The imported commodity entered in April 1984, is described as a crude butadiene stream, a trade level butadiene, which is a fundamental or generic co-production stream from an ethylene cracker, utilizing light gases for feedstocks (i.e., propane, ethane). The stream is said to contain about 71 percent butadiene. A characteristic C_4 stream, it is said, has a butadiene content normally ranging from about 65 to 75 percent. It is claimed that while the butadiene content of such streams in the 55 to 65 percent range are not unknown, with today's methods of ethylene cracking, such streams are not as common as they once were.

The issue is whether this "crude butadiene" is classifiable as butadiene in item 429.50 (now 429.53), TSUS, or as a mixture of two or more organic compounds in item 430.10, TSUS.

Item 429.53 covers butadiene, butylene, ethylene and propylene. In general, Part 2D, Schedule 4, TSUS, covers chemicals which are commercially recognized as having a high degree of purity, not source materials. The Tariff Classification Study notes that technical descriptions of chemicals are used to impact greater certainty.

The Condensed Chemical Dictionary shows four grades of butadiene: technical 98.0 percent; chemically pure-99.7 percent; instrument-99.4 percent; and research-99.8 percent. The Phillips Petroleum Company's "Hydrocarbons Catalog" lists three grades of 1,3 butadiene: research grade-99.8 percent, special purity grade-99.6 percent (99.5 percent minimum)) and ruber grade 99.4 percent (99.0 percent minimum). Thus, all the recognized grades of butadiene are in excess of 98.0 percent. Nowhere is a feedstock stream with a 71 percent butadiene content generally recognized as butadiene. Essentially the imported product is an intermediate product - a hydrocarbon mixture from which high purity butadiene is obtained.

Hydrocarbon or C_4 stream mixtures of the type described herein are classifiable under the provision for mixtures of two or more organic compounds that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas, in item 430.10, TSUS.

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You are directed to deny the protest in full.

A copy of this decision should be furnished to the protestant along with the Form 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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A13

075539

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

075559

JUN 26 1986

REFER TO
CLA-2:CO::CV:G
075559 JGH

District Director of Customs
610 S. Canal Street
Chicago, Illinois 60607

Dear Sir:

Re: Decision on Review of Protest No. 3901-4-000990 on the classification of an Americium-241/beryllium neutron source capsule

The source is described as a three curie americium 241/ beryllium neutron source. It consists of the compound americium oxide with the element beryllium as a diluent, with the isotope produced by the americium oxide being americium 241. The emission of the alpha particles from the radioactive compound bombard the beryllium which in turn releases the neutrons. The americium oxide and beryllium are said to be enclosed in a stainless steel capsule. The specification sheet for the capsule shows that it is specially engineered to fit a specific type of apparatus. The source capsule is said to have many uses, including moisture monitoring, such as soil or coke moisture, hydrocarbon exploration and use as a reference source or in laboratory research. It was classified, therefore, under the provision for parts of apparatus based on the use of radiations from radioactive substances in item 709.66, TSUS.

The petitioner contends that rather than being designed to fit a particular type of equipment with one specific use, the capsule is capable of fitting a variety of apparatus used for different purposes. The source is claimed to be dutiable, therefore, under item 494.50, the provision for usefully radioactive compounds and isotopes.

However, the question is whether the capsule is specially designed to be a part of equipment which cannot function without it. The neutron source is intended to serve a particular end-whether it be to detect hydrocarbons, monitor soil or what - and the particular apparatus which it is designed to be used with has no other function but to facilitate the capsule's end use. Therefore, the capsule is not a mere container, used merely to store, handle or transport radioactive material; rather, the capsule is specially built to be a part of a particular apparatus which is designed to perform a specific function.

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Internal Advice 6/83 (072324) dated January 19, 1984, involving a similar issue is followed. ORR Ruling 200-69 distinguished.

You are directed to deny the protest in full.

A copy of this decision should be furnished to the protestant along with the Form 19 Notice of Action.

Sincerely,

Arthur P. Scheffler

for Harvey B. Fox
Director, Classification
and Value Division

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075559

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 13 1986

REFER TO
CLA-2 CO:R:CV:G
075703 JGB

075703

Mr. Louis Hochstaedter
President
Highcity International
P.O. Box 935
San Anselmo, California 94960

Dear Mr. Hochstaedter:

Your letter of December 10, 1984, requested a ruling on the tariff classification of an angler's jacket, style AJ 4441, and an angler's vest, style AV 4450, to be imported from Taiwan or Korea.

The garments have a woven twill shell that we assume to be in chief value of man-made fibers. The jacket has ribbed knitted wrist bands, waist band and collar. Both the jacket and vest have a partial inner liner of nylon mesh or net and both have zippered frontal openings. The net lining comprises a minor part of the articles. Both jacket and vest also have numerous pockets, attached D-rings, and back pouches designed to contain or secure fly-fishing equipment. All these features appear to be functional.

Both the jacket and vest contain an emergency flotation bladder that can be inflated orally. The bladder for the vest is also adapted for inflation with carbon dioxide compressed in a cartridge. The bladder is polyurethane heat sealable coated nylon. It fits between the shell of the garment and the nylon mesh to provide buoyancy in emergency situations. The instructions panel sewn on the inside of the garment recommends that the bladder be inflated slightly during normal use. Should an emergency arise, the wearer would presumably inflate the device entirely to provide the projected 19 pounds buoyancy.

You suggest that the vest and jacket are properly classified as textile articles, not specially provided for (n.s.p.f.), because they are worn for protective purposes rather than for comfort, decency, or adornment. You also suggest an alternative classification in item 790.3900, Tariff Schedules of the United States Annotated (TSUSA), as inflatable articles n.s.p.f.

This office has repeatedly ruled that the individual characteristics of the imported goods must be considered in making a determination whether the classification is as wearing apparel or articles n.s.p.f. Therefore, articles need not be eliminated from consideration as wearing apparel simply because they provide some protection from hazards or the elements. See Headquarters Ruling Letter (HRL) 073962, January 10, 1985, (IA 144/83).

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The individual characteristics of these samples appear on examination to weigh heavily on the side of wearing apparel. Although you claim that the purpose of the vest or jacket and the reason one buys it is for its inflatable characteristic, we disagree. These samples represent fishing garments of substantial and complex design. The feature of the inflatable inner bladder would surely enhance the desirability of the garments (and add to the cost), but the inflatable potentially life-saving characteristic is not the principal reason one buys a fishing vest or jacket. Fishing vests and jackets of special design have been in use for decades, occupying a special niche in the range of wearing apparel for sport. The instant merchandise corresponds to that class of wearing apparel, notwithstanding that feature that is potentially life-saving.

As to the proposed classification as inflatable articles, the vest or jacket are garments that provide the principal characteristics, not the fact that a detachable part of it inflates. The inflatable article provision embraces articles that are not more than inflatable articles; that is, the term inflatable article describes the whole article and the article is not provided for elsewhere. Neither vest nor jacket meets these standards.

Your letter explains that the logo will be screen printed on the front in the breast area. A screen-printed logo does not constitute ornamentation. The label that appears on one of the samples, an embroidered textile label, does constitute ornamentation. If the textile label does not appear on these garments when imported, the garments would not be considered ornamented.

The garments are classifiable, if identified as being intended exclusively for the wear of men or boys, as other men's or boys' wearing apparel, of man-made fibers, not knit. The jacket is classified in item 381.9530, TSUSA, dutiable at 15 cents per pound plus 27.5 percent ad valorem. This item takes textile category 634. The vest is classified in item 381.9837, dutiable at 4 cents per pound plus 18.8 percent ad valorem. This item takes textile category 659.

As products of Korea or Taiwan, this merchandise is subject to a visa requirement and quota restraints based upon international textile trade agreements. Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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075703

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Your samples are being returned under separate cover.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

071703

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

075820

DATE: JUL 15 1985

FILE: CLA-2:CO:R:CV:G
075820 JGB

TO : District Director of Customs
Chicago, Illinois 60607

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice 4/85, Classification of Pacemaker Programmers. (Your Memorandum of December 17, 1984, MAN-1-02-CV:CH CT 7 JJ)

The request for internal advice was initiated on behalf of the importer by counsel in a letter dated December 3, 1984. Our decision follows:

ISSUE:

Whether two models of pacemaker programmers are classified as an entirety with their pacemakers in item 709.17, Tariff Schedules of the United States (TSUS), the provision for other electro-medical apparatus, and parts thereof: other, dutiable at 4.9 percent ad valorem (1984), or separately in item 712.49, TSUS, as "Electrical measuring, checking, analyzing, or automatically-controlling instruments and apparatus, and parts thereof: other," dutiable at 6.8 percent ad valorem (1984), or otherwise.

This request raises the issue of the applicability of item 960.15, Appendix to the TSUS, to this merchandise. Item 960.15, is a temporary provision that was in effect until August 11, 1985, providing duty-free treatment for articles "specially designed or adapted for the use or benefit of ... physically ... handicapped persons (however provided

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for in Schedules 1 to 7)," subject to the other requirements of the provision.

FACTS:

The pacemaker, model 674, is a unipolar implantable multiprogrammable pulse generator and is a device that has a power supply and electronic circuits that produce a periodic electrical pulse to stimulate the heart. The pacemaker is listed and defined in §870.3610 of Title 21, Code of Federal Regulations (Food and Drug Administration).

The pacemaker programmer is similarly listed in §870.3700 and is defined as a device used to change non-invasively one or more of the electrical operating characteristics of a pacemaker. At issue here are models 600 AV and 700. While both programmers are said to be used to change the rate, amplitude, pulse duration, sensitivity, and refractory period of the pulse generator, the 700 model has a telemetric function permitting the measurement of rate, interval, and pulse duration as well as operating to program the pacemaker. The 700 Model has an alphanumeric printer and an LCD visual display.

Based on the information we have in the file provided by your district, open entries from October 18, 1984 through September 5, 1985 have included articles claimed to be duty-free under item 960.15 that would otherwise be classified in item 709.1705, Tariff Schedules of the United States Annotated (TSUSA), the statistical breakout for pacemakers under the superior heading "Therapeutic

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075820

apparatus". There are also entries for this time period for item 709.1790/960.15, the Schedule 7 provision for "Parts, not specially provided for" of other electro-medical apparatus. There are also entries under item 712.4950/960.15 which we presume to be for the pacemaker programmers.

LAW AND ANALYSIS:

The classification of the pulse generator (pacemaker) itself is not in dispute. The description "Pacemakers" corresponding to the statistical suffix 05 provides for pacemakers for use with the human heart. We know of no other tariff item in which pacemakers are classified. Moreover, the "parts," n.s.p.f., provision is the proper classification for parts of pacemakers. In both instances, there is no more specific provision.

Neither model of programmer is classified in item 712.49, TSUS, because this provision, governed by Headnote 2 to Subpart D, Schedule 7, requires in relevant part that the apparatus be classified in Subpart 2C or item 711.04 to 711.88 inclusive (from Subpart 2D) and "depend on an electrical phenomenon which varies according to the factor to be ascertained" or be "instruments or apparatus for measuring or checking electrical quantities." Neither electronic programmer is classified in the range of provisions mentioned above (therefore excluding it from classification in Subpart D) and the programmers, complex electronic machines, are more than apparatus for measuring electrical quantities.

075820

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Item 712.49, TSUS, is also less specific than item 709.17, TSUS, in that the goods covered by Subpart 2B, a combination of use and eo nomine provisions, must all be used in some form of medicine (general medicine, dentistry, surgery, or veterinary medicine). Goods classified in items 709.15 through 709.27 must further share an electrical characteristic. We must reject item 712.49 when applied to the pacemaker programmers. Even though this item also provides for electronic apparatus with discrete analysis abilities, if we say that it is more specific than medical apparatus, then all such apparatus, whether or not medical, would be classified thereunder. This result would eliminate the rationale for provisions for electro-medical apparatus and conflict with the logic of the organization of the TSUS. General Interpretative Rule 10(c), TSUS. See also Travenol Laboratories v. United States, 83 Cust. Ct. 1, C.D. 4812 (1979), aff'd 67 CCPA 71, C.A.D. 1247 (1980), where the narrow use characteristics of items 709.15 through 709.27 are discussed.

Having ruled out the classification of the programmer in item 712.49, we then classify it in item 709.1720, as other electro-medical apparatus, other (than electro-surgical), other therapeutic apparatus. Because this classification is under the same 5-digit tariff item number as the pacemaker, bearing the same rate of duty, it is unnecessary for us to reach the issue of whether the programmer forms an entirety with the pacemaker.

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075820

The application of item 960.15 to the pacemaker programmer may be resolved by an analysis of the operation of the device itself. The programmer is not ordinarily operated by a patient; it is operated in a medical setting by a physician or trained technican under the supervision of a physician. In that respect its use is analogous to specially designed implantation tools imported with a prosthetic hip replacement system. In our ruling on such a system, Headquarters Ruling Letter 075113, June 20, 1985, we determined that the prosthetic hip joint, the thing implanted, was eligible for duty-free treatment under item 960.15, but the tools required to be used in implantation were excluded from the coverage of item 960.15, because they were used by the physician to accomplish his job and were only remotely related to the handicapped person.

The pacemaker programmers undoubtedly provide some benefit to a person who has a pacemaker implanted in him, but the benefit also runs more directly to the physician or technician who is by means of the programmer able to make the adjustments in the pulse generator indicated by prudent medical practice. In other words, the essential nexus between the apparatus and the person benefitted is missing here. Therefore, we must conclude that the language of the

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075820

statute goes only as far as articles for the use and benefit of chronically handicapped persons and that medical apparatus operated by someone other than the handicapped person, providing only indirect or incidental benefit, is outside the scope of this statute.

HOLDING:

In view of the above, all unliquidated entries of pacemaker programmers as described in this decision should be liquidated as dutiable according to item 709.1720.

A copy of this decision should be provided to the inquirer.

Harvey B. Fox

Harvey B. Fox

075820

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

CLA-2:CO:R:CV:G
075911 JGB

11 JUL 1986

075911

Mr. Louis K. Hochstaedter
President
Highcity International
P.O. Box 1584
Novato, California 94948-1584

Dear Mr. Hochstaedter:

Your letter of March 22, 1985, requests reconsideration of a ruling issued March 5, 1985, from our New York office, file No. 812107. That ruling provided the tariff classification for a waterproof jacket. It also was an information letter, not a ruling, for coveralls, because no sample was provided.

You have since provided this office with specifications and other material related to the coveralls. The direct-mail retailer has provided this office with a sample of the coveralls in a letter dated June 26, 1985. Consequently, we are now able to provide a ruling on the coveralls, as well.

The coveralls, Model FJ-570, are specially designed to incorporate hypothermia protection and personal flotation should the wearer fall into the water. They are said to be designed to be worn over standard work clothing. They are described by the retailer as having the following features: (1) inherently buoyant closed-cell polyvinylchloride foam is designed to provide U.S. Coast Guard (U.S.C.G.) Type III flotation performance and, also, effect the proper flotation angle which will bring the head and upper torso higher out of the water for added hypothermia protection; (2) outer shell fabric is coated and seams are sealed to reduce the flow of water exchange when the wearer is immersed, allowing only the water immediate to the body to attract body heat; (3) take-up straps on wrists and legs, and seal for close fitting hood reduce ingress of cold water and continue to reduce the exchange of water while the wearer is immersed, and (4) zipper and Velcro closure combination from neck to crotch further reduce cold water exchange when the wearer is immersed.

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The coveralls, which substantially cover and protect the body from head to ankles, excluding hands, face, and feet, are said to be designed specifically to meet the U.S.C.G. standards for hypothermia which allow no more than a 1.5 degree Celsius reduction in body temperature in 46 degree to 56 degree Fahrenheit water for one hour, or no more than 8 degree Celsius reduction in body temperature in 46 degree to 56 degree Fahrenheit water for six hours for a person wearing the coveralls over ordinary work clothing. We understand that these tests have been conducted at the Hypothermia Water Safety Institute at the University of Minnesota.

You have provided additional information about personal flotation devices (PFD's), in particular, the standard for buoyant cushions issued by Underwriters Laboratories, which, when addressing the subject of hypothermia, notes, p. 24, that "when operating in cold water consideration should be given to using a coat or jacket style PFD as they cover more of the body than the vest style PFD's." From this information and the remainder of the foregoing, we have concluded that the coveralls would be used, as claimed, as a PFD meeting U.S.C.G. Class III standards for flotation and as protection against hypothermia.

The coveralls would be used by commercial fishermen, offshore rig personnel, construction personnel, barge workers, sportsmen who would be at risk of falling into cold water, and others who would benefit by keeping dry at work or recreation.

The issue for the coverall is whether it is classified as articles of textile material or as wearing apparel.

There is no dispute that the coverall is of textile material. It is constructed of woven nylon. We assume that it is coated or filled with rubber or plastics and that the shell is waterproof. This sample has not been tested by our laboratory, however.

The issue of whether the merchandise is wearing apparel is settled by reference to relevant court decisions. The basic definition for wearing apparel was provided by the Customs Court in its decision in Antonio Pompeo v. United States, 40 Cust. Ct. 362, C.D. 2006 (1958). Pompeo states that wearing apparel includes articles worn by human beings

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for "decency, comfort, or adornment" and does not include articles worn for "protection against the hazards of game, sport, or occupation, or the prevention of injury."

The distinction between providing protection against hazards, as opposed to providing decency and comfort, has been maintained by both the courts and Customs rulings since Pompeo, supra. The court has, however, observed in Admiral Craft Equipment Corp. v. United States, 82 Cust. Ct. 162, 163, C.D. 4796 (1979) that "[a]n important, if not primary, purpose of wearing apparel is protection against the environment," and in so doing, specifically distinguished Pompeo on its facts. Also, more recently, the Court of Appeals for the Federal Circuit in reversing the Court of International Trade noted that "[v]irtually all wearing apparel is to a degree (often a high degree) designed and worn to provide comfort and protection, often for very specific situations." Daw Industries, Inc. v. United States, 1 CAFC 146, 150, 714 F.2d 1140 (1983). Therefore, an article need not be eliminated fro- consideration as wearing apparel simply because it provides some protection from hazards or the elements. The court has refrained from establishing an immutable test for deciding what is included in wearing apparel. Instead, it appears to have recognized a continuum for merchandise providing adornment, comfort, or decency at the wearing apparel end and purely protective gear at the other.

The instant merchandise has few characteristics that are not characteristics of wearing apparel. The similarities are, among others, that it covers the body like wearing apparel to help keep out cold and moisture, or, otherwise stated, to retain heat. It encases the body to permit outdoor work on ships and drilling rigs or ice fishing or any number of physical endeavors outdoors, whether recreational or occupational. It supplants a rain jacket and trousers and rain hat or hood so that the owner of these coveralls would not likely wear those garments if he owned this multi-purpose one. It would also be readily worn and useful to protect one from cold and moisture whether or not worn in the presence of a potential hazard. Therefore, for example, a person going ice fishing might reasonably be expected to ride in a snowmobile some distance wearing these coveralls (where no drowning hazard is present) and then return to the starting point. He would not wear winter garments (such as ski jacket and pants) on the way to the hazard and then take them off at the site of the hazard and put on this protective garment, reversing the process at the conclusion of the potentially hazardous activity.

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The similarity of this merchandise to purely protective articles, or its dissimilarity to wearing apparel, is that it is specially designed to keep a person afloat and somewhat warm in cold water. Ordinary wearing apparel does neither of these things. We also understand that the cost of adding the buoyancy and hypothermia protective features is substantial in that there are additional costs for design, safety testing, and quality control in manufacturing. Such costs would not usually be involved in the manufacturing of ordinary rainwear or winter garments.

When this merchandise is compared with purely protective articles, such as the typical life jacket that is depicted as Type I or Type II in the U.S.C.G. literature you provided, the dissimilarity is readily apparent. The purely protective article provides no decency, comfort or adornment. The instant article, by contrast, satisfies the comfort standards and possibly decency standards as well.

Taking into consideration the characteristics discussed above, we conclude that the instant merchandise has more similarities to wearing apparel than dissimilarities. Also we conclude that the instant merchandise is more dissimilar to purely protective articles than similar to them.

After determining that the instant merchandise is substantially similar to wearing apparel, we examine what appears to be the principal function of the merchandise. Although we have determined that this merchandise does function as wearing apparel, an article which has its principal function as something other than as wearing apparel would not usually be classified in those provisions. In the instant case, this merchandise does not appear to have as its principal function the saving of the life of the wearer during emergencies. The life-saving feature would surely play a major part in the decision to buy this garment in place of a combination of waterproof garments with a life jacket and even a wet suit underneath all of it for hypothermia protection. However, when in regular use, this garment is not so different in its principal function as to be improperly described as wearing apparel. Moreover, in looking at the protective or

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life-saving features, we could not say that they are so prominent in their function, which is different from the function of wearing apparel, that coveralls with these features must be removed from the class or kind of goods used as wearing apparel. Therefore, the coveralls, Model FJ-570, are classified as wearing apparel. Following the standards enunciated in Internal Advice Memoranda Nos. 188/78 and 62/81, the merchandise must be classified according to the component material in chief value. If in chief value of man-made fibers, it would be classified in item 381.9805, TSUSA, dutiable at 4 cents per pound plus 18.8 percent ad valorem. If the value of the polyvinylchloride, the material that creates the buoyancy, exceeds the value of the man-made fiber component, making the merchandise in chief value of rubber or plastics and if the merchandise contains 50 percent or more by weight of man-made fibers, it would be classified in item 772.3140, TSUSA, dutiable at 6.3 percent ad valorem.

The sample provided by the direct-mail retailer will be returned to them.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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C1

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

13 JUN 1985

REFER TO
CLA-2 CO:R:CV:G
075913 JGB

075913

Mr. Louis K. Hochstaedter
President
Highcity International
P.O. Box 935
San Anselmo, California 94960

Dear Mr. Hochstaedter:

Re: PFDC 852203

Your letter of March 22, 1985, requests a ruling on the tariff classification of a woven nylon shell which when filled with polyvinyl chloride buoyant material will serve as a personal flotation device.

The submitted sample has man-made fiber straps sewn on the outside extending about 8 inches on either side forming loops enabling it to be attached to the body. The shell measures 15-1/2 inches by 15 inches by 2-1/2 inches. One side is open for the insertion of the buoyant material which will be inserted after importation.

A heat transfer plastic decal logo appears on the outside of a panel on the cover. This type of decal is considered to be an applique and therefore ornamentation.

This article when complete would be worn about the person only during an emergency to help protect against drowning. Moreover, it does not have any characteristics commonly associated with wearing apparel, nor does it have any use for comfort, decency or adornment. Therefore, it would not be considered wearing apparel.

This sample is classifiable under the provision for articles, not specially provided for, of textile materials, ornamented, of man-made fibers, in item 386.1343, Tariff Schedules of the United States Annotated, dutiable at 12.5 percent ad valorem. Goods classified in this item are also eligible for duty-free treatment if products of beneficiary countries of the Generalized System of Preferences.

Your sample will be returned under separate cover.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

30 JUN 1986

CLA-2 CO:R:CV:G
075934 JLV

District Director of Customs
610 South Canal Street
Chicago, Illinios 60607

Re: Decision on Protest and Application for Further Review of Protest No. 3901-4-001167, Dated November 8, 1984

Dear Sir:

The above protest and application for further review were timely filed against your action in which you classified certain fasteners under the provision for wood screws in item 646.49, Tariff Schedules of the United States (TSUS). The fasteners were entered at Chicago on Entry No. 00647505, dated December 20, 1983, liquidated on August 10, 1984. This ruling is our decision on the classification issue.

FACTS:

The merchandise at issue is a hex head, threaded fastener described by the protestant as a hex head drive spike for use in railway track contruction. The shank is cylindrical with a threaded diameter of approximately 1 inch. The diameter of unthreaded shank is slightly smaller than the diameter of the threaded part. The end of the fastener is chamfered.

In an affidavit submitted by the protestant, the use of the fastener is described (items 4 and 5):

> 4. The Hex Head Drive Spike is used in railway track construction to secure track and ties. The Hex Head Drive Spike is driven with a hammer, mallet or airgun into pre-formed holes in concrete ties and tie plates. The bolt head secures the rail to the ties. The hole in the concrete tie is larger in diameter than the Hex Head Drive Spike and is lined with a tube containing an epoxy substance. When the Hex Head

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Drive Spike is driven into the oversize hole, the epoxy substance is released, forming a seal bonding the bolt and ties and securing the track and ties.

5. The head on the Hex Head Drive Spike is used solely for removal of the bolt and is not used for setting the bolt in place.

The protest also states that the fastener is known in the trade as a bolt or as a spike and not as a screw.

It is your position that on the basis of prior administrative rulings, the threaded fasteners are wood screws for tariff purposes.

ISSUE:

Whether the imported fastener is more specifically described as a screw, and, if so, whether it is principally used in wood?

LAW AND ANALYSIS:

Although the protestant has offered an affidavit as evidence that the hex head fastener is known in the trade as a bolt or spike, there is no other evidence that would support this statement. No trade literature or other trade description as to what is a bolt or spike has been offered as evidence in support of classification as a bolt or spike.

The hex head is not conclusive evidence for classification as a bolt. In this case, the threaded fastener cannot be used with a nut or similar article. The threading and cylindrical shank are more typical of the coarse threading and shape used in wood screws for predrilled holes. The chamfered point is also characteristic of such

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screws. Finally, the fastener appears to be the type that is torqued by the head. Therefore classification as a bolt is clearly inappropriate.

Protestant describes the use of this fastener in paragraph 4 of the affidavit, supra. However, unlike spikes with corrugations (not spiral threading) and similar ridges, this fastener apears to have a significant feature that makes it more than a fastener that is set by being driven. The threading and hex head are evidence of use as a screw. Furthermore, the fastener is similar to articles known as drive screws which are driven into place but are either torqued to specification or removed by torque applied to the head. In a ruling letter of December 22, 1969 (file MCS 424.4M), we classified a hexagonal head threaded spike with a tapered chamfered point as a wood screw. The fastener in that ruling was generally used to fasten rails to wooden ties.

The threaded fastener is within the common meaning of the term screw. It also has the characteristic of a screw used in wood. Therefore, absent convincing evidence to the contrary, we classify the hex head threaded fastener as a wood screw rather than as a spike.

Protestant cites H. T. Kennedy Co., Inc. v. United States, 32 Cust. Ct. 124, C.D. 1593 (1954), and C. S. Emery & Co. v. United States, 64 Treas. Dec. 1135, Abs. 26313, as controlling However, in H. T. Kennedy, supra, the "common meaning" of the term "spike" was discussed as it applied to a

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U-shaped article and not in the context of distinguishing between a spike and a screw for tariff purposes. In C. S. Emery, supra, the "screw spike" was a spirally cut fastener with a beveled head that was not suitable for torquing with a tool. Therefore, these judicial opinions are not controlling.

HOLDING:

The hex head threaded fastener is more specifically described as a screw for tariff purposes. Furthermore, it is the type of screw that is principally used in wood. Therefore, it is classified under the provision for wood screws of iron or steel in item 646.49, TSUS. You should deny the protest in full.

A copy of this decision should be given to the protestant at the time notice of action is given on Customs Form 19.

Sincerely,

Arthur P. Schaffer
For Harvey B. Fox
Director, Classification
and Value Division

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075934

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

30 JUN 1986

REFER TO

CLA-2 CO:R:CV:G
076143 JGB
813317

076143

Mr. Luc C. Pamerleau
Market Entry Section
USA Marketing Division
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario
Canada, K1A 0G2

Dear Mr. Pamerleau:

Re: UTH-0877
6506-USA/6

This letter is in response to your letter of April 4, 1985, requesting the reconsideration of Headquarters Ruling Letter (HRL) 075551, issued February 26, 1985, New York file 811761. Your letter was written on behalf of Software Research Corporation, 3939 Quadra Street, Victoria, British Columbia, Canada V8X 1J5. Our ruling letter pertained to the tariff classification of a Visual Speech Aid (VSA). The VSA consists of: (1) an interface card for installation into the peripheral slot of an Apple II Plus or Apple IIe Microcomputer; (2) a program diskette; (3) a data diskette, and (4) a microphone.

Our ruling held that the interface card was classified in item 676.52, Tariff Schedules of the United States (TSUS), and was also eligible for duty-free treatment under the temporary item 960.15, Appendix to the TSUS. We also held that the microphone was classified in item 684.70, TSUS, and that it was not eligible for duty-free treatment under item 960.15. Your letter asks for a reconsideration of our decision on the eligibility of the microphone for item 960.15. Upon reconsideration of that ruling and the additional information presented, we have concluded that the initial ruling is correct as issued. A copy of HRL 075551 is enclosed for your reference.

Our rationale for determining that the microphone and cord are not eligible for item 960.15, is that the microphone's identity has not been substantially altered in its "adaptation" for the use or benefit of other physically handicapped persons. We have examined catalogues of nationwide retailers of electronic articles and have determined that a variety of low-cost plugs and jacks are readily available for microphones and similar articles. This information leads to our determination that the jack modification to the microphone enabling the microphone cord to be connected with the interface card is an insignificant adaptation which, by itself,

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does not qualify the microphone for duty-free entry under item 960.15. See T.D. 84-17 for a discussion of insignificant adaptations. Moreover, the microphone does not form an entirety with the interface card, even though they may be imported and used together, because, as noted above, the identity and characteristics of the microphone are never lost, submerged or obscured when joined with the interface card or the microcomputer.

The cord restrainer for the microphone card is no more than a safety feature that would provide protection to any person who might pull on the cord and damage the electronic device. This restrainer is therefore unrelated to the physically handicapped as defined in the tariff provision.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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076143

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

25 JUL 1986

REFER TO
CLA-2 CO:R:CV:G
076342 JLV

District Director of Customs
P.O. Box 3130
Laredo, Texas 78044

Re: Decision on Request for Internal Advice 85-28

Dear Sir:

In a memorandum of February 21, 1985, you requested advice on whether galvanization of steel sheets constitutes a substantial transformation. It is your opinion that uncoated steel sheets and galvanized steel sheets are not commercially interchangeable, are different in appearance and name, and, therefore, the processing of steel sheets into galvanized steel sheets is a substantial transformation. This ruling is our decision on the issue.

FACTS:

The merchandise is steel sheet, in coil, produced in Brazil and galvanized in Mexico. There are two principal types of processes that constitute galvanizing of steel sheet: electrogalvanizing and hot dip galvanizing. The nature of the steel sheet and the intended applications determine, in part, the galvanizing process.

Other types of galvanizing are: application of zinc by a mechanical process similar to peening; coating with a zinc-rich paint; and spraying molten zinc onto the steel product.

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Galvanization gives a protective layer of corrosion-resistant metal to carbon steel. Hot dip galvanizing gives a more durable layer of protection because it does not simply coat the surface or deposit zinc on the surface. It involves a molecular bonding by the formation of a thin layer of zinc-steel alloy between the layers of steel and zinc. This interpenetration of molecules establishes a durable bond for the protective surface.

The process for hot dip galvanizing involves the following: clean and descale; pass through molten zinc; trim excess zinc; and chromate. If the process is a continuous hot dip process, the steel sheet is annealed after cleaning. It is then immersed into the molten zinc.

ISSUE:

Is galvanization of steel sheet a substantial transformation such that the origin of the galvanized sheet is that of the country in which it is galvanized?

LAW AND ANALYSIS:

In a ruling dated November 5, 1982, affirmed in a ruling of May 20, 1983, we held that electrogalvanizing and temper rolling of cold rolled steel sheet did not constitute a substantial transformation. A substantial transformation requires that an article, subjected to a manufacturing or processing operation, be transformed into a new and

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different article having a distinctive name, character, or use. Anheuser-Busch Brewing Association v. United States, 27 U.S. 556 (1908); Uniroyal, Inc. v. United States, 3 CIT 220 (1982); National Juice Products Association, v. United States, ___ CIT ___ (Slip Op. 86-13, decided January 30, 1986).

The essential article, the nature of which remains constant through the various stages of finishing, is the cold rolled carbon steel sheet. Galvanization does not change the inherent name of steel sheet; it does not change the chemical composition that gives steel sheet its structural quality; nor does it change the use of steel sheet as a material in the production of numerous articles. The fact that galvanization is performed by a processor, rather than a user, to provide a protective finish to steel sheet is not determinative. See Uniroyal, Inc. and National Juice, supra, in which the court ruled on products that were processed from producer's goods to consumer's goods. In both cases the court held that the products, shoe uppers attached to soles and orange juice concentrate reconstituted as juice, respectively, were not substantially transformed.

Galvanization increases the market value of the product by a wide range of percentages, varying, for example, from 15 percent to 66 percent of the cost of the steel sheet.

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The cost of the zinc material, however, is the most costly element in the galvanization process. It accounts for approximately 50 percent of the added cost. Furthermore, the processing operation by which zinc is applied to steel is significantly less complex and less costly than the process by which the steel sheet is formed. Because galvanization does not materially alter the structural nature of the product as cold rolled steel sheet, the costs added by galvanization do not justify a conclusion that there is a substantial transformation.

Galvanization gives a distinctive surface character and appearance. But surface finishing in this case does not change the name or essential character of the article as flat rolled carbon steel sheet. The processing is an enhancement or finishing of an identifiable product. It is not a change in the name or character.

Galvanized steel sheet is often used in applications different from those in which ungalvanized sheet is used. However, the underlying structural use as steel sheet, whether or not galvanized, is an interchangeable use. The fact that a particular industry requires a specific protective surface on steel sheet is not conclusive evidence of "new" use. It only recognizes that steel sheet is finished with different coatings or surface treatments in order to protect an article more adequately from

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corrosion. Therefore, although galvanization enjoys a recognized status in many user-applications, it is our position that the use of steel, as a material, has not been changed by virtue of the protective coating or surface.

HOLDING:

Galvanization of cold rolled steel sheets, whether by electrogalvanization or hot dip galvanization, is not a substantial transformation of the steel sheet.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 30 1985

REFER TO
CLA-2 CO:R:CV:G
076369 JAS

076369

District Director of Customs
40 South Gay Street
Baltimore, Maryland 21202

Dear Sir:

This is our decision on Application for Further Review of Protest No. 1303-4-000195, dated June 22, 1984. It covers consumption entries 150176, 151869 and 152115 dated, respectively, March 11, April 20, and April 27, 1982. The entries were liquidated April 20, 1984. At issue is the classification of certain steel plates, U-shaped profiles, angles, channels and I beams from Austria.

FACTS:

The subject components are used in the construction of tanks which hold and store processed sunflower seeds and their oil. Counsel for protestant maintains that all components necessary to make up a complete storage/holding tank arrived in each of the three shipments. Each component is said to have been drilled, shaped and formed in such a way that on-site assembly requires only that the components be fitted together and welded to form a complete tank.

Classification under the provision for tanks and other containers, of metal, having a capacity over 75 gallons and ordinarily installed as fixtures in industrial plants or elsewhere for storage or manufacturing use, in item 640.35, Tariff Schedules of the United States (TSUS), is therefore felt to be appropriate. Counsel advances an alternative classification under the provision for columns, pillars, posts, beams, girders and similar structural units, other, not in part of alloy iron or steel, in item 652.94, TSUS. This is because the various components are said to

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support the vertical loads or stresses imposed by conveyors, bridges, walkways and platforms situated on top of and surrounding the tanks, as well as diffusing downward the weight of the tanks' contents.

You have liquidated the subject entries under the provision for other articles of iron or steel, not coated or plated with precious metal, in item 657.25, TSUS.

ISSUE:

(1) Does each shipment/entry contain components necessary to comprise a complete or substantially complete tank, and if not, (2) has classification in item 652.94 been substantiated?

LAW AND ANALYSIS:

With respect to the first issue, an affidavit, dated May 21, 1986, from the sunflower seed processing plant's technical director, attests to the fact that the holding/storage tanks were shipped as complete, unassembled units, although in some instances either additional components were present or a few minor parts omitted. None of the entry documents are present in the protest file so that we are unable to independently verify this fact. Submitted packing lists and shippers' invoices do not significantly clarify the issue.

If your review of the subject entries reveals that all the essential components necessary to the completion of a tank otherwise meeting the requirements of item 640.35, TSUS, were present in any or all of the protested entries, with such components arriving in the same shipment, classification in item 640.35, TSUS, would be appropriate. Replacement or additional parts or components in each entry would be classified and assessed with duty under that tariff provision you find to most narrowly

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and specifically describe them, or in item 657.25, as appropriate. Our rulings 034529, dated July 24, 1974, and 041677, dated January 6, 1976, are enclosed for your reference.

If your review reveals that minor parts or components in each entry were omitted, classification in item 640.35 would still be warranted provided the components comprise a substantially complete tank, in accordance with General Interpretative Rule 10(h), TSUS. See Daisy-Heddon Div. Victor Comptometer Corp. v. United States, C.D. 4765, aff'd. C.A.D. 1228 (1979).

076369

With respect to the second issue, that is, if components for less than a substantially complete tank are found in any or all of the entries, the merits of an item 652.94, TSUS, classification must be addressed. In accordance with J. Ray McDermott & Co., Inc. v. United States, 69 Cust. Ct. 197, C.D. 4394 (1972), and the Protest Review Decision of November 7, 1983 (072156), copy enclosed, the structural units classifiable in item 652.94 need not necessarily support vertical concentrated loads in the strictest and most technical sense, but must transmit stresses or loads in a vertical direction. While some of the structural components in each shipment may support apparatus atop or alongside the tanks, or even the weight of the tanks and their contents, these units or components are not identified in each shipment. We conclude that there is insufficient evidence in the record to show which, if any, of the components in the protested entries represent structural units ejusdem generis with the exemplars in item 652.94, TSUS. Moreover, classification as "parts" of structures, in item 653.00, TSUS, would be precluded because there is no evidence as to the chief use of the various components, as required by General Interpretative Rule 10(ij), TSUS.

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Possibly applicable provisions in Schedule 6, Part 2, Subpart B, TSUS, were also considered. However, there is no evidence in the protest file to establish conformity with the Subpart B, Headnote 3(g) or 3(j) definitions for Plates and sheets or Angles, shapes and sections, respectively.

HOLDING:

To the extent that you find classification in item 640.30, TSUS, to be appropriate, the protest should be allowed. Otherwise, the protest should be disposed of in accordance with the views herein expressed. A copy of this decision should be attached to the Form 19, Notice of Action, to satisfy the notice requirements of section 174.30(a), Customs Regulations.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

Enclosures

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016561

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

30 JUN 1986

REFER TO
CLA-2 CO:R:CV:G
076371 JLF

076371

District Director of Customs
Houston, Texas 77057-3012

Dear Sir:

Re: Decision on Application for Further Review of Protest Nos. 5301-3-000617.

This protest was filed against your decision in the liquidation on July 23, 1983, of entry No. 81-383513-2 dated September 21, 1981. The entry covers a shipment of catalytic naphtha, said to be used only as a gasoline blending stock.

At issue is whether the catalytic naphtha from the Netherlands is properly classifiable as naphtha in item 475.35, Tariff Schedules of the United States (TSUS), or as a benzenoid mixture in item 407.16, TSUS.

Customs maintains that the catalytic naphtha imported by the petitioner contains dutiable alkylbenzenes which have a benzenoid structure that are synthetically produced during the catalytic cracking process. The importer maintains that catalytic cracking is not a synthesis process. However, during the cracking process, large molecules break down into fragments which reassociate to form molecules containing a benzenoid structure. This benzenoid structure appears only after the catalytic cracking and is produced by chemical reaction. This is a synthesis process.

The importer also maintains that even if the dutiable benzenoids exist as a result of the synthesis process, the benzenoids are de minimis. Of the 7.2 percent dutiable benzenoids that are synthetically produced, the importer claims that 5.3 percent are undesirable because they produce engine deposits. However, the dutiable benzenoids present help boost octane and the importer does not show that the problem of engine deposits outweighs the positive effect of octane enhancement. Customs maintains its position that the 7.2 percent of dutiable benzenoid compounds resulting from the synthesis do enhance the product for use as a blend stock and is not considered de minimis.

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Headnote 1, Part 10 (the petroleum section) states that any product described in the petroleum section and also in the benzenoid schedule is classifiable in the latter, except for motor fuel, fuel oils, lubricating oils and greases. Naphtha is not included in that exception, and, therefore, naphtha containing more than a de minimis amount of synthetic benzenoids would be classifiable as a benzenoid mixture under 407.16, TSUS. A 7.2 percent benzenoid (alkylbenzene) content is far in excess of a de minimis amount.

Therefore, the catalytic naphtha is properly classifiable under the provision for benzenoid mixtures in item 407.16, TSUS.

You should deny the protest. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification and
Value Division

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076371

DS

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

CLA-2:CO:R:CV:G
076411 JGB
813660

31 JUL 1986

076411

Mr. James Tang
Hecny Brokerage Services, Inc.
10804 S. La Cienga Blvd.
Inglewood, California 90304

Dear Mr. Tang:

Your letter of May 6, 1985 requested a ruling on the tariff classification of a garment that you identify as a 100 percent cotton corduroy short-overall. You asked whether this garment was classified under item 379.6430, Tariff Schedules of the United States Annotated (TSUSA), now item 381.6530, TSUSA.

The sample you provided is a pair of woven cotton corduroy shorts with a bib. The shorts have two front pockets and a rear pocket. The waistband of the shorts is elasticized on the rear portion and has two tunnel-type belt loops on the front that are formed by an upward extension of the front pockets. A bib with a front and back panel has been inserted under the waistband on the inside and stitched to the shorts; two cloth straps, stitched to the back panel, are designed to act as suspenders by passing through two buttonholes on the front panel. The "suspenders" are to be secured and adjusted to the size of the wearer by knotting.

The bib portion of the garment is composed of a lighter weight corduroy than the shorts and is crudely finished. The ends of the suspender-like straps are knotted at the buttonholes at the bib and are so poorly finished that, with the slightest use, they will unravel. If this garment were worn with the bib portion, the waistband would flop over because the tension from the suspenders coupled with the weight of the garment would be focussed in a spot about 1-1/2 inch below the waist band. In short, the bib addition to this garment is an unusual element having no apparent actual utility nor commercial reality. The bib feature is obviously not intended to be used with the shorts. Rather, the purchaser of the garment would cut off the bib at its attachment at the inner bottom of the waistband and throw it away. The bib feature appears to be useful only to try to enable the garment to be classified under a tariff provision that fails to describe it accurately.

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This office has previously ruled on garments that have unrealistic features oddly attached.

In our ruling on a sweater and panty-like garment attached by a single yarn, we determined that the two pieces together were not known in the commerce of the United States nor were they used as a single garment. Headquarters Ruling Letter 073219, February 29, 1984. The instant sample may be subjected to the same test. Is this bibbed pair of corduroy shorts known in the commerce of the United States in the form it appears in the sample? Are the bib and the shorts worn together? We must answer both questions in the negative because these features do not present an identity beyond a pair of shorts with a superfluous construction of material attached in the wrong place, even for a bib.

In another ruling from Customs Headquarters, file SPE-2-07-O:B: SR, March 14, 1978, the inquirer presented women's blue jeans to which had been attached a bib in front and back purporting to make them overalls.

In that ruling it was stated, "[w]hile admittedly, goods are classified in the condition as imported, the sample garment in question cannot be regarded as a commercial entity in its imported condition." In that case the bib was insecurely stitched to the waistband and was left in an unfinished condition. Here the bib is more or less unfinished but is sewn semi-securely in the wrong place for a real bib. The principle of the March 14, 1978 ruling remains. Customs must classify goods according to what the goods are in reality meant to be. Any feature of a garment that has no commercial significance, that is meant to be removed by the purchaser, and that is obviously designed to skew trade reporting statistics and textile quota enforcement efforts, cannot form the basis of a correct tariff classification.

It is worth noting that this ruling does not affect in any way the general principle of classifying goods in their condition as imported. See Dwight v. Merritt, 140 U.S. 213, 219 (1890); Falk v. Robertson, 137 U.S. 225, 232 (1890). However, the reality of the identity of the goods being entered is an inherent part of arriving at the correct classification. Customs has no interest in judging whether a

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076411

given fashion will meet commercial success or whether a given garment is tasteful. The obligation is rather the correct application of the tariff provisions to goods presented for entry.

The shorts are classified in item 381.6210, TSUSA, the provision for "Other men's and boys' wearing apparel, not ornamented: Of cotton: Not knit: Other: Other: Suits, trousers, slacks and shorts, Shorts," dutiable at 16.5 percent ad valorem. The bib portion, having no recognizable value as wearing apparel, is classified in item 386.20, TSUS, the provision for "Articles not specially provided for, of textile materials: Other articles, not ornamented: Of cotton: Pile or tufted construction: Corduroy," dutiable at 20 percent ad valorem.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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076411

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 18 1986

REFER TO
CIA-2 CO:R:CV:G
076435 jlj

076435

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-011820

This protest was filed against your decision in the liquidation of entry 84-162800-7 dated January 13, 1984, covering vinyl inflatable boats produced in Taiwan.

This ruling concerns the correct classification of the vinyl inflatable boats.

FACTS:

The merchandise at issue is three polyvinyl chloride (PVC) inflatable boats. The packing and the advertising claim that the model with bow number 604 (Model SKU 04953) is for use by one person, number 784 (Model SKU 04661) by two people, and number 955 (Model SKU 04359) by three people. The Customs laboratory in New York verified that the thickness of the PVC in the three boats is close to that claimed on the packaging: 18 gauge for numbers 604 and 784, and 23.5 gauge (not 24 gauge) for 955.

All three models have two inflatable air chambers in the floor. In addition, numbers 604 and 784 have one inflatable air chamber in the body of the boat, while number 955 has two in the body of the boat. None of the three have any transverse inflatable air chambers. Number 604 was rated by the Customs laboratory at 160 pound capacity, number 784 at 318 pound capacity, and number 955 at 500 pound capacity (not 600 as claimed on the package). The boats are sold at retail for $12.99, $26.99 and $37.99 respectively when on sale.

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Counsel for the protestant claims that the boats are classified under the provision for canoes, racing shells, pneumatic craft, and pleasure boats not specially provided for which are not of a type designed to be chiefly used with motors or sails, pneumatic craft, in item 696.35, Tariff Schedules of the United States (TSUS).

The New York import specialist classified the one person and two person boats (numbers 604 and 784) under the provision for other inflatable articles not specially provided for, in item 790.39, TSUS. He classified the three person boat (number 955) in item 696.35, TSUS.

ISSUE:

Should the one person and two person inflatable boats be classified as pneumatic craft in item 696.35, TSUS?

LAW AND ANALYSIS:

In a written brief, counsel for the protestant argues that an eo nomine provision is more specific than a provision for "articles, not specially provided for." She claims that the one and two person boats are specifically covered by the provision for pneumatic craft in item 696.35, TSUS, therefore they are not classifiable in the basket provision for other inflatable articles not specially provided for in item 790.39, TSUS. She asserts that all three boats meet the dictionary definition of "craft." She points out that all the boats are designed for use with oars or paddles and that the three person boat (number 955) is capable of having a motor mount and motor installed for navigation purposes.

Counsel further contends that all three boats meet the standards set for "pneumatic craft" by Customs in that they are of substantial construction and are suitable for serious boating, as required by Customs

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Headquarters Ruling Letter (HRL) 047016, dated September 1, 1977. She observes that each boat has several air chambers intended to prevent sinking if a puncture occurs and that they are all advertised and sold as boats.

She argues that Customs has set an arbitrary standard by determining that boats made of 20 gauge plastic (or greater) are of substantial construction while those made of less than 20 gauge plastic are of insubstantial construction. Finally she claims once again that the vinyl boats are more specifically provided for as "pneumatic craft" than as "other inflatable articles not specially provided for."

In a conference at Customs Headquarters, a second attorney representing the protestant presented additional oral arguments. He claims that 46 U.S.C. 1452 and the United States Coast Guard's Boat Hull Identification Number (HIN) program apply to the instant merchandise. He argues that, pursuant to the Coast Guard's HIN program, effective August 1, 1984, HINs were required by the Coast Guard for identification of certain boats. He states that he does not know when the HINs were actually issued for the instant merchandise, but he presented a purchase order dated April 9, 1983, which indicates that HINs were in use for the 2 man and 3 man boats which were ordered at that time. The attorney also provided three samples (one of each type of boat) and two catalogs covering similar merchandise. We note that the three samples provided all had HINs, but that the HINs were all dated — according to the Coast Guard formula — September 1984, therefore the samples were not part of the instant merchandise, which was covered by an entry dated January 13, 1984.

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There is no doubt that pneumatic craft such as those at issue here are classified in item 696.35, TSUS, if they are of substantial construction. See United States v. Seagull Marine, 67 CCPA 89, C.A.D. 1251 (1980), in which similar pneumatic craft were held classifiable in item 696.35, TSUS.

The next question is "What makes a boat of substantial construction?" Customs has held that boats made of 20 gauge (or greater) plastic are of substantial construction, while those made of less than 20 gauge plastic are of insubstantial construction. Customs has used the gauge measurement of thickness (in order to determine whether a boat is of substantial construction or not) for some time. See HRL 046517 of September 7, 1977, HRL 053578 of December 8, 1977, HRL 070502 of February 8, 1983, and HRL 075365 of July 31, 1985, all of which discuss and adhere to the 20 gauge rule.

Inflatables range in durability of construction from extremely flimsy items intended for use in swimming pools to boats with 100 horsepower motors which are used by Jacques Cousteau in exploring glacial waters. Obviously not all of these items qualify as "pneumatic craft" in item 696.35, TSUS, and there must be a dividing line somewhere. We have found the 20 gauge or over rule to be a reasonable dividing line in the past.

It may be that none of these boats are actually intended for serious boating. We take note of the fact that the instant merchandise is sold in boxes which state as follows:

> "Not recommended to be used in open water."
>
> "Not to be used as a life saving device as defined by the U.S. Coast Guard."
>
> "Warning: Do not use as a life preserver."
>
> "Use under strict parental guidance."

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None of the above warnings inspire confidence in the substantial construction of the boats, nor in the seriousness of the purposes to which they may be put. We further note that their use is limited to people weighing not over 160 pounds each for number 604, 159 pounds for number 784, and 167 pounds for number 955. Nevertheless, we have adhered to the rule that boats made of 20 gauge plastic (or greater) are of substantial construction in the past, and we shall continue to adhere to that rule in this case for the sake of uniformity.

Counsel's arguments concerning 46 U.S.C. 1452 and the Hull Identification Numbers (HINs) are informative, but they have nothing to do with the case before us. It seems that counsel would have us adopt the Coast Guard's HIN system as a way of separating boats intended for serious boating from other inflatables. We decline to do so, inasmuch as we already have a system in place for making such a determination (i.e., the 20 gauge rule explained above.)

Counsel's eo nomine and specificity arguments do not apply to inflatable boats which are not sturdy enough to qualify as "pneumatic craft." Based on our past experience and rulings, we find that the one person boat (number 604) and the two person boat (number 784) are not substantial enough to be used for serious boating. Both of these boats are of less than 20 gauge plastic and should be classified in item 790.39, TSUS, as other inflatable articles. The three person boat (number 955), which is made of 23.5 gauge plastic, is of substantial construction and could be used for serious boating. Following United States v. Seagull Marine, supra, we find that it should be classified in item 696.35, TSUS, as "pneumatic craft."

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HOLDING:

The one person and two person boats (numbers 604 and 784) are classified in item 790.39, TSUS. The protest is denied in part with regard to these items. The three person boat (number 955) is classified in item 696.35, TSUS. The protest is approved in part with regard to this article.

The protest is approved in part and denied in part as spelled out above. A copy of this decision letter should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

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D14

076435

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
076472 c

076472

08 JUL 1986

District Director of Customs
Philadelphia, Pennsylvania 19106

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1101-5-000084

This protest was filed against your decisions in the liquidations on March 15, 1985, of entry No. 79-106636 dated October 31, 1978, and entry No. 79-107401 dated November 2, 1978.

The athletic shoes involved were classified in liquidation under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics in item 700.60, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 percent ad valorem.

Pursuant to Schedule 7, Part 1, Subpart A, Headnote 3(b), TSUS, the athletic shoes were appraised on the American selling price of specified domestically produced athletic shoes.

The protestant sets forth several arguments opposing American selling price appraisement in this instance. However, the arguments are moot inasmuch as partial refunds of certain duties paid will be made as part of the compromise agreement reached with the protestant (ASICS Sports of America, Inc.) pursuant to 19 U.S.C. 1617.

The protest is denied. However, in accordance with the enclosed copy of the compromise agreement, a refund of $17,120.41 is due the protestant including a refund of $1,689.20 on entry No. 79-106636 and a refund of $471.88 on entry No. 79-107401. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 27 1986

REFER TO

CLA-2 CO:R:CV:G
076553 JGB
813333

076553

Mr. Gordon Baynham
Canada Wire and Cable Ltd.
250 Ferrand Drive
Don Mills, Ontario
Canada M3C 3J4

Dear Mr. Baynham:

This is in response to your calls following a letter dated December 16, 1985, from Mr. C. S. Archibald, your predecessor, and the initial inquiry from Mr. Gary Reitmeier of C. J. Tower & Sons, Buffalo, New York, written on behalf of your firm. In the calls subsequent to Mr. Archibald's letter you have provided additional information and clarification of the issue to be decided. This ruling concerns the classification procedure for wooden reels imported with their wire or cable.

We understand that your firm exports a wide range of wire and cable products to the United States. The cable and wire products are shipped on either wooden or steel spools or reels. The steel reels are not at issue here because they are considered instruments of international traffic. This letter concerns only wooden reels. You estimate the sizes of the reels to be from 22 inches to 96 inches in diameter and their value to range from $40 to $800.

The issue is whether the wooden reels are dutiable with their contents or are treated as imported articles separate and distinct from their contents.

The resolution of this issue turns on the meaning of "containers or holders, if not designed for, or capable of, reuse," a phrase from General Headnote 6(b)(i), Tariff Schedules of the United States (TSUS). This headnote provides that the containers are dutiable with their contents if not designed for or capable of reuse.

We understand from you that the wooden reels at issue here are manufactured for your company according to the National Electrical Manufacturers Association (NEMA) standards for non-returnable wooden reels. The NEMA specifications are found in Wire & Cable Packaging WC 26-1984, published to establish the minimum standards required to handle, load and transport a reel safely.

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There is no question that the reels are containers or holders in the language of the headnote. Moreover, the wooden reels would meet the standard for "containers not designed for... reuse" because the design, at least from the standpoint of durability, is embodied in the NEMA standard. A reusable container would be constructed of different materials according to a higher or different standard and would usually show a deposit on the commercial invoice. The usage of the industry appears to be embodied in the NEMA standards which provide Customs with both the common and commercial understanding of the terms "designed for... reuse."

The meaning of the second part of the headnote phrase, "capable of reuse," is not as easy to interpret. We understand that some wooden reels survive the first transportation process intact and may be suitable for reuse. We also understand that in some segments of the wire and cable end-user industries, salvagers in fact go over used reels in an attempt to find reels that may be usable as is, or that may be repaired enough to use again as reels to transport and contain wire. But in contrast to this information, we are aware from speaking with a representative of the domestic industry who serves on the Packaging Committee of the Wire and Cable Division of NEMA, that non-returnable reels are most often destroyed after use. We have learned that the salvaging of the reels is more the exception than the rule.

The word "reuse" as used in this headnote means practical, commercial reuse, not incidental or fugitive reuse. Fontana Hollywood Corp. v. United States, 64 Cust. Ct. 204, 209, C.D. 3981 (1970). It follows that the only reuse that might qualify for "capable of reuse" is commercial reuse, not incidental use. Therefore, our observation that many of these wooden reels take on a new life as a picnic table or as a student's coffee table is immaterial to the headnote meaning of reuse. There is no doubt that some reuse of the reels takes place, but that reuse is not generally of the type recognized by the tariff language.

The word "capable" in this context is obviously limited by the other words analyzed above. The Court of Appeals for the Federal Circuit considered this term in its published decision in Holly Stores, Inc. v. United States, 1 CAFC 16, 17 (1983), when it agreed with the Customs Service that "capable" is limited by the limited meaning of "reuse." At issue was the reusability of wire and plastic clothes hangers imported with their clothes. The evidence showed that while the clothes hangers were designed to be and were in fact of fairly durable construction and that it would be physically possible to reuse them, the clothes hangers were, in general practice, never reused. Instead they were given away or thrown away. The situation is similar here. While we do not have precise statistics on the frequency of commercial reuse of the reels, we are convinced that the incidence of one-time commercial use is overwhelming. The trial court, affirmed in Holly Stores, supra, found the theoretical capability of reuse of the clothes hangers to be modified by the practical and commercial reality of one-time use for the clothes hangers.

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Likewise, we cannot regard a salvage and repair operation on wooden reels to create any significant reuse for them. Therefore, non-returnable wooden reels for cable and wire manufactured to NEMA standards for non-returnable reels will be considered "not designed for or capable of reuse" according to General Headnote 6(b)(i) and will therefore be dutiable at the same rate as their contents.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

076552

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR - 3 1986

REFER TO
CLA-2:CO:R:CV:G
076560 JLV

076560

District Director of Customs
511 N.W. Broadway, Room 198
Portland, Oregon 97209

Re: Decision on Protest and Application for Further Review of Protest No. 2904-5-000081, dated March 5, 1985

Dear Sir:

The above-referenced protest and application for further review were timely filed against your classification of certain hydrojet engine components under the provision for parts of pleasure boats in item 696.15, Tariff Schedules of the United States (TSUS). The merchandise was entered at Portland on Entry No. 84-412116-1, dated September 20, 1984, and liquidated on December 21, 1984. This ruling is our decision on the issue raised by the protest.

FACTS:

The protestant identifies the merchandise in issue as follows:

1. Rear mount kits;
2. T3 steering;
3. Indicator kits; and
4. 1031 HTR kits.

The protestant claims that these components are classifiable as parts of hydrojet engines in item 660.77, TSUS. As evidence of this, the protestant has submitted descriptive literature on some of the components. The 1031 HTR kit, for example, is a high-thrust reverse bucket for the Hamilton Jet 1031 engine. Each kit consists of a bucket which directs

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the jet stream and is mounted on the rear of the engine, an electro-hydraulic power pack, a hydraulic cylinder and mounting bracket, and a control stick and panel. The indicator kit appears to be an optional item which is used to show the position of the bucket. The rear engine mount kit consists of a bell housing support, jet engine support, and rubber insulators, and is designed to ensure correct alignment of the front engine and rear jet engine. The T3 steering unit was not described in the literature.

076560

ISSUES:

1. Whether the components are parts of jet engines?

2. If so, whether they are specifically provided for elsewhere?

3. If not parts of engines and if not specifically provided for elsewhere, are the components classified as parts of pleasure boats?

LAW AND ANALYSIS:

The protestant does not produce any argument which would demonstrate that the components are considered, for tariff purposes, to be parts of jet engines. The literature submitted by protestant shows that the components are used in conjunction with jet engines. However, they are not necessary to the completion or functioning of the jet propulsion unit. Rather, the components are used to couple the jet engine to a power source (rear engine mount) and to provide a directional change of the jet thrust (reverse bucket and indicator kit).

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These items are distinct from the entity known as the jet engine and, therefore, would not be parts of the engine. They are accessories.

No specific provision has been proposed for any of the individual components. Based on the evidence submitted with this protest and application for further review, we hold that classification in item 696.15, TSUS, is correct.

HOLDING:

For the reasons expressed above, the components are classified as parts of pleasure boats in item 696.15, TSUS, and the protest should be denied in full. A copy of this decision should be given to the protestant at the time notice of action is given on Customs Form 19.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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076560

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

30 JUN 1986

CLA-2 CO:R:CV:G
076584 JLV

076584

District Director of Customs
909 First Avenue
Seattle, Washington 98174

Re: Decision on Protest and Application for Further Review of Protest No. 3001-4-000692, Dated November 1, 1984

Dear Sir:

The above-referenced protest and application for further review were timely filed against your action in classifying certain steel fasteners as screws in item 646.63, Tariff Schedules of the United States (TSUS). The merchandise was entered at the Port of Seattle on Entry No. 00277151, dated April 26, 1984, liquidated on August 3, 1984. This ruling is our decision on the classification issue.

FACTS:

The merchandise is a steel fastener, described as a timber head drive spike (Plan 3M) used to secure tie plates, switch plates, and other track items to a cross tie. It is a square washer head fastener with a quadruple thread of 3/8 inch pitch (four separate spirals), measuring 1/2 inch by 6-1/2 inches. The shank is cylindrical and the point is chamfered. It is used in predrilled holes.

The protestant, through its counsel, states that the fasteners are driven, not screwed, into predrilled holes by an airgun, hammer, or mallet. Protestant claims that the fasteners are classified, for tariff purposes, as bolts, or, in the alternative, as spikes, rather than as screws. In support of its position, protestant offers an affidavit in which the affiant states that the square head bolt plan 3M is used in

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numerous surface materials (rubber, steel, epoxy, wood) and that the square head is used solely for removal of the spike, not for setting the spike.

You state that the classification is more properly as wood screws in item 646.49, TSUS, rather than as other screws, in item 646.63, TSUS, the provision under which you liquidated the entry. You have classified this fastener on subsequent entries as wood screws.

ISSUE:

Whether this fastener is described by the tariff term "screw" rather than by the term "bolt" or "spike?"

LAW AND ANALYSIS:

The spiral threading on the fastener is the type of steep spiral found primarily on specialty nails and spikes to improve holding power in various types of materials. In the advertising literature submitted by protestant, two different types of threaded spikes are shown. One is called a "screw spike" and has a square head, with or without washer, and a single thread. The article in issue is called a "timber head drive spike" and has a four-lead thread. The difference between these two products appears to be that the "screw spike" is intended to be torqued into place, while the "drive spike" is intended to be driven in a manner similar to a spike or similar type of spiral fastener.

However, the controlling feature in this case is that the fastener has a square head to which torque can be applied, either for the purpose of securing or removing the fastener.

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Therefore, it falls within the class or kind of fastener that is known as a drive screw. The threaded spike, classified as a spike by the court in C.S. Emery & Co. v. United States, 64 Treas. Dec. 1135, Abs. 26313, had a bevelled head which precluded the use of a tool to remove it by torquing the head.

The special feature of the square head, in this case, is controlling. This distinguishes the fastener as in the class or kind of articles known as "screws" for tariff purposes.

The argument that the fastener is commonly known as a bolt is without merit. None of the evidence in the file supports this statement. Furthermore, the usual distinction between a bolt and a screw is that a bolt is fastened by torquing a nut onto the bolt, whereas a screw is fastened by torquing the head.

There is no evidence that the fastener is used, to any significant degree, in materials other than wood. The descriptive literature calls it a "timber" drive spike. We conclude that the principle use of this article is in wood.

Holding:

The timber square washer head threaded fastener is classified as a wood screw in item 646.49, TSUS. The protest should be denied. A copy of this decision should be given to the protestant at the time notice of action is given on Customs Form 19.

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Because the rate of duty under item 646.49, TSUS, is higher than under item 646.63, the provision under which the screws were classified and liquidated, and is higher than the rate for either of the claimed provisions, the protest should be denied in full without reliquidation under item 646.49, TSUS.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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E11

048594

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

17 JUN 1986

REFER TO
CLA-2 CO:R:CV:G
076637 jlj

076637

District Director of Customs
2039 Federal Office Building
909 First Avenue
Seattle, Washington, 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3004-4-000050

This protest was filed against your decision in the liquidation on February 24, 1984, of two Blaine entries covering shipments of cedar paneling manufactured in Canada.

This ruling concerns the correct tariff classification of the cedar paneling.

FACTS:

The merchandise at issue is 1/4 inch thick by 3-11/16 inches wide by 8 feet long cedar paneling, which has been tongue and grooved along the edges and which has square cut ends. The product was made from lumber which was cut into veneers. The veneers were then tongue and grooved to produce the imported product.

The merchandise was liquidated under the tariff provision for articles, not specially provided for, of wood, in item 207.00, Tariff Schedules of the United States (TSUS). The protestant claims that the merchandise should be classified under the provision for dressed or worked cedar lumber in item 202.27, TSUS, or under the provision for wood veneers in item 240.03, TSUS.

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076637

ISSUE:

Is cedar paneling with square cut ends and with edges which have been tongue and grooved classified as articles of wood in item 207.00, TSUS, as dressed or worked lumber in item 202.27, TSUS, or as wood veneers in item 240.03, TSUS?

LAW AND ANALYSIS:

The protestant's broker argues that the instant merchandise is classifiable under the provision for lumber, rough, dressed, or worked softwood, cedar, in item 202.27, TSUS, because it meets the tariff definitions of "lumber" and of "worked lumber" set forth in Headnote 2(a) and 2(a)(iii), Subpart 1B, Schedule 2, TSUS. Alternatively, he argues that the merchandise is classified under the provision for wood veneers, whether or not face finished, not reinforced or backed, other, in item 240.03, TSUS, because the merchandise is 1/4 inch thick and is described on the invoice as paneling. He assumes that such paneling will probably be used to overlay inferior material, therefore he claims that the cedar paneling meets the definition of "wood veneers" set forth in Headnote 1(a), Subpart 3, Schedule 2, TSUS. Finally, he points to General Interpretative Rule 10 and claims that because both item 202.27, TSUS, and item 240.03, TSUS, are more specific than item 207.00, TSUS, relative specificity prohibits the classification of the cedar paneling in item 207.00, TSUS.

The instant merchandise begins as lumber which meets the tariff definition of "lumber" set forth in Headnote 2(a) supra. When the merchandise is cut into veneers, however, it becomes a new product with a new name, a new use and new specifications. This new product is no longer classifiable as lumber.

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Inasmuch as the new product meets the tariff definition of wood veneers set forth in Headnote 1(a), Part 3, Schedule 2, TSUS, it would be classified as veneers if the edges remained square cut. The classification issue here turns upon the tongue and grooving of the edges of the merchandise, which takes it out of the category of veneers. It becomes the final product, i.e., cedar wall paneling, which puts it into the category of wood articles, not specially provided for, in item 207.00, TSUS.

It is argued that there is a distinction between bullnosed edges and tongue and grooved edges. Both processes constitute edge working, however, and, as such, they advance the panel beyond the wood veneer stage to the wood wall paneling. Edge working has been the subject of previous Customs rulings. See, for example, Customs Headquarters Ruling Letter (HRL) 068226, dated May 21, 1981, and HRL 074493, dated September 28, 1984. HRL 074493 concerned cedar strip veneer with bullnosed edges; it found that such bullnosed cedar veneer was classified in item 207.00, TSUS. Finally, see Border Brokerage Company, Inc. v. United States, 68 Cust. Ct. 7, C.D. 4325 (1972), in which wood strips which technically met the definition of wood veneers were held to be classified as articles of wood, not specially provided for, because they had been advanced beyond the stage of wood veneers by further processing prior to importation.

We find that the instant cedar paneling, which has been tongue and grooved on the edges, is classified as articles of wood, not specially provided for, in item 207.00, TSUS.

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HOLDING:

The instant cedar paneling, which has been tongue and grooved on the edges, is classifiable in item 207.00, TSUS. The protest should be denied in full. A copy of this decision should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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076637

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 11 1986

CLA-2:CO:R:CV:G
076682 JLV

076682

District Director of Customs
700 Parkway Plaza,
Dallas-Ft. Worth Airport
P.O. Box 61050
Dallas, Texas 75261

Re: Decision on Protest and Application for Further Review of Protest No. 5501-4-000031, dated March 2, 1984

Dear Sir:

The above-referenced protest and application for further review were timely filed against your classification of a certain belt for a corrugator machine under the provision for clothing for paper-making machines, not specially provided for, of man-made fibers, in item 358.50, Tariff Schedules of the United States (TSUS). The merchandise was entered at the port of Dallas/Ft. Worth on Entry No. 83-273926-4, dated April 22, 1983, and liquidated on January 27, 1984. This ruling is our decision on the classification issue.

FACTS:

The merchandise is a continuous belt 160 feet long, 90 inches wide, and approximately 3/8 inch thick. It is a tightly woven three-ply product of man-made fibers. The belt is known as an "Aqua Pull® Belt" and is used in a paper corrugator machine.

In the descriptive literature it is stated that the belt provides excellent transport, maximum heat exchange between the paper and hot-plate, and a high hygroscopic character which gives the belt absorption and evaporation rates essential for production of corrugated products.

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In application, the belt is mounted on drive rollers above the path of the corrugated paper. Just prior to contact with the belt, two surface layers of paper are coated with glue and then pulled over the top and bottom of a fluted layer of paper. As these layers are joined, they pass between the belt and a series of metal hot plates for bonding. At this stage of processing there is also a series of hot rollers above the belt that are necessary to maintain constant tension and heat to ensure uniform bonding. The belt rides above the corrugated product and acts as a cushion to prevent crushing during bonding. The moving belt is capable of transmitting motion to (i.e., transports) the paper because its coefficient of friction is greater than that of the steel plates.

As the paper product moves beyond the rollers, it passes over another series of hot plates in the drying section. The belt continues to ride above the paper and, at this point, utilizes its hygroscopic qualities to effect a rapid and even moisture removal. After the drying stage, the belt pulls the product over cooling plates. The belt alone continues to ride above the paper and functions to transfer heat from the paper to the atmosphere. After the cooling stage, the belt and the paper separate, and the belt continues in its cycle back to the bonding stage.

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The protestant claims that the belt is classifiable under the provision for belts, for machinery, of man-made fibers, in item 358.14, TSUS, apparently on the reasoning in two revoked ruling letters (revoked because the requests were not in compliance with sections 177.2 and 177.5 of the Customs Regulations (19 CFR 177.2 and 177.5)). The protestant, however, does not produce additional evidence that the belts in issue are principally used in a transport function and that the other functions are secondary to this function. It is your position that the belts are an integral and substantial part of the corrugating process, and that the transmission of motion is not the sole principal function.

ISSUE:

Does the imported merchandise have the single principal function of transporting, or, does it have two or more functions that are essential to the corrugating process?

LAW AND ANALYSIS:

The provision for belts and belting (item 358.14, TSUS, in this case) has been held to apply to those articles which are designed to transmit motion or to transport or convey. If designed to perform other functions that are not merely auxiliary or incidental to transport or to the transmission of motion, belts used on machinery are classifiable under the broader provision for machine clothing in items 358.24 to

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358.60, TSUS, depending on component material of chief value. I.A. 89/76, dated December 16, 1976 (file 047203). In I.A. 89/76 we ruled that papermakers' felts were classified as machine clothing rather than as belts because the felts had three distinct functions: transport, removal of water, and finishing of the surface on paper. We also noted in the ruling that the legislative history made it clear that felts were intended to be considered articles of machine clothing.

Belts used in a sludge dewatering system have been classified as machine clothing because they perform two functions: transport and filtration or separation of water and solids. Ruling letter of June 29, 1978 (file 052438).

Contrary to your position, the transport function of the belt is the principal function. Much of the literature submitted on the Aqua Pull® Belt describes its high tractive force (similar to cotton belts) and its durability (from the unique man-made fiber). The hygroscopic nature of the belt is an additional feature of the belt which enhances the processing of a corrugated product. However, unlike the filtration process or the surface finish process in the above cited cases, the hygroscopic design of the belt does not represent a function of the belt that is anything other than a normal, but secondary, function of such transport belts.

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HOLDING:

The Aqua Pull® Belt is classified under the provision for belting and belts, for machinery, of man-made textile fibers, other than V-belts, in item 358.14, TSUS. The protest should be allowed in full. A copy of this decision should be given to the protestant at the time notice of action is given on Customs Form 19.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

14 AUG 1986

REFER TO

CLA-2 CO:R:CV:G
076721 c
813225

076721

Mr. Mick W. Blakely
C. F. Liebert Inc.
P.O. Drawer L
Blaine, Washington 98230

Dear Mr. Blakely:

Your letter dated April 2, 1985, addressed to our New York office concerning the dutiable status of a two piece insole system, has been referred to us for a direct reply to you. A sample manufactured in Italy was submitted for examination.

The so-called insole sytem is a combination of two separate pieces. One piece, A, is a molded, full insole of foamed plastic having a fabric socklining bonded to its top surface. The second piece B, is a molded heel and arch "stabilizer" of non-foamed plastic designed to be used with the foam insole. Specifically, the second piece B has holes in it corresponding to the nubs on piece A. In use, the interlocking of A and B is such that they cannot slide with relation to each other and would effectively act as a single unit.

Inasmuch as you have asked for the classification of A and B when imported together and when imported separately, we assume that the item or parts of it may be imported for sale both directly to consumers and to an assembler who will combine the parts for resale to consumers.

The issue to be decided is whether the insole is almost wholly of foamed plastic. General Headnote 9(f)(iii), Tariff Schedules of the United States (TSUS), defines the term "almost wholly of" to mean "that the essential character of the article is imparted by the named material, notwithstanding the fact that significant quantities of some other materials may be present."

It is our view that the insole is almost wholly of foamed plastic. It is much thicker in the heel and arch area than at the ball and has been molded to "cup" the wearer's heel. It is our opinion that both of these features which are imparted by the foam plastic are present to provide substantial shock absorption and to increase the foot's stability by preventing one's heels from sliding within the shoe. These two characteristics are intended to reduce the chance of injury while jogging and constitute the essential character of the merchandise. It should be noted that the plastic is the only material which contributes to this "essential character."

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In view of the foregoing, it is our position that piece A, is classifiable under the provision for expanded, foamed, or sponge rubber or plastics, and articles not specially provided for wholly or almost wholly of such rubber or plastics in item 770.80, TSUS, and dutiable at the rate of 7.3 percent ad valorem.

Regarding the importation of either A or B together or B by itself it is our opinion that they would not be almost wholly of foamed plastics. Inasmuch as their chief use appears to enable consumers to improve footwear purchased separately, these items are not considered parts of footwear, but footwear accessories. On this basis, they are classifiable under the provision for other articles not specially provided for, of rubber or plastics in item 774.55, TSUS, and dutiable at the rate of 5.7 percent ad valorem. This classification is based on the assumption that A was not made from a sheet of laminated fabric and that the cost of the plastic in A plus the cost of B is higher than the cost of the fabric lining in A.

Sincerely,

William P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

2 3 JUL 1986

CLA-2 CO:R:CV:G
076735 JLV

Jeffrey S. Beckington, Esq.
Collier, Shannon, Rill & Scott
1055 Thomas Jefferson Street, NW.
Washington, D.C. 20007

Dear Mr. Beckington:

In your letter of August 8, 1985, as supplemented by letters of September 17, October 4, October 11, and November 13, 1985, together with samples, you requested information concerning the following:

1. Whether shipments of low fuming brass brazing rod, produced in South Africa, are being transshippped through other countries and improperly documented at the time of entry as products of the country through which they are transshipped;

2. Whether low fuming brass brazing rod, classified in item 612.6205, Tariff Schedules of the United States Annotated (TSUSA), is improperly claimed and classified at entry in item 612.6290, TSUSA; and

3. Whether the low fuming brass brazing rod from South Africa is properly marked, either when resold to end-users in its condition as imported (after repackaging), or when sold after being fluxed in the United States?

With regard to the first question, it has been determined that entries of South African low fuming brass brazing rod were incorrectly reported on the entry documents as products of the country through which they were shipped (such as Saudi Arabia), but that the Customs IM 115 report showed South Africa as the port of lading. Corrective action has been taken by Customs to improve the accuracy of reporting at the time of entry.

Similarly, the tariff classification of the brazing rod has been misreported at entry with regard to statistical identification. In order to correct this at the New York

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Seaport, for example, all entries of copper rod (and wire) were removed from the bypass system so that they can be monitored and compared with the metallurgical criteria for low fuming brazing rod.

Finally, the question as to country of origin marking raises two separate issues. Clearly, if merely repackaged and sold to users in the United States, country of origin of the product remains South Africa (or other country in which the low fuming brazing rod was produced) and it must be marked accordingly.

As to the country of origin of the fluxed brazing rod, we are of the opinion that fluxing does not substantially transform the low fuming brazing rod into a product of the country in which it is fluxed. The fluxing does not change the essential metallurgical character of the brazing rod. Although the different fluxing materials have specific characteristics, we view the metallurgical character of the rod as the primary consideration for determining country of origin, because it is that character which is critical for the type of weld to be performed.

This response is not a ruling. It is an information letter. If you have specific information or believe that the merchandise is not properly classified by Customs, you may have specific procedural rights under Section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

Sincerely,

John T. Rath

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

7 JUL 1986

REFER TO
CLA-2:CO:R:CV:G
076742 PR

076742

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

This is in reply to your Request for Internal Advice, No. 68/85, concerning the tariff classification of certain imitation leather materials. Our ruling on the matter follows.

ISSUES:

Two issues are presented by the subject inquiry. The primary issue is the classification of the merchandise in question: Whether the method in which it is constructed is a coating process, thus causing the merchandise to be classifiable under the provision for nonwoven fabrics, whether or not coated or filled, of man-made fibers, in item 355.25, Tariff Schedules of the United States (TSUS), or if the merchandise is constructed in a laminating process, which would cause it to be classifiable under the provision for other textile fabrics not specially provided for, including laminated fabrics, in item 359.50, TSUS. The second issue presented is the effect on two Customs Headquarters rulings of a letter by the Chief, Duty Assessment Branch 7/8, U.S. Customs Service, New York Seaport, which expresses views on the classification of the subject merchandise that are contrary to the Headquarters rulings.

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FACTS:

The importer's representative describes the subject merchandise as a supported fabric composed of a nonwoven substrate which is coated with a compound plastic coating. The substrate consists of man-made fibers held together by a synthetic latex binder. One side of the substrate is coated with plastics to give the merchandise a leather-like appearance. The process of manufacture is described as follows:

> The fabric is manufactured by the "counter coat process". The preparation of the coating begins with the application of a layer of polyurethane paste to a a special siliconized paper. The polyurethane is then heated and dried in an oven. Next a layer of liquid polyvinylchloride (PVC) is applied on the top of the polyurethane, and the coating is again heated until the PVC is partially dried. A plastic adhesive is applied to the PVC. At this point the coating is semi-liquid and lacks any structure--its consistency is like gelatine. The gelatine-like plastic coating is applied to the nonwoven substrate. After being coated, the fabric is cured in an oven. It is at this point that the plastic coating dries and binds to the substrate. When the curing is complete, the paper is stripped off the fabric, and a lacquer is applied to the surface of the coating. Then the fabric is trimmed, cut, and wrapped for shipment.

On February 20, 1981, in a response to Internal Advice Request No. 18/81, file 067089, (CIE N-36/75), this office specifically ruled that the same manufacturing process as involved herein caused a fabric to be laminated to the plastic layered component.

In a letter of July 16, 1982, from the Chief, Duty Assessment Branch 7/8, U.S. Customs Service, New York Seaport,

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concerning the same merchandise and process which were the subjects of Internal Advice Request 18/81, it was specifically stated that the process described in our response to Internal Advice Request 18/81 was a coating operation and not a laminating process.

On February 16, 1983, the same attorney who initiated the prior correspondence, requested for the same importer a clarification from Customs Headquarters on the tariff status of fabric combined with plastics in a counter coat process. In response to that request, Customs replied by letter of May 25, 1983, 071199, that our response to Internal Advice Request 18/81 determined that if there was an acceptable laminating process, allowance may be made under item 807.00, TSUS, for domestic exported fabric; that our views on laminations remained unchanged; and that entries made in reliance on our reply to Internal Advice Request 18/81 should be accorded treatment under item 807.00. The February 20, 1981, ruling was not modified or changed in any respect. The clear import of that response was that the counter coat process was considered "an acceptable laminating process."

LAW AND ANALYSIS:

Since the inception of the Tariff Schedules, Customs has continuously interpreted the superior heading to items 355.02-355.25, as precluding the classification of laminated fabrics in those provisions. Accordingly, nonwoven fabrics, in material lengths, which have been laminated with rubber or

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plastics material have been classified under the provision for other textile fabrics not specially provided for, in items 359.10-359.60, TSUS. The importer here contends that the Customs Service is required to classify its merchandise under item 355.25 because over the past ten years it has imported merchandise under that tariff provision, creating an established and uniform practice of classification that Customs is prohibited from changing without going through the procedures required by 19 USC 1315(d) and 19 CFR 177.10(c)(1).

In this regard, we note that for an established and uniform practice based on liquidations to exist, it must be applicable to virtually all of the same or essentially similar merchandise imported into this country, not just the merchandise imported by a particular importer. The importer here has failed to present any convincing evidence of the existence of such a practice, or that no other importer imports identical or similar merchandise into this country, thus establishing a practice based on its own liquidations. In addition, such a practice is not deemed to exist because, as recognized by the importer, the subject merchandise was, by court decision, classified in Schedule 7, TSUS, until 1984 when Congress deleted Headnote 1(vii) from Subpart 4C, Schedule 3, TSUS, and enacted Headnote 5(b), Schedule 3, TSUS. The action by Congress effectively negated the holdings of prior court decisions and caused the classification of the

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subject merchandise to be changed from Schedule 7 to Schedule 3. The claim of a practice must, therefore, be predicated on published rulings, or liquidations, occurring after the effective date of Congress' action.

The importer cites various lexicon definitions, the Brussels Tariff Nomenclature, and legislative history pertaining to coated or filled fabrics to show that the instant merchandise should be classified in item 355.25. In addition, it cites the case of C. J. Tower & Sons of Buffalo, Inc. v. United States, 62 Cust. Ct. 643, C.D. 3840 (1969), to support its position that the plastic layer on its merchandise is not a lamination.

In view of our determination that the fabric has been laminated with rubber or plastics material, the citations to authorities concerning the classification of coated or filled fabrics is not pertinent. Further, we do not agree that C. J. Tower supports the importer's position. In C. J. Tower, a liquid plastic sheet was extruded directly onto another plastics sheet. We do not interpret the language of the court in the same manner as the importer. There, the court stated that "lamination" means bringing together two plastic sheets into a permanent union so that the final product will be an integral article. The court also stated that "laminated" means that an article is composed of layers of firmly united materials. The court went on to say, "It is clear, then, that the words 'adhesive' and 'laminate' can hardly find proper

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usage in association with articles which are not solids to begin with." Apparently, the importer interprets this latter language as meaning that a lamination can only occur between solids. However, such an interpretation is dispelled in the next paragraph of the court's opinion.

> It is true, of course, that in the initial stage of the process at bar the polyester is a solid and the polyethylene is a liquid. Nevertheless, the process described . . . is a controlled operation which anticipates the transformation of the liquid into a solid before completion of the process, and provides in advance for the adhesion of two solids together in the final product. (at pg 647-8).

In this instance, as described by the importer, the plastic portion of the merchandise, just prior to its combination with the nonwoven fabric, has an identity as an existing layer or sheet. As such, it has an existence as a separate layer that is capable of joinder to a second layer by means of an adhesive. This situation is very similar to that before the court in C. J. Tower and there it was held that the process was an assembly and did not result in a coating. Accordingly, the subject merchandise consists of a nonwoven fabric which has been laminated with rubber or plastics material and is properly classifiable in item 359.50, TSUS.

The second issue to be decided is the effect of the New York letter of February 16, 1982, on the two Customs Headquarters rulings. Section 177.0, Customs Regulations (19 CFR 177.0) gives authority to make rulings to the Headquarters

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Office of the United States Customs Service and to the Regional Commissioner of Customs, New York Region. The Regional Commissioner, New York, has delegated this authority to the Area Director of Customs, New York Seaport, but not to the Chief, Duty Assessment Branch 7/8. Accordingly, the letter of July 16, 1982 could not constitute a binding ruling upon which the recipient could rely.

Furthermore, we note that all three of the concerned Customs' letters, two from this headquarters and one from our New York office, as well as the instant inquiry, involved the same attorney acting on behalf of the same importer. Therefore, the importer was clearly on notice by virtue of two Customs Headquarters' rulings, one of which postdated the New York letter, that the New York letter should not be relied upon.

HOLDING:

The subject merchandise is made by a laminating process and is classifiable in item 359.50, TSUS. A copy of this ruling should be furnished to the importer's representative.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076742

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

22 JUL 1986 CLA-2:CO:R:CV:G
076777 JCH

076777

District Director of Customs
423 Canal Street
New Orleans, Louisiana 70130

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 20024000279

The above-captioned protest and application for further review were filed against the tariff classification of blood tubing lines for hemodialysis machines in several entries filed in 1984. This merchandise is a product of Japan. Our decision follows:

ISSUE:

The merchandise was entered under the provision for parts of electro-medical instruments and apparatus in item 709.17, Tariff Schedules of the United States (TSUS). The column 1 rate of duty required under that provision in 1984 was 4.9 percent ad valorem. However, this rate was advanced to 11.7 percent ad valorem, the 1984 column 1 rate for other nonelectric medical articles in item 709.27, TSUS. An alternative claim is also made that the merchandise is classifiable under the provision for rubber or plastic tubing with or without fittings in item 772.65, TSUS. The 1984 column 1 rate of duty under that provision was 3.4 percent ad valorem. The main issues thereby raised are whether the merchandise constitutes parts of hemodialysis machines and, if not, whether an established and uniform practice exists in the importer's favor.

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FACTS:

The merchandise consists of sets in various configurations of arterial and venous blood lines for use with hemodialysis machines to transport blood to and from the patient. The clear plastic tubes contain clamps, valves, drip chambers and other fittings which when compared to those on competing merchandise appear to be of a universal type. The merchandise is sold in bags pursuant to prescription. Nothing on the sample bag we have been provided shows a part number or indicates in any way that the merchandise is for the exclusive use with any specific make or model of hemodialysis machine.

LAW AND ANALYSIS:

Classification of the merchandise at issue under item 707.27 was in accordance with our decision of September 20, 1983, file No. 071150. While the protestant now faults that decision for various reasons, it was essentially our position at that time that hemodialysis tubing lines most closely resembled the merchandise which was the subject of Travenol Laboratories, Inc. v. United States, 67 CCPA 71, C.A.D. 1247 (1980), and that a different dutiable status was not warranted. The Travenol merchandise consisted of tubing products for intravenous use which, although not as complex as dialysis tubing lines, had analogous clamps, fittings, drip chambers, etc., and were sold in the same type of packaging.

However, while this protest has been pending another court decision has been issued dealing more directly with the

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dutiable status of dialysis supplies, viz., Terumo Corp. v. United States, Slip Op. 86-19 (Ct. Int'l Trade, decided February 21, 1986). Exhibits submitted in connection with the instant matter show that the Terumo merchandise consisted of filters which, similar to the tubing components for the overall dialysis system, are disposable, attached as an external nonreusable component to the dialysis pumping machine, provided with universal fittings, and sold in the same circumstances as the tubing for use in no single make of dialyzer.

Accordingly, we find at this time that the Terumo decision is more in point as a precedent for the classification of the instant tubing products than the Travenol decision.

HOLDING:

For the foregoing reasons it is now our position that our tariff classification of September 20, 1983, supra, has been superseded by the principle of Terumo Corp. v. United States, supra, and will no longer be followed. Accordingly, it is unnecessary for us to review and discuss the practice and other alternative claims made in this matter and the extensive precedent cited in support of them. Therefore, you are

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instructed to deny the protest except to the extent reclassification of the merchandise under item 709.17 results in a partial allowance. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: JUN 25 1986

FILE: CLA-2 CO:R:CV:G
[redacted] JCH
076823

TO : District Director of Customs
San Francisco, California 94126

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 78/85 Concerning the Tariff Classification of Atomic Absorption Spectrophotometers and Other Types of Spectrophotometers

076823

This internal advice request was initiated by the importer's letter of August 5, 1985. Since that time counsel has participated in this matter. The merchandise is a product of Australia. Our decision follows:

ISSUES:

The importer contends that its products are classifiable as nonoptical electrical measuring, checking, analyzing, or automatically-controlling instruments and apparatus in item 712.49, Tariff Schedules of the United States (TSUS). The column 1 rate of duty under that provision in 1984 was 6.8 percent ad valorem. The importer, therefore, objects to the proposed advancement to the applicable rates for optical instruments and apparatus in item 712.05, TSUS, covered by the same superior heading. For example, the 1984 column 1 rate under that provision was 15.6 percent ad valorem.

The major subordinate issues upon which this tariff classification competition must be resolved are whether the types of spectrophotometers involved qualify as optical instruments under the definition in Headnote 3, Part 2, Schedule 7, TSUS, and if so, whether there exists in the importer's favor an established and uniform practice.

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FACTS:

Technical information which has been submitted shows that atomic absorption spectrophotometers use a light source which emits light only of a wave length characteristic of the metal or material for which an analysis is being made. The light after passing through the chamber where the sample has been atomized is directed to a photoelectric detector. The amount of material for which the sample is being tested is proportional to light absorption. Other types of spectrophotometers employing infrared, visible or ultraviolet light may be used as more versatile means for testing more than one material. Apparatus of the latter type does not use atomization chambers, and the monochromator is positioned differently in relation to the light source and sample. Mirrors as well as monochromators are common to most types of spectrophotometers, and results may involve data in both digital and graph form.

LAW AND ANALYSIS:

Apparatus which combines optical and electronic features typically incorporates photoelectric detectors. Previous classifications of this type of merchandise under item 712.49 have mainly been based on failure to meet the criteria for an optical goods classification in Engis Equipment Company v. United States, 62 Cust. Ct. 29, C.D. 3670 (1969). Of those criteria the most important was the first which required that the optical feature be primary or dominant in relation to the electronic feature in order for apparatus to be regarded as an optical instrument. Since the optics could seldom be regarded as more than co-equal in relation to electronic and other features, classifications of photoelectric apparatus as optical goods were infrequent.

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However, in Norman G. Jensen, Inc. v. United States, 77 Cust. Ct. 9, C.D. 4668 (1976), it was held that the primary-or-dominant criterion was no longer applicable under the definition for "optical instruments" in Headnote 3, Part 2, Schedule 7, and that the test was now whether the optics were subsidiary or not subsidiary in relation to other features. Therefore, for merchandise in which the optics were more than subsidiary emphasis shifted to the question of whether or not the fourth Engis criterion was met. Under that criterion, merchandise must aid human vision or produce a picture or image of an object in order to qualify for an optical instruments classification.

Based on certain dicta in United States v. Ataka America, Inc., 64 CCPA 60, C.A.D. 1184 (1977), it was our conclusion that compliance with the cited headnote definition plus the remaining three viable Engis criteria would no longer be required, and these applicable criteria would be regarded in the disjunctive rather than in the conjunctive. Accordingly, we took the position that absence of the direct enhancement of vision or the production of a picture or image by itself was not sufficient for avoiding an optical goods classification. It was our further view that even if this were not the case, the fourth Engis criterion could be satisfied anyhow indirectly by, as in the case of spectrophotometers, substituting electronic methods for previously used optical eyepiece observations or by the production of a graph or other computer generated pictorial information. This point of view was initially incorporated in our decision of July 9, 1982, IA 124/81, file No. 067495, from which several classifications of photoelectric apparatus under item 712.05 ensued, including our classification of spectrophotometers in our PRD of May 24, 1984, file No. 074233.

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While this reconsideration of that position has been pending, the court has had occasion to consider the dutiable status of photoelectric apparatus in EAC Engineering Division of East Asiatic Company v. United States, Slip Op. 85-111 (Ct. Int'l Trade, decided October 24, 1985). In that matter, the court regarded the fourth Engis criterion as indispensible for an optical instruments classification, and gave no consideration to the possibility of meeting that criterion indirectly. The latest order in that litigation, Slip Op. 86-32, has become final without an appeal by the Government.

HOLDING:

For the foregoing reasons, we find that our classifications of spectrophotometers as optical instruments under item 712.05, TSUS, are no longer sustainable and, therefore, no longer reflect the current views of the Customs Service. This finding makes it unnecessary for us to review the further claim made in this matter concerning the possible existence of an established and uniform practice. Accordingly, spectrophotometers are classifiable under the provision for nonoptical electrical measuring, checking, analyzing or automatically-controlling instruments and apparatus in item 712.49, TSUS. A copy of this decision should be furnished to the internal advice applicant.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 13 1986

REFER TO

CLA-2 CO:R:CV:G
076844 JNB

076844

Paul E. Linet, Esq.
Sandler & Travis, P.A.
444 Brickell Avenue
Miami, Florida 33131

Re: Tariff Classification of Modified Asphalt Roofing Membrane

Dear Mr. Linet:

This is in response to your ruling request dated August 23, 1985, supplemented by your letter of September 23, 1985, on behalf of your client Bitupol, Inc., concerning the tariff classification of a modified asphalt roofing membrane.

The subject product is a mixture of styrene butadiene styrene (known as SBS, a synthetic thermoplastic rubber), asphalt, oil and polyethylene, with a crenette fabric polyester carrier that is supported by a nonwoven fiberglass mat. The product is imported in rolls weighing approximately 125 pounds each. In your description, you state that the fabric is woven; however, further scrutiny reveals that this is not the case. Rather, the fabric is comprised of yarns of polyester filaments which are held together by a plastic binding. The warp and filler yarns cross at right angles and are fused at each intersection. The crenette fabric comprises approximately 4 pounds of each roll.

In your view, the merchandise is classifiable as textile fabrics, including laminated fabrics, not specially provided for: other, under the provisions of item 359.60, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4.3 percent ad valorem.

You initially state that the subject product is classifiable under Part 4, Subpart C, Schedule 3. We concur. Headnote 5(b), Schedule 3, provides, " Any fabric described in part 4C of this schedule shall be classified under part 4C whether or not also described elsewhere in the schedules." Customs has held crenette fabric to be classifiable as textile fabrics, including laminated fabrics, not specially provided for: of man-made fibers, under

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the provisions of item 359.50, TSUS, based on component material of chief value of the textile. See Customs Ruling Letter dated January 24, 1973 (Control No. 020501), Customs Ruling Letter dated July 19, 1977 (Control No. 039981), and Customs Ruling Letter dated August 1, 1978 (Control No. 059492). Inasmuch as the crenette textile fabric has been held as being described in Part 4C of Schedule 3, classification of the instant product elsewhere in the tariff schedules is precluded.

Headnote 2(c), Part 4C, Schedule 3, TSUS, prohibits classification under items 355.65-355.85 of woven or knit fabrics that are coated, filled or laminated with sheet rubber or plastics and weigh in excess of 44 ounces per square yard. The subject asphalt roofing membrane weighs approximately 80 ounces per square yard. As such, you assert that the product is barred from classification under the noted item numbers. We concur that classification of the subject product under the noted provisions is improper; however, we base our objection on the fact that items 355.65-355.85 cover woven or knit fabrics. By definition, crenette is neither woven nor knit and cannot be so classified.

You rely extensively on the Court of International Trade decision in Uniroyal, Inc. v. United States, Slip Op. 85-94 (Ct. Int'l. Trade decided September 13, 1985), as support for the suggested classification of item 359.60, TSUS. In Uniroyal, Inc. v. United States, supra, the Court held that certain rubber coated hoses which were reinforced with a fabric wrapping were properly classifiable under Schedule 7, TSUS. Customs advanced the position that Headnote 4(b), Schedule 3, TSUS, precluded consideration of the coating when determining whether the merchandise was in chief value of fiber or rubber. The pertinent Headnote reads:

> In determining the component fibers of chief value in coated or filled, or laminated, fabrics and articles wholly or in part thereof, the coating or filling, or the nontextile laminating substances, shall be disregarded in the absence of context to the contrary.

In further support of its position, Customs relied on language in C. Itoh & Co. America v. United States, 1 CIT 223, 520 F.Supp. 273, aff'd 69 CCPA 147, 678 F.2d 218 (1982). The C. Itoh Court noted that "in determining whether a textile fabric is of a particular type of fabric, or in chief value of a particular fiber ... the nontextile laminating substances are to be disregarded in the absence of context to the contrary". C. Itoh, supra, 1 CIT at p. 230, 520 F.Supp. at 278.

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Consistent with C. Itoh, the Customs Service has continuously, from the inception of the tariff schedules, interpreted and applied Headnote 4(b) as meaning that in the case of almost all coated, filled, or laminated textile fabrics, the coating or filling or the nontextile laminating material is not considered in determining the proper classification of the fabric or article from which the fabric is made. See Customs Ruling Letter of May 1, 1981 (Control No. 061982).

The Uniroyal court rejected Customs position and distinguished the reasoning in C. Itoh. Citing Marshall Co. v. United States, 67 Cust. Ct. 316, CD 4291 (1971), and Briarcliff Clothes Ltd. v. United States, 66 Cust. Ct. 228, CD 4194 (1971), the Court stated that the pertinent Headnote referred only to the situation in which a choice must be made between several fibers. The headnote does not indicate that coating, filling or laminating substances should be disregarded for other purposes. You assert that this language supports the proposition that the classification of the subject roofing material must be based on the component material in chief value. The SBS cannot be disregarded when determining component material in chief value. Inasmuch as the SBS comprises 42 percent of its value, the material must be classified as textile fabrics, other, under item 359.60, TSUS.

We do not agree. Uniroyal involved competing Schedule 3 and Schedule 7 classifications of textile-reinforced rubber hose. The Uniroyal decision did not overrule C. Itoh, which ultimately involved competing classifications within Schedule 3. The Court distinguished C. Itoh by noting that the Headnote 4(b) interpretation espoused in that case was used only with reference to alternative classifications within Schedule 3. That is the precise situation that is currently under consideration. We are of the view that the interpretation of Headnote 4(b) set forth in Uniroyal should be limited to situations where competing classifications involve Schedule 3 and another schedule. We find C. Itoh to be controlling in this case. The nontextile laminating substance, i.e. the SBS, is to be disregarded in determining the component material of chief value.

The case of Semperit of America, Inc. v. United States, Court No. 79-6-01201 (17 Cust. Bull. No. 30, at p. 27), is cited as confirming classification of the subject roofing membrane under item 359.60, TSUS. In Semperit, the merchandise at issue was a woven laminated fabric with a rubber sheeting, weighing

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over 44 ounces per square yard and in chief value of rubber. Headnote 2(c) of Subpart 4C precluded classification of this woven material under items 355.65-355.85, TSUS. The subject material is not woven. As a crenette fabric, it is precluded from classification in items 355.65-355.85, TSUS. The headnote which controlled classification is inapplicable here.

You cite Customs Ruling Letter dated May 1, 1981, supra, as supporting the 359.60 classification. That case involved classification of a roofing material known as Rhenofol CV, a material comprised of a woven scrim of man-made fibers completely covered on both sides by nontransparent polyvinyl chloride plastic applied by a laminating process. The merchandise weighed over 44 ounces per square yard, thereby precluding classification under items 355.65-355.85, TSUS. As in Semperit, supra, the core material was a woven fabric covered with a plastic laminate. Headnote 2(c) of Subpart 4C precluded classification of this woven material under items 355.65-355.85, TSUS. The subject merchandise, because it includes a crenette fabric, is not subject to Headnote 2(c), Subpart 4C, and is therefore distinguishable from Rhenofol CV.

Numerous administrative rulings have held roofing materials which include a textile layer of nonwoven man-made fibers to be classifiable under item 359.50, TSUS. See the following cases: Customs Ruling Letter dated December 1, 1983 (Control No. 072123), involving a product comprised of layers of asphalt, sandstone, a fiberglass nonwoven fabric laminated to a nonwoven polyester fabric, and a film of olefin plastic material; Customs Ruling Letter dated December 8, 1983 (Control No. 072018) involving a product comprised of slate granules, polymeric bitumen, polyester felt, unfillerized bitumen and polyethylene film; and Customs Ruling Letter dated August 20, 1985 (Control No. 076414), involving a product called Derbigum which included modified bitumen and a core of nonwoven polyester textile fabric laminated to a specially constructed (not woven) grid fabric of man-made glass fiber yarns. It is Customs view that the subject merchandise is also classifiable under item 359.50, TSUS.

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In light of C. Itoh and the subsequent administrative decisions on like products comprised of a nonwoven fabric, the subject asphalt roofing membrane is properly classifiable as textile fabrics, including laminated fabrics, not specially provided for: of man-made fibers, under the provisions of item 359.50, TSUS, dutiable at the 1986 compound duty rate of 7¢ per pound plus 20 percent ad valorem. Products which are so classifiable also may be subject to quota restrictions pursuant to textile category 627.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: AUG 19 1985

FILE: CLA-2 CO:R:CV:G
076846 jlj

076846

TO : District Director of Customs
San Juan, Puerto Rico 00903

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 76/85 Concerning the Classification of Certain Unfinished Footwear

This request for information was initiated by a letter from John B. Pellegrini, Esquire, of Baskin and Steingut, P.C., representing the importer, the Outdoor Footwear Company, a wholly owned subsidary of Timberland.

FACTS:

The merchandise at issue is men's leather moccasin-type boat shoe uppers (i.e., unfinished footwear) which will be completed in the United States by the addition of an insole, a midsole and an outsole. Three samples were submitted along with the inquiry. Exhibit A is the upper in its condition as imported. Exhibit B is the upper with a midsole attached. Exhibit C is the completed shoe, with the outsole attached and a sock lining (i.e., insole) inserted. The insole, midsole and outsole are added in Puerto Rico after importation into the Customs territory of the United States.

The instant merchandise, Exhibit A, consists of a moccasin-type leather upper manufactured in the Dominican Republic. The upper consists of a piece of leather which is folded up to create an elongated U-shape closed at one

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end. A plug, which covers the front of the foot, is hand sewn to the open end of the U-shape. A collar/eyelet stay component is sewn to the closed end of the U-shape. A slit is cut in the center of the upper's bottom. The slit, which is sewn loosely, runs through about 40 percent of the bottom's length. The instant leather upper is completely formed and sewn, and it has a bottom. Except for the insole, the midsole, and the outsole, the sample is a complete shoe. (At this point, we note that the bottom of the instant sample is the equivalent of an insole or a midsole inasmuch as it covers the bottom of the foot entirely. Therefore even though both a midsole and an insole are added after importation, the instant upper already has the equivalent of an insole or a midsole.)

For the record, we note that the sample upper is virtually identical to that covered by Customs Headquarter Ruling Letter (HRL) 068874 of September 8, 1982 (Internal Advice 71/81) and its reconsideration, HRL 072978 of August 23, 1983. HRL 072978 reversed HRL 068874 and made the new tariff classification of "unfinished footwear" effective 90 days from the date of the ruling for that specific merchandise. We further note that the only merchandise at issue here is that imported prior to October 1984.

The inquirer claims that this unfinished footwear is classifiable under the tariff provision for leather cut or wholly or partly manufactured into forms or shapes suitable for conversion into footwear, other, uppers, in item 791.27, Tariff Schedules of the United States (TSUS).

The inquirer also asks that no country of origin marking be required, claiming that the merchandise undergoes a substantial transformation in the United States and that his client is therefore the ultimate purchaser. The country of origin marking issue will be subject of a separate ruling letter issued by the Entry, Licensing and Restricted Merchandise Branch.

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It is the import specialist's position that the unfinished footwear at issue is classified under the provision for footwear of leather (except footwear with uppers of fibers), other, for men, youths and boys, in item 700.35, TSUS, in accordance with General Interpretative Headnote 10(h), TSUS.

ISSUE:

Is the imported upper classifiable as unfinished footwear in item 700.35, TSUS? Or is it classifiable as leather manufactured into forms or shapes suitable for conversion into footwear in item 791.27, TSUS?

LAW AND ANALYSIS:

The inquirer makes the following claims in support of his assertion that the unfinished footwear should be classified in item 791.27, TSUS:

(1) The imported uppers are specifically described by item 791.27, TSUS.

(2) General Interpretative Rule 10(h), TSUS (hereafter called Rule 10(h)), provides for the classification of unfinished articles as complete articles "unless the context requires otherwise." Since there is a specific provision for leather uppers, the context requires otherwise, so Rule 10(h) does not apply. He cites United States v. J. Gerber et al., 58 CCPA 110, C.A.D. 1013 (1971) and Corporacion Sublistacion, S.A. v. United States, 1 CIT 120 (1981) in support of the latter argument.

(3) The imported uppers are within the common and commercial meanings of the term "upper." He cites Webster's Seventh New Collegiate Dictionary and an American Footwear Industries Association brochure entitled "The Art and Science of Footwear Manufacturing" in support of this assertion.

(4) The term "upper" is an eo nomine designation not limited in any way. As such, it encompasses all forms of the article.

(5) Assuming arguendo that Rule 10(h) is used to classify the imported merchandise as unfinished footwear, the instant merchandise is not substantially complete footwear, therefore it cannot be classified as unfinished footwear. He argues that in Rule 10(h) cases, the courts have placed emphasis upon the fact that the imported article was made into the finished product with minimal effort, therefore articles subject to substantial processing in the United States may not be classified as unfinished. He cites various cases in support of these contentions, especially Daisy-Maddon, Div. of Victor Comptometer v. United States, 81 Cust. Ct. 55, C.D. 4765 (1978), aff'd 68 CCPA 97, C.A.D. 1228 (1979).

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(6) The imported articles are not lasted uppers. The inquirer attempts to distinguish Treasury Decision 79-100 (T.D. 79-100), 13 Customs Bulletin 247, and Customs Headquarters Ruling Letter (HRL) 072978 of August 23, 1983, which held that leather uppers were classifiable as unfinished footwear.

(7) Even if Customs decides that the instant merchandise is classified as unfinished footwear, the uppers imported on or before November 23, 1983, should be liquidated in item 791.27, TSUS, as entered. He claims that this is necessary because HRL 072978 did not become effective for the specific unfinished footwear in that case until 90 days after the date of the ruling. He claims that there was a uniform and established practice under T.D. 79-100 and that to change the alleged practice other than prospectively would be illegal.

In response to the inquirer's first four claims, he is comparing tariff provisions which are subordinate to different superior headings. General Interpretative Rule 10(c)(ii), TSUS, (hereafter called Rule 10(c)(ii)), reads as follows:

> (c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; but, in applying this rule of interpretation, the following considerations shall govern:
>
> * * * * * * * * * *
>
> (ii) comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading.

See Arthur J. Humphries, Packard-Bell Electronics v. United States, 59 Cust. Ct. 231, C.D. 3128 (1967), which commented on Rule 10(c)(ii), "We interpret the cited language to mean that under TSUS the rule of relative specificity does not apply between provisions of inferior headings under different superior headings...."

The inquirer is attempting to compare item 700.35, TSUS, and item 791.27, TSUS, which are inferior headings under different superior headings, but he is barred from doing so under Rule 10(c)(ii). Instead, Rule 10(c)(ii) mandates a comparison between the superior heading for item

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791.27, TSUS, and that for item 700.35, TSUS — i.e., between "footwear, of leather (except footwear with uppers of fibers)" for item 700.35, TSUS, and "leather cut or wholly or partly manufactured into forms or shapes suitable for conversion into footwear" for item 791.27, TSUS.

The footwear upper at issue, Exhibit A, is obviously too far advanced to be classified as a leather shape or form. The instant leather upper is completely formed and sewn, and it has a bottom. Indeed, except for the insole, the midsole, and the outsole, the sample is a complete shoe. To recapitulate what has been done to manufacture the leather into an upper, the leather has been folded up to create a U-shape. A plug has been hand sewn to the open end of the U-shape. A collar/eyelet stay component has been sewn to the closed end of the U-shape.

Indeed, although the import specialist only claims that the leather upper is unfinished footwear, the leather upper looks like a complete moccasin and is capable of being worn as a moccasin-type slipper just as it is. We note that the "Art and Science of Footwear Manufacturing" brochure submitted by the inquirer has an illustration, on page 25, of a "true moccasin" which is virtually identical to the sample before us. The "Art and Science" brochure states that "The true moccasin construction is a single piece of leather encompassing the bottom and sides of the foot and second piece, called the plug, covering the top of the foot." This description aptly summarizes the sample before us.

General Interpretative Rule 10(c), TSUS, states that an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it. The instant sample is more specifically described as unfinished leather footwear than as leather shapes or forms suitable for conversion into footwear.

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Uniroyal, Inc. v. United States, 3 CIT 220, (1982), aff'd 1 CAFC 21 (1983), dealt with similar merchandise — i.e., a leather footwear upper which was a complete shoe except for an outsole and which had been lasted so that it had attained its ultimate shape, form and size. Uniroyal found that the upper was "the very essence of the completed shoe" and that the upper was already "a substantially complete shoe" at the time of importation.

Customs Headquarters Ruling Letter (HRL) 072978 of August 23, 1983, classified virtually identical leather uppers as unfinished footwear, so that the Customs Service has already ruled on merchandise which is the twin of that at issue here. (The samples from HRL 072978 are almost identical to Exhibit A, the sample of the instant merchandise.) We find that the instant leather upper, which is completely formed and sewn and which has a bottom, is unfinished footwear.

Having found that the instant leather upper is unfinished footwear, we proceed to the inquirer's fifth claim, which is that, under Daisy-Reddon, supra, the upper is not substantially complete footwear, therefore it cannot be classified as unfinished footwear. It is unnecessary to go into the Daisy-Reddon tests, however, because the issue of whether a leather upper constitutes unfinished footwear has already been litigated. In Uniroyal, supra, another leather upper was held by both the Court of International Trade and the Court of Appeals for the Federal Circuit to be classified as unfinished footwear because the upper was a "substantially complete shoe" at the time of importation. This issue has already been litigated in Uniroyal, and the inquirer's position did not prevail.

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Next, the inquirer claims that the imported uppers are not lasted uppers, citing T.D. 79-100 and HRL 072978. T.D. 79-100 dealt with leather footwear uppers which had been lasted (i.e., in that instance, which had an insole or a midsole and which had been formed to fit the foot). As stated in HRL 072978, which elaborated upon what constitutes lasting, "That ruling [T.D. 79-100] did not purport to set forth an all-inclusive definition of the term 'lasted.'" HRL 072978 went on to discuss leather uppers virtually identical to the leather upper at issue here. It concluded that the leather uppers were "sufficiently processed...to constitute 'lasted leather uppers' as that term is used in T.D. 79-100." Inasmuch as HRL 072978 considered virtually identical leather uppers and found them to be lasted, we find that this issue has also been decided previously. We follow HRL 072978 and find that the instant leather upper is lasted, too.

Finally, the inquirer claims that the uppers liquidated on or before November 23, 1983, should be liquidated in item 791.27, TSUS, as entered even if the instant merchandise is unfinished footwear. In answering this claim, we note that the only reason HRL 072978 did not become effective immediately on August 23, 1983 (the date when HRL 072978 was issued), was because it was a revocation of a previous letter to the same party (HRL 068874 of September 8, 1982). Inasmuch as there had been a previous letter (i.e., HRL 068874) upon which that inquirer had relied, a grace period of 90 days was given for the change set forth in HRL 072978.

The instant inquirer, however, was not the party involved in either HRL 068874 or HRL 072978, therefore he had no right to rely upon HRL 068874 nor to expect a 90 day grace period following HRL 072978. (We note that the instant inquirer had not even requested a ruling letter regarding his client's transaction.) It is clearly stated in 19 CFR 177.9(c) that:

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> A ruling letter is subject to modification or revocation without notice to any person, except the person to whom the letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter.

Following the clear mandate of 19 CFR 177.9(c), the inquirer had no right to rely upon HRL 068874, therefore he is not entitled to a 90 day grace period following the August 23, 1983, issuance of HRL 072978.

The inquirer further claims, however, that there was a uniform and established practice established by T.D. 79-100 and that to change the alleged practice other than prospectively would be illegal. T.D. 79-100 dealt with leather footwear uppers which had been formed to fit the foot and which had an insole or a midsole. The instant merchandise has been formed to fit the foot, but it does not have an insole nor a midsole. As we noted above, however, the instant upper has the equivalent of a midsole or an insole in that it covers the bottom of foot entirely. The instant upper is substantially similar to that covered by T.D. 79-100, therefore it is both lasted and unfinished footwear. (As we noted in HRL 072978, T.D. 79-100 "did not purport to set forth on all-inclusive definition of the term 'lasted.'") We would agree with the inquirer that a uniform and established practice was established in T.D. 79-100 and in HRL 072978 to call this type of leather upper "unfinished footwear." Inasmuch as we are following rather than changing the practice, however, there is no need for any prospective application.

Finally, having decided that the instant leather upper constitutes unfinished footwear classified in item 700.35, TSUS, the law allows us no discretion to allow the liquidation of entries dated prior to November 23, 1983, under item 791.27, TSUS, which is the incorrect tariff classification.

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Indeed, to allow the liquidation of the entries under item 791.27, TSUS, would exceed the power granted to this office by the law. See National Corn Growers Association et al. v. United States, Slip Op. 86-55 (decided May 23, 1986).

Based on all the foregoing, we find that the instant leather upper, which is completely formed and sewn and which has a bottom, is unfinished footwear. It is classified in item 700.35, TSUS. No 90 day grace period for HRL 072978 will be allowed.

HOLDING:

The instant leather upper constitutes unfinished footwear. It is classified in item 700.35, TSUS. No 90 day grace period for HRL 072978 will be allowed. You should inform the inquirer of this ruling.

Sincerely,

William P. Muffler
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

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814433

076874

2 JUL 1986

Mr. Mark N. Itoh
James J. Boyle & Company
311 South Spring Street
Los Angeles, California 90013

Dear Mr. Itoh:

In your letter of July 2, 1985, you requested a ruling on the tariff classification of an article described as "seamless carbon steel pipe with well screen welded."

The article consists of (1) a base pipe which has been drilled or otherwise perforated with holes, (2) multiple support rods which run the length of the section to be screened, and (3) a V-shaped wire which has been wound around the support rods on the base pipe. All of the components are welded together to form a section of pipe covered with a screen.

These pipe-base screens are said to provide an improvement over slip-on screen jackets because they have a higher tensile strength and resist separation when pulled out for service or replacement. Well screens are essential filtration equipment used in production wells. Well screens may differ in construction and design, but the purpose is the same: separate sand and other soil materials from the fluids which flow into a pipe for extraction.

The pipe-base well screen is not merely a pipe or tube covered with steel wire for reinforcement, protection, or similar purpose. The wire and support rods, when welded to the pipe base, form a specialized filtering and fluid collection device. Therefore, the article is more than a pipe covered with wire and is not described or classifiable under the provisions for pipes and tubes in Part 2 of Schedule 6.

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The pipe-base well screens are filtering devices and, as noted in our letter to your company on March 18, 1985 (file 074698), are classifiable as other filtering apparatus for liquids or gases, in item 661.95, TSUS.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 27 1985

CLA-2:CO:R:CV:GV
076896 JLV

District Director of Customs
200 East Bay Street
Charleston, South Carolina 29402

Re: Decision on Protest and Application for Further Review of Protest Nos. 1601-5-000044 and 1601-5-000045, dated June 13, 1984

Dear Sir:

The above protests and applications for further review were timely filed against your action in classifying certain self-propelled sprayers under the provision for motor vehicles specially constructed and equipped to perform special services or functions, in item 692.16, Tariff Schedules of the United States (TSUS).

The merchandise was entered at Charleston on Entry No. 84-108656, dated March 9, 1984, liquidated April 5, 1985, and on Entry No. 84-109327, dated April 10, 1984, and liquidated on May 24, 1985. This ruling is our decision on the classification issue.

FACTS:

The merchandise is a self-propelled sprayer suitable for agricultural use. It is imported from Italy and is designated by the manufacturer as the Nuovo Semovente, SE.4x.150.2000/42" VV Fan, with a VM 1056 diesel engine. It has a storage tank which holds 525 U.S. gallons, a 36.9 GPM pump, a 42" VV fan, an 8-speed transmission, and 4-wheel drive. The 42" VV fan has a special sprayer head for use in spraying orchards. The 8-speed transmission has 8 forward and 8 reverse speeds. Other spray heads and special accessories or options are also available.

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The protestant claims that the sprayers are provided for as sprayers suitable for agricultural and horticultural use, in item 662.45, TSUS.

ISSUE:

Is the self-propelled sprayer more specifically described under the provision for mechanical appliances for projecting, dispersing, or spraying liquids: sprayers suitable for agricultural or horticultural use, in item 662.45, TSUS, rather that under the provision for other motor vehicles specially constructed and equipped to perform special services or functions, in item 692.16, TSUS?

LAW AND ANALYSIS:

In a decision dated February 23, 1978 (file 054040), we held that the model 2112 4 RM/DS self-propelled sprayer, known generally as the "Semovente," was classified in item 692.16, TSUS. The model in issue is substantially the same sprayer.

The protestant does not address any evidence that the self-propelled sprayer is not a motor vehicle described in item 692.16, TSUS. In Headnote 1(v), Part 4, Schedule 6, it is stated:

> **Part 4 headnote:**
>
> 1. This part does not cover ...
>
> (v) articles and parts of articles specially provided for elsewhere in the schedules.

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In view of this headnote, which controls item 662.45, and in view of our ruling of February 23, 1978, the self-propelled sprayer is more specifically described in item 692.16, TSUS.

HOLDING:

The self-propelled sprayer is classifiable in item 692.16, TSUS. You should deny the protest in full. A copy of this decision should be given to the protestant at the time notice of your action is given on Customs Form 19.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

APR - 3 1986

REFER TO
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Mr. P. J. Dixon
Office of the Minister (Commercial)
Embassy of Australia
1601 Massachusetts Ave., N.W.
Washington, D.C. 20036-2273

Dear Mr. Dixon:

In your letter of September 17, 1985, reference 306/1/45, on behalf of Siddons Pty. Ltd., Victoria, Australia, you inquire as to the tariff classification of various dozer, scraper, and grader blades and edges, and single and double bevel flat steel sections. Descriptive materials were submitted on these products, each designated numerically.

Heat treated steel blades (1.1), in either single or double bevel curved or double bevel flat sections, are available in 3 to 12 ft. lengths, in thicknesses of 1/2, 5/8, 3/4 and 1 inch, and with holes punched at 6 or 12 inch pitch. They are advertised as ground engaging tools for motor graders. These blades are classifiable under the provision for other excavating, levelling, boring, and extracting machinery, and parts thereof, in item 664.08, Tariff Schedules of the United States (TSUS), dutiable at the rate of 2.8 percent ad valorem. Grader end bits (1.2), bolted to the ends of the grader blades to protect them from wear and damage, are likewise classifiable in item 664.08, TSUS.

Bulldozer cutting edges or ground engaging tools (2.1), are finished carbon steel blades for wheeled and nonwheeled tractors. Available in lengths of from 1 to 12 ft. they come in straight, universal, or angle blade configurations depending on the volume of material to be moved and distance covered. Those blades up to 6 ft. long have been determined by Customs to belong to a class or kind of blades chiefly used on farm type tractors. Accordingly, they are classifiable under the provision for agricultural and horticultural implements not specially provided for, in item 666.00, TSUS, free of duty. Those blades 7 ft. to 12 ft. long are classifiable in item 664.08, TSUS. Bulldozer end bits (2.2), both the general purpose high impact-high abrasion types, and the penetration types for low impact/abrasion materials, are classifiable in item 666.00, TSUS, or item 664.08, TSUS, as indicated.

Medium carbon steel scraper blades, or ground engaging tools, are available in 18 to 72 inch lengths, with one, two, or three rows of bolt holes, and in level-cut (3.1) or stinger (3.2) arrangements depending on degree of impact and desired wear life. These blades are classifiable in item 664.08, TSUS. Scraper router bits (3.3), similar in function to the bulldozer and grader end bits, are likewise classifiable in item 664.08, TSUS.

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Single piece edges or ground engaging tools for loader buckets (4.2), general purpose bucket edges (4.3) consisting of cutting edge and 2 end pieces, and 1 piece wrap-around loader bucket edges (4.4), all of medium grade carbon steel, are classifiable in item 664.08, TSUS.

Single bevel (one edge) flat sections (5.1), and double bevel (two edges) flat sections (5.2), of medium and high grade carbon steel, will be imported both in material lengths and cut to length, with and without holes, ready for welding to buckets. The beveling of these sections is achieved during the hot rolling process. Those flat sections which are cut to length and drilled or punched, are finished grader blades classifiable in item 664.08, TSUS. Those flat sections cut to length but without holes, and ready for welding, are similarly classifiable. Beveled flat sections imported in material lengths, not drilled, not punched, and not otherwise advanced, and not of alloy steel, would be classifiable under the provision for hot rolled angles, shapes, and sections, in item 609.80, TSUS, dutiable at the rate of 0.9 percent ad valorem. Those beveled flat sections which have been drilled, punched, or otherwise advanced, would be classifiable under the provision for such merchandise which are hot rolled angles, shapes, and sections, in item 609.84, TSUS, dutiable at the rate of 4.8 percent ad valorem.

Grouser retread bars (6.0), permit the renovation of worn crawler track shoes. They may be imported in mill lengths from which required lengths are cut. Such merchandise is classifiable under the provision for hot rolled angles, shapes, and sections, not drilled, not punched, and not otherwise advanced, in item 609.80, TSUS. Such merchandise cut to the exact length of the track shoe is regarded as a part chiefly used with industrial tractors. This cut-to-size product is classifiable under the provision for other tractors and parts of such tractors, in item 692.35, TSUS, dutiable at the rate of 2.6 percent ad valorem.

Stubble mulch plowblades (7.0), are used with 3-wheeled mulch machinery. Such cut-to-size blades, hole punched, are classifiable under the provision for knives and cutting blades for agricultural or horticultural machines and for shoe machinery, in item 649.65, TSUS, free of duty.

The three-piece bevel flat sections (7.1) are 6, 8, or 10 inch edges for the bucket of a front end loader. The 6 to 8 inch double bevel curved sections (7.2) are for mounting to the blades of earth graders. Although advertised as ground engaging tools for agricultural machinery, they belong to a class or kind of edges chiefly used with loaders and graders of the industrial type. They are therefore classifiable in item 664.08, TSUS. Finally, the 6 or 8 inch double bevel curved sections (7.3) are for

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mounting to the blade of a box scraper. Such scrapers are of the type believed primarily used agriculturally to make land level. These sections are therefore classifiable as agricultural or horticultural implements, not specially provided for, in item 666.00, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

076978

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 27 1985

CLA-2:CO:R:CV:G
077004 JLV

District Director of Customs
120 South Central Avenue
St. Louis, Missouri 63105

Re: Decision on Protest and Application for Further Review of Protest No. 4503-4-000035, dated December 7, 1984

Dear Sir:

The above protest and application for further review were timely filed against your classification of certain lighting fixtures under the provision for other illuminating articles of base metal, in item 653.39, Tariff Schedules of the United States (TSUS). The merchandise was entered at St. Louis on Entry Nos. 84-109213, dated August 9, 1984, and 84-109194, dated August 14, 1984, both of which were liquidated on November 16, 1984. This ruling is our decision.

FACTS:

The articles in issue are the model PL-13 table base (clamp mounted) fluorescent lighting fixtures. The design of the fixtures is such that the ballast is located at the end of the electrical cord which plugs into an electrical socket.

The protestant submitted a technical drawing which lists all of the components in each lamp. These components were identified as either plastic or metal. Based on this evidence, the protestant claims that the lighting fixtures are in chief value of plastic.

ISSUE:

Is there sufficient evidence to demonstrate that the articles are in chief value of plastic?

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LAW AND ANALYSIS:

The tariff description for illuminating articles provided for in item 653.39 requires that they be in chief value of base metal. Illuminating articles in chief value of plastic are classifiable elsewhere.

Using the cost itemizations submitted by the protestant, we conclude that the lamps are in chief value of metal. The sum of the costs for the identifiable metal components is $4.18, whereas the sum of the costs of the identifiable plastic components is approximately $2.95. Included in our allocation of costs were the component costs of the materials in the ballast.

HOLDING:

The lighting fixtures, Model PL-13, are in chief value of base metal, and, therefore, are classifiable in item 653.39, TSUS. You should deny the protest in full. A copy of this decision should be given to the protestant at the time notice of action is given on Customs Form 19.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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071704

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 19 1986

REFER TO

CLA-2 CO:R:CV:G
077025 JAS

George R. Tuttle, Esq.
Three Embarcadero Center
Suite 1260
San Francisco, California 94111

Dear Mr. Tuttle:

In your letter to the Area Director of Customs, New York Seaport, dated March 29, 1985, you ask that we reconsider a letter issued to your client concerning certain snow chains from Italy.

A letter dated October 31, 1984 (810984), from the Area Director, New York Seaport, considered the tariff status of the Konig Rally-Flash, a snow chain for use on vehicle tires. The chain was described in the ruling letter as follows: "It has an inner side ring for fitting the inner part of the wheel and an outer side ring for the outer side of the wheel, linked by various elements which provide friction on the tread. The cross chains are of square steel about 3.90mm thick." These chains were held to be classifiable under the tariff provision for chain and chains, of base metal, other, including parts, in item 652.35, Tariff Schedules of the United States (TSUS), dutiable at the rate of 7.1 percent ad valorem.

You state that the description of this snow chain was inaccurate, in that the subject chains are not of square steel but of stock which is D-shaped in cross section. You cite our letter dated March 20, 1980 (064173), published as C.S.D. 80-240, in which we held that the links of certain tire chain in the form of a D were of a "somewhat circular" cross section and, consequently, were classifiable in item 652.30, TSUS, a provision describing such chain by diameter which is of stock essentially round in cross section.

The second paragraph of C.S.D. 80-240 contains the following: "Since merchandise is classified in its condition as imported, it is only necessary to consider the sample link of the tire protection chain. This sample is doughnut-shaped with a flattened inner surface. It was cut in half resulting in two half-circular portions. The shape of the cross section of these half circular portions is more of a 'D' rather than a circle." Pictures of the merchandise under consideration in ruling 064173 indicate to us that the stock was not in the true shape of a D, but of a cross section in the somewhat oblong shape of a lemon. These pictures were made available to Mr. Smith of your office. The reference to a D shape is a description of convenience for a particular sample. Therefore, it is not this reference or the above-cited description in C.S.D. 80-240, but the merchandise itself, which governs classification.

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We are advised that the link stock in this case is formed from bar cold drawn through a die. One half of this die is in the form of a bisected circle and the other half of the die is in the form of a square with one side missing. A submitted sample of the stock and the description of the die from which it is made lead us to conclude that the stock is not lemon shaped. Therefore, C.S.D. 80-240 is not controlling here.

It is our position that stock with at least one side flat or straight cannot be considered essentially round for the purposes of item 652.30. Consequently, the described snow chain is classifiable under the provision for other chain and chains, and parts thereof, all the foregoing of base metal not coated or plated with precious metal, in item 652.35, TSUS. The letter dated October 31, 1984 (810984), is therefore affirmed.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 23 1986

REFER TO
CLA-2 CO:R:CV:G
077063 JLV

077063

Frederick P. Waite, Esq.
Cadwalader, Wickersham & Taft
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Waite:

In your letter of September 2, 1985, you requested on behalf of the American Wire Producers Association, information on the classification of poultry and stucco netting.

The merchandise is produced from carbon or alloy steel wire which is twisted and woven, generally into a hexagonal pattern. You state that the diameter of the wire used in poultry netting is usually 0.035 inch, and that the diameter of the wire used in stucco netting is usually 0.054 inch. The products may be coated with metal either before or after weaving.

A wire netting product, described by you, would be classifiable under the provision for netting not specially provided for, of wire, not cut to shape, woven (but of other than simple warp and weft construction) and composed wholly or in substantial part of wire measuring under 0.075 inch in maximum cross-sectional dimension, in item 642.45 (if coated with metal before weaving) or in item 642.47 (if coated with metal after weaving), Tariff Schedules of the United States.

Enclosed is a copy of a ruling issued on December 15, 1976 (file 047785), in which a similar netting product was classified under the above provisions.

Sincerely,

Arthur P. Schuffler
For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 27 1986

REFER TO
CLA-2:CO:R:CV:G
077084 JCH

077084

Mr. Eric Swadell
Custom House Broker
180-A6 Mace Street
Chula Vista, California 92011

Dear Mr. Swadell:

This is in response to your letter of September 20, 1985, concerning the tariff classification of articles assembled in Mexico and entered at the port of San Diego.

The merchandise is a small plastic container-like article with a top or cover which snaps onto the bottom. The cover is made to serve as a receptacle for urine specimens and various reagents. It has a hole in the bottom covered by a thin filter which is claimed to be impregnated with a human chorionic gonadotropin (HCG) antibody. The filter is supported by a plastic disc. Underneath that and filling the remainder of the container is a cylindrical piece of foamed plastics material. Markers are contained in the receptacle for measuring purposes. In the United States, these articles are added to kits which contain the reagents and other materials necessary for an in vitro pregnancy test.

Your claim for classification under item 772.42, Tariff Schedules of the United States (TSUS), cannot be allowed because the merchandise does not meet the description of any of the specific exemplars enumerated under that provision. Nor would we regard the merchandise classifiable as a medical instrument or appliance. In this connection, Headnote 1(iii), Subpart B, Part 2, Schedule 7, TSUS, precludes laboratory appliances from classification as medical instruments, and we would not regard a device which replaces laboratory apparatus for home use as any more eligible for such classification. Your further claim for alternative classification as a miscellaneous medical supply in Subpart C, Part 13, Schedule 4, TSUS, must also be rejected since the merchandise is not within any of the descriptions there. Further, we would not regard the HCG antibody as a medicinal.

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Ordinarily, articles which are in chief value of a chemical combined with laboratory glassware or other devices or chemicals which make them entireties which are more than the named chemical are classifiable under the so-called similitude or basket provisions in Part 14, Schedule 7. See, for example, our decision of October 20, 1980, file No. 064257; Pharmacia Laboratories, Inc. v. United States, 67 CCPA 5, C.A.D. 1235 (1979). However, on the basis of the broad nature of the provision for certain biologicals which are duty-free under item 437.76, TSUS, as indicated in the legislative history, we have allowed the classification of certain pregnancy kits under that provision in our decisions of February 15, 1983, file No. 069234, and April 12, 1984, file No. 072667. We now find that those decisions are controlling with respect to the dutiable status of the instant merchandise.

Accordingly, the instant articles are classifiable under item 437.76.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 16 1986

REFER TO
CLA-2 CO:R:CV:G
077109 JGH

077109

Ms. Paula Quinn Regan
Vice President
Prestige Premiums, Inc.
41 Vreeland Avenue
Totowa, New Jersey 07512

Dear Ms. Regan:

This is in reference to your inquiry concerning the dutiable status of a "Twinkle Ink" pen, a product of Taiwan.

The "pen" is designed to decorate a surface with glitter. In application, the pen is squeezed, with the glitter being transmitted to the surface to be decorated. It is designed to be used on T-shirts, packages, decorations and ornaments. Examination of a sample pen discloses that the cap and barrel are made from polyethylene, and the glitter of a plastic chemical material mixed with a water soluble adhesive.

A product of this type is classifiable, if in chief value of the chemical ingredients, under the provision for other articles not provided for elsewhere in the tariff schedules, item 799.00, Tariff Schedules of the United States. The rate of duty is 3.9 percent ad valorem. As a product of Taiwan it is entitled to duty-free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 16 1986

REFER TO
CLA-2:CO:R:CV:G
077121 JGH

District Director of Customs
6th Floor, Plaza Nine Bldg.
55 Erieview Plaza
Cleveland, Ohio 44114

Re: Decision on Applicaton for Further Review of Protest No. 4110-5-000016, on the Classification of Industrial Robots and Parts, Products of West Germany

Dear Sir:

The protest concerns the classification and appraised value of Niko 600 robots and parts. The claim of the importer is that the industrial robots are classifiable under the provision for electric welding machines and parts thereof in item 683.90, TSUS. It is further contended that any license fees paid are not part of the dutiable value of the merchandise.

Customs classified the merchandise under the provision for machines not specially provided for, and parts thereof in item 678.50, TSUS.

Descriptive literature concerning the Niko 600 gantry robot units describes them as all electric, continuous path robots providing exceptional versatility, capable of performing a wide range of complex tasks, such as automated press operations, automated machining and fabrication cells, line trackable welding, loading and unloading of machine tools, casting and forging processes, quality control inspection and many others.

Regarding appraisement, the petitioner maintains that the license fees described in the license agreement between the seller and themselves are non dutiable and that the appraised value should be the invoiced unit values, less any invoiced discount, packed.

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Although the petitioner maintains the merchandise is used in welding, the literature submitted shows that the robots were capable of a wide variety of uses, and that there is no physical difference between Niko 600 robots and other general purpose robots. Therefore it has not been established that the robots are chiefly used for welding operations only.

As to the appraisement issue, the license agreement between the petitioners and the West German manufacturer provides that the petitioner must pay a royalty for the exclusive right to make, have made, or use and sell the robots, utilizing the technical information, patents, drawings tests, etc., furnished by the foreign manufacturer. Under section 402(b), Trade Agreements Act of 1979, any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States must be added to the price actually paid or payable for the merchandise. We are not convinced from the evidence before us that the license fee is not a condition of the sale of the imported merchandise for exportation to the United States. Accordingly, the license fee is part of the appraised value under transaction value.

You are directed to deny the protest in full. A copy of this decision should be attached to the Customs Form 19 Notice of Denial furnished the petitioner. That portion of the original protest file included with the appeal is hereby returned.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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077121

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 13 1986

REFER TO
CLA-2:CO:R:CV:G
077132 JLF

077132

Mr. A.W. Baird
Senior Customs Representat
Shell Canada Limited
P.O. Box 100, Stn. (M)
Calgary, Alberta T2P245
Canada

Dear Mr. Baird:

This is in response to your request for classification of "Clean-Sol 34," a product consisting of the following components: paraffins, 48.1%; napthenes, 34.7%; and aromatics, 17.2%.

Classification of this product as a benzenoid mixture in item 407.16, Tariff Schedules of the United States (TSUS), is inappropriate because the dutiable benzenoids that are present in Clean-Sol 34 are naturally occurring; that is, the benzenoids are naturally present in the crude oil used in the initial distillation during the production of Clean-Sol 34.

After reviewing the submitted specifications sheet, classification as naptha in item 475.35, TSUS, is incorrect because Clean-Sol 34 does not have a naptha boiling range.

Based upon the product specifications and flow diagrams of Clean-Sol 34, we find it properly classifiable as a kerosene in item 475.30, TSUS, dutiable at the rate of 0.25 cent per gallon.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

30 JUN 1986

REFER TO

CLA-2 CO:R:CV:G
077150 JCH

077150

District Director of Customs
111 West Huron Street
Buffalo, New York 14202

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0901-4-701660

The above-captioned protest and application for further review were filed against the tariff classification of pocket diaries which were the subject of entry No. 113671 filed at the port of Buffalo in 1984. The merchandise is a product of Canada. Our decision follows:

ISSUE:

Duty was liquidated at the 1984 column 1 rate of 6.3 percent ad valorem for diaries under item 256.56, Tariff Schedules of the United States (TSUS). It is claimed the merchandise is dutiable at the 1984 column 1 rate of 2 cents per pound for lithographed paper calendars in item 274.10, TSUS. The underlying issue is the effect to be given precedents when the ratio decidendi of the later one appears to be inconsistent with that of the earlier one and the merchandise is similar but not identical.

FACTS:

Further details concerning the pocket diaries at issue are contained in the following discussion.

LAW AND ANALYSIS:

This protest has been preceded by precedents of which three are most pertinent, and all involve articles which have some features in common, but none of which are identical. The earliest of these decisions is Sormani et al. v. United States, 33 Cust. Ct. 423, Abs. 58502 (1954), in which an

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article described as a calendar booklet was classified as a calendar, and the Customs classification as a diary was not sustained. In the next decision, Baumgarten v. United States, 49 Cust. Ct. 275, Abs. 67150 (1962), merchandise invoiced as desk diaries was easily regarded by the court as diaries, and there was no alternative claim for classification as calendars for the court's consideration. However, in Charles Scribner's Sons v. United States, 574 F. Supp. 1058 (CIT 1983), merchandise designated engagement calendars was classified as calendars and the Customs classification as diaries was overruled.

The Sormani merchandise, which was classified as calendars, was similar to the Scribner's merchandise in that it had a typical calendar configuration with a picture on one page and a date tabulation on the opposite page for the display of both when left open on a desk. The common spiral binding feature which facilitated this use is not common to the instant merchandise which is also smaller than all of the articles in the precedents and which otherwise is suited to a pocket use rather than a desk top display use. The Baumgarten merchandise, which was classified as diaries, unlike the Sormani merchandise, but similar to the instant merchandise, did not have any pictures. Further, the Baumgarten articles did not have the single-page-per-month format of the Sormani articles, nor does either the Scribner's or the instant merchandise.

Therefore, the instant merchandise is distinguishable from the Sormani calendars. In fact, while it was held that the areas for entering notations in the latter calendars were incidental to the calendar feature, the same cannot be said of the spaces in the instant articles because they represent the salient feature. Aside from slight differences in size and

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in the method of binding, the Baumgarten merchandise and the instant articles are essentially the same except that the instant articles only provide for entries by day, while the Baumgarten articles instead of allowing for one page per week allowed for two with a further space breakdown for entries by hour of the day. In fact, the spaces allowed for these entries are not significantly different in size than the spaces in the Scribner's merchandise and the spaces in the instant merchandise. The view, therefore, that the instant merchandise must be classified in accordance with the views of the Scribner's court rather than those of the Baumgarten court is predicated on the position that Scribner's has made a change which supersedes previous precedent. We disagree with that conclusion.

When previous precedent is overruled the court will usually so state, which it did not do in Scribner's. The court, however, did imply that Baumgarten was not stare decisis for Scribner's because the issues as framed by the parties were different. The decisions still meet head on in that the Baumgarten court found that even though the spaces were intended for entries other than those for the typical diary, the user could enter whatever information that was chosen in the spaces. The Scribner's court found no such alternative uses for spaces of essentially the same size. Proponents of a calendar classification for the instant merchandise, therefore, interpret Scribner's as establishing a single criterion for determining what constitutes a calendar and what does not constitute a diary based on the size of the spaces allocated for notations. In this connection, although the Scribner's court did note that the spaces had the primary purpose of allowing for the entry of "dates for future appointments and references," rather than diary entries, 574 F. Supp. 1060, later findings

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by the court do not support a single criterion standard. At 574 F. Supp. 1063, the court made the finding that the article's "essential purpose was to convey high-quality Sierra Club photography" and was "not suitable for diary purposes."

Accordingly, we find that the Baumgarten decision has not been overruled and that it was not stare decisis for the Scribner's litigation mainly because of differences in the merchandise involving the significance of the area for entries as it relates to other features, such as pictures for desk display. On that basis, if Baumgarten was not stare decisis for Scribner's, Scribner's would not be precedent for the classification of merchandise which we find, taking all of its characteristics as a whole into consideration, rather than any single criterion, has more features in common with the Baumgarten merchandise than with the Scribner's merchandise.

It should be noted that where there is a difference in the ratio decidendi in two court decisions not involving identical merchandise or identical issues as framed by the parties, there is no rule requiring that one court's views on a matter be regarded as correct and another court's differing views incorrect merely because one decision is later than the other. Further, failure of the Government to appeal generally implies acquiescence in the correctness of the court's ultimate conclusion taking all considerations into account. In a situation as here, where there are multiple considerations such as commercial designation, presence of pictures, printing process, manner in which used, size of booklet, type of binding, format of tabulated information and type of paper, acquiescence does not concede agreement with the court's views and points on every one

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of these considerations, particularly, when the court's views on a single consideration, such as the size of the space for entries, cannot be reconciled with the views of an earlier court. It is the responsibility of the Customs Service in tariff classification matters to apply precedent in a manner which gives effect to all pertinent and viable court decisions without ignoring or overruling any pertinent precedent administratively when a later court has not specifically done so itself.

HOLDING:

For the foregoing reasons, we find that the instant pocket diaries most resemble the diaries which were the subject of Baumgarten v. United States, supra, and their classification is controlled by the principle of that precedent in accordance with the requirements of 19 CFR 152.16(b). Under the principle of that decision, the merchandise is properly classifiable under the provision for diaries in item 256.56, TSUS. Therefore, you are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action, and the Form 19 is returned herewith.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 14 1986

REFER TO
CLA-2 CO:R:CV:G
077191 TLL

Joseph A. Bosco, Esq.
Bosco, Curry, Paulsen & Tesoro
Attorneys at Law
120 Nineteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Bosco:

Your letter dated October 25, 1985, regarding the classification of Nutella, a hazelnut cocoa spread, has been forwarded to this office for reply. In your October 25, 1985, letter, you ask that Nutella be classified under item 156.47, Tariff Schedules of the United States (TSUS). In the event that item 156.47, TSUS, is deemed to be inappropriate, you suggest classification under either items 156.30 or 157.10, TSUS. In any event, you suggest that classification under item 183.05, TSUS, is inappropriate. It is noted that by letter dated May 20, 1986, you have withdrawn your request for alternative classification under item 157.10, TSUS. However, we are compelled to point out that all possible classifications are considered, whether or not an inquirer makes a claim for a particular classification.

Your submission points out that Nutella consists of the following ingredients:

sugar	50 percent
edible vegetable fat	20 percent
roasted hazelnut powder	13 percent
nonfat dry milk	10 percent
lowfat cocoa powder	7 percent
traces of soy lecithin and vanillin	(less than 1 percent)

which are combined in an anhydrous paste with particle size of less than 0.05 millimeter.

It is advertised and marketed as a "chocolaty nut spread," and is imported and sold in 7 oz., 13 oz., and 2 lb. jars. You state that it is chiefly used as a topping on cakes and cookies as well as a spread on bread and crackers and at least one retail bakery has used it as an ingredient in its "chocolate-filled croissants."

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The National Import Specialist has pointed out that the label on the submitted sample has a logo which shows the product already spread onto bread with an ordinary table knife. The extensive past history of this product clearly shows its chief use to be a spread on bread.

The relevant TSUS provisions are then items 156.30, 156.47, 157.10 and 183.05.

Item 156.30, TSUS, provides for sweetened chocolate in any other form other than in bars or blocks weighing 10 pounds or more each. Item 156.47, TSUS, provides for confectioners' coatings and other products (except confectionery) containing by weight not less than 6.8 percent nonfat solids of the cocoa bean nib and not less than 15 percent of vegetable fats other than cocoa butter. Item 157.10, TSUS, provides for candy, and other confectionery, not specially provided for. Item 183.05, TSUS, provides for edible preparations not specially provided for.

Headnote 1, Subpart B, Part 10, Schedule 1, TSUS, provides:

> 1. The term "chocolate", as used in this subpart, shall be limited to products (whether or not confectionery) consisting wholly of ground cocoa beans, with or without added fat, sweetening, milk, flavoring, or emulsifying agents.

Headnote 2, Subpart C, Part 10, Schedule 1, TSUS, provides:

> 2. The term "confectionery" as used in this subpart, covers confections or sweetmeats ready for consumption. This subpart does not cover all confectionery (see Subpart B of this part, Part 9 of Schedule 1, and Subpart B of Part 15 of Schedule 1 for other provisions covering confectionery).

You acknowledge that Customs has previously ruled that Nutella was classifiable under item 183.05, TSUS; however, you suggest that recent court developments justify the review of this classification. In support thereof, you cite Rockwell Import Corp. v. United States, 76 Cust. Ct. 262 (1976), and Leaf Brands, Inc. v. United States, 70 Cust. Ct. 66 (1973).

In reviewing the various TSUS provisions at issue, we note that classification under item 156.30, TSUS, is inapplicable because of the presence of nuts and vegetable fats. See in this regard, the United States v. Rockwell Import Corp., 65 CCPA 12 (1977), where the court stated:

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The courts have repeatedly held that the presence of nuts in imported products referred to as "chocolate" precluded classification of such products under the sweetened chocolate provisions of the Tariff Acts. C. J. Van Houten & Zoon, Inc. v. United States, supra, (Tariff Act of 1930); A. Herman & Co. v. United States, 56 Treas. Dec. 435, T.D. 43666 (Cust. Ct. 1929) (Tariff Act of 1922). In enacting TSUS, Congress intended to continue the established classification practices:

> In Subpart B the provisions relating to cocoa have been brought together. The headnote is new and represents an effort to settle a question that has come up from time to time concerning the classification of sweetened chocolate and chocolate containing nuts, fruits, etc. The headnote would continue the practice of classifying sweetened chocolate under the provisions for chocolate (items 156.25 and 156.30) even though it may be regarded as confectionery, and the practice of classifying such chocolate containing added ingredients such as nuts, fruits, etc., under the provision for confectionery (items 157.10 and 157.11). [Tariff Classification Study, Schedule 1, 163 (1960)].

In addition, the court pointed out:

> [5] Congress thus intended to preclude assessment of chocolate products containing vegetable fat other than cocoa butter at the rate applicable to chocolate, either directly, by classification as "chocolate," or indirectly by similitude.

Insofar as the application of item 156.47, TSUS, is concerned, you state in your letter of May 20 that the fat content of the cocoa bean is less than 1 percent. Since item 156.47, TSUS, requires not less than 6.8 percent non-fat solids of the cocoa bean nib, and the Nutella contains 7 percent low fat cocoa powder, we are unable to conclude that the product qualifies for entry under item 156.47, TSUS. In any event, the legislative history of item 156.47, TSUS, demonstrates that products such as Nutella were clearly not intended to be covered by that provision. See for instance the discussion in Rockwell, supra, which provides:

> As originally proposed, the TSUS included the present definition of chocolate but not item 156.47. When item 156.47 was added, its purpose was explained in the Tariff Classification Study, Sixth Supplemental Report 1 (May 23, 1963):

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Explanation: This change is required to clarify the status of certain related products containing cocoa or chocolate and vegetable fat other than cocoa butter. These products include confectioners' coatings, coating for ice cream bars, and simple mixtues of cocoa or chocolate and vegetable fat.

Consequently, entry under item 156.47, TSUS, is inappropriate.

Insofar as the application of item 157.10, TSUS, is concerned, we see nothing in the holding of Leaf Brands, Inc. v. United States, 70 Cust. Ct. 66 (1973), to indicate that Nutella should be classified as a candy or other confectionery. In fact, there is no evidence that the product is chiefly used as a confection. If anything the product closely resembles the "halawi," a product made from sesame oil and sugar and was eaten, as imported, on bread, and was held to be erroneously classified as a confectionery. Magdalini Bros. v. United States, stated 55 T.D. 812, T.D. 43418 (1929).

For the reasons herein stated, we are of the opinion that Nutella is appropriately classified under item 183.05, TSUS.

Sincerely,

Arthur P. Schaffler

For Harvey B. Fox
Director, Classification
and Value Division

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071761

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 18 1986

REFER TO
CLA-2 CO:R:CV:G
077244 jlj

District Director of Customs
1 East Bay Street
Savannah, Georgia 31401

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1703-3-000217

This protest was filed against your decision in the liquidation of entry number 82-255730-4 of May 10, 1982, covering a shipment of nylon/leather athletic footwear produced in South Korea.

This ruling concerns the correct tariff classification of the instant nylon/leather athletic footwear.

FACTS:

The instant nylon/leather athletic footwear is described on the Customs Form 6445 as follows:

A. Boys' Boston Nylon Split Track Shoes, Stock No. 73265, Style K2J657, and

B. Boys' Nylon Jogger Shoes, Stock No. 73384, Style 87003B.

The Savannah import specialist liquidated the entry under the provision for other footwear, other, other, in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant Maldisco claims that the athletic footwear should have been classified under the provision for footwear, of leather (except footwear with uppers of fibers), other, for men, youths and boys, in item 700.35, TSUS.

ISSUE:

Is the instant nylon/leather athletic footwear classifiable as leather footwear in item 700.35, TSUS, or other footwear in item 700.95, TSUS?

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LAW AND ANALYSIS:

With regard to Stock No. 73384, the import specialist states that Customs Laboratory Report 83/1235 of December 10, 1982, which dealt with Stock No. 73384, indicated that size 3 footwear had only 0.5476 square feet of leather, as opposed to the manufacturer's stated 0.77 square feet of leather. This means that the component value breakdown submitted by the protestant was incorrect. The import specialist found this shoe to be classified in item 700.95, TSUS.

With regard to Stock No. 73265, the import specialist states that the detailed component value breakdown cost of rubber and plastic, excluding the cost of cutting and sewing, is $0.9495. About 46 percent of the total leather purchased is waste. The cost of the leather, using a 35 percent waste allowance and excluding cutting and sewing costs, is $0.65. Based on these figures, the import specialist found Stock No. 73265 to be classified in item 700.95, TSUS.

The protestant submitted a voluminous statement regarding why it believes that both types of footwear should have been classified in item 700.35, TSUS. The gist of its statement is that it is reasonable to assume that leather was the component of chief value for both Stock No. 73384 and Stock No. 73265.

We have reviewed the manufacturer's component value breakdown for Stock No. 73265. Based on the cost information shown there, we find that Stock No. 73265 should have been classified in item 700.35, TSUS, as claimed by the protestant.

We have also reviewed the manufacturer's component value breakdown for Stock No. 73384. The manufacturer claims that there is 0.77 square feet of split and Everskin leather in a pair of boys' size 4 joggers. Customs

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Laboratory Report 83/1235 indicates that there is 0.5476 square feet of leather in a pair of boys' size 3 joggers. If the cost of leather is adjusted to take this discrepancy into account, the results are as follows:

.5476 / .77	x $0.88 (stated cost of leather)	=	$0.626
			.22 cutting
			.22 trimming
			$0.896 leather cost

The adjusted cost of the leather must be compared to the cost of the rubber and plastic, which is as follows:

Rubber and Plastic	-	$0.95
Cutting	-	$0.09
Trimming	-	$0.06
		$1.10

Based on a comparison of the costs stated above, the component of chief value for Stock No. 73384 is rubber and plastic. (We have disregarded the stitching costs of $0.26 for the leather and $0.10 for the rubber and plastic components because there is no indication that these costs are based on the weight of the upper's components. In any case, even if these costs were added, the component of chief value would still be rubber and plastic rather than leather.) We find that Stock No. 73384 is classified in item 700.95, TSUS, as the import specialist stated.

HOLDING:

Based on the analysis given above, we find that Stock No. 73265 should have been classified in item 700.35, TSUS. The protest is approved with regard to Stock No. 73265. We find that Stock No. 73384 was correctly classified in item 700.95, TSUS. The protest is denied with regard to Stock No. 73384.

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The protest is approved in part and denied in part as stated above. A copy of this decision should be sent to the protestant along with the Customs Form 19 Notice of Action.

Sincerely,

Arthur V Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

077274

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 27 1986

REFER TO
CIA-2 CO:R:CV:G
077248 JAS

077248

Mr. Paul B. Dacy
Sea Containers America, Inc.
One World Trade Center
Suite 1235
New York, New York 10048

Dear Mr. Dacy:

In your letter of October 30, 1985, you inquire as to the tariff classification of 20 ft. and 40 ft. refrigerated containers and 20 ft. tank containers, presumably from countries entitled to the column 1 rate of duty. Brochures were submitted.

You maintain that the provision in item 640.30, Tariff Schedules of the United States (TSUS), covering other containers, of base metal, chiefly used in the packing, transporting, or marketing of goods, represents the proper classification of these containers. Our New York office, however, has suggested item 657.25 and item 661.35, TSUS, as possible alternative classifications.

With respect to the refrigerated containers, or reefers as they are commonly called, entries under item 640.30 would be subject to Schedule 6, Part 3, Subpart A, Headnote 1(i), TSUS, which precludes from coverage within item 640.30 containers with mechanical or thermal equipment such as agitators, heating or cooling coils, or electrical elements (provided for in parts 4 and 5 of Schedule 6). The reefers described on page 4 of the submitted brochure, fitted with nose-mounted clip-on diesel generator, would fall within this exclusion and would therefore be precluded from classification under item 640.30.

Item 661.35, TSUS, is a provision for refrigerators and refrigerating equipment, whether or not electric, and parts thereof. Tariff terms are normally construed in accordance with their common and commercial meanings, which are presumed to be the same. The term "refrigeration" denotes the process of producing low temperature usually throughout an appreciable volume. Moreover, the 1969 Summaries of Trade and Tariff Information, a compilation of trade data disseminated by the U.S. International Trade Commission, while not indicative of the legislative intent in enacting item 661.35, TSUS, reflect Customs handling of entries accepted under that item. Volume 8, Schedule 6 thereof, at p.90, in discussing refrigerators and refrigerating equipment, whether or not electric, describes machines or assemblies of apparatus which function in a continuous cycle of operations to produce and maintain temperatures ordinarily near or below freezing. These units normally comprise, among other things, a compressor (with or without motor) and condenser mounted on a common base, whether or not

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complete with evaporator, or self-contained absorption units. It is our opinion that the refrigerated (reefer) containers at issue possess these elements. Consequently they are specifically provided for in item 661.35, TSUS. The 1986 rate of duty is 3.2 percent ad valorem.

The literature describes the 20 ft. IMCO Type 1 tank container for transporting hazardous liquids, the 20 ft. IMCO Type 2 container for low/medium hazard liquids, and the 20 ft. ISO container for non-hazardous liquids. The IMCO Type 1 has electrical immersion elements fitted in fully welded and pressure tested stainless steel tubes situated internally near the bottom of the tank with terminals at the rear dished end. The IMCO Type 2 has four external steam channels welded to the underside of the tank to provide steam heat. The ISO tank container has two 4 inch diameter semicircular full length steam tubes fitted on the underside of the tank. These tank type containers are designed to transport chemicals and other liquids which require controlled heat. The presence of the heating elements would preclude classification of these containers in item 640.30, TSUS, because of Schedule 6, Part 3, Subpart A, Headnote 1(i), TSUS, previously cited.

Inasmuch as there is no other specific tariff provision believed applicable to these containers, and because stainless steel is the component material in chief value, the IMCO Type 1 and Type 2 tank container and the ISO container, would be classifiable under the tariff provision for other articles of iron or steel, not coated or plated with previous metal, in item 657.25, TSUS, dutiable in 1986 at the rate of 6.2 percent ad valorem.

Sincerely,

Arthur P. Scheffler

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 6 1986

REFER TO
CLA-2 CO:R:CV:G
077249 DM

Mr. D. Edgar MacLeod
Scotwell Industries Limited
Suite 503
5800 Rue St. Denis
Montreal, PQ Canada

Dear Mr. MacLeod:

We are responding to your request for a ruling on the country of origin of cabinet toweling and operating room surgical towels. You have furnished additional details about the processing in a letter dated October 31, 1985, which was in response to our letter of June 12, 1985. Your submission elaborates on the finishing performed in Canada on greige cloth that is imported from various countries.

The precise operations performed on the cloth include sewing the individual pieces end to end into one continuous length. The fabric is then brushed and singed. It is passed through a solution containing enzymes and other chemicals on the padding machine which dissolves starch and protein products such as casein, glue, gelatine. From the padding machine, the cloth is steamed and washed to remove impurities. The next step is to bleach the cloth, after which it is washed and dried. During these washing and drying processes the fabric passes through a device that shrinks the fabric and sets it at a permanent width. The fabric is prepared for vat dyeing by a specially trained technician. After the towelling material is dyed, it is cut to lengths of 40 yards, hemmed and put up into rolls. As noted in your submission, the cost of the equipment is over $750,000. And, you have pointed out that the huck towels have been classified by the U.S. Food and Drug Administration as medical devices. It is your view that the finishing and cutting and hemming performed on the towelling material in Canada amounts to a substantial transformation.

Under Section 12.130(b), Customs Regulations, merchandise that is processed in more than one country is considered to be a product of the last country where it underwent a substantial transformation. That is, a new and different article of commerce must be created by means of a substantial manufacturing or processing operation.

Section 12.130(e)(2), Customs Regulations provides that an article usually will not be considered a product of a particular country by virtue of merely having undergone:

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(ii) Cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;

This provision governs the importation of the subject towels into the United States. Since the towelling material, as imported into Canada, must only be cut to length to form the individual towels, the finishing operations are not sufficient to result in a substantial transformation of the merchandise. See Headquarters Ruling Letter 077055 dated April 22, 1986, where a substantial transformation did not occur when terry toweling in rolls and grey form is cut to length and stitched, bleached and dyed.

Although we do not deny that the processing performed in Canada adds significant value to the product, it is our view that the essence of the final product nevertheless is the towelling material. The landmark case of Uniroyal v. United States, 3 CIT 220, 542 F. Supp. 1026 (1982), aff'd., 702 F. 2d 1022 (Fed. Cir. 1983) supports this view. In the Uniroyal decision, the court rejected the importer's claim that attaching a leather upper to an outsole in the United States resulted in a substantial transformation of the merchandise. In characterizing the assembly process as "minor", the court stated that the upper was "the very essence of the completed shoe."

Even though the material and the finished towels are classifiable in discrete tariff provisions, that is not decisive in ascertaining the country of origin. This is consistent with the decision in Rolland Freres, Inc. v. United States, 23 CCPA 81 (1935) where the court made the following observation:

> While the fact that by a manufacturing effort expended on an article its tariff status may have changed is a proper matter to consider along with other circumstances in arriving at a conclusion as to whether the article has been "manufactured or produced," it certainly should not be a controlling consideration.

To sum up, we find that processing the towel material in Canada does not result in a substantial transformation of the merchandise. Thus, the country where the fabric is woven is the country of origin of the finished towels.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 23 1986

REFER TO
CLA-2:CO:R:CV:G
077251 jlj

Ms. Angela De Gaetano
U.S. Customs Service
Customs Information Exchange
Room 200
6 World Trade Center
New York, New York 10048

Dear Ms. De Gaetano:

In a memorandum dated October 30, 1985, you forwarded a Customs Form 6431 dated September 9, 1985, from the port of Pembina concerning entry No. 85-3252487 covering polycoated printed natural kraft paper manufactured by Bonar Packaging in Canada. This difference is listed on the twelfth line, first page of C.I.E. N/64 dated December 13, 1986.

The instant merchandise is printed polycoated kraft paper which is made into bags for potato slices. The paper is imported in rolls. It has marks capable of being read by an electric eye. According to the importer, the paper is "sealed into a tube, bottom sealed, filled with [the] product, and top sealed" after importation, thereby making the paper into a bag. The issue is whether the instant paper, imported printed and in rolls, is classifiable as coated paper, other, not lithographically printed, impregnated, coated or both, not gummed, other, in item 254.85, Tariff Schedules of the United States (TSUS), or as articles of paper not specially provided for, other articles of coated paper, other, in item 256.87, TSUS.

One port argues that Sanwa Foods, Inc. v. United States, (Sanwa), Court No. 81-10-01363, Slip Op. 85-37 (March 25, 1985) is controlling. It contends that the instant rolls of paper are more specifically provided for as unfinished bags (i.e., as articles of paper not specially provided for) than as paper.

The other port argues that Customs Headquarters Ruling Letter (HRL) 073464 of December 29, 1983, is controlling. HRL 073464 discussed a similar issue, i.e., whether pre-printed paper imported in rolls and intended for sugar bags was classifiable as other printed paper in item 254.70, TSUS, or as other articles of paper in item 256.90, TSUS.

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It concluded that the merchandise there at issue was not advanced far enough to be considered unfinished sugar bags and that the merchandise was more specifically described as other printed paper than as other articles of paper, not specially provided for.

The merchandise involved in Sanwa was:

> ...rolls of unassembled plastic packaging for various noodle mixes produced by plaintiff. Printed on each roll at regular intervals are the trademarked product brand name, product descriptions, preparation instructions, and magnetic black ink marks. The marks are read by an electric eye, which triggers a mechanism that cuts, folds, and seals the plastic around various noodle mixes in accordance with the location of the marks.

(Slip Op. 85-37 at 2-3.) As the quotation above indicates, the merchandise in Sanwa is very similar to the merchandise at issue here.

Prior to classifying the merchandise under item 772.20, TSUS, the Sanwa court determined that the imported packaging constituted "articles" rather than "material" because the character and identity of the individual pieces was fixed at the time of entry and because the merchandise was not commercially capable of any other use than packaging the noodle mixes. We find that these principles apply to the instant merchandise too, therefore the instant paper is classifiable as unfinished paper bags in the tariff provision for other articles of paper, not specially provided for, other, of coated paper, other, in item 256.87, TSUS, dutiable at the rate of 5.6 percent ad valorem.

19 Code of Federal Regulations 152.16(b) (19 CFR 152.16(b)) states as follows:

> 152.16 Judicial changes in classification.
>
> (b) Similar merchandise under decision favorable to Government. The principles of any court decision favorable to the Government shall be applied to merchandise, though not identical with the merchandise the subject of the court's decision, if its classification is affected by such principles, provided that

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it has been entered or withdrawn for consumption after 30 days from the date of publication of the court's decision in the Customs Bulletin.

The date of publication of Sanwa in the Customs Bulletin was April 17, 1985. If the principles of Sanwa are applied to the instant merchandise, a higher duty rate will result, therefore the Sanwa decision in this context is favorable to the government.

Pursuant to the above-cited 19 CFR 152.16(b), the principles of Sanwa apply to the similar merchandise at issue here. Therefore, all such merchandise which was entered or withdrawn for consumption after 30 days from April 17, 1985, should be classified in item 256.87, TSUS. Because the change in classification was effected judicially, no formal change of practice procedure is required.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 11 1986

REFER TO
CLA-2 CO:R:CV:G
077269 jlj

077269

District Director of Customs
511 N.W. Broadway, Federal Building
Portland, Oregon 97209

Dear Sir:

Re: Application for Further Review of Protest No. 2904-4-000205

This protest was filed against your decision in the liquidation on August 31, 1984, of entry No. 413677-1 of September 15, 1983, covering a shipment of backswings produced in Taiwan.

This decision concerns the correct tariff classification of the backswings (Body-Trac 200 or Back-Trac 200).

FACTS:

The merchandise at issue is Body-Trac 200 (also known as Back-Trac 200) backswings. This merchandise is a physical fitness apparatus which allows the user to invert his body, thereby reversing the effect of gravity. According to an advertising brochure, the Body-Trac 200 backswing relieves stress and tension, back, shoulder and neck pain, and improves circulation, posture and complexion. The Body-Trac 200 is similar in purpose and function to various traction devices sold in sporting goods and physical fitness stores.

The backswings were liquidated under the provision for gymnastic, athletic or playground equipment in item 735.20, Tariff Schedules of the United States (TSUS).

The protestant's broker claims that the backswings should be classified under the provision for orthopedic appliances and similar devices, other, in item 709.57, TSUS.

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ISSUE:

Are the backswings classifiable in item 735.20, TSUS, or in item 709.57, TSUS?

LAW AND ANALYSIS:

The protestant's broker argues that the backswings are medical devices ordered by medical stores and doctors for patients, therefore they are classifiable as orthopedic devices in item 709.57, TSUS. The protestant states that 95 percent of the backswings are sold to doctors. A number of backswing invoices to doctors and medical establishments have been submitted along with the protest.

In Customs Headquarters Ruling Letter 058970 of May 7, 1978, orthopedic appliances were defined as articles "that are generally worn on the person and used in the correction of body disabilities which are most often of an incapacitating nature." Inasmuch as the backswings are not worn on the person, they do not meet this definition of "orthopedic appliances."

In HRL 058970, we stated that orthopedic appliances "are professionally prescribed and are available through professional outlets. Articles which are available in ordinary retail stores for use in alleviating sprains or strains are not, for purposes of tariff classification, considered orthopedic devices." As we noted above, the Body-Trac 200 is similar to various traction devices sold in physical fitness and sporting goods stores. The mere fact that doctors purchase certain physical fitness equipment for their own personal use or for their patients does not make the equipment an orthopedic appliance.

The Portland import specialist suggested that the Body-Trac 200 might be classified under the provision for mechano-therapy appliances in item 709.40, TSUS. In the Explanatory Notes of the Tariff Classification Study

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(CIE 1/64), mechano-therapy appliances are described as "those primarily used to treat diseases of the joints and muscles by mechanical reproduction of various movements. Such articles, however, are those that are ordinarily used for treatment given under medical supervision, and do not include ordinary exercising or physical culture equipment such as rowing machines and the like." Based on this definition, the Body-Trac 200 is not a mechano-therapy device classifiable in item 709.40, TSUS.

Inasmuch as the backswings do not meet the definitions of orthopedic appliances or mechano-therapy appliances and inasmuch as similar devices are sold in sporting goods and physical fitness stores, we find that the backswings are correctly classified as gymnastic, athletic or playground equipment in item 735.20, TSUS.

HOLDING:

The backswings are classified in item 735.20, TSUS. The protest should be denied in full. A copy of this decision should be sent to the protestant along with the Customs Form 19, Notice of Action.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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017269

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR - 3 1986

REFER TO
CLA-2:CO:R:CV:G
077290 PR

077290

Miss Neelam Dhamija
First Secretary (Commerce)
Embassy of India
2536 Massachusetts Ave., N.W.
Washington, D.C. 20008

Dear Miss Dhamija:

This is in reply to your letter of November 5, 1985, concerning the classification and textile category of two types of yarn-dyed fabric from India.

No construction information was given for either fabric. You state that both fabrics are 100 percent cotton and power-loomed. The entry documents accompanying this submission show that both fabrics were entered at Los Angeles International Airport in 1984, as woven cotton colored fabrics, not fancy or figured, in item 322.9872 Tariff Schedules of the United States Annotated (TSUSA). The accompanying visaed invoice was for textile category 318.

Customs officers at Los Angeles issued a notice of redelivery and required a visa or visa waiver because the fabric belonged in textile category 310. You believe that the proper category for these fabrics is category 318 and refer to a booklet containing guidelines for textile category 310. We assume you are referring to the Textile Category Guidelines, CIE 36/79, of September 17, 1979. The guidelines for this category state that the TSUSA definition which did not change between 1979 and 1984, for gingham is adequate. That definition for gingham, Statistical Headnote 1(b), in Subpart 3A, Schedule 3, TSUSA, provided:

> (b) Gingham: Plain-woven and fancy yarn-dyed fabrics having two or more colors in the warp and/or in the filling. Includes checked and plaid ginghams, gingham stripes, cloth of "haircord" construction (i.e., cloth having cord stripes in the warp which are formed by yarns woven from an extra beam), and "poplin" type fabrics with a difference in picks per inch and ends per inch of less

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than 40 (e.g., 90 x 60). Excluded are yarn-dyed handkerchief fabrics made in box looms. The following are examples:

Yarn number (before weaving) Warp	Filling	Yarns per inch Warp	Filling
20s	20s	62	50
40s	40s	80	70
40s	40s	90	60
40s	40s	70	60
30s	30s	70	60
30s	30s	76	64
30s	40s	73	66
30s	40s	90	60

The construction parameters in the definition above were stated to be examples only and were not intended to include all possible constructions for gingham.

Basically, gingham is a plain woven yarn-dyed fabric which is a check, plaid or stripe. Examination of the fabric samples shows that both fabrics are plain woven, yarn-dyed, and fancy or figured (containing two or more colors in the filling). One fabric is a stripe. The other is a plaid. Our tests indicate that neither fabric has a difference between the warp and filling of 40 or more. Both samples conform to the TSUSA definition of gingham and, therefore, must be classified as such.

You note that the Guidelines exclude chambray and madras from textile category 310 and conclude the fabrics in question fall into category 318 by default.

Where there is a conflict between the Guidelines and a statistical headnote in the TSUSA, the headnote prevails. However, here we note no real discrepancy. Chambray is a fabric with a single color in the warp and a single color in the filling. The fabric designated style 1221 has two different colors in the filling and, therefore, is not a chambray. Further, after reviewing the history of the Guidelines, we are convinced that the type of madras fabric

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meant to be excluded was a figured weave fabric, not the plain weave as represented by the fabric designated style 1038.

In addition, since both types of fabrics have two or more colors in the filling, they should have been classified as fancy or figured fabrics pursuant to Headnote 3, Subpart 3A, Schedule 3, TSUS.

In view of the above, we can find no reason to exclude quality 1038 or quality 1221 from category 310. Both fabrics are properly classifiable under the provision for woven cotton fabrics, fancy or figured, colored, in item number 325.-- TSUS. We are advised by our National Import Specialist that the statistical suffix applicable to these fabrics in 1984 should have been 18 or 20.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

077390

DATE: JUN 23 1986

FILE: CLA-2 CO:R:CV:G
077390 TLL

TO : Area Director of Customs
New York Seaport
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Reconsideration of Headquarters Ruling Letter Dated December 29, 1983, File No. 073464

This is in response to a memorandum dated November 15, 1985, submitted by the New York Seaport concerning a recent court case, Samsa Foods, Inc. v. United States, Court No. 81-10-01363, Slip Op. 85-37 (March 25, 1985) (hereinafter referred to as Samsa and its implications with regard to HRL dated December 29, 1983, file No. 073464.

The merchandise involved in Samsa was:

> ...rolls of unassembled plastic packaging for various noodle mixes produced by plaintiff. Printed on each roll at regular intervals are the trademarked product brand name, product descriptions, preparation instructions, and magnetic black ink marks. The marks are read by an electric eye, which triggers a mechanism that cuts, folds, and seals the plastic around various noodle mixes in accordance with the location of the marks. The subject merchandise thus serves both to protect its contents and promote the sale of the product.

Slip Op. 85-37 at 2-3.

The court in Samsa preliminary to classifying the imported merchandise under item 772.20, Tariff Schedules of the United States (TSUS), made the determination that the imported merchandise was "articles" under the TSUS rather than merchandise.

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The merchandise involved in file HRL dated December 29, 1983, was:

> ...40 pound MF bleached kraft sugar bag, imported in rolls 16-1/8 inches in width. The paper is completely pre-printed by flexographic process with all the printing that is necessary for a sugar bag, including such instructions as "To open, lift flap" and "Cut here for easy pouring spout." Each printed impression will make an individual bag. After importation, the rolls of paper are cut up, glued and assembled into sugar bags.

The competing tariff provisions involved in file No. 073464 were the basket provision for articles of paper, not specially provided for, in item 256.90, TSUS, and the provision for other printed papers, not specially provided for, not lithographically printed, weighing over 18 pounds per ream, in item 254.70, TSUS. The merchandise was classifiable under item 254.70, TSUS.

In reviewing the Sarma case and your comments thereon, we agree that if the merchandise described in Sarma is an article then the merchandise described in HRL dated December 29, 1983, would also be considered an "article" for tariff purposes. This being the case, Headnote 1, Subpart B, Part 4, Schedule 2, becomes relevant. That headnote provides in part:

> This subpart covers paper and paperboard, in rolls and sheets, cut to size or shape, and not made up into articles, finished or not finished.

Since item 254.70, TSUS, is set forth in Subpart B, we are precluded from classifying these "articles" within item 254.70, TSUS. Therefore, the merchandise should be classified under item 256.90, TSUS.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 11 1986

REFER TO
CLA-2 CO:R:CV:G
077434 TLL
815876

077434

Ms. April Evans
The A.W. Fenton Company, Inc.
P.O. Box 19937
Columbus, Ohio 43219

Dear Ms. Evans:

Your letter dated October 21, 1985, regarding the classification of recipe cards has been forwarded to Headquarters for response.

Sample cards were attached. They are two copies of a Recipe Number 9, of a set of unstated number; each is printed by a lithographic process on paper, with a picture of a cooked dish, Skillet Chicken with Biscuit Dumplings, on one face, and a recipe for the preparation of listed ingredients, printed in two columns, on the other side. The cards measure approximately 4 5/8 by 4 1/8 by .008 inches.

In reviewing the classification of this merchandise, we have concluded that the printing of the recipe in columns is the controlling point and that the merchandise would be considered charts for classification purposes. The merchandise would be classified under item 273.35, Tariff Schedules of the United States (TSUS), with a free rate of duty.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 11 1988

CLA-2 CO:R:CV:G
077442 JNB
815660

077442

Mr. Joseph B. Caleca
F.W. Myers & Co., Inc.
One World Trade Center
New York, New York 10048

Dear Mr. Caleca:

This is in response to your ruling request submitted on behalf of Montgomery Ward Importing, Inc., inquiring as to the tariff classification of two metal tool chest and cabinet combinations, both manufactured in Taiwan.

Article 4271 is comprised of a cabinet and tool chest. The cabinet has dimensions of 26 inches in width, 26 1/2 inches in height and 13 inches in depth. The cabinet contains two drawers and a large storage compartment. It is designed to stand on the floor. The corresponding tool chest is designed to sit on top of the cabinet. It has seven drawers and is not equipped with handles. The chest is 24 inches in width, 13 1/4 inches in height and 11 inches in depth.

Article 4277 also is comprised of a cabinet and tool chest. The cabinet has one drawer and a large storage compartment. It has dimensions of 22 inches in width, 23 1/2 inches in height and 12 1/2 inches in depth and is designed to stand on the floor. The corresponding tool chest is 20 inches in width, 11 1/2 inches in height and 10 inches in depth. It, too, is not equipped with handles.

The cabinets fall within the tariff definition of furniture in that they are movable articles of utility designed to be placed on the floor or ground designed to equip the home or other establishment. See Headnote 1, Schedule 7, Part 4A, Tariff Schedules of the United States (TSUS). Both cabinets are classifiable as furniture, ..., not specially provided for: other, under item 727.70, TSUS, dutiable at the rate of 4.7 percent ad valorem. See I.A. 65/83.

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Inasmuch as the tool chests are not equipped with handles, they are not cases designed to be carried with the person and are disqualified from tariff classification under the luggage provisions. See Customs Ruling Letter of February 6, 1984, (Control No. 073673). Accordingly, the chests are classifiable as articles of iron or steel, not coated or plated with precious metal: other articles; other, under item 657.25, TSUS, dutiable at the rate of 6.2 percent ad valorem.

Sincerely,

Arthur P. Schaffler

For Harvey B. Fox
Director, Classification
and Value Division

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077442

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 11 1986

REFER TO
CLA-2 CO:R:CV:G
077444 jlj

Area Director of Customs
Airport International Plaza, Room 210A
Newark, New Jersey 07114

Dear Sir:

Re: Application for Review of Protest No. 1001-5-007072

This protest was filed against your decision in the liquidation on March 1, 1985, of entry No. 84-927516 dated July 19, 1984, covering a shipment of "Marty Mouse" produced in South Korea.

This ruling concerns the proper tariff classification of "Marty Mouse," a Hartz Mountain cat toy.

FACTS:

The merchandise at issue is "Marty Mouse," Hartz Mountain Code No. 114004, a cat toy which is a textile mouse with a hat and with eyeglasses.

The Newark import specialist classified Marty Mouse under the provision for articles not specially provided for, of textile materials, not ornamented, of man-made fibers, of pile or tufted construction, in item 389.50, Tariff Schedules of the United States (TSUS).

The attorney for the protestant argues that Marty Mouse is ornamented, therefore it should be classified under the provision for articles not specially provided for, of textile materials, other articles, ornamented, in item 386.13, TSUS.

ISSUE:

Is Marty Mouse an ornamented article for tariff purposes because of its hat and eyeglasses?

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LAW AND ANALYSIS:

Customs has consistently ruled that features which are necessary to create the article itself do not constitute ornamentation for tariff purposes. See C.I.E. 6871/66, CBR Ruling 72-0263, Protest Review Decision (PRD) 75-15 of May 27, 1975, Customs Headquarters Ruling Letter (HRL) 069169 of December 4, 1981, and HRL 073029 of October 11, 1983.

The importer concedes that the eyes or eyeglasses attached to Marty Mouse may help create the toy, however, it believes that the hat ornaments Marty Mouse. The attorney for the importer cites Headnote 3(a)(iii) and (iv) of Schedule 3, TSUS, Endicott Johnson Corp. v. United States, 82 Cust. Ct. 49, C.D. 4787 (1979), and Blairmore Knitwear Corp. v. United States, 60 Cust. Ct. 388, C.D. 3396 (1968) in support of her client's claim that Marty Mouse is ornamented. She argues that the toy mouse is created by its body, eyes and tail, while the hat is unnecessary to create a mouse, therefore it is ornamentation.

In PRD 75-15, one of the cat toys under review was a duck-like figure wearing a cap. Inasmuch as the cap (i.e., hat) was held to be one of the features which created the duck-like figure, it was held not to be ornamentation.

In HRL 073029, a textile mouse wearing a hat and eyeglasses was found to be unornamented because the hat and the glasses were used to create the article.

As stated in PRD 75-15 "...whether or not a doll or plaything reasonably resembles any known animal is not the governing criterion. Nor is the fact that the doll or plaything is intended for use by an animal that may or may not be capable of understanding or recognizing the features

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of that doll or plaything. What must be determined is whether the features on the doll or plaything are used to create that article or merely to decorate it." HRL 069169 and HRL 073029 also emphasize the idea that features which are necessary to create the article itself do not constitute ornamentation. We find that both the hat and the eyeglasses are necessary to create the article itself, therefore they do not constitute ornamentation.

HOLDING:

Marty Mouse is not ornamented. It is classified in item 389.50, TSUS. The protest is denied in full. A copy of this decision should be sent to the protestant's attorney along with the Customs Form 19, Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 13 1988

REFER TO
CLA-2 CO:R:CV:G
077453 DW

077453

Mr. Lawrence Reisman
Good Idea Corp.
320 Northern Blvd.
Suite 9
Great Neck, New York 11021

Dear Mr. Reisman:

You have requested a ruling on the tariff classification of four sewing kits from Taiwan.

Three of the sewing sets are contained in hard plastic cases with hinged covers. Each sewing set contains the following articles: scissor measuring approximately 2 1/2 inches, two needles, one plastic thimble, one needle threader, and a formed plastic pin cushion. The three cases contain 10, 12, and 14 spools of varicolored threads, respectively. Each spool contains 35 yards of spun polyester thread.

The remaining sewing kit consists of 12 spools of assorted colored threads, two needles on a piece of paper-backed foil, a safety pin, an aluminum needle threader, and a pair of scissors. These items are contained in a blister package.

The term "sewing set" was construed in New York Merchandise Co., Inc. v. United States, 66 Cust. Ct. 20, C.D. 4162 (1971) where the court stated:

> In our opinion the sine qua non to designation of an article of commerce as a "sewing set" is that an article which contends to be such contains, needle and thread, the essentials needed to perform the act of sewing, in addition to whatever other sewing accessories it may happen to include, i.e., scissors, thimbles, pins, tape measure, etc.

In the past, Customs required the container to be substantial or reuseable. See Headquarters Ruling Letter 072763 dated June 4, 1984. It is now our view that the requirement for a substantial or reuseable container is erroneous. In a recent decision dated March 17, 1986, file No. 077311, we ruled that a sewing kit contained in a blister package was classified in item 651.13, TSUS, as a sewing set in leather cases or other containers of types ordinarily sold therewith in retail sales, other in item 651.13, TSUS.

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Thus, all four kits are classifiable in item 651.13, TSUS. Articles from Taiwan that are classifiable in item 651.13, TSUS, are eligible for duty-free treatment under the Generalized System of Preferences upon compliance with all pertinent requirements.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 18 1986

REFER TO
CLA-2 CO:R:CV:G
077468 JLV

077468

Arthur V. Fitzwater
Reed Rolled Thread Die Co.
Industrial Park
Holden, Massachusetts 01520-1895

Dear Mr. Fitzwater:

In a letter of December 13, 1985, you requested a ruling on the classification of certain tool steel products, called die blanks, imported from Japan.

The die blanks are produced from hot rolled or forged AISI D-2 tool steel bars. After being cut from material lengths of bar to approximate individual lengths, the blanks are milled to exact length. The blanks are then ground on all four sides to specific dimensions. The ends may be finished as follows: by a double bevelling at 5 degree angles, by a single bevelling at a 5 degree angle, or by a straight edge on both ends. After the ends are finished, the blanks are imported and then further processed. Processing after importation consists of grinding or milling the cutting threads, and polishing and buffing.

The blanks with straight edges are classifiable under the provision for other bars of alloy tool steel in item 606.95, Tariff Schedules of the United States (TSUS). Although you state that these are to be used as blanks for thread rolling machinery, they have not been advanced or dedicated to the point where they are considered to be other than bar stock. In Avins Industrial Products Co. v. United States, 62 CCPA 83, C.A.D. 1150 (1975), affirming 72 Cust. Ct. 43, C.D. 4503 (1974), the court held that certain lengths of wire, specially straightened and cut to length for use as antennas, were classified as wire rather than as unfinished antennas because the wire lengths were capable of use in applications other than as antennas.

The blanks with the bevelled ends, however, have been processed by an operation that is not allowable under Headnote 1, Part 2, Schedule 6, TSUS, for products classifiable in Part 2 of Schedule 6. Furthermore, the bevelling is performed to the specifications for use in a particular screw thread rolling machine. They have been advanced to the point where they are dedicated to a specific, sole use, and are considered to be unfinished interchangeable tools for the thread rolling machine.

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Therefore, the blanks with bevelled ends are classifiable under the provision for interchangeable tools for hand or machine tools not suitable for cutting metal, in item 649.49, TSUS.

The articles classified in item 606.95, TSUS, are subject to quota under items 926.22 (for products entered on July 20, 1985, through July 19, 1986) and 926.23 (for products entered on July 20, 1986, through July 19,1987), Appendix to the Tariff Schedules.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

077470

REFER TO

8 JUL 1986

CLA-2 CO:R:CV:G
077470 DW

R. Brian Burke, Esq.
Rode & Qualey
295 Madison Avenue
New York, New York 10017

Dear Mr. Burke:

Under the authority of Part 177, Customs Regulations, you have requested the tariff classification and quota status of eight styles of hand-crocheted cotton garments from the Philippines. You presented additional arguments at a meeting at Customs Headquarters on November 18, 1985, attended by representatives of the Government of the Philippines and Customs and Commerce. Your request contained in a letter dated December 6, 1985, was accompanied by several sample garments.

The eight sample tops that are the subject of this request are hand crocheted with the exception of the knit waistbands that are machine-made.

We agree with your claim that the garments are classifiable for tariff purposes as blouses rather than sweaters. Each top covers the body from the neck to below the waist and satisfies the definition of the term "blouse." These garments crocheted from fine to medium sized yarns that result in a lightweight fabric with varying amounts of openwork probably will be worn over underwear. Nor do we regard the amounts of openwork fabric as indecent or immodest as to preclude these garments from being classifiable as blouses.

You correctly note that none of the garments have a net construction: that is, an open mesh fabric with uniform spacing. To classify a garment as "net," the fabric used to manufacture the garment must be machine-made. See T.D. 75-57 and HRL 059884 dated September 20, 1978. It is our judgment that the machine-made waistband on a hand-made garment is not sufficient to result in classifying the garment as net. A description of the individual garments follows:

Style 8501 is a sleeveless pullover blouse with a round neck and scalloped edging at the neckline and arm openings. It has a net-like construction punctuated by vertical rows of raised knots of yarn known as "popcorn stitches" that are formed during the knitting process and do not constitute ornamentation for tariff purposes. Style 8604 is similar to style 8501 except that the popcorn stitches form diagonal rows across the front panel, and the neck and sleeve openings have straight rather than scalloped edgings.

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Style 8602 is a sleeveless pullover with a V-neck, and features decorative scalloped edging at the armholes and neck, and a row of "popcorn stitches" on each side of the front yoke. The fabric of the front panel consists of hand knit patterns with varying degrees of openwork.

Like style 8602, style 9401 is a sleeveless pullover blouse composed of a mesh-like fabric with a V-neck and decorative scalloped edging at the armholes and neck. Popcorn stitches formed during the knitting of the fabric are scattered over the front panel. This garment has textile appliques in the shape of flowers which are stitched to the front panel.

Style 9404 is a sleeveless pullover blouse with a V-neck and decorative picot edging at the armholes and neck. The front panel consists of openwork fabric with a diamond shaped design.

Style 9406 is a sleeveless pullover blouse with a V-neck and picot edging at the armholes and neck. The fabric of the rear panel and the top front half consists of open mesh with scattered popcorn stitches. The remainder of the front panel consists of a diamond-patterned knit with small pointelle holes.

Style 9409 is a sleeveless pullover blouse with a V-neck and with scalloped edging at the neck and armholes. The front and back panels have openwork fabric in an inwrought design.

Style 9411 is a sleeveless pullover blouse with a round neck. The armholes and neck have decorative picot edging. The front and back have openwork in an inwrought design.

You have claimed that the garments that are the subject of this ruling are not of lace construction. As you point out, the term "lace" for tariff purposes is defined as an "openwork fabric with a preconceived inwrought design" E. C. Carter & Sons v. United States, 38 Cust, Ct. 368, C.D. 1889 (1957). That is, the garment must have a significant amount of openwork with an intricate design. Delicacy is a characteristic associated with lace. Openwork garments knit or crocheted from bulky yarns in preconceived inwrought designs may lack the delicacy associated with lace. In Headquarters Ruling Letters 059454 dated June 19, 1979, and 059958 dated May 3, 1979, Customs held that certain openwork sweaters were of "lace" construction because they were sufficiently delicate to be commercially acceptable as lace.

Turning to the merchandise at hand, it is our view that styles 9406, 9409, and 9411 are sufficiently delicate, and possess significant openwork in an inwrought design to be considered lace wearing apparel.

You claim that the picot stitch or scalloped edging does not ornament these garments, because it serves the functional purpose of finishing the edges on these garments. In our opinion, that is not decisive. The test that has been developed to determine if a feature constitutes ornamentation is whether its primary purpose is decorative rather than functional. Schedule 3, Headnote 3(b)(iii), TSUS, specifically states that an edging is

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not required to have a separate existence from the fabric or article on which it appears in order to constitute ornamentation. Ordinarily, the fact that a feature completes a raw edge is entitled to great weight in determining whether it is primarily decorative or functional. If an edging, however, is formed during the knitting process, it would always complete the garment. Such an edging, as provided for in the headnote may be yet considered ornamentation if the balancing test results in a finding that the effect produced by the edging is primarily decorative. Applying this test to the subject edgings, it is our view that they are more pleasing to the eye than a straight edging would be. Nor, do we believe that the decorative effect of these edgings is merely incidential. It is true, as you note, that the edges are small and are created from the same yarn which is used in the body of the garment. Unlike Brittania Sportswear v. United States, 5, CI.T. 212, 214 (1983), where the court mentioned those factors in holding that a hammerloop on a pair of jeans did not constitute ornamentation, both edgings are highly decorative and do indeed constitute ornamentation.

As for the floral-shaped designs that are stitched to the front panel of style 9401, they are not formed at the same time the garment is created; rather these decorative designs are appliques under Headnote 3(a)(ii), Schedule 3, TSUS, and accordingly, ornament the garment.

The final issue to be resolved concerns whether these garments are exempt from quota under the Philippine Bilateral Agreement. You have argued that all hand-crocheted garments which are products of the cottage industry and which have been properly certified by the Philippine Garments and Textile Export Board are exempt from quota.

Article 16(A) of the Bilateral Textile Agreement provides as follows:

> In conformity with Article 12, paragraph (3) of the Arrangement, this agreement shall not apply to exports of handloom fabrics of the cottage industry of the Republic of the Philippines, or handmade cottage industry products made of such handloom fabrics in the Republic of the Philippines, or to folklore handicraft textile products traditional to the Republic of the Philippines including those specified in Annex D as "Philippine Items," provided that such products are properly certified under arrangements established between the two Governments pursuant to paragraphs 11 and 18 of this agreement and the above mentioned article of the Arrangement. "Philippine items" are traditional Philippine products, cut, sewn, or otherwise fabricated by hand in cottage units of the cottage industry. Additional items may be subsequently added to this list by mutual agreement.

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Annex D

Philippine Items

Philippine Traditional Folklore Handicraft Textile Products.

Philippine Items are traditional Philippines Products, cut, sewn, or otherwise fabricated by hand in cottage units of the cottage industry. The following is the agreed upon list of such items.

Batik and Harlon Fabrics - hand woven fabrics of the cottage industry.

Banaue Cloth - Cotton Handloom Fabric in Multi-Colors.

Other Hand Woven and Handloom Fabrics of the Cottage Industry.

Articles and garments made by hand from hand woven and handloomed fabrics.

Hand crocheted garments, shawls, hats, and accessories, including the "Catsa Group" type garments (heavily hand crochet work in combination with coarse greige or dyed cotton fabric or batik fabric).

Taking these provisions together, it is our view that only hand-crocheted garments that are traditional Philippine products that are cut, sewn, or otherwise fabricated by hand in cottage units of the cottage industry are exempt under Annex D. The garments at hand are clearly not traditional Philippine items; accordingly, they are subject to the Bilateral Textile Agreement.

Since our meeting at Customs Headquarters on November 18, 1985, we have been advised by the Committee for the Implementation of Textile Agreements that the Government has agreed, for 1986 only, to permit entry for consumption and from withdrawal from warehouse for consumption of both traditional and non-traditional hand-crocheted garments certified under the provisions of Paragraph 1A and Annex D by the Government of the Philippines. See 51 Fed. Reg. 10651 (1986).

To be considered exempt from quota, garments must be entirely hand-crocheted. The garments which are the subject of this ruling have waistbands that are machine-made; thus, they do not qualify for the

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exemption. We note that if the garments, including the waistbands, were to be entirely hand-crocheted, then they would be exempt from quota under Annex D of the Bilateral Textile Agreement between the United States and the Philippines.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
077473 TLL

077473

08 JUN 1986

Edward J. Farrell, Esq.
Bronz & Farrell
2021 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Farrell:

This is in reply to your letter dated December 9, 1985, requesting a ruling on behalf of your client Pascobel, Inc. Montreal, Canada, as to two products. You submit that both products are properly classifiable as casein mixtures under item 493.17, Tariff Schedules of the United States (TSUS). As such, you suggest the products would be free of quota.

The first product, Nollibel P25-C, is a mixture of calcium and sodium caseinate with sweet dried whey, whey protein concentrate, and edible lactose. It has the following composition:

Lactic acid	1.5 percent
Ash	7.5 percent
Lactose	60 percent
Fat	2 percent
Protein	25 percent
Moisture	4 percent

The value composition would be:

Composition	Percent Value
Caseinate (Mixed Na and Ca)	43.2
Sweet dried whey	30.8
Dried whey protein concentrate	22.0
Edible lactose	4.0

Further, you point out that Nollibel P25-C is used as an ingredient in such frozen products as ice cream, fruit ice, sorbets, ice milk; in milk desserts such as dessert custards, jellied milk, etc; and in prepared dishes such as milk sauces, quiche fillings, pancake fillings, etc.

The second product concerned, Belcover P25-C, is a mixture of calcium and sodium caseinate with denatured sweet dried whey protein, whey protein concentrate and lactose and has the following composition:

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Moisture	4 percent
Protein	25.5 percent
Lactose	61 percent
Fat	0.5 percent
Ash	7.5 percent
Lactic acid	1.5 percent

You provide the following value breakdown for this product:

Composition	Percent Value
Caseinate (mixed Na and Ca)	43.5
Sweet dried denatured whey	31.6
Dried whey protein concentrate	22.2
Lactose	2.7

Belcover P25-C is used principally in chocolate product formulas and its incorporation is possible in a whole range of chocolate products such as milk chocolate bars or blocks, milk chocolate coverings, confectionary chocolate, and chocolate fillings. Its characteristics allow it to obtain homogenous sized particles having a smooth surface without fissures or cavities. It exhibits excellent behavior during crushing, reduces fat liaison, allows for reduction of fat content in bars because of the gain in viscosity and also allows for a reduction in the thickness of coating due to the reduction of the flow limit which it permits.

The controlling classification provision is item 493.14, TSUS, which appears under the superior heading for "Casein and mixtures in chief value thereof (other than a product described in item 118.45)." Item 493.12, TSUS, provides for the classification of casein. Item 493.14, TSUS, provides for the classification of:

> Dried Milk (described in items 115.45, 115.50, 115.55, and 118.05) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported.

Item 493.17, TSUS, provides for the classification of "other" casein and mixtures.

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MOLLIBEL P25-C is a mixture of calcium and sodium caseinates, sweet dried whey, whey protein concentrate, edible lactose, and 2 percent fat. It is in chief value of the caseinates. Item 493.14, TSUS, provides for dried whey (118.05, TSUS) mixed with other ingredients, having over 16 percent milk solids, not over 5.5 percent by weight of butterfat, and not packaged for retail trade. Since this product is a mixture in chief value caseinates having a dried milk described in item 118.05, TSUS, it is classifiable under item 493.14, TSUS, and subject to the provision of item 950.19. The product is prohibited from entering the commerce of the United States.

BELCOVER P25-C is a mixture of calcium and sodium caseinate, denatured sweet dried whey protein, whey protein concentrate, lactose, and 0.5 percent fat. It is in chief value of the caseinate.

Therefore, it is not a direct mix of an item provided for in item 493.14 (one or more items 115.45, 115.50, 115.55 or 118.05). Since this article is in chief value of caseinates, and is excluded from classification as an edible preparation because of Headnote 3, Subpart B, Part 15, Schedule 1, classification under item 493.17, TSUS, is appropriate.

Sincerely,

John T. Kerl
for Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

077514

DATE: JUL 18 1986

FILE: CLA-2:CO:R:CV:G
077514 JLF

TO : Area Director of Customs
New York Seaport
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 92/85 Concerning the Tariff Classification of Merchandise Identified by the Importer as "Santa's Song Book."

This is in response to your memorandum dated December 6, 1985, regarding the tariff classification of merchandise known as "Santa's Song Book," under Internal Advice 92/85. Your memorandum was initiated by a request from Patrick Powers Customhouse Broker for the importer, Hope Industries, dated October 17, 1985.

We find the proper classification of this article to be an entirety under the provision for other electrical articles and electrical parts of articles, not specially provided for, in item 688.42, Tariff Schedules of the United States (TSUS), with separate classification of the batteries in item 682.95, TSUS.

Classification of this article as a toy in item 737.95, TSUS, is inappropriate since the quality of emotion induced by the user of the article is not mere amusement, but rather that of musical interest. This merchandise is not characteristic of a plaything that is chiefly used for amusement.

Classification in item 688.34, TSUS, which provides for other electrical articles or electrical parts of articles using pre-programmed digital integrated circuits, is also improper since the song book does not produce the rectangular wave-based sound which was intended as part of the requirement for inclusion in item 688.34, TSUS. Rather, the article produces sound by a single tone oscillator feeding a flat speaker which produces the tone corresponding only to the individual key being depressed.

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- 2 -

In view of the foregoing, the subject merchandise marketed as "Santa's Song Book" is properly classifiable as an entirety in item 688.42, TSUS, with separate classification of the batteries in item 682.95, TSUS.

You should inform the inquirer of this ruling.

Harvey B. Fox

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079514

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

8 JAN 1986

REFER TO
CLA-2 CO:R:CV:G
077536 JGB

Miss Beth C. Ring
Attorney at Law
Sandler & Travis, P.A.
505 Park Avenue
New York, New York 10022

Dear Miss Ring:

Your letter of December 26, 1985, supplements the information provided in your request for a ruling dated August 14, 1985, and follows our letter to you dated December 24, 1985 (our file No. 076798). You have requested a ruling as to the tariff status of finished shirts exported from Israel (country "A"), which are made in part in country "A" and in part in Botswana (country "B"). Your request is on behalf of Giallo Apparel, 9 Dorset Drive, Delmar, New York.

You request confidential treatment of the name of country B and for the extensive cost and production figures provided us. Samples of two shirts have been provided: an oxford cloth boy's size with button-down collar and a women's over-sized "big shirt." We understand that these samples are not made in the two countries specified, but are provided as examples of the shirts proposed to be imported. You state that in the past your client has imported shirts that have been classified in items 379.55 and 383.47 of the Tariff Schedules of the United States (TSUS). Since September 1, 1985, those items have been renumbered to 381.56 and 384.46 respectively and bear the respective column one rates of duty of 21 and 16.5 percent ad valorem. When eligible for duty reduction under the United States-Israel Free Trade Area Implementation Act of 1985, the items would bear 14.7 percent and 11.6 percent ad valorem rates of duty.

Although your original ruling request described four possible production alternatives, you have since identified one of these as the production method to be followed. This method has the patterns made in country A and shipped with the shirt fabric to country B where the components would be cut, the collars, cuffs, pocket flaps and placket would be sewn (or faced) and the buttons sewn to the placket. All the components would then be returned to country A where buttonholing of the placket and presumably of the cuffs (and in some instances the collar) takes place prior to assembly and pressing.

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Citing 19 CFR $12.130(b), you correctly note in your submission of August 13, 1985, that a textile product that consists of materials produced in more than one foreign country is considered a product of the country where it last underwent a substantial transformation or a "transformation into a new and different article of commerce." You also note that an example provided in our regulations (19 CFR $12.130(e)(1)(v)) namely, "substantial assembly by sewing and/or tailoring of all cut pieces of apparel articles which have been cut from fabric in another foreign...country...into a completed garment (e.g. the complete assembly and tailoring of all cut pieces of...shirts)" conforms to the operations expected to be undertaken in country A by your client, suggesting that the finished shirts would be a product of country A.

You responded to our request for detailed financial information by providing the name and function of the machine involved in each operation, the capital investment involved with each processing operation (by stating the cost of the machines), and the costs involved with each processing operation by stating the wage rate of each operator by occupation, whether in country A or country B. This information remains part of our file and forms the basis for our decision.

The information you provided shows that the parts of the shirt, even those faced, do not constitute a shirt when they leave country B and that the processes that take place in country A substantially transform the parts into a finished shirt which is a new and different article of commerce.

The capital investment is primarily in country A when compared to country B and bears a ratio of about 12:1. The time involved in labor applied to the garment or its parts runs in favor of country A in a ratio of about 2:1. Our regulations require an examination of time, labor, and capital, among other things, to perform an analysis of whether manufacturing processes are substantial in a given country with respect to a specific product; therefore, our focus must be on the product, itself, and what is done to it, to determine where the substantial manufacturing took place. Nevertheless, it is useful to compare the relative cost and complexity of the manufacturing steps to arrive at a country of origin determination.

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Taking all the factors presented into consideration, we conclude that country A is the country where the substantial manufacture of these shirts takes place. Therefore, they should be marked as having Israeli origin.

The difficulty in making a determination of country of origin will necessarily vary according to the financial facts and evidence presented. Our regulations are drafted in comprehensive language to permit relevant factors to be considered. Therefore, simple tests such as comparing the number of components assembled in one country to the number assembled in another, while easy to apply, will not necessarily lead to a correct answer.

If your client's processing or manufacturing plans change, we will endeavor to respond with a country of origin determination to specific descriptions of the new processes, as appropriate.

The claim for confidentiality will be allowed for the business and proprietary information presented. The claim of confidentiality with respect to the identity of country B will not be allowed on the grounds that the mere name or identity of a country from which goods may be lawfully imported into the United States is not a proprietary or business confidential matter.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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077536

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 13 1986

REFER TO
CLA-2 CO:R:CV:G
077556 JAS
816153

077556

John K. Williamson, Esq.
Allegheny International, Inc.
Two Oliver Plaza
P.O. Box 456
Pittsburgh, Pennsylvania 15230

Dear Mr. Williamson:

In your letter of November 1, 1985, you inquire as to the tariff classification of a product known variously as the Tullen Safe-T-Snips, Tullen Snips, Tullen Kitchen Cutters and Tullen Work Cutters, from New Zealand. A sample and descriptive literature were submitted.

You indicate that Customs officers at Savannah propose to classify the snips under the provision for other scissors and shears, and blades therefor, in item 650.92, Tariff Schedules of the United States (TSUS), dutiable at the 1986 rate of 10 cents each, plus 11.6 percent ad valorem. You advance arguments that these articles are neither scissors nor shears, citing certain trade literature, but are actually snips. You state that snips are designed for cutting sheet metal, sheet brass, copper, plastic cloths, and other materials, which is what the subject articles do. Therefore, you conclude that the provision for tin snips and parts thereof in item 648.91, TSUS, dutiable at the rate of 2 cents each plus 5.2 percent ad valorem, encompasses not only conventional tin snips but snips of all kinds.

The submitted sample measures 7-1/4 inches long, has plastic handles and 2-3/4 inch long cutting blades of light gauge metal with a spring positioned so as to keep the blades open. Squeezing the handle compresses the blades. Tariff terms are normally interpreted in accordance with their common and commercial meanings, which are presumed to be the same. Although various lexicographic authorities we have consulted indicate that the term "snips" denotes a variety of hand shears used especialy to cut sheet metal, we acknowledge from the materials you have submitted, and from other sources, that the term "snips" may possibly encompass shears used to cut a variety of materials. However, the provision under consideration is for "tin" snips, in item 648.91, TSUS, which admittedly represents a narrower class or kind of merchandise. The type of hand tool classifiable in item 648.91, also referred to as metal snips or metal shears, are specially designed for cutting sheet metal. The multi-purpose Safe-T-Snips under consideration possess no special design features dedicating them to the cutting of sheet metal. Consequently, they are not classifiable as tin snips.

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Inasmuch as the Safe-T-Snips are a species of hand shears and are not more specifically provided for as tin snips, they are classifiable for tariff purposes under the provision for scissors or shears, in item 650.92, TSUS.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

071756

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 6 1988

REFER TO
CLA-2:CO:R:CV:G
077591 TLL

District Director of Customs
101 E. Main Street
Norfolk, Virginia 23510

Re: Application for Further Review of Norfolk Protest No. 1404-4-000008

Dear Sir:

This application for further review is against your classification of certain strip brushes under item 389.62, Tariff Schedules of the United States (TSUS), as textile articles not specially provided for of man-made fibers. The protestant is of the opinion that the merchandise should be classified as "other brooms and brushes", under item 750.70, TSUS.

ISSUE:

Whether the strip brushes are subject to classification under item 750.70, TSUS, as other brooms and brushes.

FACTS:

The strip brushes (samples provided) are imported in various lengths (3ft. to 10ft.) depending upon use and style. These strip brushes have synthetic or natural bristles supported in an aluminum or iron extrusion, essentially finished, requiring additional modifications after importation dependent upon area of use.

There appear to be many uses for these strip brushes which can be divided into three groups:

1. Weather strips used as a weather seal for doors and windows
2. Brushes (hand) for home and factory
3. Brushes (mechanical) for home and factory

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The merchandise was entered under item 771.55, TSUS, as filaments of plastics ... other than cellulosic plastics materials. On October 14, 1983, the merchandise was liquidated under the classification at entry. On January 6, 1984, however, the merchandise was reliquidated, and all items were classified under item 389.62, TSUS, as textile articles not specially provided for of man-made fibers.

DISCUSSION OF LAW:

In Nestle-Lemur Company v. United States, 37 Cust. Ct. 209, C.D. 1825 (1956), the court emphasized what it considered important in defining the term "brush" by stating:

> It is noted that the quoted definition has reference to the use of brushes, and, in the case of Keer, Maurer Co. v. United States, 32 Cust. Ct. 441, Abstract 57959, we observed that, in a general way, there was a use connotation to the term in the sense that articles embraced by the term exhibited a "brushing" action in their use. There is no question, however, but that that term as used in the tariff act provision, hereinbefore quoted, is not a use designation but is an eo nomine designation, that is to say, the test classification is not the use of the article, but its name. Under these circumstances, use, in the condition as imported, is not a necessary concomitant of articles classifiable as brushes; it is sufficient if in the condition as imported, they respond to the name of brush. We think there is no question but that the articles at bar are, in that sense, brushes.

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The court in Nestle-Lemur had before it the first definition found in Webster's New International Dictionary, 1933, of the term "brush" which provided:

> 1. An instrument composed of bristles, or the like, set in a suitable back or handle, and used for various purposes. Brushes have different shapes and names according to their use; as clothes brush, paint brush, etc.

In accord is the definition of "brush" set forth in Webster's New Twentieth Century Dictionary, Unabridged (2nd ed. 1980) which defines "brush" as "a device having bristles, hairs, or wires fastened in a back of some sort, with or without a handle attached: brushes are used for cleaning, polishing, painting, smoothing the hair, etc."

Applying the criteria set forth in the Nestle-Lemur Company case, the strip brushes are subject to classification as brushes. The bristles are permanently attached to the metal core forming the brush strip and such brush strip is essentially finished. The brush strip is bought and sold as a brush strip and regardless of ultimate use, has the name "brush". The brush strip has the name and structure (bristles) of a brush. The court in Nestle-Lemur says "use" is not a necessary concomitant of articles classifiable as brushes - so long as they respond to the name "brush".

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CONCLUSION:

The merchandise is classified under item 750.70, TSUS. Accordingly, you are directed to allow this protest. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

077591

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

JUL 16 1986

CLA-2 CO:R:CV:G
077594 JLJ

077594

TO : Area Director of Customs
J.F.K. Airport

FROM : Director, Classification and Value Division

SUBJECT : Internal Advice Request No.83/85 Concerning Whether Certain Children's Blanket Sleepers Are Ornamented Or Not

This request for Internal Advice was initiated by C-Air Custom House Brokers & Forwarding Inc. on behalf of its clients, Bradley Imports Ltd. and the Baron Group Ltd. The inquiry concerns whether certain children's blanket sleepers made in Taiwan are ornamented or not.

FACTS:

One sample was submitted along with the internal advice request. The garment is known as style number 95429 (children's sizes 4 to 6x) by Bradley Imports and as style number 36600 (girls' sizes 7 to 14) by the Baron Group. The garment is made of 100 percent polyester knit fabric. It is a one-piece, long-sleeved garment with felt, rib knit collar and cuffs, elasticized ankles and non-skid plastic toe caps and soles. A full front opening from the neckline to the ankle is secured by a nylon zipper. A textile tab with a snap has been sewn at the neckline. The tab is approximately 1 1/2 inches wide by 2 inches long. The tab is sewn so that it covers the top 1 1/2 inches of the zipper closure. The tab is decorative and enhances the appearance of the garment.

The inquirer argues that the textile tab is functional because it prevents the wearer from being poked or stabbed in the neck by the zipper pull. He claims that the sleeper should be classified under the provision for infants' wearing apparel, not ornamented, of man-made fibers, knit, other, pajamas and other nightwear, blanket sleepers, in item 384.8632, Tariff Schedules of the United States (TSUS), dutiable at the 1986 Column 1 rate of 21.4 percent ad valorem plus 7 cents per pound.

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The JFK import specialist argues that the textile tab is decorative and that its primary purpose is to enhance the appearance of the sleeper. The import specialist claims that the sleeper is classified under the provision for infants' wearing apparel, ornamented, of man-made fibers, pajamas and other nightwear, blanket sleepers, in item 384.2222, TSUS, dutiable at the 1986 Column 1 rate of 28.3 percent ad valorem.

ISSUE:

Does the textile tab which covers the zipper pull constitute ornamentation?

LAW AND ANALYSIS:

The inquirer claims that the textile tab does not ornament the sleeper because the tab covers the zipper pull and prevents it from poking the wearer's neck. Since he claims that the tab is functional, he argues that the garment is not ornamented and is classified in item 384.8632, TSUS.

The JFK import specialist argues that the tab is neither insignificant nor unobtrusive on the garment. The import specialist thinks that the tab is a decorative styling feature which serves no real function on the blanket sleeper, therefore the sleeper is ornamented and is classified in item 384.2222, TSUS.

Advertisements from several department stores were included which showed that sometimes similar sleepers have the tabs and sometimes they do not. Surely if the tab was a necessary protective feature, all similar sleepers would have the tabs, especially sleepers intended for infants and small children. The ads indicate that this is not the case. Also, neither the advertisement nor the advertising on the plastic bag in which the instant merchandise is sold mention the textile tab as a protective or safety feature.

Finally, the national import specialist informs us that she discussed this matter with a domestic manufacturer of blanket sleepers. He told her that the tab does not perform a function on the garment. Instead it is perceived by the buying public as a mark of quality. He said that such a tab may have performed a function in keeping the zipper closed before self-locking zippers were available, but that the self-locking nylon zipper makes the tab unnecessary.

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An examination of the sample submitted proves that this is so. Once the zipper is closed, when the zipper pull is pressed flat against the zipper, the zipper pull locks in place. No tab is required to hold the pull in a flat position on the sleeper once it is locked in place, therefore the textile tab serves no real function.

Headnote 3(a)(iii) of Schedule 3, TSUS, defines textile fabric as one form of ornamentation. Textile tabs have consistently been held by Customs to be ornamentation when their primary purpose is a decorative effect. See New York letter 808988 of May 16, 1984.

We find that the textile tab is primarily decorative and that it constitutes ornamention. The sleeper is properly classified in item 384.2222, TSUS.

HOLDING:

The textile tab is ornamentation. The blanket sleeper is classified in item 384.2222, TSUS. You should inform the inquirer of this decision.

Harvey B. Fox

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077594

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 14 1986

REFER TO
CLA-2 CO:R:CV:G
077651 SH

077651

Ms. Renee Sonn
Branch Manager
F. W. Myers & Co., Inc.
5200 Southcenter Blvd.
Suite 14
Seattle, Washington 98188

Dear Ms. Sonn:

You have requested a tariff classification ruling, on behalf of Marcraft International Corporation, for a tool kit that you are currently importing from the Republic of China. You have submitted a brochure that includes a photograph of a tool box with 23 tools and other articles. No sample was submitted to this office; however, one of our National Import Specialists has examined a sample of the tool kit.

The tool box is described in the brochure as being of heavy gauged break resistant plastic with a large positive latch and a cantilevered storage tray. It measures 13-3/8 by 7 by 4-3/4 inches. The tools include two pairs of pliers, several nut drivers and screwdrivers, soldering tools, and a pair of safety goggles. Subpart 3E of Schedule 7, item 651.75, Tariff Schedules of the United States (TSUS), provides for "Sets (except sets specially provided for) which include two or more of the tools . . . provided for in different rate provisions of this subpart." Since the tool kit includes, at a minimum, screwdrivers and pliers classifiable under different rate provisions of Subpart 3E, it constitutes a set classifiable under item 651.75, TSUS. For a group of articles bought and sold together to constitute a set under this provision, it is not necessary that all the articles be provided for in Subpart 3E. Tanross Supply Co., Inc. v. United States, 63 Cust, Ct. 38, C.D. 3870 (1969), aff'd, in relevant part, 58 CCPA 26, C.A.D. 1000 (1970).

The rate of duty for item 651.75, TSUS, is the "rate of duty applicable to that article in the set subject to the highest rate of duty."

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Headnote 5 of Subpart E, Part 3, Schedule 6, TSUS, provides: "Cases, boxes, or containers of types ordinarily sold at retail with the tools or other articles provided for in this subpart are classifiable with such articles if imported therewith." It is your position that this Headnote controls the classification of the box. We do not agree. The Tariff Classification Study Explanatory and Background Materials, Schedule 6 , p. 191, states, with regard to this headnote: "These cases, boxes, or containers are usually of a kind specially designed to contain the articles". Although the tool box advertised in your brochure is imported with the tools and other articles, it is not covered by the language of this headnote because it is not specially designed to contain these articles, but, rather, could be used for a variety of merchandise. Because of its broad usefulness, it cannot be said to be "of the type" ordinarily sold with the tools it contains. Instead, it is "of the type" that in fact is frequently imported empty and sold separately. It cannot, therefore, be classified with its contents but must be treated as an imported article for tariff purposes.

It is our determination that the tool box constitutes part of the set. The appellate court in Tanross, supra, at 31, determined that "set" indicates "'a collection of articles which naturally complement each other, and usually go together,' . . . and not being simply an aggregation of disparate articles imported together for shipping convenience." In Karoware, Inc. v. United States, 77 Cust. 112, C.D. 4681 (1976), aff'd, 65 CCPA 1, C.A.D. 1197 (1977), the appellate court, at 11, determined that "[i]f the articles fulfill the requirement of naturally complementing each other, they need not be of the same kind" in order to constitute a set under item 651.75, TSUS. A tool box and tools complement each other as parts of a set, and we have in fact determined in the past that various types of holders were parts of sets including other articles with which they were imported. In file 042746 of January 5, 1976, a wicker basket holding a variety of miniature gardening articles was determined not to be a case or container of the type ordinarily sold at retail with the contents, and was classified as an article in a set under item 651.75, TSUS.

If imported alone, the tool box would be classifiable as luggage under item 706.62, TSUS. See, for example, ORR Ruling 654-68. Headnote 2(a)(ii) in Part 1, Schedule 7, TSUS, provides that the term "luggage" includes occupational luggage cases and like containers and cases designed to be carried with the person.

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Therefore, the rate of duty on item 706.62, TSUS, must be taken into account in determining which article in the set is subject to the highest rate of duty.

You state in your letter that the tool kit is "now being imported" by your client. You have, then, requested a ruling on a matter that is not prospective, but rather is the subject of a current transaction. Technically, this procedure is in contravention of the Customs Regulations. We caution that the Internal Advice procedures spelled out in section 177.11 of the Regulations, 19 CFR 177.11, should be used in the future when disputes arise with regard to current transactions.

Sincerely,

Arthur P. Scaffler
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

077653

APR 18 1986

REFER TO
CLA-2 CO:R:CV:G
077653 JGH

Mr. Dean Walcutt
President
Certified Oil Company
303 South Front Street
Columbus, Ohio 43215

Dear Mr. Walcutt:

Your letter of January 17, 1986, concerns the dutiable status of a mixture containing at least 7 percent alkylbenzenes and no more than 93 percent ethanol. It is stated that the mixture would from a designated beneficiary country under the Generalized System of Preferences. It is assumed that the mixture will be used for fuel purposes.

A mixture of ethanol and ethylbenzene, in which the alkylbenzene content is 7 percent or more by weight of the entire mixture, is classified as a benzenoid mixture in item 407.17, TSUS, (formerly 407.16). The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate would be ethanol under item 427.88/901.50, TSUS, dutiable at 3 percent ad valorem plus 60 cents per gallon.

Effective March 31, 1986, merchandise entered under item 407.17, TSUS, is no longer entitled to GSP benefits.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

AUG 11 1986

REFER TO

CLA-2 CO:R:CV:G
077694 JGH

077694

Chief, Customs Information Exchange
U.S. Customs Service
6 World Trade Center, Rm. 450
New York, New York 10038

Dear Sir:

Customs Form 6431, prepared at the port of Detroit, on September 24, 1985, concerns the difference in classification of liquid fire fighting foams, manufactured by Wormald Canada, Ottawa, Ontario, and imported by The Ansul Co., Martinette, Wisconsin, and covered by entry number 85486692, dated September 3, 1985. This difference is the eleventh listing under Canada in the list of differences furnished Headquarters.

The issue is whether fire fighting foams are classifiable as mixtures, n.s.p.f., in item 432.25 (now 432.28) or as nonenumerated articles in item 799.00, TSUS. It is noted that some Headquarters decisions classified such foam products under item 799.00, while in other decisions they were classified in 432.25.

The fire fighting foam liquids in issue are said to consist of hydrolyzed protein, hexylene glycol, inorganic salts and a fluorosurfactant.

The classification of the product depends on the chemical composition. It is noted that often fire fighting foams of this nature consist of proteinaceous material derived from cattle horns and hooves, and, while in many instances, this material may be broken down into its constituent chemical composition, since determining the composition of proteins is a tedious process, often the substances are described as having no definite chemical composition.

In considering the classification of the products in issue, if the chemical composition of the liquid protein is known, along with the identity of all the other chemical constituents in each product, then the fire fighting foams would be classifiable as chemical mixtures in item 432.25 (432.28), TSUS. However, where the composition is not clear and the complete composition of the proteinaceous matter is not identifiable, classification as a nonenumerated article in item 799.00, TSUS, is correct.

Sincerely,

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William V. Scheffler
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 13 1986

CLA-2:CO:R:CV:G
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Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-5-010306

This protest was filed against your decision in the liquidation of entry No. 1001-85-423414-5 dated July 26, 1985, covering a shipment of novelty backpacks manufactured in Korea.

FACTS:

The merchandise involved consists of the following three styles:

1) 16-BBP, Bear
2) 16-KBP, Koala
3) 16-PBP, Panda

Each of the listed styles is a novelty backpack in the form of a particular animal. The sample pack submitted measures 16 inches high and is in chief value of man-made textile materials. The head, arms and legs are fully stuffed, but the body cavity is partially stuffed. Standard backpack harness straps and fasteners are permanently sewn to the ends of the arms and legs. The pack has a carry pouch approximately 8 inches wide sewn into the back of the animal.

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This merchandise was classified in liquidation under the provision for luggage of other textile materials in item 706.41, Tariff Schedules of the United States (TSUS).

The protestant claims that the article should be classified under the provision for toy figures of animate objects (except dolls): not having a spring mechanism: stuffed: valued over 10 cents per inch of height in item 737.30, TSUS.

ISSUE:

Are the novelty backpacks represented by the sample chiefly used for the amusement of children or adults?

LAW AND ANALYSIS:

Schedule 7, Part 1,Subpart D, Headnote 2(a)(i), TSUS, provides in pertinent part that "For the purposes of the tariff schedules - (a) the term "luggage' covers (i) travel goods such as * * * knapsacks, * * * and like articles designed to contain clothing or other personal effects during travel."

Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, provides that "For the purposes of the tariff schedules. a 'toy' is any article chiefly used for the amusement of children or adults."

General Interpretative Rule 10(e)(i), TSUS, provides that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States, at or immediately prior to, the date of importation, of articles of that class or kind to which the

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imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined."

In a recent decision this office had occasion to rule as to the dutiable status of a Koala "candy bear" which was in chief value of man-made textile materials and measured approximately 12 inches in height. The head, arms, and legs of the bear were stuffed, but the body cavity was empty. The bear was dressed in overalls which formed the bottom half of the torso with plush fabric forming the top half. The hollow body cavity of the bear formed an interior compartment while a zipper closure across the front of the bear secured the lined compartment and a smaller pouch therein. Adjustable textile tape harness straps were attached to the rear of the overalls at the seam and at the back of the stuffed head to form armholes.

In reaching the conclusion that the "candy bear" is a toy for tariff purposes, this office took the position that the utilitarian aspect of the merchandise was incidental to its play value for the following reasons:

(1) The "candy bear" is so small as to be confined to use by 2 to 5 year old children,

(2) the amount of storage space is minimal,

(3) the "candy bear" is in fact a plaything and can provide frivolous amusement to the users. See United States v. Topps Chewing Gum, Inc., 58 CCPA 157, C.A.D. 1022 (1971). Wilson's Customs Clearance, Inc. v. United States, 59 Cust. Ct. 36, C.D. 3061 (1967), and

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(4) as a practical matter the candy bear would not be chiefly used as an article of utility, i.e., for the users to carry their personal belongings during travel.

In the case of Ideal Toy Corp. v. United States, 78 Cust. Ct. 28, C.D. 4688 (1977), the court made the observation that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utilitarian purpose incidental to the amusement."

In this instance, it is our position that the play value of the panda novelty backpack is incidental to its utilitarian function for the following reasons:

(1) The novelty backpack appears to be designed as a functional backpack; and

(2) the amount of storage space is sufficient as a practical matter to carry a kindergarten child's personal effects such as money, crayons or a lunch.

In view of the foregoing, it is our position that the merchandise is not chiefly used in the United States for the amusement of children. Consequently, it is classifiable under the provision for luggage of other textile materials in item 706.4144, TSUS, and dutiable at the rate of 20 percent ad valorem. The applicable textile quota number is 670. As a product of Korea this merchandise will be subject to textile quota restraints.

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HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 11 1986

REFER TO
CLA-2 CO:R:CV:G
077737 JLV

077737

The Honorable
Ed Zschau
House of Representatives
Washington, D.C. 20515

Dear Mr. Zschau:

We are enclosing a copy of our response to Mr. Ronald E. Edelstein, Corporate Customs Manager, Fujitsu America, Inc.

Mr. Edelstein raises the issue of fairness in the disposition of Fujitsu's entry of certain fiber optic cables. He states that he was not aware of Customs position until he received the amended denial of his protest, dated August 1, 1985. In order to better understand everts that took place, the relevant written documents are listed in the following chronology:

September 23, 1983	Entry 83-241800; 807 documents not submitted
October 13, 1983	Entry 84-238094; 807 documents not submitted
March 30, 1984	Request by Fujitsu for 30-day extension to produce missing documents
April 13, 1984	Form 29 issued, rejecting request for 30-day extension (Entry 83-242800)
May 9, 1984	Form 29 issued, informing Fujitsu that Entry 84-238094) would be liquidated at full appraised value because of missing 807 documentation
June 8, 1984	Entries liquidated
June 8, 1984	Assembler's statement prepared and sent by Fujitsu; received by Customs on June 13

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June 18, 1984	Protest 5501-4-000080 and application for further review were filed (prepared 6-14-84)
May 20, 1985	Protest and Application for further review were denied by Customs
August 1, 1985	Amended denial of protest and application for further review

The documents in this chronology do not refer to the reason stated on August 1, 1985, as to why the 807 claim was denied. However, prior to liquidation on June 8, 1984, Customs had no information from Fujitsu on the nature of the processing. The only evidence that Customs had at the time of liquidation was the fact that no 807 documentation had been submitted, and, therefore, the 807 claim was not allowable.

By the time Mr. Edelstein's statement of processing was received by Customs on June 13, 1984 (and several days later by the import specialist), Mr. Edelstein had already prepared a protest on the basis of what Customs had identified as the reason for rejection of the 807 claim.

After the import specialist, Mr. Caviness, reviewed the statement of processing, he told Mr. Edelstein that the processing was outside the scope of operations permitted under 807. This conversation was not reduced to writing. However, the change in the reason for rejection of the 807 claim was discussed with Mr. Edelstein and was sufficient to put him on notice that the protest, in its form as submitted, should have been amended. Under section 174.14 of the Customs Regulations an amended protest could have been submitted for the purpose of addressing both the substantive issue and the specific reasons for further review. No such action was taken.

The events, subsequent to the denial of May 20, 1985, are detailed in Mr. Edelstein's letters and our responses. Although further review is now precluded by law, we believe that adequate notice was given as to the issues, and that

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Mr. Edelstein was aware of and had the opportunity to use the procedures to protect his company's interests. These were not used.

If we can be of further assistance in this matter, please do not hesitate to call us.

Sincerely,

Alfred R. Boyce
Acting Assistant Commissioner
Commercial Operations

Enclosure

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

JUL 11

CLA-2 CO:R:CV:G
077737 JLV

077737

Mr. Ronald Edelstein
Corporate Customs Manager
Fujitsu America, Inc.
3055 Orchard Drive
San Jose, California 95134-2017

Dear Mr. Edelstein:

This decision is our response to your letter of April 11, 1986. We summarize the essential points that you make in your letter:

1. Protest 5501-4-00080, dated June 18, 1984, was filed to correct a mistake of fact (late filing of foreign assembler's declarations).

2. The amended denial dated August 1, 1985, was the first time that the issue was raised as to whether the processing on the fiber optic cable was more than a mere assembly.

3. The amended decision did not re-evaluate the decision to deny further review, which was requested when the protest was timely filed.

4. Part 174, Customs Regulations (19 CFR Part 174), sets forth criteria for further review, and these criteria, if met, require the district director to forward the protest for further review.

5. The sequence of events and the timing of the events have precluded Fujitsu from exercising its right to administrative review, as well as its right to judicial review.

For the following reasons, we conclude that the amended denial of the protest, issued on August 1, 1985, is a valid notice of denial that started the running of the statutory period for filing a civil action, and that the denial of the application for further review was not ultra vires.

Pursuant to 19 USC 1515(a) and 19 CFR 174.30(a), the district director properly gave notice of denial with a statement of the reason for the denial. Although you state that you were never given notice (prior to the amended denial) as to the reason why 807.00 was inapplicable, the import specialist who was involved in the decision clearly remembers that he personally told you, shortly after he received your letter of June 8, 1984,

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that the optical working (polishing) of the fiber optic ends was outside the purview of 807 processing. Clearly, this was notice of the specific legal issue and was sufficient for you to evaluate the adequacy of your protest (filed June 18, 1984) and to file a timely amended protest pursuant to section 174.14 of the Customs Regulations. Therefore, the claim by you that you were taken by surprise is not warranted in this case.

Secondly, a protest must be forwarded by the district director for further review under 19 CFR 174.24, if it meets the criteria. The authority to determine whether the criteria are satisfied is delegated to the district director. 19 CFR 174.23, 174.24, and 174.26. This determination requires an exercise of one's judgment in viewing all the relevant facts. The regulations also require a protestant to state with specificity the reasons why the criteria for further review are satisifed. 19 CFR 174.25. See, also, the instructions on Customs Form 19, block 9. Your protest did not allege or give specific reasons. We will not, therefore, second-guess the decision of the district director who is acting within his delegated authority.

Finally, we regret the unintentional delay in responding to your letter of August 8, 1985, (our letter of January 23, 1986, file 076857). However, our failure to respond should not have impaired your ability to file a summons. The timely exercise of one's rights is clearly identified as the responsibility of the protestant. San Francisco Newspaper Printing Co. v. United States, Slip Op. 85-108, decided October 18, 1985 (Court of International Trade).

It is our conclusion that further administrative review by Customs is not available.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

26 JUN 1986 CLA-2 CO:R:CV:G
077756 jlj

077756

John B. Rehm, Esq.
Busby, Rehm and Leonard, P.C.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Rehm:

Recently you asked us to change an established and uniform practice regarding the tariff classification of reusable cotton knit diapers manufactured by your client, Deltamex, S.A. de C.V. of Puebla, Mexico. In the past, such diapers have been classified under the tariff provisions for other infants' wearing apparel, not ornamented, of cotton, knit, other, other, in item 384.3497, Tariff Schedules of the United States (TSUS). Textile category 359 applies to item 384.3497, TSUS. Your client wants such diapers to be classified under the tariff provision for other underwear, not ornamented, of vegetable fibers, knit, valued over $4.00 per pound, in item 378.1540, TSUS. Textile category 352 applies to item 378.1540, TSUS.

In view of the uniform and established classification practice concerning diapers and the possibility of domestic interest in this subject (as evidenced by the fact that an agreement with Mexico was negotiated including diapers as other wearing apparel), if such a change was contemplated, it would be necessary to follow the formal change of practice procedure set forth in 19 C.F.R. 177.10(c)(2). See 19 C.F.R. 177.10(c)(1), which mandates such a procedure "when the contemplated change of practice will result in the assessment of a lower rate of duty and the Headquarters office determines that the matter is of sufficient importance to involve the interests of domestic industry."

In Customs Headquarters Ruling Letter (HRL) 047342 of December 6, 1976, we considered the same request — i.e., that Customs change its uniform and established practice of classifying diapers under the provisions for other wearing apparel to the provisions for underwear. Our conclusion in HRL 047342 was that the established and uniform practice of classifying diapers as other wearing apparel was supported "by judicial precedent, by the lexicographic definitions of underwear and by the prevalent usage of diapers as other than clothing worn under other clothes."

You argue that dictionary definitions of "diapers" and affidavits submitted by La Leche League International and by four diaper services support your position (i.e., that diapers are underwear rather than outerwear). You argue that not one of the 19 dictionaries which you consulted implied that diapers were outerwear. You also claim that four of the 19 dictionaries which you consulted specifically define diapers as "underclothing" or as "underpants."

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You conclude that both dictionaries and experts in the field define diapers as underwear, therefore you claim that the established and uniform practice should be changed from other wearing apparel to underwear.

In responding to your claims, we observe initially that the current uniform and established practice for diapers does not classify them as "outerwear" but as other wearing apparel. There is no tariff provision which contains the language "outerwear." The tariff provision for other wearing apparel is very broad — it encompasses diapers as well as all other clothing which has not been previously enumerated. As noted in Max M. Myres et al. v. United States, 9 Treas. Dec. 298, T.D. 26085 (1905), at 299:

> The decisions are uniform, not alone of this Board and of the lower courts, but of the Supreme Court of the United States, that the words "wearing apparel" are broad enough to cover not alone a person's outer clothing, but also to cover all articles usually worn, dress in general, including underclothing. See G. A. 289 (T.D. 10736); Arnold, Constable and Co. v. United States (46 Fed. Rep. 510, 511); Arnold, Constable & Co. v. United States (147 U.S. 494); Maillard v. Lawrence (16 How. 251).
>
> ...numerous individual articles of wearing apparel have been from time to time by the courts held wearing apparel, irrespective of whether worn next to the skin or otherwise. In Greenleaf v. Worthington (26 Fed. Rep. 303) drawers in part of wool and in part of cotton were held to be wearing apparel. Manifestly, these articles are uniformly worn next to the skin. So, in the same case, stockings composed in part of wool and in part of cotton were held to be dutiable as wearing apparel. articles uniformly worn next to the skin.

We consulted four thesauruses; none of them defined underwear as diapers. We consulted 14 dictionaries; none of them defined underwear as diapers. We doubt that there are any dictionaries which define "underwear" as "diapers." Your conclusion that "the lexocographical evidence unqualifiedly supports the conclusion that the diapers are underwear" seems unwarranted.

Even the four dictionaries which you claim define diapers as "underpants" or "underclothing" mention that diapers have an additional function — that of collecting the baby's body wastes. This additional function makes diapers more than underwear. It is an established principle of Customs law that merchandise which constitutes more than items covered by a certain tariff provision cannot be classified under that

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tariff provision. See United States v. Flex Track Equipment, 59 CCPA 97, C.A.D. 1046 (1972); E. Green & Son (New York), Inc. v. United States, 59 CCPA 31, C.A.D. 1032 (1971); United States v. New York Merchandise Co., 58 CCPA 53, C.A.D. 1004 (1970). Inasmuch as diapers are more than underwear, they cannot be classified as underwear.

We have examined the affidavits which you present, but we do not find them persuasive. We note that four out of five affidavits are from diaper services, which are interested parties in this matter. The fifth affidavit is from La Leche League International, which — as we understand it — is an organization which promotes breast feeding of babies. We do not view La Leche as experts on diapers. We further note that three of the five affidavits mistakenly follow your lead in asserting that diapers are not "outerwear."

Finally, we note that tariff terms are to be construed in accordance with their common and commercial meanings, which are presumed to be the same. See United States v. Victoria Gin Co., Inc. et al., 48 CCPA 33, C.A.D. 759 (1960); Floral Arts Studio et al. v. United States, 46 CCPA 21, C.A.D. 690 (1958); United States v. C. J. Tower and Sons, 48 CCPA 87, C.A.D. 770 (1961). Congress is presumed to know the language of commerce and to have framed tariff acts so as to classify commodities according to the general usage and denomination of the trade. See Nylos Trading Company v. United States, 37 CCPA 71, C.A.D. 422 (1949).

This rule dates back as far as Hedden v. Richard, 149 U.S. 346 (1893), in which the Supreme Court cited the following rule:

> With regard to the language of commerce the general rule laid down by this court is that it must be construed, when used in laws imposing duties on importations of goods, and particularly when employed in the denomination of articles, according to the commercial understanding of the terms used.

In the same decision, the Supreme Court noted with approval the following quotation from Arthur v. Lahey, 96 U.S. 113 (1878):

> The commercial designation of an article among traders and importers, where such designation is clearly established, fixes its character for the purpose of tariff laws.... A specific designation eo nomine must prevail over general terms, and a commercial designation is the standard by which the dutiable character of the article is fixed.

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Following these precepts, the Customs Court found that eggcups were not "cups" within the common meaning of the term nor within the term as used by the tariff schedules. See Ross Products, Inc. v. United States, 46 Cust. Ct. 8, C.D. 2226 (1961). The same court found that currycombs did not fall within the meaning of the term "comb" as used in the Tariff Act of 1930 and that lacquered plastic articles consisting of a snack bowl, a snack set and a two-tiered tidbit were not "serving dishes" within the meaning of item 772.06, TSUS. See Miller Harness Co., Inc. v. United States, 59 Cust. Ct. 1, C.D. 3053 (1967) and Davis Products, Inc. v. United States, 63 Cust. Ct. 87 (1969), respectively.

The Court of Customs and Patent Appeals found, in C. J. Tower and Sons v. United States, 44 CCPA 41, C.A.D. 634 (1957), that corn on the cob, with husks on, was classified as vegetables in their natural state, not specially provided for, rather than as corn or maize, including cracked corn, pursuant to a long-standing administrative practice. It also found that bicycle saddles or seats were not classified under the provision for "harness, saddles and saddlery, and parts thereof," but as "other parts of bicycles." See United States v. Andrew Fisher Cycle Co., Inc., 57 CCPA 102, C.A.D. 986 (1970).

The point of all the above-cited cases is that the tariff provision for underwear is to be interpreted according to the common and commercial meaning of underwear. While many garments are known commonly and commercially as "underwear," diapers are not. Diapers are commonly and commercially known as "diapers" rather than as underwear in the United States. Diapers are manufactured, advertised and sold as "diapers," not as underwear. Neither dictionaries nor thesauruses define "underwear" as "diapers." Indeed, because of their additional function of collecting babies' body wastes, diapers are more than underwear. We therefore find that our uniform and established practice of classifying diapers as other infant's wearing apparel is correct, and we decline to change it.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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BY

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 18 1986

REFER TO
CLA-2 CO:R:CV:G
077783 c

077783

Area Director of Customs
JFK Airport Area
JFK Airport, Bldg. 178
Jamaica, New York 11438

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-003889

This protest was filed against your decision in the liquidation on December 23, 1983, of entry No. 82-750082-2 dated June 17, 1982, covering a shipment of "Action Smurf Sets" manufactured in Italy.

FACTS:

The merchandise involved designated as "Action Set Smurf #1490501" consists of molds, modeling paste or clay, three tempera paints, varnish, paint brushes and various plastic accessories.

This merchandise was classified in liquidation under the provision for children's pigments and paints, in cakes, jars, tubes or other forms, and such pigments and paints assembled into sets with or without brushes, in any form not over 1.5 pounds net weight each: * * * Assembled into sets with or without brushes, outline drawings, stencils, water pans, or other articles in item 474.08, Tariff Schedules of the United States (TSUS).

The protestant claims that the entry in question must be deemed liquidated as entered upon the first anniversary date of said entry. The rationale for this claim is that the protestant did not receive notification of the first and second purported extensions of the liquidation period.

The protestant maintains that the components of the set should be separately classified under item Nos. 799.00, 737.45 and 474.08, TSUS.

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ISSUE:

1. Is the entry deemed liquidated as entered by operation of law?

2. Do the components of the set constitute an entirety for tariff purposes?

LAW AND ANALYSIS:

ISSUE No. 1

The controlling statute is 19 U.S.C. 1504 which states in pertinent part:

> (b) Extension. - The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in regulations, if -
>
> (1) information needed for the proper appraisement or classification of the merchandise is not available to the appropriate Customs officer;
>
> (2) liquidation is suspended as required by statute or court order; or
>
> (3) the importer, consignee, or his agent requests such extension and shows good cause therefor.

19 CFR 159.12(a)(2)(b), the regulation in question states:

> (b) Notice of extension. If the district director extends the time for liquidation, as provided in paragraph (a)(1) of this section, he promptly shall notify the importer or the consignee and his agent and surety on Customs Form 4333-A, appropriately modified, that the time has been extended and the reasons for doing so.

Information before this office is that ADP records indicate that the entry was extended and notice of extension mailed to the importer of record at the address shown on the entry in the normal course of business.

ISSUE No. 2

Schedule 4, Part 9, Subpart C, Headnote 1, TSUS, provides that "The provision in this subpart for artists', students' and children's pigments and paints assembled into sets (item 474.08) covers only pigments and

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paints assembled in such container and form, and with such assortment of articles, as to be suitable for sale at retail to artists, students, or children as a paint set, kit, or color outfit."

The merchandise involved falls within the ambit of the above-cited headnote. We recognize that in classifying such merchandise consideration should also be given to the degree of assembly or construction involved in these craft sets. If the assembly or construction is considerable with the painting being minor or incidental, then a separate classification of the components may be justified. However, the molding in clay of the Smurf articles seems equal to or less than the painting effort thus requiring classification of the set under item 474.08, TSUS.

HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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077783

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: AUG 26 1986

FILE: CLA-2 CO:R:CV:G
077815 DW

TO : Director, Entry, Procedures and Penalties Division

FROM : Director, Classification and Value Division

SUBJECT: Classification of Merchandise Entered as Ladies Knit Tops

We are responding to your memorandum dated February 21, 1986, requesting the tariff classification and quota category number of certain garments. Samples were received from the Fines, Penalties, and Forfeiture officer in New York.

Style "Tally" is a knit pullover with cap sleeves. It has a woven overlay measuring approximately three inches in width across the chest area. The overlay has several rows of horizontal quilted stitching and four rows of grommets. The pullover is considered to be an ornamented garment.

The other style, "Ringo," is a mesh knit short-sleeve pullover with rib knit armbands and epaulette-like strips on the shoulders. The shirt is imported with an abbreviated sleeveless top that has a scoop neck. The top is worn over the shirt. There are snaps on the shoulder straps which are snapped under the epaulette-like strips on the shirt. At the time of importation, June 1983, these two garments were classifiable as an entirety for tariff purposes.

The record indicates that the garments in question were ordered as men's shirts by El Dorado Fashions, Inc. a corporation that imports only men's clothing, and that the ultimate consignee of the subject garments was "Chess King," a chain of men's stores.

El Dorado is alleged to have entered and attempted to enter shipments of men's knit tops from Taiwan under the false description that they consisted of ladies' knit tops with visas for quota category 639.

The issue to be resolved is whether these garments are classifiable as men's shirts. Headnote 2, Part 6, Schedule 3, Tariff Schedules of the United States (TSUS) provides that:

> (b) Men's and boys' wearing apparel is wearing apparel for males over 6 years of age; and

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(c) Women's and girls' wearing apparel is wearing apparel for females over 6 years of age, including wearing apparel commonly worn by either sex and not identifiable as being intended exclusively for the wear of men or boys.

To satisfy the definition of women's and girls' wearing apparel under the headnote, a garment must be either feminine apparel or must be commonly worn by either sex and not identifiable as being intended exclusively for the wear of men or boys.

The Customs Service has ruled that the construction of the garment is a factor in determining the intended sex of the wearer. See Headquarters Ruling Letter 066916 dated October 27, 1981. That ruling recognized that different specifications exist for men's and women's clothes, and that garments that were made according to men's specifications were "identifiable as being intended for the exclusive wear of men or boys."

The garments at hand were ordered as men's wear and sold to men's stores. Style "Ringo" manufactured from a mesh fabric is characteristic of a men's garment. We disagree with the conclusion of Jack Hyde, the technical expert obtained by the petitioner. He believes that the garment is an example of women's wearing apparel. It is our view that the shirt is too revealing for a woman to wear, even when it is worn with the abbreviated top. The low scooped neck and large armholes fail to provide adequate coverage. Thus, the garment is classifiable under the provisions for men's or boys' wearing apparel, and category 638 is applicable.

The same analysis applies to style "Telly." An examination of the garment supports the import specialist's classification. The overlay on the front panel at the chest area is characteristic of a men's garment. Thus, category 638 is applicable to this garment also.

Harvey B. Fox

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 18 1986

REFER TO
CLA-2 CO:R:CV:G
077822 SM

077822

Mr. Jeffery T. LaBombard
U.S.A. Bound Co.
50 Smith Street
Rouses Point, NY 12979

Dear Mr. LaBombard:

You have requested a tariff classification ruling for a knee orthosis that is a product of Canada and have submitted descriptive literature.

The article in question, the anterior cruciate (A. C.) knee orthosis, is a custommade brace consisting of a plastic shell with metal braces and straps. It allows room for flexion and extension, but prevents full extension of the leg and stabilizes the knee joint. It is used in the treatment of a torn knee ligament.

The A. C. knee orthosis is classifiable under the provision for orthopedic appliances, item 709.57, Tariff Schedules of the United States. The 1986 rate of duty of 6.3 percent applicable to products of Canada is scheduled to be reduced to 5.8 percent in 1987.

Mail importations are subject to the same requirements as importations by any other means. In addition to any duties that may be payable, Congress has recently authorized the Customs Service to collect a five-dollar fee in connection with preparation of documentation for dutiable mail entries. A copy of the Customs Regulations concerning mail importations and of the Federal Register notice concerning the new user fees is enclosed for your information. Additionally, the Postal Service may collect a fee upon the delivery of mail on which duty must be collected. Because of the large volume of mail, there may be some inconsistencies in the actual collection of duty; however, all importations are subject to examination, as explained in the regulations.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox

Enclosures

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 22 1986

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Sidney H. Kuflik, Esq.
Lamb & Lerch
Counsellors at Law
233 Broadway
New York, New York 10279

Dear Mr. Kuflik:

In a letter dated February 21, 1986, you asked that we reconsider the result reached in Headquarters Ruling letter (HRL) No. 076964c dated November 27, 1985, concerning the dutiable status of the Snugli quiet book manufactured in Korea.

In the cited ruling the Snugli quiet book was held to be classifiable under the provision for other toys, not specially provided for in item 737.95, Tariff Schedules of the United States (TSUS).

You maintain that the merchandise is properly classifiable under the provision for toy books, including coloring books and books, the only reading matter in which consists of letters, numerals, or descriptive words in item 737.52, TSUS.

The basis for your request for reconsideration is stated to be the case of RBW Inc. v. United States, -- CIT --, Slip Op. 86-8 (January 13, 1986) dealing with the tariff classification of books of crossword puzzles, word games, and "search-a-word" puzzles and HRL No. 057283 set dated September 21, 1978, concerning the tariff classification of a child's toy book.

You assert that Customs has mistakenly taken the position that the contents of the quiet book determine its classification noting that the RBW court rejected such a position when it stated that "classification on the basis of textual consideration or layout would be entirely arbitrary criteria".

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We do not agree that this line of reasoning set out by the RBW court is relevant to whether the instant merchandise is covered by item 737.52, TSUS. A fair reading of that provision shows that the contents of the article do in fact determine whether it qualifies as a toy book. For example, in order to fall within the provision the article must contain only reading matter consisting of letters, numerals, or descriptive phrases. Although the quiet book is in a book format in so far as there are "pages", this does not bring it within the purview of item 737.52, TSUS.

The result reached in HRL No. 057283 sst dated September 21, 1978, is not in conflict with the ruling on the quiet book. It should be noted that some pages in that child's toy book contain worded instructions as to how to complete the picture or puzzle.

For the reasons stated above it is our position that the result reached in HRL No. 076964 dated November 27, 1985, is correct.

Sincerely,

Thomas J. Lobred for
Harvey B. Fox
Director, Classification
and Value Division

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076964

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 13 1996

REFER TO
CLA-2 CO:R:CV:G
077875 SM

077875

Mr. Stephen A. Sturdevant
Traffic and Distribution Manager
Laticrete International, Inc.
1 Laticrete Park North
Bethany, Connecticut 06525-3498

Dear Mr. Sturdevant:

You have requested a tariff classification ruling for merchandise to be imported from Singapore, identified as a "desk blotter calendar." A sample was submitted to our office.

The proposed importation would actually include two articles. One is a colored plastic desk pad with an inserted paperboard backing and a clear plastic overlay of the same dimensions, approximately 20-1/2 by 15 inches. A strip of plastic approximately 3-3/8 by 20-1/2 inches that is printed with some advertising is attached at the top and flips forward over the pad. The second article is a calendar of the same size, 20-1/2 by 15 inches. Separate calendar grids for each month of the year are fastened together at the top by a strip of adhesive. Each page also shows all the months of the year and some metric system conversion tables. The calendar can be slipped in under the overlay and held in place by two clear plastic strips across the outer corners of the desk pad.

Each of these two articles can be used alone, and even when the two are used together, each retains its separate identity. Thus, each is separately classifiable for Customs purposes.

The desk pad is classifiable under item 774.55, Tariff Schedules of the United States (TSUS), as an article not specially provided for, of rubber or plastics. Examination indicates that the calendar was lithographically printed. It is therefore classifiable under item 274.10, TSUS, if not over 0.020 inch in thickness, or under item 274.15, TSUS, if over 0.020 inch in thickness. Because the pages of the calendar are only loosely held together at the top with adhesive, and can be torn off easily, the calendar is not considered to consist of "permanently mounted" lithographs for purposes of Headnote 3 of Part 5, Schedule 2, TSUS. Therefore, the thickness to be measured for purposes of items 274.10 and 274.15 is that of the thinnest sheet in the calendar.

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Articles that are classifiable under items 774.55, 274.10 and 274.15, TSUS, and that are products of Singapore are entitled to duty-free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Sincerely,

Arthur P. Schaffer
For Harvey B. Fox
Director, Classification
and Value Division

017875

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B14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 13 1986

REFER TO

CLA-2:CO:R:CV:G
077901 SM

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Re: Application for Further Review of Protest No. 3801-5-002158, dated July 3, 1985

Dear Sir:

This protest concerns the tariff classification of two articles: a textile fabric and air filters made up from this fabric.

Merchandise identified as numbers FE-2504 and FE-2545 is a nonwoven textile fabric of man-made fibers backed or laminated with a woven textile scrim. No dimensions are given. The protestant claims that it is specifically provided for under item 355.25, Tariff Schedules of the United States (TSUS), as nonwoven fabric of man-made fibers. You have classified it under item 359.50, TSUS, and we are in agreement with your position. Nonwoven fabrics with laminated backings, such as the merchandise in question, are excluded from item 355.25, TSUS, and properly classifiable under item 359.50, TSUS, as other textile fabrics, including laminated fabrics, of man-made fibers. Customs has long interpreted the language in the description of articles classified under item 355.25, "... nonwoven fabrics ... whether or not coated or filled ...", to exclude laminated fabrics, and laminated fabrics are therefore classified as textile fabrics not specially provided for, including laminated fabrics, under item 359.50, TSUS. Essentially the same fabric from the same West German manufacturer, Carl Freudenberg, was held to be so classifiable in our ruling 077776 of May 6, 1986 (copy enclosed).

Merchandise identified as number MF-85, air filters, consists of the same fabric in plastic frames or holders with metal stiffeners. These articles are in chief value of the textile material. The protestant claims that they are properly classifiable under item 661.95, TSUS, in Subpart 4A of Schedule 6, as filtering and purifying machinery and apparatus and parts. However, Headnote 1(iv) to Part 4 provides that articles in chief value of textile materials are not classifiable in that part. Since the filters are in chief value of a fabric consisting of woven and nonwoven fabrics,

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laminated together, and such fabric is, therefore, not classifiable under item 355.25, TSUS, the filters are not classifiable under item 355.25, TSUS, as articles of nonwoven fabrics. Accordingly, we are in agreement with your position that the filters are properly classifiable under item 389.62, TSUS, as other articles not specially provided for, of man-made fibers, not ornamented and not knit.

You should deny this protest in full. A copy of this decision should be sent to the protestant along with your Form 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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106470

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

8 JUL 1986

REFER TO
CLA-2 CO:R:CV:G
077908 SM

077908

Steven P. Kersner, Esq.
Brownstein, Zeidman and Schomer
1401 New York Avenue, N.W.
Suite 900
Washington, D.C. 20005-2102

Dear Mr. Kersner:

On behalf of Inner Secrets, you have requested a tariff classification ruling for a bandeau to be imported from Macao. Your firm has made written and oral presentations on behalf of your client.

The article of women's apparel in question is a bandeau of a woven print fabric, 65 percent polyester, 35 percent cotton. It is strapless, with a back opening secured by a plastic fastener. There is a vertical stay at each side seam and elastic all the way around both the top and bottom edges and through the center front. A tie approximately 19 inches long is stitched to the inside center front; it shapes the front and adjusts to permit more or less coverage.

You state that the article is neither a brassiere nor outerwear. Your position is that it cannot be a brassiere because it does not provide support, and that it cannot be outerwear because the fabric is "virtually see-through." You conclude that it should be classified as underwear since it is sold in underwear departments of stores.

We agree that this article is not a brassiere, for the reasons you state. However, we do not agree that it is underwear. The fact that it may be sold in underwear departments is not alone determinative of its classification for Customs purposes.

The fabric in this article is not flimsy or see-through. Fabric of this weight and type is commonly used for blouses, shorts, skirts, and dresses. Further, the article is not practical as underwear. The fabric is gathered around the entire garment, creating bulk that would not lie flat against the skin and would distort the fit of a blouse worn over it. The tie would make it difficult or impossible to button a blouse over the garment, and it would create a lump if worn under a sweater or blouse. You have suggested that the tie could be accommodated by leaving the blouse at least partially open. However, it is our position that underwear is worn under outer garments and is not seen.

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For the foregoing reasons it is our decision that the article is not underwear and is properly classifiable as other women's wearing apparel, not ornamented, according to the component fiber in chief value.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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077908

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUN 13 1986

REFER TO
CLA-2 CO:R:CV:G
077909 JLP

077909

Mr. Bill Dorsey, Sr., President
Myraid International Trading Co.
Post Office Box 54386
Oklahoma City, Oklahoma 73154

Dear Mr. Dorsey:

This is in response to your request made to Accu-Rate International, Inc., regarding the classification of an artificial "Canadian Pine" imported from Hong Kong, Taiwan and Mainland China. The sample submitted consists of a two inch wide strip of polyvinyl chloride (PVC) which has been fringed and then entwined around a two wire twisted core to render an effect of a needle branch. The fringed two inch wide strip is considered to be a plastics material.

The merchandise is precluded from tariff classification in item 748.20, Tariff Schedules of the United States (TSUS), because that provision does not include articles consisting of parts that are not assembled "by binding with flexible materials such as wire, paper, textile material, or foil, or by gluing, or by similar methods." See Schedule 7, Part 7, Subpart B, Headnote 1(iii), TSUS. Since the branches of your artificial tree are hinged and fold upward for storage, the tree is considered assembled by the use of hardware, which is a method of assembly not for merchandise classified in item 748.20, TSUS.

This issue has been addressed in a previous Customs ruling, 076081, July 30, 1985, which held that artificial Christmas trees having parts assembled by a slip-on and hardware method of assembly are properly classifiable in item 772.97, TSUS, under the provision for Christmas ornaments, of rubber or plastics. This classification is appropriate since artificial Christmas trees, as those in this case, are commonly and commercially looked upon as belonging to the class of merchandise understood to be Christmas ornaments. Also, for this reason, item 774.45, TSUS, which provides for other artificial trees made of plastics is not an appropriate classification.

In view of the foregoing, we find that the artificial Canadian pine tree is properly classifiable under the provision for Christmas ornaments of rubber or plastics in item 772.97, TSUS, and dutiable at 5.7 percent ad valorem. Duty-free treatment is available for the importation of this product from Hong Kong or Taiwan.

Sincerely,

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Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

CS

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUN 25 1986

REFER TO

CLA-2 CO:R:CV:G
077918 c

077918

Ms. Angela DeGaetano
Chief, Customs Information Exchange
U.S. Customs Service
6 World Trade Center
New York, New York 10048

Dear Mr. DeGaetano:

A Customs Form 6431 dated November 7, 1985, received in this office on March 12, 1986, concerns entry No. 85-203887 dated May 30, 1985, covering a shipment of jewelry rolls manufactured in Hong Kong. This difference of opinion is listed as the last item on page 1 of the list of differences circulated as CIE M89/79, Suppl. 46 of April 1986.

The sample submitted designated as style No. C6116B is a rayon brocade purse. It has a bi-fold design and measures 5-1/2 inches by 4-1/2 inches when folded and 5-1/2 inches by 9 inches when open. This purse has two full width pouches which are each closed by a nylon coil zipper. There is a center padded ring holder with a security snap. The purse is secured by means of a nylon cord which loops around the bi-fold body holding the two sides closed. Since the jewelery is secured in separate zipper pouches and the snap ring holder, the nylon cord is merely used to hold the purse in its folded condition and can be adjusted according to the quantity contained therein. The cord secures the purse when folded.

The sending port maintains that the sample is properly classifiable under the provision for other articles not specially provided for, of textile materials, not ornamented, of man-made fibers in item 389.62, Tariff Schedules of the United States (TSUS). The rationale for this position is that the article is chiefly used in the home for storage. Also, CIE 248/67 has been cited which held that a jewelry roll of textile material is classifiable under Schedule 3, TSUS, according to component material of chief value.

We do not consider the result reached in CIE as controlling here inasmuch as the jewelry roll involved therein was approximately twice as large as the instant sample. Apparently, although there was no reasoning presented as a basis for the decision, we were satisfied that the article was not designed to be carried on the person.

Schedule 7, Part 1, Subpart D, Headnote 2(c), TSUS, provides that "the term '<u>flat goods</u>' covers small flatwares designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change purses, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches and similar articles."

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The sample is a type of purse which is usually sold at retail and is also used as a premium or inducement to buy a product. It is being offered as a premium inducement to purchase "Leggs" pantyhose. Advertising literature before us shows that the same class or kind of merchandise is manufactured and sold at retail as attractive travel cases or purse accessories.

It is our opinion that merchandise represented by the sample is designed to be other than a storage bag for use in the home. The overall attractive brocade design, similarity to an accessory or cosmetic purse and extra secure features demonstrate that the sample was designed to be an attractive purse accessory to be used to carry jewelry in a handbag or travel bag. It is ejusdem generis with the articles listed in Schedule 7, Part 1, Subpart D, Headnote 2(c), TSUS, and does satisfy the requirement that it be designed to be carried on the person. Thus, the question of chief use does not have to be resolved.

For the foregoing reasons, it is our position that the sample rayon brocade purse is classifiable under the provision for other flat goods of other textile materials in item 706.39, Tariff Schedules of the United States.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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817640

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 22 1985

REFER TO
CLA-2 CO:R:CV:G
077951 SM

077951

Ms. H. K. W. Ho
Second Secretary
Hong Kong Commercial Affairs
British Embassy
3100 Massachusetts Avenue, N. W.
Washington, D.C. 20008

Dear Ms. Ho:

You have inquired as to whether a cotton polishing cloth imported as part of a shoe shine kit requires a visa in Category 369, as U.S. Customs in Seattle has told the importer. It is your position that the article in question is a toy and so should not be subject to textile licensing requirements. You have sent us a sample of the kit.

The kit consists of a tin box containing four other articles. The box, which measures about three and a half by two and a half by two and a half inches, has a hinged lid. Four holes are punched in the top for the insertion of the prongs of a metal foot rest. The articles contained in the box are a can of shoe polish, a cotton polishing cloth, a plastic combination polish applicator and shoe brush, and a plastic shoe horn.

Schedule 7, Part 5, Subpart E, Headnote 2, Tariff Schedules of the United States (TSUS), provides: "For the purposes of the tariff schedules, a '<u>toy</u>' is any article chiefly used for the amusement of children or adults." General Interpretative Rule 10(e)(i), TSUS, provides that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States, at or immediately prior to, the date of importation of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined."

We think that the chief use to which the shoe shine kit would be put is a utilitarian one, the cleaning of shoes, and that any amusement value derived from its use would be only incidental. Thus we cannot agree that it is a toy. The fact that it is small, or that it could be used by a child, does not make it a toy for tariff classification purposes. We also disagree with your position that the shoe shine kit should be classified as an entirety. Each of the articles in the

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kit has a separate identity and function, retained despite the fact that all are imported together. Therefore each article is classified separately. The box, however, if imported containing the other articles, is considered a container of the usual type ordinarily sold at retail with its contents according to General Headnote 6 (b) (i), TSUS. A separate rate of duty will not be assessed against the value of the box; rather, its cost will be counted as a part of the value of the contents.

The response your inquiry, then, is that the cotton cloth is classifiable under item 385.3000, Tariff Schedules of the United States Annotated, quota category 369.

Sincerely,

Harvey B. Fox

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157670

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

10 JUN 1986

REFER TO

CLA-2 CO:R:CV:G
077955 JLV
817785 NY

077955

Stephen S. Spraitzer, Esq.
Law Offices, George R. Tuttle, P.C.
Three Embarcadero Center, Suite 1260
San Francisco, California 94111

Dear Mr. Spraitzer:

In a letter of March 13, 1986, with enclosures and exhibits, as supplemented by a letter of April 14, 1986, with attachments, you request a ruling on behalf of Arco Alaska, Inc., Anchorage, Alaska, for 14 components which will be parts of a central gas facility (CGF). Each component is a modular unit designed to perform an auxiliary function for the CGF:

Item	Description
a	Booster Compressor Aftercooler: an air to gas heat exchanger used to cool the compressed feed gas; consists of 10 bays (each containing coils and two 50 horsepower electric fan-drive motors), a power distribution center, and piping and instrumentation.
b	Stabilizer Condenser: a condenser used to condense the overhead stream from the stabilizer; consists of eight air cooler bays, each containing two coils and two fans, piping and instrumentation.
c	Firewater Skid: a module for storage of firewater and for pumping water to hydrants in the CGF; consists of a heated storage tank, pressurizing pumps, fire protection system for the structure, and a heating-ventilation-air-conditioning (HVAC) system.
d	Fired Heater: a system which provides process and building heat for the CGF; consists of three hot oil, fired heaters (natural gas), a structure housing an electrical control room and piping, and an HVAC.

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e and k	LTS Gas/Gas Exchangers: shell and tube heat exchanger using type 4 gas to cool feed gas; each consists of eight shell and tube exchangers and interconnecting piping.
f, g, h, and j	LTS Refrigerant Condenser: module designed to reduce temperature and condense the propane refrigerant utilized in the chillers; each consists of six induced draft bays, each with two coil sections and two fans with two-speed motors, a power distribution center with motor controls, lighting, fire detection system, and all piping and instrumentation.
m	Refrigerant Storage Tank: a tank for storage of the propane refrigerant; consists of a tank mounted on two saddles, one of which is fixed to the tank. The saddles function as the base.
o	NGL Divert and Storage Unit: this module functions as a tank for temporary storage and surge capacity for natural gas liquids; consists of a pressure vessel and a structure which houses the two pumps, inlet/outlet meters, fire detection/control system, and an HVAC.
p	Flare Manifold: a system designed to control the disposal of unwanted gases; consists of a structure housing the manifolds, valves, and other machinery to regulate the gases, the HVAC, a fire protection system, and a hoist for maintenance; flare tips, which are connected by piping to the manifold, are burners for the system and will be imported with the module.
r	Pumphouse: a module to provide storage and pumping facilities for diesel fuel and methanol injection gas; consists of two storage tanks, and a structure housing the pumps, the pump controls, a fire protection system, and the HVAC.

With the exception of item m, all of the imported modules have a base consisting, in general, of built-up I-beams, cross-ties, and stub columns which are designed to raise and support the units on pilings above the

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tundra in such a manner that any heat generated in the modules will not transfer to the tundra and affect the perma-frost.

The modules will be transported by barge to location. In order to insure safe transport, a special I-beam transportation base will be welded or bolted to the skids (and then welded to the deck of a barge). These transportation bases will be removed before installation of the modules and will be scrapped.

It is your position that each one of the modules is classified as an entirety. You cite numerous administrative rulings as evidence of prior tariff treatment of similar modules as entireties. We agree with respect to items a, b, e, f, g, h, j, k, and m. For tariff purposes, these items are classifiable as entireties. That is, each module is, in itself, the functional article described under a tariff provision. All of the components (including the base or saddles) are merged into the identity of the article, i.e., a heat exchanger, a condenser, or a storage tank. United States v. Mannesmann-Meer, Inc., 54 CCPA 24, C.A.D. 897 (1966). Therefore, items a, b, e, and k, are classifiable under the provision for industrial machinery or equipment for the treatment of materials by a process involving a change of temperature, in item 661.68, Tariff Schedules of the United States (TSUS). Items f, g, h, and j, are classifiable under the provision for refrigerating equipment in item 661.35, TSUS. Item m is classified under the provision for tanks, of metal, having a capacity over 75 gallons and ordinarily installed as fixtures in industrial plants or elsewhere for storage or manufacturing use, in item 640.35, TSUS. The transportation bases for these items are the usual or ordinary types of containers within the meaning of General Headnote 6(b)(i), TSUS.

Items c, d, o, p, and r, however, are not classified as entireties because they consist of readily identifiable operational components which are housed in or situated next to a structure. Item c consists of a heated tank for water storage, and a structure which houses the equipment to maintain water pressure and pump water to hydrants located throughout the CGF. The structure also contains its own fire protection system and an HVAC system. While the functions of all these components are related, their identities are not merged into a single article. Therefore, the housing structure, together with the base, the HVAC system (including ducting), the fire protection system, and any electrical wiring or plumbing that is integral to the structure, are classifiable under the provision for other structures, of steel, in item 653.00, TSUS. The pumps and special piping related to their operation are classified under the provision for other pumps for liquids, in item 660.97, TSUS. The tank, because it contains an internal heating coil, is classifiable as a non-electrical storage water heater in item 661.65, TSUS. We note that if the HVAC is a portable or self-contained unit (not a central heating system), then it would be classified separately.

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Item d, the fired heater module, consists of gas-fired oil heaters and a structure that houses the controls for the heaters. The heaters, and all the related controls and piping identified with the heaters in the structure, are classified as non-electrical industrial furnaces in item 661.30, TSUS. The structure together with the base, the HVAC (if a central system), and the fire protection system, is classified in item 653.00, TSUS. The electrical control room, if designed to regulate the interaction of the three heaters, is classifiable under the provision for control panels in item 685.00, TSUS.

The rationale for separate classification of the structure and the machinery in items o, p and r is the same as above. Item o, the NGL divert skid, is separately classified as follows: the base and enclosure structure, together with the HVAC and fire detection system, in item 653.00, TSUS; the tank in item 640.35, TSUS; the pumps in item 660.97, TSUS; and the flow meters in item 711.70.

In item p, the base and structure that encloses the manifold, valves, actuators, fittings, fans, motors, control system, and hoists, are classified as a structure in item 653.00, TSUS. This would include the central HVAC and fire protection systems. The hoist is classified in item 664.10, TSUS. The operational system is a pre-assembled system and functions as an entirety. It is classifiable under the provision for valves and similar apparatus for controlling the flow of gases, in item 680.27, TSUS. The flare tips are classified in item 657.25, TSUS.

Finally, in item r, the base and structure, together with any central HVAC and fire detection system, are classified in item 653.00, TSUS. The two tanks are classified in item 640.35, TSUS. The pumps are classified in item 660.97, TSUS. Any piping associated with the inherent operation of, and necessary to the completion of the tanks or of the pumps, and which is not integral to the construction of the structure itself, is classifiable accordingly with the tanks or pumps.

The transportation bases for items c, d, o, p, and r, are the usual or ordinary types of containers within the meaning of General Headnote 6(b)(i), TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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077955

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 15 1986

REFER TO
CLA-2 CO:R:CV:G
077962 c

077962

Mr. Steve Kaity
Materials Manager
Strong Group, Inc.
105 Maplewood Avenue
P.O. Box 1195
Gloucester, Massachusetts 01930

Dear Mr. Kaity:

In a letter dated March 18, 1986, you inquired as to the dutiable status of a cotton bag manufactured in Taiwan. You also requested clarification of the textile category number applicable to the product. A sample was submitted for examination.

The sample is a cotton canvas bag which measures approximately 4 inches by 2 inches by 3 inches. It has a nylon coil top zipper and small woven fabric loops sewn to each end and is unlined. This bag is to be used to contain shoeshine equipment and will be marketed as a shoeshine kit.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), Tariff Schedules of the United States (TSUS), provides that "the term 'luggage' covers — (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel."

We view the sample cotton bag as being similar to the kitbag named as an exemplar of luggage in the cited headnote. Consequently, merchandise represented by the sample is classifiable under the provision for luggage, of textile materials, of cotton in item 706.3650, TSUSA, and dutiable at the rate of 8.2 percent ad valorem. The applicable textile category number is 369. As a product of Taiwan this merchandise is subject to quota restraints and visa requirements.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 18 1986

REFER TO
CLA-2 CO:R:CV:G
078013 jlj

078013

Miss H. K. W. Ho
Second Secretary
Hong Kong Office
British Embassy
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

Your letter to Mrs. Claire McDermott of the Department of Commerce was forwarded to this office for response on March 7, 1986. Your letter requests that we verify textile category 659 for a certain women's garment. A sample of the garment was also sent to this office along with your letter.

The sample in question is manufactured from a 100 percent woven acetate fabric. The garment is similar to a body suit, but it bares the entire back and shoulders. It has a red nondetachable bow tie at the chest and is trimmed with lace, both of which constitute ornamentation. The bodice of the garment is red, with a white inset at the front and three red buttons. There are two red elastic straps at the top, one of which goes around the wearer's neck and the other goes around the back, and two red elastic straps below the waist which are attached to the end of a thin strip of fabric that extends from the front of the garment through the crotch area and serves to hold the garment to the body. You state that it is designed to be worn by waitresses serving in bars and nightclubs.

According to Shirley Hargrove of the Department of Commerce, this shipment is currently being contested at our New York Seaport office, which claims that textile category number 652 applies to the garment. You believe that the garment belongs in textile category 659. You ask us to request the Department of Commerce to change its 1985 import data in categories 652 and 659 to show that 195 pounds (390 dozen) ladies' 100 percent woven acetate tuxedo outfits have been charged to category 659.

This garment lacks the coverage ordinarily required of garments worn alone; presumably it will be worn over a bodyshirt or similar garment. In any case, tariff classification as underwear is precluded because the garment is designed to be seen rather than worn under other clothing.

The "tuxedo outfit" is classified under the provision for other women's ornamented wearing apparel, of man-made fibers, not knit, in item 384.2697, Tariff Schedules of the United States, dutiable at the 1986 rate

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of 28.3 percent ad valorem. Textile category 659 is applicable to this garment. A copy of this letter is being sent to the Department of Commerce so that the import figures may be adjusted accordingly.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

078013

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

078025

DATE: 21 MAY 1986

FILE: CLA-2:CO:R:CV:G
078025 JAS

TO : District Director of Customs
Seattle, Washington 98174

FROM : Director, Classification and Value Division

SUBJECT: Substantial Transformation of Structural Shapes;
Internal Advice 27/86

In your memorandum of March 10, 1986 (CLA-1 SE:C:D-23), you request internal advice on the issue of whether certain steel structural components of Japanese origin are cor ered to have been substantially transformed in Taiwan by eries of operations performed there, so as to be con. ered products of Taiwan for tariff purposes. A brief from counsel representing the internal advice applicant, dated March 4, 1986, supplemented by a meeting at Headquarters on March 12, 1986, at which other materials were submitted, and a follow-up brief dated April 4, 1986, complete the record.

This request concerns 18 fabricated structural units comprising the second of nine shipments, the contents of which will be used to construct the Washington State Convention and Trade Center. There is no tariff classification issue presented.

The submitted data indicates that certain hot rolled wide flange (W) H beams from Japan were shipped to Taiwan where, after preparation of shop drawings, templates (patterns), and cutting plans, they are subjected to the following processing steps: straightening to remove deformations occurring during transportion or handling, ends cut to desired lengths, cambering or controlled heating to achieve a desired convex shape, welding or bolting on of precut and drilled gussets and stiffener plates, shot blasting to remove scale and rust, inspection and packing for shipment to the job site.

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D3

Counsel cites Uniroyal, Inc. v. United States, 3 CIT 220, 542 F. Supp. 1026, aff'd. 702 F. 2d. 1022 (Fed Cir. 1983), in which the court, among other things, compared the time, labor and material costs, as well as degree of skill and expertise necessary to manufacture the initial product, with those associated with the processes in the intermediate country, in determining whether a substantial transformation in the intermediate country had occurred. Counsel then concludes, under this authority, that inasmuch as the value of the processing operations in Taiwan is 75 percent of the value of the Japanese H beams, the fabricated structural units imported into the United States must be considered products of Taiwan for tariff purposes.

In order for the Japanese H beams to be considered as having been substantially transformed in Taiwan, the record must establish that the processing operations there resulted in a product other than or materially different from the H beams of Japanese origin; that is, a new and different article must emerge from Taiwan, one having a new name, character or use. Anheuser-Busch Brewing Association v. United States, 207 U.S. 556 (1908). It is noted by the courts that a mere change in a product's name, without more, is a relatively unimportant consideration in most instances. United States v. International Paint Co., 35 CCPA 87, C.A.D. 376 (1948), National Juice Products Association, et al. v. The United States, Slip Op. 86-13 (Ct. Int'l. Trade, decided January 30, 1986).

As to character and use, there must be evidence to show that the processing in Taiwan both transforms the Japanese H beams in such a way that they are no longer the essence of the final product as imported, and also dedicates the product entering the United States to a specific use not associated with the Japanese H beams. Such evidence is lacking here. Despite the value added to the Japanese H beams by the processing in Taiwan, these H beams remain the very essence of the imported structural units. The Japanese product is not a raw material from which a finished structural unit is fabricated, but is a fully fabricated structural unit unto itself, one manufactured to specific ASTM standards. These H beams have simply been subjected to additional processing which, in our opinion, does not change their fundamental character or use.

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078025

For these reasons, it is our opinion that no substantial transformation has taken place and that the fabricated structural units, the subject of this request, are to be considered as products of Japan for tariff purposes.

Harvey B. Fox

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

078025

DS

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 18 1986

CLA-2:CO:R:CV:G
078043 JLF
817642

078043

Ms. Jo Christi Jones
V. Alexander & Co., Inc.
Port Nashville Bldg.
500 Maple Leaf Drive
P.O. Box 17367
Nashville, TN 37217

Dear Ms. Jones:

Your letter dated March 5, 1986, addressed to our New York office requesting a tariff classification of a battery operated musical book, has been referred to our office for direct reply to you.

The "My Play a Tune Book" has been described as a battery operated electronic device comprised of a keyboard permanently affixed to a music book which uses a color code to identify the eight notes on the keyboard. The book has 12 full color illustrations and 12 matching songs with words and notes. The sound of this article is produced by a single tone oscillator feeding a flat speaker which produces the tone corresponding only to the individual key being depressed.

The issue presented by your request is whether the merchandise under review may be classified as an entirety or whether the book is separately classifiable from the affixed keyboard. The issue hs been addressed recently by the Customs Service in Ruling 077514, July 16, 1986. The functions of the musical instrument and the music book appear to be co-equal in the use of this novelty item. Considering that the keyboard and music book are permanently joined together at the time of manufacture and are shipped and marketed together, we find that the subject musical book is properly classifiable as an entirety with separate classification of the batteries.

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D6

In view of the foregoing, the merchandise which is the subject of your inquiry is properly classifiable under the provision for other electrical articles and electrical parts of articles, not specially provided for, in item 688.42, Tariff Schedules of the United States (TSUS), with separate classification of the batteries in item 682.95, TSUS.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D7

078043

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 19 1986

REFER TO

CLA-2:CO:R:CV:G
078050 SM

078050

District Director of Customs
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Re: Request for Further Review of Protest No. 3701-5-000045 dated July 23, 1985

Dear Sir:

This protest concerns your classification of tractor parts identified as bottom roller SFR 33552 and top roller R 33965 under item 692.35, Tariff Schedules of the United States (TSUS), as other tractor parts. The protestant claims that they are properly classifiable under item 692.34, TSUS, as parts for tractors suitable for agricultural use, a duty-free provision. For the reasons stated below, we have determined that the protestant's position is correct.

With regard to then-item 692.30, tractors suitable for agricultural use, and parts thereof, the Tariff Classification Study Explanatory and Background Materials, Schedule 6, at 325, states:

> Items 692.30 and 692.35 cover tractors (except platform tractors and automobile truck tractors). Item 692.30 would put on a sounder basis the existing treatment of tractors as agricultural implements under paragraph 1604 of the free list of the Tariff Act of 1930. In recent years, practically all imports of tractors have been admitted free under paragraph 1604. Tractors are mobile power units used for many purposes, including agricultural, construction, road building, etc. Attempts to distinguish so-called agricultural-type tractors from types chiefly used for non-agricultural purposes necessarily involve unrealistic distinctions. For years it was the practice to classify as agricultural implements only so-called wheel-type tractors. Within recent months a so-called half-tread tractor, said to be of special design for agricultural

D8

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> purposes, was held to be free as an agricultural implement. Item 692.30 would change the present 'chief use' concept implicit in paragraph 1604 by providing for tractors 'suitable for agricultural use'. In view of the unrealistic distinctions which have been involved in the administration of the chief use concept, it is believed that the practical result has been more nearly a suitability test rather than one of chief use. Moreover, the suitability test is much less difficult to apply. Tractors not suitable for agricultural use are provided for in item 692.35 at the existing rate of duty of 11.5 percent ad valorem currently applicable under paragraph 372.

Further, our appellate court has held repeatedly that "suitable for use" means actually, practically, and commercially fit for such use, and that articles classified on the basis of suitability for use do not have to be chiefly used for the stated purpose. Following these guidelines, we have previously determined that the J. I. Case tractor model 850 is classifiable under item 692.34, TSUS, as suitable for agricultural use. We note the master tractor index of April 8, 1983.

General Headnote 10(ij), TSUS, provides that a provision for "parts" of an article covers a product solely or chiefly used as a part of such article. Therefore, unlike the tractors themselves, tractor parts must meet a chief use test. To be classified as parts for tractors suitable for agricultural use, any such parts must be chiefly used as parts for such tractors.

The rollers in question here are designed for use with J. I. Case tractor models 850 and 880. The model 850 is classifiable under item 692.34, TSUS, as indicated above; no information is supplied for the model 880, and it is presumed dutiable. However, inasmuch as we are satisfied that the rollers are chiefly used on the model 850, classification under item 692.34, TSUS, is warranted.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D9

078050

You should allow this protest in full. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

050870

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D10

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 16 1986

REFER TO
CLA-2:CO:R:CV:G
078087 JLF
817361

078087

Manchester Textile Ltd.
2-12 Kwai Fat Road, 4/F
Kwai Chung, N.T.
Hong Kong

Dear Sirs:

This is in response to your ruling request of January 28, 1986, concerning the tariff classification of a man's boxer-style garment.

The sample submitted has an elasticized waist with a snap closure, a zippered fly-front opening and a full support liner of knit fabric.

Ruling 073387, February 17, 1984 (copy enclosed), addresses the issue presented by your case and states the principles to be followed. The resolution of whether the subject garment is shorts and therefore classifiable in item 381.6210, Tariff Schedules of the United States (TSUS), with a textile and apparel category of 347, or whether the garments are swimwear classifiable in item 381.6585, TSUS, with a textile and apparel category of 359, is the issue under consideration.

Criteria previously stated by the Customs Service for making the distinction between swimwear and shorts are discussed in Ruling 073387. Features such as heavier fabrics, pockets, cotton liners, and fly fronts are pointed out as being characteristic of multipurpose shorts and not swimwear. Ruling 073387 also states that although the fabric of the garment in question may be determinative by itself, none of the other criteria will be the sole determining factor of whether an article is classifiable as shorts or swimwear. The article of apparel should be considered as a whole, using the stated criteria for assistance in making the determination.

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D11

In applying the principles set out in Ruling 073387 to the instant case, we find that the sample submitted is classifiable as multipurpose shorts. This classification is appropriate when considering the overall design of the shorts, especially the fly front and the three pockets, two of which have slanted openings.

The sample garment which is the subject of your ruling request is properly classifiable under the provision for other men's or boys' cotton shorts, not ornamented and not knit, in item 381.6210, TSUSA, with a textile and apparel category designation of 347, dutiable, if a product of Hong Kong, at 16.5 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D12

L80810

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

18 JUL 1986

REFER TO
CLA-2:CO:R:CV:G
078089 SM

078089

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Re: Application for Further Review of Protest No. 3801-5-002174 of July 8, 1985

Dear Sir:

This protest concerns your classification of two products, sold under the brand names Taski R-20 Plus and Taski Stripo, under items 432.25/428.47 and 430.20/428.47, Tariff Schedules of the United States (TSUS), respectively. The protestant claims that both products should be classified under item 466.30, TSUS, as synthetic detergents; or under item 493.10, TSUS, as polishing or cleaning products in immediate containers not over ten pounds each; or under item 409.30, TSUS, as products chiefly used as detergents.

Product information supplied by the importer indicates that Taski R-20 Plus is a "concentrated stripper for removing hard metal-interlock floor finishes." Taski Stripo is referred to as a "dry stripper . . . for the cleaning or stripping of floors which have been coated with acrylic emulsion or dispersion floor finish." Thus these products are more than detergents, as they contain solvents that have a functional role in stripping surfaces. Classification under items 466.30 or 409.30, TSUS, would thus be inappropriate.

Strippers of this type can be considered cleaners for tariff classification purposes. Thus, both products, if imported in immediate containers holding not over ten pounds each, are classifiable under item 493.10, TSUS. If imported in containers holding over ten pounds each, they would be classifiable as mixtures, according to their chemical composition. Taski R-20 Plus would then be classifiable under item 432.25, TSUS, with the rate of duty from item 428.47, TSUS; Taski Stripo would be classifiable under item 430.20, TSUS, with the rate of duty also from item 428.47, TSUS.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

D13

You should therefore deny this protest in full, except to the extent that reclassification of the products, if imported in immediate containers holding not over ten pounds each, under item 493.10, TSUS, results in a partial allowance. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffler
for Harvey B. Fox
Director, Classification
and Value Division

080870

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

D14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 22 1986

REFER TO
CLA-2:CO:R:CV:G
078098 JGH

078098

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Re: Decision on Internal Advice No. 35/86 - Classification of Gasoline Blendstock

Dear Sir:

The imported gasoline blendstock from Brazil was said to contain over 5 percent synthetically produced dutiable benzenoids. It was also stated to contain 0.13 percent sulfur. The maximum amount of sulfur allowable in unleaded gasoline under both ASTM D439 and EPA regulations is 0.10 percent by weight. Furthermore, the product was said not to conform to distillation characteristics and Reid Vapor Pressure specifications found in the former standards for motor fuel set out in T.D. 66-23(13).

Based on such specifications and in view of the synthetic benzenoid content, the product is classifiable as a benzenoid mixture in item 407.16, TSUS.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E1

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 24 JUN 1986

FILE: CLA-2 CO:R:CV:G
078100 SM

078100

TO : District Director of Customs
Buffalo, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request 9/86, Your Memorandum CLA-1-0:CV:JP of February 4, 1986

This request, which concerns the tariff classification of fiberglass tape coated with adhesive, was initiated by Phillips, Lytle, Hitchcock, Blaine & Huber on behalf of their client Bay Mills, Ltd., of Oakville, Ontario. They have proposed classification under various items of Schedules 3 and 7, Tariff Schedules of the United States (TSUS). You have determined that this article is properly classifiable under item 355.82, TSUS. For the reasons set out below, we are in agreement with your classification.

The merchandise, known as "FibaTape," is a wall repair material that can be used to cover the joints between sheets of drywall. It is an open-weave leno fabric composed of continuous filament fiberglass yarn. After the fabric is woven, one surface is coated with acrylic/acetate co-polymer dispersion, an adhesive plastics material. It is about two inches wide and comes in rolls of 65 feet or 200 feet in length. It is in chief value of the fiberglass filaments, less than 70 percent by weight of the adhesive, and less than 44 ounces per square yard in weight. Samples of the fabric with and without the coating were submitted.

Headnote 5(b), Schedule 3, TSUS, provides: "Any fabric described in Part 4C of this schedule shall be classified under Part 4C whether or not also described elsewhere in the schedules." It reflects the fact that, in general, while an article may be covered by two, or more, tariff provisions, actual classification, which will depend on other factors such as relative specificity, exclusionary headnotes, and other tariff classification principles, can be under only one provision. It resolves any uncertainty that may exist with respect to classification of fabrics described in Subpart 4C of Schedule 3 by providing specifically that preference in classification "shall" be given to items in that subpart whose descriptions cover the imported articles in question, even if those articles can also be said to be described anywhere else in the tariff schedules.

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001870

In Subpart 4C, item 355.82, TSUS, provides for "Woven or knit fabrics. . . of textile materials, coated or filled with rubber or plastics material. . . Of man-made fibers: . . . Other." FibaTape is a woven fabric, of continuous filament fiberglass yarn, which, by Headnote 2(c) of Part 1E, Schedule 3, is composed of man-made fibers. Headnote 2(a) of Subpart C, Part 4, Schedule 3, provides that "coated or filled" means that "any such fabric or other article has been coated or filled . . . with . . . plastics materials . . . or other substances, so as to visibly and significantly affect the surface or surfaces thereof otherwise than by change in color . . . ." In interpreting Headnote 2(a), the Customs Service has taken the position, in T.D. 81-219, that it will consider the surface of a fabric to be visibly affected by a coating or filling if, among other factors, coating or filling material causes the fabric to appear significantly more rigid than it would be if not coated or filled. Inspection of the submitted fabric samples reveals obvious differences in the rigidity of the coated and uncoated versions. The visible effect of the coating is to stabilize the fabric and prevent the easy shifting of the warp and filling yarns and resulting distortion of the fabric that can be seen in the uncoated sample. Therefore it is our position that "FibaTape" is described in item 355.82, TSUS. Since it is thus described in Subpart 4C, it must be so classified.

Counsel for the importer have suggested several alternative classifications for this article. However, even disregarding Headnote 5(b), above, we do not find these arguments persuasive. Item 338.25, TSUS, woven fabric of glass, would not be appropriate in that the fabric in question here is coated, and thus more specifically provided for under item 355.82, TSUS. Item 347.68, TSUS, narrow fabric of glass, would not be appropriate. Item 347.68 is in Subpart 4A of Schedule 3. Headnote 1 of this subpart provides that "[a]ny fabric described in this subpart and also in Subpart B or C of this part is classifiable in the said Subpart B or C." Since the coated fabric in question here is described in item 355.82, TSUS, in Subpart C, as indicated above, the latter takes precedence.

Finally, classification under item 790.55, TSUS, would not be appropriate for this article. We do not agree with counsel's interpretation of this provision that the term "flat" modifies only the terms "shapes or forms." Rather, we think that the usual and customary manner of understanding English requires the conclusion that the phrase "[s]heets, strips, tapes, stencils, monograms, and other flat shapes or forms" was intended to mean that any sheets, strips, tapes, stencils, monograms, and other shapes or forms classified under this provision must be flat. We also note that in United Mineral & Chemical Corp. v. United States, 63 Cust. Ct. 522, 523, C.D. 3946 (1969), the Customs Court stated that item 790.55 "provides for specified kinds of flat pressure sensitive articles," indicating that it was the court's interpretation that articles classified under item 790.55 must be flat as well as pressure sensitive.

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Further, we do not think that the leno fabric in question here is described under this provision in that it is not "flat." Leno is "[a] weaving process in which warp [lengthwise] yarns are arranged in pairs . . . . The filling is shot straight across the fabric as in a plain weave, but the warp threads are alternately twisted in a right and left hand direction, crossing before each pick [filling yarn, running from selvage to selvage at right angles to the warp] is inserted." Fairchild's Dictionary of Textiles (1967 ed.). Like leno fabrics generally, FibaTape is a lightweight, open weave, that is, the strands are widely spaced, forming a non-continuous surface. Furthermore, portions of its surface are formed by single strands, but at each intersection of a filling yarn and a pair of warp yarns, one yarn crosses over the filling yarn while the other crosses under, forming a bumpy surface measurably thicker at some points than at others. Our ruling of May 12, 1983, file 070247, indicated our position that certain pressure sensitive stickers sought to be classified under item 790.55, TSUS, were not flat within the meaning of that provision, "being three dimensional and having depressions and elevations."

For the above reasons, we conclude that FibaTape was properly classified under item 355.82, TSUS. Please notify the inquirer of this decision.

For Harvey B. Fox

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E4

070180

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 18 1986

REFER TO

CLA-2:CO:R:CV:G
078112 DW
817605

078112

Mr. Brian Stuart
California Beachfront
6405 East Alondra Blvd.
Paramount, California 90723

Dear Sir:

Your letter dated February 25, 1986, requested the tariff classification of certain wearing apparel from Taiwan. A sample was submitted along with your request.

The sample is a pair of men's boxer-style shorts manufactured from a fabric that is a blend of 65 percent polyester and 35 percent cotton. It has an elasticized waist with a functional drawstring, a full support liner, an inner key pocket at the waist and two side pockets. There is a label above the left leg opening which is not considered to ornament the garment for tariff purposes.

You claim that the garment is classifiable as swimwear. And you state that plans exist to manufacture similar garments from a fabric that is a blend of 60 percent cotton and 40 percent polyester.

In determining whether men's boxer-style shorts are classifiable as shorts or as swimwear, the Customs Service has stated in a ruling dated May 2, 1984, file 073387 that:

> the term "swimwear" connotes garments which are intended for wear in water and which are predominantly used in that manner. We recognize that men's swimwear, especially in ocean beach areas, may be worn in certain commercial areas adjacent to, or in the immediate proximity of the water area by someone enroute directly to, or from, that area. Generally, however, we do not believe that swimwear has any real use other than being worn as such. Except for travel to and from the water, we believe that the use of swimwear for any activity other than swimming constitutes a fugitive use.

ES

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In distinguishing between shorts and swimwear, the Customs Service considers, inter alia, the weight and absorbancy of the fabric and the liner.

Given the lightweight fabric of the garment and the liner's lack of absorbancy, it is our judgment that the garment is classifiable as swimming trunks in item 381.9570, Tariff Schedules of the United States (TSUSA), under category 659. Without a sample of the merchandise in cotton, we are unable to issue a ruling. It is our opinion, however, that if the sample garment is manufactured from a fabric that is in chief value of cotton, it is probably classifiable in item 381.6585, TSUSA, under category 359.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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E6

071811

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 18 1986

CLA-2 CO:R:CV:G
078114 JGB

078114

Miss Gail T. Cumins
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, New York 10004

Dear Miss Cumins:

You have requested a ruling on the tariff classification of a ladies' raincoat with tie belt, Style 104, which your client, Fleet Street Ltd., expects to import from Malaysia. A sample was provided.

You claim that the coat and the belt are classified as an entirety in item 384.37, Tariff Schedules of the United States (TSUS), the provision for other women's wearing apparel, not ornamented, of cotton, not knit, coats, valued over $4 each, other. This item is dutiable at 8 percent ad valorem and is subject to textile category designation 335. You cite our decision, Headquarters Ruling Letter (HRL) 077496, February 12, 1986, designated C.S.D. 86-10, for the authority that only substantial belts are to be separately classified under the requirements of Headnote 3, to Part 6, Schedule 3, TSUS. You claim that the instant belt is not substantial and, therefore, must be classified with the coat.

The issue is whether the belt requires separate classification, or is classified with the coat as an entirety.

The instant belt is of the same woven material and color as the raincoat and is closed by tying. There are no non-textile attachments to the belt. The belt is flat and appears to be made by sewing together two pieces of the same stiff material used in the body of the raincoat. There appears to be no interfacing material between the two pieces of material to give the belt additional stiffness or body. The width is about 1-3/4 inches.

This office recently issued a ruling, part of which reconsidered the classification of textile belts of the same material as the garment with which they were imported. That ruling, HRL 077545, May 28, 1986, clarifies and modifies the ruling you cite. The application of the principles of that

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E7

ruling to the facts presented by the sample you provided dictates that the belt will continue to be classified with the coat as an entirety. Because the instant belt does not meet the standards that would require separate classification, the new effective dates are irrelevant to your client.

Your sample is being returned under separate cover.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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E8

071814

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 16 1986

CLA-2:CO:R:CV:G
078131 JLF
817687

078131

Mr. Paul Pritchard
V.I.P. Imports, Inc.
350 Fifth Avenue
New York, N.Y. 10118

Dear Mr. Pritchard:

This is in response to your ruling request of March 17, 1986, concerning the tariff classification of a man's boxer-style garment, sample model H032. The sample that you submitted was viewed by our New York office and this ruling is based upon a description of the garment given to us from that office.

The garment has a net lining of 100 percent nylon. It has an elasticized waist with a functional drawstring threaded through two grommets and an inserted pocket at each side seam. The sample garment, known as a fish jam, is longer than the usual boxer-style shorts. The imported garments will have woven shells of either 100 percent cotton or 65 percent polyester and 35 percent cotton.

The resolution of whether the subject garments are shorts and therefore classifiable in item 381.6210, Tariff Schedules of the United States Annotated (TSUSA), with a textile and apparel category designation of 347, or whether the garments are swimwear, classifiable in item 381.6585, TSUSA, with a textile and apparel category designation of 359, is the issue under consideration.

Ruling 073387, February 17, 1984 (copy enclosed), addresses the issue presented by this case and states the principles to be followed. Features such as heavier fabrics, pockets, cotton liners, and fly fronts are pointed out as being characteristic of multipurpose shorts and not swimwear. Ruling 073387 also states that although the fabric of the garment in question may be determinative by itself, none of the other criteria will be the sole determining factor of whether an article is classifiable as shorts or swimwear. The article of apparel should be considered as a whole, using the stated criteria for assistance in making the determination.

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E9

In applying the principles set out in Ruling 073387 to the instant case, we find that the sample submitted is classifiable as multipurpose shorts. This classification is appropriate when considering the overall design of the shorts and their common wearing use.

The sample garment which is the subject of your ruling request is properly classifiable under the provision for other men's or boys' cotton shorts, not ornamented and not knit, in item 381.6210, TSUSA, with a textile and apparel category designation of 347, dutiable as a product of China at 16.5 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E10

073131

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 19 1986

CLA-2 CO:R:CV:G
078136 SM

078136

Mr. M. Guirguis
Director
New England International Trading Co., Inc.
Two Summer Street
Natick, Massachusetts 01760

Dear Mr. Guirguis:

You have requested a tariff classification ruling for canned lentils that are a product of Canada.

Subpart 8B of Schedule 1, item 140.35, Tariff Schedules of the United States (TSUS), provides for dried lentils with a column 1 rate of duty of 0.15 cent per pound. However, Subpart 8C, which covers prepared or preserved vegetables, does not have a specific provision for lentils. It is our position that lentils are legumes, not beans, and so cannot be classified as beans. They must be treated as "other" vegetables and are thus classifiable under item 141.38, TSUS, with a column 1 rate of duty of 17.5 percent ad valorem.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 12 1985

REFER TO
CLA-2:CO:R:CV:G
078141 SM

078141

District Director of Customs
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Re: Further Review of Protest No. 3001-4-000504 of July 9, 1984

Dear Sir:

This protest concerns your classification of a shipment of men's, youths', and boys' nylon/suede joggers under item 700.95, Tariff Schedules of the United States (TSUS). The protestant claims that the shoes are properly classifiable under item 700.35 or item 700.45, TSUS, as leather footwear.

In order for the shoes to be classified as leather footwear, they would have to be in chief value of leather, that is, the value of the leather would have to exceed that of each other component. Based on the cost information supplied, we have determined that the shoes in question here are not in chief value of leather.

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown i incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on this matter was that importer-submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports, and like reports or responses.

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E12

In the case of this entry, a sample taken from the shipment, stock number 183-52936, boys' size 5, was analyzed by the Customs laboratory. Their report states that the total amount of leather in a pair of these shoes is .64 square feet. This measurement includes the leather on the exterior surface of the upper, the lasting allowance, and that leather which is not visible on the exterior surface. Component value information provided by the exporter overstates the amount of leather in these shoes as .74 square feet per pair. The resulting, lower, recalculated value of the leather in the shoe, together with the higher recalculated value of the rubber-plastics component when the labor cost for the sole is added to the other rubber/plastics costs, results in a rather wide margin for the rubber/plastics component. We conclude that this footwear was properly classified under item 700.95, TSUS.

Therefore, you should deny this protest in full. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur J. Schaffler

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E13

071811

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY 20 1986

REFER TO
CLA-2:CO:R:CV:G
078150 PR

078150

District Director of Customs
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Request for Further Review of Protest No. 3001-4-000108, dated December 2, 1983

This protest concerns the tariff classification of boys' and girls' ski parkas from Taiwan.

The merchandise was classified as follows:

1. Style 102 Girl's Nylon Parka - item 383.90
2. Style 102 Boy's Nylon Parka - item 379.95
3. Style 223 Boy's Nylon Jacket - item 379.96
4. Style 109 Girl's and Infants' Parkas - item 383.90
5. Style 109 Boy's Ski Parka - item 379.95
6. Style 300 Nylon Ski Wear - item 383.92

It is the protestant's claim that all of the garments are classifiable under the provision for garments designed for rainwear, hunting, fishing, or similar uses, in item 376.56, TSUS. This claim is based on the contention that all of the garments are designed for rainwear, hunting, fishing or similar uses and are made from fabrics which are coated or filled with rubber or plastics materials for tariff purposes. Protestant also claims that the cup test is no longer relevant when deciding on the water-proofness of a garment, and cites the decision in Pacific Trail Sportswear v. United States, Court of International Trade Slip Op. 83-45 (1983).

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E14

It is now your view that two of the styles, Nos. 109 and 300, are classifiable in item 376.56 because both garments passed the cup test and because you are of the opinion that the coating visibly and significantly affects the fabric.

With regard to the remaining two styles, Nos. 102 and 223, you have determined that style 102's fabric does not appear to have been coated sufficient to impart an effect which is different from the uncoated fabric used and style 223 failed a modified cup test.

Please note that our position concerning the cup test has changed because of the recent decision in Izod Outerwear, Div. of General Mills, Inc. v. United States, Slip Op. 85-72 (1985). There the court held that under the language of item 376.56, and Headnote 2(a), Subpart 4C, Schedule 3, TSUS, which defines the term "coated or filled," there is no requirement that the fabric comprising the garments pass the "cup test". The court concluded that in order for a garment to be classifiable in item 376.56, it must be wholly or almost wholly of coated or filled fabric and must be designed for activities that require protection from moisture or dampness.

Headnote 2(a), Subpart 4C, requires that for a fabric to be "coated for filled," the coating or filling must visibly and significantly affect the surface(s) of that fabric otherwise than by a change in color. We have examined swatches from each of the garments in question and fail to see, in any instance, where the added rubber or plastics material makes the fabric significantly stiffer, or adds a shine, luster, or dullness to the surface (T.D. 81-219), otherwise than by a change in color. Therefore, the subject garments are not coated or filled for tariff purposes and cannot be classified in item 376.56, TSUS.

Accordingly, you are directed to deny the protest in full. A copy of this decision should be forwarded to the protestant along with your Form 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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051850

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 16 1986

CLA-2:CO:R:CV:G
078163 JLF
817802

078163

Ms. D. Incivilito
Warnacc Sourcing
90 Park Avenue, 12th Floor
New York, New York 10016

Dear Ms. Incivilito:

This is in response to your ruling request of March 21, 1986, concerning the tariff classification of men's boxer-style garments.

The resolution of whether the subject garments are shorts and therefore classifiable in item 381.6210, Tariff Schedules of the United States Annotated (TSUSA), with a textile and apparel category designation of 347, or whether the garments are swimwear, classifiable in item 381.6585, TSUSA, with a textile category designation of 359, is the issue under consideration.

The samples submitted have varying characteristics and may be considered individually for classification purposes. Criteria previously stated by the Customs Service for making the distinction between swimwear and shorts are discussed in Ruling 073387 (copy enclosed). Features such as heavier fabrics, pockets, cotton liners, and fly fronts are pointed out as being characteristic of multipurpose shorts and not swimwear. Ruling 073387 also states that although the fabric of the garment in question may be determinative by itself, none of the other criteria will be the sole determining factor of whether an article is classifiable as shorts or swimwear. The article of apparel should be considered as a whole, using the stated criteria for assistance in making the determination. Common features among the five samples submitted include an elastic waist with a functional drawstring, a coin pocket with a flap closure on the inner side of the waistband, a full support knit liner of 100 percent nylon, and two side seam inserted pockets.

Style M44 is made with a shell of 100 percent cotton and a rear inserted pocket with a zipper closure. Styles M41 and M12P have shells of 100 percent cotton. Style M127 has a shell of 55 percent cotton and 45 percent polyester and is made with two side inserted pockets. Style M3P has a shell of 100 percent nylon and two side inserted pockets.

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In applying the principles set out in Ruling 073387 to your ruling request, we find that styles M41, M44, M12P, and M127 are properly classifiable under the provision for other wearing apparel, not ornamented and not knit, of cotton, in item 381.6585, TSUSA with a textile and apparel category designation of 359, dutiable, if products of Taiwan, at the rate of 9.4 percent ad valorem. Style M3P is classifiable under a similar provision for wearing apparel of man-made fibers, in item 381.9892, TSUSA, with a textile and apparel category designation of 659, with duty, if a product of Taiwan, at the rate of 4 cents per pound plus 18.8 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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071816

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUL 14 1986

REFER TO
CLA-2 CO:R:CV:G
078191 TLL
817417

078191

Ralph Fishkin, President
Stellar Industries, Inc.
2321 N. Keystone Avenue
Chicago, Illinois 60639

Dear Mr. Fishkin:

Your letter dated February 24, 1986, regarding the tariff classification of certain dry mixes you intended to produce in a foreign trade zone has been forwarded to this office for response.

The products manufactured to Department of Defense specifications are dry mixes for cakes, brownies, pancakes, sweet dough, rolls, biscuits, cornbread, donuts, cookies, icings, pudding and pie fillings, gelatin desserts, and cocoa beverages. All are essentially complete, requiring only the addition of water or milk prior to mixing and, where applicable, cooking. All are packaged in containers ranging from 1-1/2 ounces to 5 pounds, and distributed to food service facilities on military installations worldwide. Ingredient formulations are prescribed by military specifications. The sugar content varies, ranging from under 10 percent by dry weight for the pancake, roll, biscuit, and cornbread mixes, to over 65 percent for the vanilla icing mix and the vanilla and butterscotch instant desert powders (pudding and pie fillings). The information you provide shows that the gelatin dessert powder mix is in chief value gelatin.

The gelatin dessert powder mix is classifiable under the provision for edible preparations not specially provided for... of gelatin, in item 182.90, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 6 percent ad valorem. Currently, merchandise classified under item 182.90, TSUS, is not subject to quota.

The pancake, cake, brownie, dough, roll, biscuit, cornbread, donut, and cooking mixes would be classifiable in the provision for pancake flour and other flour mixes, in item 183.01, TSUS.

The icing mixes, dessert powders (pudding and pie filings), and cocoa beverage powder are classifiable under the provision for other edible preparations not specially provided for, in item 183.05, TSUS.

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Item 958.15, Appendix to the Tariff Schedules, subjects articles classifiable in item 183.05, TSUS, to quota restrictions if they contain over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, are capable of being further processed or mixed with similar or other ingredients, and are not prepared for marketing to the retail consumers in the identical form and package in which imported. The subject vanilla icing mix and the vanilla and butterscotch instant dessert powders contain over 65 percent of such sugars. In our opinion, they will not be subject to this quota.

In Headquarters letter 553050/073278 LCS dated August 22, 1984, and 073002/073277 LCS (Legal Determination 84-0029), the quota language was held to contemplate the commercial feasibility of further processing or mixing, and aimed at bulk imports of sucrose mixtures. Wholesale purchasers could, therefore, fall within the "retail packaging" exemption from the quota when their products were contained in institution-sized packages. Hotels, bars, restaurants, taco stands, and other food service establishments have been considered to be outside the quota.

In the instant situation the purchaser is the Defense Personnel Support Center. The products are packaged in institution-sized containers, and will be used in military kitchens for preparations and serving to troops. We are of the opinion these circumstances are analogous to those "retail package" examples cited above, and the vanilla icing mix and vanilla and butterscotch dessert powders are not subject to quota in item 958.15.

Items 958.17 and 958.18 subject articles provided for in items 183.01 and 183.05, TSUS, to quota restrictions if they contain over 10 percent by dry weight of sugar, except (in relevant part) articles not principally of crystalline structure or not in dry amorphous form that are prepared for marketing to the retail consumer in the identical form and package in which imported, and cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections.

According to the military specifications, the yellow, devil's food, gingerbread and white cake mixes, chocolate and butterscotch brownie mixes, sweet dough and donut mix, sugar, chocolate, and oatmeal cooking mixes, vanilla and chocolate icing mixes, chocolate, vanilla and butterscotch dessert powders, and the cocoa beverage powder all contain over 10 percent by dry weight of such sugars. With the exception of the cocoa beverage, all will be packaged in institution-sized containers and used in military food service facilities. However, although the language of the "retail packaging" exemption for those provisions is the same as item 958.15, it is applicable only to articles not principally of crystalline structure or <u>not</u> in dry amorphous form. All of the above products are dry mixes. The "retail packaging" exemption cannot apply. Hence, mixes containing over 10 percent sugar, classifiable in item 183.01, TSUS, will be subject to quota restrictions in item 958.17. Mixes containing over 10 percent sugar, classifiable in item 183.05, TSUS, are subject to quota restrictions in item 958.18.

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078191

As noted above, item 958.18 provides an exception to the quota for certain cake decorations and similar products. Cake and cooking icings have been considered to fall within this class of merchandise. The exception, however, applies to those products used in the same condition as imported without further processing other than the direct application to pastries. The instant products are dry icing mixes, and are not usable until mixed with water.

In summary, the gelatin dessert powder is classifiable in item 182.90 TSUS. All other mixes are classifiable in items 183.01 and 183.05, TSUS. Those dry mixes classifiable in item 183.01 or 183.05, TSUS, containing over 10 percent by dry weight of sugar are subject to quota restrictions in item 958.17 and 958.18.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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076191

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

17 JUN 1986

CLA-2:CO:R:CV:G
078193 JLF

078193

Runette Scherer
Import Manager
Neiman-Marcus
2727 Realty Road
Carrollton, Texas 75006

Dear Mr. Scherer:

This is in response to your ruling request of April 17, 1986, regarding the dutiable status of goods imported into the United States, and exported for the purpose of photography for advertisements and then re-imported back into the United States.

You indicate that your present plans include photographing an upcoming catalog of various wearing apparel items in Australia. The merchandise will be reimported into the United States from Australia.

In your letter you cite Ruling 717463, September 30, 1981. The principles of this ruling apply to your present situation. The removal of the merchandise to Australia is an exportation, and therefore, its return to the United States is an importation. Headnote 1, Schedule 8, Part 1, Tariff Schedules of the United States (TSUS) states that articles, absent a specific exemption, are dutiable upon importation despite the fact that duty may have been paid on a previous importation.

However, a drawback or refund may be available under the procedure of same condition drawback, the criteria of which is set forth in 19 U.S.C. 1313 and 19 CFR Section 191.141, Customs Regulations (copies enclosed). If imported merchandise is exported in the same condition as imported, 99 percent drawback or refund of duties paid on the merchandise is available.

An exemption under item 810.20, TSUS, is available if models or photographers are personally taking the articles abroad and returning with them after using them in their trade or profession. See 19 CFR Section 148.53, Customs Regulations.

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Finally, any import quota and/or visa requirements, as applicable, in force at the time of re-entry of the items into the U.S., regardless of any duty implications, must be met.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

078193

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PUBLIC _____

F8

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO

07 AUG 1986

CLA-2:CO:R:CV:G
078203 SM

078203

Mr. William Benovitz
Ohio Valley Bag and Burlap Company
P.O. Box 504
1010 South Preston Street
Louisville, Kentucky 40201

Dear Mr. Benovitz:

You have submitted what appears to be a request for a tariff classification ruling for empty burlap bags that are a product of Italy.

The submitted sample measures approximately 16 inches by 32 inches, is open at one end, and has printing on one side.

You state that you believe that the bags are classifiable under item 385.45, Tariff Schedules of the United States (TSUS), as bags of textile materials, of vegetable fibers except cotton, not colored.

In applying the tariff statutes it is not enough to read the descriptions of the articles classifiable under each item. The headnotes to the tariff schedules are part of the law, and the descriptions must be read in conjunction with them. Headnote 2(b), Schedule 3, TSUS, provides in pertinent part:

> (b) the term 'colored,' as used in connection with . . . textile articles, means that they have been subjected to a process such as, but not limited to, dyeing, staining, painting, printing, or stenciling, in which color is imparted at any stage of manufacture to all or part of the . . . textile article. . . .

Thus the bags in question are clearly "colored" for tariff classification purposes, and are classifiable under item 385.50, TSUS, as colored bags. We sent you an identical ruling on the same type of merchandise in 1973; a copy is enclosed. The law has not been amended since that time.

F9

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We note that you have requested a ruling on a matter that is not prospective but rather is the subject of a current transaction, that is, entry has already been made. Technically, this procedure is in contravention of the Customs Regulations. We caution that the Internal Advice procedures spelled out in section 177.11 of the Regulations, of which a copy is enclosed for your reference, should be used in the future when disputes arise with regard to current transactions.

Sincerely,

John T. Rick

For Harvey B. Fox
Director, Classification
and Value Division

Enclosures

078203

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 16 1986

CLA-2:CO:R:CV:G
078209 JLF
817894

078209

Mr. Marc Wallach
Cluette YouthWear
34 West 33rd Street
New York, N.Y. 10001

Dear Mr. Wallach:

This is in response to your ruling request of March 27, 1986, concerning the tariff classification of boys' boxer-style garments.

The two samples of woven shorts which were submitted are composed of 60 percent cotton and 40 percent polyester. One style has an elasticized waist with a functional drawstring, a full support liner of knit man-made fabric, two side seam pockets and a rear inserted pocket. The rear pocket has an unsecured flap as does a coin pocket which is placed inside the waistband.

The other style also has an elasticized waist and functional drawstring and a full support liner of knit man-made fabric. It has two diagonal front inserted pockets and an unsecured coin pocket on the inside of the waistband. The garment has a fly front opening which is secured by fabric closure material and a metal snap closure at the waist.

The resolution of whether the subject garments are shorts and therefore classifiable in item 381.6210, Tariff Schedules of the United States Annotated (TSUSA), with a textile and apparel category designation of 347, or whether the garments are swimwear, classifiable in item 381.6585, TSUSA, with a textile category designation of 359, is the issue under consideration. Ruling 073387, February 17, 1984 (copy enclosed), addresses the issue present in this case and states the principles to be followed.

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Features such as heavier fabrics, pockets, cotton liners, and fly fronts are pointed out as being characteristic of multipurpose shorts and not swimwear. Ruling 073387 also states that although the fabric of the garment in question may be determinative by itself, none of the other criteria will be the sole determining factor of whether an article will be classifiable as shorts or swimwear. The article of apparel should be considered as a whole, using the stated criteria for assistance in making the determination.

In applying the principles set out in Ruling 073387 to the instant case, we find that the samples submitted are classifiable as multipurpose shorts. This classification is appropriate when considering the overall design of the shorts, especially the three unsecured pockets on the first style and the fly front, metal snap closure, and slanted pocket openings on the second pair.

The sample garments which are the subject of your ruling request are properly classifiable under the provision for other men's or boys' cotton shorts, not ornamented and not knit, in item 381.6210, TSUSA, with a textile and apparel category designation of 347, dutiable, if entitled to column 1 rates of duty, at 16.5 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

F12

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073209

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 18 1986

REFER TO

CLA-2 CO:R:CV:G
078212 JNB
817621

078212

Mr. Shane Bronston
Vice President
International Sourcing and Countertrade Company
610 S. 3rd St.
Geneva, Illinois 60134

Dear Mr. Bronston:

This is in response to your letter of March 4, 1986, in which you request the tariff classification of a rack bar casting produced in Zimbabwe. The casting will be imported in an unfinished state, unmachined and unplated. The finished rack bar will be used as a component in a railroad or mining mechanical lift-type jack. The rack bar will be the vertical lifting member of the jack. We assume that, even in its unfinished state, the imported casting is dedicated for sole or chief use in a lift-type jack.

The Tariff Schedules of the United States, (TSUS), do not provide specifically for racks. General Headnote 10(ij), TSUS, states that "the provision for parts of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part." As such, it must be determined of what article described in the TSUS the rack bar is a part.

Pursuant to Webster's New World Dictionary, 2nd. Edition, 1974, a jack is defined as "any of various machines used to lift, hoist or move something heavy a short distance." That same source defines a rack as "a device for lifting an automobile for repairs from below; lift." A rack is a device within the machine, known as a jack, which is used for lifting. Therefore, the rack is part of a jack. A jacking unit, which contained a rack, has been found to be classifiable as a part of a leg-jacking system used to raise ocean drilling platforms. See I.A. 77/82.

Pursuant to General Headnote 10(h), TSUS, a tariff description for an article "covers such article ... whether finished or not finished." The subject rack bar casting, whether imported in a finished or unfinished state, is classifiable as jacks ... and parts thereof, under item 664.10, TSUS, dutiable at the rate of 2.4 percent ad valorem.

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Merchandise which is classifiable under item 664.10, TSUS, and is a product of Zimbabwe, may be eligible for duty-free treatment under the Generalized System of Preferences, (GSP), provided that the requirements of sections 10.171-10.175 of the Customs Regulations, (19 CFR 10.171-10.175), are met.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

078212

F14

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC.

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 16 1986

REFER TO
CLA-2:CO:R:CV:G
078216 c

078216

District Director of Customs
610 South Canal Street
Chicago, Illinois 60607

Re: Decision on Application for Further Review of Protest No. 3901-3-000919

Dear Sir:

This protest was filed against your decision in the liquidation on August 8, 1983, of entry No. 83-680046-1 dated June 1, 1983, covering a shipment of steering wheel covers manufactured in Taiwan.

FACTS:

The steering wheel covers were classified in liquidation under the provision for articles not specially provided for, of textile materials not ornamented: of man-made fibers: pile or tufted construction in item 389.50, Tariff Schedules of the United States (TSUS).

The protestant claims that the merchandise should have been classified under the provision for other parts of motor vehicles in item 692.32, TSUS.

ISSUE:

Do steering wheel covers contribute to the safe and efficient operation of motor vehicles?

LAW AND ANALYSIS:

The protestant cites the case of Beacon Cycle & Supply Co., Inc. v. United States, 81 Cust. Ct. 46, C.D. 4764 (1978), as support for its position that the steering wheel covers are classifiable as parts of motor vehicles.

G1

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The protestant points out that the court set out a two part test to determine whether an article constitutes a "part" of another article. The first test is that to constitute a "part" an article must be irrevocably dedicated for use with its parent article. The item must be designed solely to be used with its parent article and can have no independent function. The second test or requirement is that the "merchandise must serve a useful function in relation to the main article so that in some way it contributes to the safe or efficient operation of the article".

We agree with the protestant that the steering wheel covers meet the first test. Unquestionably, they are designed specifically for use on motor vehicles and can serve no other function. They are in fact irrevocably dedicated for use with motor vehicles.

We do not agree with the protestant that the steering wheel covers meet the second test. The argument that these covers contribute to the safe and efficient operation of a motor vehicle because they afford the user a better grip on the wheel and keep one's hands warm is not tenable. Steering wheel covers are sold as accesories and they appeal primarily to motorists who want a dressed up customized appearance to their automobile. There is no evidence that they provide a better grip of the wheel. While they may be warmer to the

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078216

touch than a cold steering wheel, this benefit is considered marginal because virtually all automobiles have heaters to warm the car's interior and most drivers during the initial cold period after starting would wear gloves.

In view of the foregoing it is our position that steering wheel covers are not "parts" for tariff purposes.

HOLDING:

The steering wheel covers are classifiable under item 389.50, TSUS. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer
For Harvey B. Fox
Director, Classification
and Value Division

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078216

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 31 MAY 1986

FILE: CLA-2 CO:R:CV:G
078231 JAS

078231

TO : District Director of Customs
Seattle, Washington 98174

FROM : Director, Classification and Value Division

SUBJECT: Substantial Transformation of Structural Shapes; China Steel Structure Co., Ltd.

This decision concerns the issue of whether certain hot rolled wide flange H beams of Japanese origin are considered to have been substantially transformed in Taiwan by a series of operations performed there so as to be considered products of Taiwan for tariff purposes. A brief from counsel representing the subject company, dated April 28, 1986, supplemented by a meeting at Headquarters on April 30, 1986, at which other materials were submitted, and a follow-up letter dated May 2, 1986, make up the record in this case.

This request concerns ninety-nine (99) fabricated structural units comprising the third of eleven shipments, the total contents of which will be used to construct the Washington State Convention and Trade Center in downtown Seattle. The concerned import specialist has forwarded photographs of each of these structural units, specifically correlated by installment number and check number to the master packing list.

The same issues with respect to eighteen (18) similar components, comprising the second of the eleven shipments, were addressed in our response to Internal Advice 27/86 (078025).

The submitted data indicates that hot rolled wide flange (W) H beams from Japan were shipped to Taiwan where, after preparation of shop drawings, templates (patterns), and cutting plans, they are subjected to the following processing steps: straightening to remove deformations occurring during transportion or handling, ends cut to length, cambering or controlled heating to achieve a convex shape, welding or bolting on of drilled bracing angles, stiffener plates, and gussets, all cut from flat rolled Taiwanese plate, shot blasting to remove scale and rust, inspection and packing for shipment to the job site.

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078231

Counsel has previously cited Uniroyal, Inc. v. United States, 3 CIT 220, 542 F. Supp. 1026, aff'd. 702 F. 2d. 1022 (Fed Cir. 1983), and National Juice Products Association, et al. v. United States, Slip Op. 86-13 (Ct. Int'l. Trade, decided January 30, 1986), in which the court, among other things, compared the time, labor and material costs, as well as degree of skill and expertise necessary to manufacture the initial product, with those associated with the processes in the intermediate country, in determining whether a substantial transformation in the intermediate country had occurred. Counsel then concludes, under this authority, that inasmuch as the sum of the cost of the Taiwanese plate and direct labor in Taiwan is $294,818, which is significantly more than the $191,722 cost of the Japanese H beams, the fabricated structural units imported into the United States must be considered products of Taiwan for tariff purposes.

In order for the Japanese hot rolled H beams to be considered as having been substantially transformed in Taiwan, the record must establish that the processing operations there resulted in a product other than or materially different from the H beams of Japanese origin; that is, a new and different article must emerge from Taiwan, one having a new name, character or use. Anheuser-Busch Brewing Association v. United States, 207 U.S. 556 (1908). A mere change in a product's name, without more, is a relatively unimportant consideration in most instances. United States v. International Paint Co., 35 CCPA 87, C.A.D. 376 (1948). As to character and use, however, there must be evidence to show that the processing in Taiwan transforms the Japanese H beams in such a way that they are no longer the essence of the final product as imported.

With respect to the structural units which comprise the third shipment presently under consideration, we have identified fourteen (14) such units which, in our opinion, have not met this test. The value added to these units in Taiwan is relatively minimal when compared to the value of the Japanese H beams. More importantly, the H beams are clearly recognizable in and remain the very essence of these 14 components. The additional processing is not substantial and does not change their fundamental character. These 14 structural units which we find not to have been substantially transformed in Taiwan are identified as follows:

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65

Installment Number	Check Number
3-1A	BRD-V13
3B	5A49-1
3B	BR8-H51
3-1B	6A9-1
3-1C	BRF-V15
3-1C	T20-1
3-1C	T20-2
3-1C	T20-9
3-1C	6A61-1
3-1C	T20-1
3-1C	RAG-1
3-1D	BRL-H8
3-1D	T19-11
3-1D	T19-6
PCB	6CP36-1

With respect to the remaining eighty-five (85) structural units under consideration, we are satisfied that the substantiality of the cutting, bolting/welding of the drilled angles, stiffener plates, gussets, and built-up support sections, all fabricated from Taiwanese flat rolled plate, among other processing operations, sufficiently transforms the multi-purpose hot rolled H beams of Japanese origin into specifically identifiable structural components dedicated for use in one, particular building. The built-up support sections are structural sections similar in appearance to the H beams. Attachment of these sections to the H beams results in fabricated units designed to support other load bearing members. By virtue of the extensive processing operations in Taiwan, the Japanese H beams have been precision engineered into structural units capable of withstanding far greater stresses than the H beams themselves. Moreover, the total weight of these structural units in many instances is significantly greater than the weight of the Japanese H beams. The imported components have lost the identifying characteristics of the Japanese hot rolled H beams, and have taken on significantly new attributes which dedicate them to an exclusive use. This conclusion is reinforced by the fact that these structural units would be reduced to scrap and sold, if not used in the structure as intended. For these reasons, the remaining 85 structural units in the third shipment, correlated by installment number and check number to the master packing list, are to be considered products of Taiwan for tariff purposes.

Harvey B. Fox

Harvey B. Fox

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07823

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 11 1986

REFER TO
CLA-2:CO:R:CV:G
078232 PR

078232

Mr. Jack Scapa
President
Empress Linen Import, Co.
P.O. Box 786
Encino, California 91436

Dear Mr. Scapa:

This is in reply to your letters of April 25, 1986, addressed to both this office and to our office in Terminal Island, California, concerning the tariff status of certain cotton terry towels manufactured in Pakistan. Our ruling on the matter is enclosed.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 11 1986

REFER TO
CLA-2:CO:R:CV:G
078232 PR

078232

This ruling concerns the textile category applicable to certain towels.

ISSUE:

The issue presented by the subject towels is whether those towels are dish towels and are, therefore, includable in category 369, or whether those towels are within a class of towels other than dish towels and includable in textile category 363.

FACTS:

The submitted sample is a cotton towel with terry pile on both sides. It is rectangular in shape and measures approximately 15 by 25 inches. The towel is all white except for three parallel blue stripes, approximately 1 inch apart, that run lengthwise down the center portion on each side.

Prior to the importation of the subject merchandise the importer sought assistance from the local Customs office concerning the textile quota category applicable to the merchandise. A Customs import specialist advised the importer that the subject merchandise would be classifiable as dish towels, in item 366.2420, Tariff Schedules of the United States Annotated (TSUSA), with duty at the rate of 11.7 percent ad valorem, and subject to restraints applicable to textile category 369. That opinion, given in writing, was clearly accompanied by the words "Advisory only." Based on

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that opinion, the importer ordered the towels in question and obtained a visa for category 369 from the Government of Pakistan. The merchandise is now being denied entry because it is not accompanied by a category 363 visa.

LAW AND ANALYSIS:

Since hand towels and dish towels fall within the same general size ranges and are similar in appearance, the distinction between the two is one of use. In accordance with General Headnote 10(e)(i), TSUSA, a provision controlled by use, other than actual use, is governed by the chief use in the United States of the class or kind to which the imported articles belong. It is our experience that terry dish towels in the United States usually contain designs or pictures which make them more conducive for use in a kitchen. The three blue lines down the center of the subject towels do not appear to serve that purpose. To the contrary, we are advised by our National Import Specialist that the subject merchandise belongs to a class or kind chiefly used as hand towels.

In addition, although category 369 is, in essence, a basket category, dish towels, bar mops, and shop towels are specifically named in statistical classifications as falling within that category. All other cotton terry towels are includable in textile category 363. Therefore, any cotton terry towels of the same general size as the imported merchandise which are not identifiable as being chiefly used as shop towels, bar mops, or dish towels, fall within category 363. In this instance, it appears that, at best, the subject

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merchandise may be a multi-use article. As such, it is not one of the named towels and is includable in category 363.

In regard to the advisory "ruling" the importer obtained from a Customs import specialist, what the importer actually received was an opinion that was clearly designated "Advisory." Part 177, Customs Regulations (19 CFR, Part 177) sets forth the procedures which allow interested parties to obtain from the Customs Service formal rulings that may be relied upon. As a matter of course, to assist importers, Customs import specialists routinely give advisory opinions, but they are indicated as such and are not binding on the Customs Service.

HOLDING:

The subject merchandise is classifiable, assuming it is valued over 45 cents each and over 1.45 cents per pound, in item 366.2460, TSUSA, and subject to restraints applicable to textile category 363.

Harvey B. Fox
Director, Classification
and Value Division

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078237

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 11 1986

REFER TO

CLA-2 CO:R:CV:G
078240 JNB

078240

Mr. Bruce R. Kindler
President
Kinco International, Inc.
P.O. Box 02345
Portland, Oregon 97202-0345

Dear Mr. Kindler:

This is in response to your letter of March 24, 1986, and your follow-up correspondence of July 15, 1986, in which you request the tariff classification of certain leather articles. You state that the merchandise is for the industrial welding market and not for general fashion use. Literature depicting garments and other articles is provided. You suggest classification of all designated merchandise as articles, not specially provided for, of leather: other, under item 791.90, Tariff Schedules of the United States (TSUS), dutiable at the rate of 0.5 percent ad valorem.

The majority of the articles in question are garments. These include leather cape sleeve and bib combinations, separate leather cape sleeves, detachable bibs, full jackets, jacket sleeves, aprons and spats. These are made from cowhide and are advertised to provide "maximum protection and durability." Also included in the literature is a leather rod holder, designed for carrying electrodes.

Leather workman's aprons have been found to be wearing apparel in that they have a major function in the protection of clothing. They are not worn solely for protection against injury. See C.I.E. 184/61. The illustrated garments, including the cape sleeve and bib combination, cape sleeve, detachable bib, jacket, jacket sleeve, waist style apron, bib apron, split leg apron and spats, are, therefore, wearing apparel and would be classifiable as wearing apparel, not specially provided for, of leather, other: other, under item 791.76, TSUS, dutiable at the rate of 6 percent ad valorem.

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The rod holder is not a garment and would be classifiable as an article, not specially provided for, of leather, other, under item 791.90, TSUS, dutiable at the rate of 0.5 percent ad valorem.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

078240

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

17 JUN 1986

REFER TO
CLA-2 CO:R:CV:G
078245 DW

078245

Ms. Grace Chan
L. Kee & Company, Inc.
530 Forges Boulevard
South San Francisco, California 94080

Dear Ms. Chan:

You have requested the tariff classification and quota status of certain bed sheets.

You state that finished cotton sheets that are products of the United States are exported to China where lace or embroidery is sewn on the sheets. The embroidered sheets then are exported to the United States.

The sheets which are considered to be ornamented by the embroidery or lace designs are classifiable under the provision for other bedding ornamented: sheets and pillowcases, of cotton in item 363.0130, Tariff Schedules of the United States Annotated (TSUSA), if napped, or if not napped in item 363.0135, TSUSA, dutiable at the rate of 25.5 percent ad valorem.

Headnote 2, Part 1, Schedule 8, TSUS, provides that any product of the United States which is returned after having been advanced in value or improved in condition abroad, shall be a foreign article for the purposes of the Tariff Act of 1930, and is subject to duty unless otherwise prescribed.

This merchandise is not eligible for an exemption or partial exemption from duty under items 806.20, TSUS, or 807.00, TSUS. Since sewing of embroidery or laces to finished bed sheets constitutes neither a repair nor an alteration, item 806.20, TSUS, is foreclosed, because it applies only to articles that are returned to the United States after repairs or alterations are made abroad.

Item 807.00, TSUS, is applicable to exported fabricated United States components that are designed to be fitted with other components in an assembly process, with no operations performed thereon except the attachment of the components to form the imported merchandise. Sewing embroidery or lace on the sheets does not constitute an assembly of separate components; therefore, item 807.00, TSUS, would not apply.

Under section 12.130(c), Customs Regulations, which involves the country of origin of textile and textile products for import restraint purposes, merchandise which falls within the purview of Headnote 2, Part 1, Schedule 8, TSUS, may not upon its return to United States, be considered a product of the United States. Thus, the sheets require a visa from China for category 361.

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We have considered your request to mark these bed sheets "Made in U.S.A., ornamented in China". It is our view that marking the bed sheets in such a manner is unacceptable. In our opinion, an appropriate label would be "Made in" or "product of China, U.S.A. fabric". We caution, however, that you should request another ruling from Customs if you decide to use a different label.

Your second proposal involves cotton material from the United States that is sent to China where it is cut and sewn into bed sheets and pillows. The bed sheets and pillows are embroidered and exported to the United States. The sheets are classifiable in item 363.0130, TSUSA, if napped or if not napped in item 363.0135, TSUSA. The pillowcases are classifiable in item 363.0110, TSUSA, if napped or if not napped in item 363.0115, TSUSA, with duty at the rate of 25.5 percent ad valorem. The articles should be marked "Made in China" or "Product of China". The sheets and pillowcases require visas from China for categories 361 and 360, respectively.

Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078245

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 22 1985

REFER TO
CLA-2:CO:R:CV:G
078247 jlj

078247

District Director of Customs
555 Battery Street
San Francisco, California 94126

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 2809-5-000274

This protest was filed against your decision in the liquidation on January 4, 1985, of entry No. 84-260624-8, dated August 10, 1984, covering a shipment of brass plated hall trees manufactured in Taiwan.

This ruling concerns the correct tariff classification of the brass plated hall trees produced in Taiwan.

FACTS:

The merchandise is described on the invoice as "BP800 brass hall trees" manufactured by Sunlyson Industrial Corporation in Taipei, Taiwan. At the time of entry, the merchandise was classified under the provision for furniture and parts thereof, not specially provided for, of copper, in item 727.65, Tariff Schedules of the United States (TSUS). This provision is eligible for Generalized System of Preferences (GSP) duty-free entry for articles manufactured in Taiwan.

Upon obtaining a sample of the merchandise, the San Francisco import specialist determined that the "brass hall trees" were actually "brass plated hall trees." The merchandise was re-classified and liquidated under the provision for furniture and parts thereof, not specially provided for, other, in item 727.70, TSUS.

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078247

ISSUE:

Are the brass plated hall trees properly classified as furniture, copper, in item 727.65, TSUS, or as furniture, other, in item 727.70, TSUS?

LAW AND ANALYSIS:

The protestant's broker argues that the merchandise should be classified as furniture of copper in item 727.65, TSUS. He encloses a component of chief value breakdown from the manufacturer, which states as follows:

Steel Tubing	U.S. $3.36
Polish and Plate	5.37
Brass Plated Hardware	1.25
Packing	.20
Inland Shipping	.10
Bank Charge	.15
Profit	.32
Total cost -	$10.75

The San Francisco import specialist maintains that "furniture of copper" refers to copper furniture and to solid brass furniture. Solid brass is an alloy, usually of 65 percent copper and 35 percent zinc, which is in chief value and in chief weight of copper. The import specialist asserts that brass plated furniture (like the instant hall tree) is made of steel tube that is electromechanically plated with a very thin (.0003937 inch) coat of decorative brass plate, of which only 65 percent is copper. He cites Modern Electroplating, 3rd edition (1974), edited by Frederick A. Lowenheim and published by John Wiley and Sons, in support of his position.

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We note that the manufacturer's value statement incorrectly combines the cost of the brass plate and the polishing. This error means that the value statement is incorrect.

In an additional brief dated June 30, 1986, the protestant's attorney concedes that the figure for the brass polish and plate includes not only the cost of the brass but the labor for plating and polishing the hat tree. She admits that without the labor costs, the brass portion of the hat tree costs less than the steel tubing. She argues that it is not the cost of the "raw" brass, but the cost of the brass which has been plated and polished on the steel tubing which should be used as the cost of the brass.

The proper method of determining component material of chief value is to ascertain the costs of the separate parts or component materials to the manufacturer at the time they are in such condition that nothing remains to be done to them except put them together. See United States v. Jovita Perez, et al., 44 CCPA 35, C.A.D. 633 (1957). In the instant case, the point at which nothing remains to be done to the components except put them together is the point at which the "raw" brass and the steel tubing are still separate entities, therefore the cost of the brass and the steel tubing must be compared at this point. The "brass plating and polishing" labor costs are simply the labor costs of combining the two

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components; they cannot be counted as part of the value of either component alone. When the cost of the brass and the cost of the steel tubing are compared, the cost of the steel tubing far exceeds the cost of the brass, therefore the hat tree cannot be classified as furniture of copper.

It is Customs' experience that the component of chief value of brass plated furniture from Taiwan is always the base metal inasmuch as the plating has a minimal value. Based on the fact that the attorney concedes that if the labor costs are disregarded, the brass portion of the hall tree costs less than the steel tubing and upon Customs' experience, we find that the brass plated hall tree is classifiable under the provision for furniture, other, in item 727.70, TSUS, and not under the provision for furniture of copper, in item 727.65, TSUS.

HOLDING:

The instant brass plated hall tree is classifiable in item 727.70, TSUS. You should deny the protest in full. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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017247

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

25 JUL 1986

CLA-2 CO:R:CV:G
078255 c

078255

Mr. Richard G. Lamb
President
Mainland Windsurfing Hawaii, Inc.
P.O. Box 40119
Santa Barbara, California 93140

Dear Mr. Lamb:

In a letter dated May 2, 1986, you inquired as to the dutiable status of a nylon mast cover which you intend to import from Hong Kong and Taiwan. A sample was submitted for examination.

The sample produced in Hong Kong measures approximately 13 feet in length and 10.5 inches at its widest dimension. There is a zipper closure running from the bottom to approximately its midsection. At the point of closure, there are two plastic zippers with attached textile braided loops. Stitched to the back portion at each end at the hem is a woven textile loop. Screen printed at one end on the front is the Windsurfing Hawaii logo.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(ii), Tariff Schedules of the United States (TSUS), provides that "For the purposes of the tariff schedules — (a) the term '<u>luggage</u>' covers — (ii) brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', sample, etc.), and like containers and cases designed to be carried with the person, except handbags as defined herein."

Although the mast cover, containing a mast for a "windsurfer surfboard," is said to be used solely for the protection of such item from the elements, its protective feature serves no more or less than any other travel or carrying bag. However, it is designed, despite its length, for transporting its contents from the home to the beach and from beach to beach, etc. In fact, the textile loops (one attached to each back end) can be utilized in securing the cover, with its contents, during travel. Furthermore, we do not consider the presence of handles as a determining factor as to whether an article is designed for luggage purposes.

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Inasmuch as the mast cover appears to be designed to protect its contents during travel, it is our position that it is properly classifiable under the provision for luggage of other textile materials in item 706.4152, TSUSA, and dutiable at the rate of 20 percent ad valorem. The applicable textile category number is 670. As a product of Hong Kong it is not currently subject to quota restrictions. However, this merchandise exported on or after August 1, 1986, is subject to visa requirements.

Sincerely,

John T. Lall

For Harvey B. Fox
Director, Classification
and Value Division

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078255

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO
CLA-2:CO:R:CV:G
078275 JAS

03 JUL 1986

078275

Daniel A. Pinkus, Esq.
Assistant Chief Counsel
International Trade Litigation
26 Federal Plaza
New York, N.Y. 10278

Re: Heraeus-Amersil, Inc. & United States,
Slip Op. 86-41, Court No. 80-9-01501

Dear Mr. Pinkus:

In your letter of May 8, 1986 (JDD:ta NR60505-1), you solicit our opinion on the advisability of appealing the captioned decision.

In accordance with a detailed stipulation of fact, the merchandise at issue is precious metal contact tape wound in continuous lengths onto reels. It is designed for and used only as contacts in contact cluster springs and transfer cluster springs used in certain telephone relays. Using the weld-then-cut application method, a length of the subject tape is welded to the tips of each of the springs of the clusters, then cut to the correct length to form a contact.

In confirming classification as parts of relays, in item 685.90, Tariff Schedules of the United States (TSUS), the court rejected the Government's claimed classification of the tape as a material, under the provision for other rolled precious metal, semimanufactured, in item 605.66, TSUS. The court's decision was apparently based on two factors: (1) the tape was designed for and dedicated to an exclusive end use, and (2) it is subjected to minor post-importation processing which the court found to be the equivalent of a simple assembly.

On page 41 of Slip Op. 86-41, the Heraeus-Amersil trial court recited the longstanding rule on the issue of material versus unfinished articles:

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> The rule*** recognizes the fact that most small articles are not produced as individual or separate products * * *. The rule of decision is therefore established that where such articles are imported in the piece and nothing remains to be done except to cut them apart they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. This follows, however, only in case the character or identity of the individual articles is fixed with certainty and in case the woven piece in its entirety is not commercially capable of any other use (emphasis added).

United States v. Buss & Co., 5 C.C.A. 110, 113, T.D. 34138 (1914).

The merchandise before the Buss court was woven cotton fabric in running lengths, having the appearance of ordinary cotton tape. However, at regular intervals there appeared cross marks or ridges to indicate the points at which the article may be cut into individual coat hangers. Thus, individual coat hangers, in unfinished form, were clearly identifiable in the material.

The rationale of the court in United States v. Nylonge Corporation, C.D. 2144, aff'd, C.A.D. 764 (1960), cited in Heraeus-Amersil, in holding certain compounds of non-acetate cellulose to be finished or partly finished cellulose sponges, is somewhat more difficult to discern because of the uniqueness of the merchandise. The sponge blocks there were oval and rectangular in shape. The trial court found that the utility of the sponges lay in their absorptive capacity. Such capacity of the imported sponge blocks was found to be sufficient for the products to be used as sponges. The cutting to size did not make the imported product any more or less a sponge.

The decision in J.E. Bernard & Co. v. United States, 50 Cust. Ct. 41, C.D. 2386 (1963), appears to more closely follow the Buss rule. There, 100 to 500 ft. of steel bands or strips in coils which by a milling process had teeth cut in them in such a way to meet the requirement for use as a bandsaw blade, were held to be classifiable as steel band saws, finished or further advanced. However, testimony was adduced to the effect that the teeth were cut in such a way, from 2 to the inch to as many as 32 to the inch, so that

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078275

after importation lengths could be cut to accomodate a particular bandsaw. In this context, the number of teeth per inch were used to determine the particular blade length to be cut. This is analogous to the cross marks or ridges in Buss.

In our opinion, the decision in Doherty-Barrow of Texas, Inc, v. United States, 3 C.I.T. 229 (1982), cited with approval in Heraeus-Amersil, represents an unwarranted diversion from the Buss rule (referenced in the body of the decision). There, the competing provisions were the one for bale ties made from strip, in 642.93, versus the provision for steel strip, in item 609.03. The merchandise was made to rigid chemical specifications and tensile strength, dedicating it to use only to make steel cotton bale ties. Except for cutting to length, no further post-importation processing was required. We believe the court erred because what they found to be fixed with certainty was the identity and character of the steel strip and not that of the individual bale ties because there were no individual bale ties identifiable. We do admit, however, that the decision in Doherty-Barrow may have been partly the result of the unique provisions involved, and the fact the material was made to rigid specifications as to chemical composition and tensile strength. Note the court's statement at page 232:

> For a bale tie to be "made from" strip under item 642.93, TSUS, some manufacturing process is implied which transforms strip steel into bale ties, whether finished or unfinished. Both finished and unfinished manufactured products must be sufficiently processed to a point where they possess characteristics distinguishing them from the material from which they are made. American Import Co. v. United States, 26 CCPA 72, 75-76, T.D. 49612 (1938).

This statement obscures, or perhaps ignores, the fact that individual ties were not identifiable in the material. Note as well The Harding Co. et al. v. United States, 23 CCPA 250, T.D. 48109.

Despite the foregoing, we agree that Doherty-Barrow, supra, and to a lesser extent R.W. Smith and John D. Winchester A/C Doherty Petroleum Co., Inc. v. United States, C.D. 2250, rev'd C.A.D. 806 (1962), and J.E. Bernard, supra,

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represent a significant, though erroneous, divergence from the original Buss rationale. This being so, we concur in your opinion that an appeal in this case would be fruitless.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

078275

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 18 1986

REFER TO
CLA-2 CO:R:CV:G
078300 c

078300

District Director of Customs
Buffalo, New York 142302

Re: Decision on Application for Further Review of Protest No. 0901-5-825622

Dear Sir:

This protest was filed against your decision in the liquidation on September 20, 1985, of entry No. 85-446534-1 dated September 4, 1985, covering a shipment of suspensions for helmets manufactured in Canada.

FACTS:

Certain energy absorbing suspensions for helmets were classified in liquidation under the provision for other wearing apparel (including rainwear) not specially provided for, of rubber or plastics in item 772.31, Tariff Schedules of the United States (TSUS).

The protestant asserts that the suspensions are properly classifiable under the provision for other articles not specially provided for, of rubber or plastics in item 774.55, TSUS.

ISSUE:

Are the suspensions considered parts of headwear for tariff purposes?

LAW AND ANALYSIS:

The suspension attaches to a helmet and fits over the crown of the head. It is used as a support for the helmet and to provide comfort and safety for the wearer.

Schedule 7, Part 1, Subpart B, headnote 1(a), TSUS, provides that "the term '<u>headwear</u>' includes hats, caps, berets, bonnets, hoods, and all other head coverings, of whatever material composed (including bodies, forms, plateaux, manchons, and shapes for headwear), designed for human wear,

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except infants' knit headwear, but does not include mufflers, scarves, shawls, mantillas, veils, and similar articles; hair nets; hair ornaments; or wigs and similar articles."

This headnote has been interpreted by Customs to include only articles of headwear that are complete or substantially complete in themselves. The headnote does not include "parts" of headwear. The suspension is an essential part of the helmet and not a casual, auxiliary or optional accessory. Inasmuch as parts of headwear have traditionally been classified as wearing apparel, it is our view that classification of the merchandise under item 772.31, TSUS, was appropriate.

HOLDING:

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer

FEL Harvey B. Fox
Director, Classification
and Value Division

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078300

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 18 1986

REFER TO
CLA-2:CO:R:CV:G
078303 DW

078303

Mr. Jerome Sachs
Doris Trading Corporation
45 West 36th Street
New York, New York 10018

Dear Mr. Sachs:

You have requested the country of origin of dyed shop towels that will be cut and hemmed in Cyprus from fabric woven in China or Pakistan. A sample of the dyed shop towel was submitted along with your request dated April 7, 1986.

The production process involves sending fabric from China or Pakistan to Cyprus where it is marked and cut to size. After the edges are finished by overlock stitching, the towels which are linked together must be separated. Following the manufacturing process, the shop towels are dyed. You have indicated that the Cyprus operation requires approximately a $100,000 investment. The machines involved in Cyprus include (1) yard folding machines (2) cutting tables and (3) 15 yamato sewing machines. You state that 15 out of the 20 employees are skilled workers.

In determining the country of origin of textiles and textile products that consist of materials produced or derived from, or processed in, more than one country, the imported article is considered to be a product of that country where it last underwent a substantial transformation. A textile or textile product is considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing into a new and different article of commerce.

Our regulations concerning the country of origin of textiles state that fabric that is woven in a country is usually considered to be a product of that country. See section 12.130(e)(1)(iii), Customs Regulations. Thus, the fabric in question which is woven in China or Pakistan is a product of either country, unless it undergoes a substantial transformation in Cyprus. Under section 12.130(e)(2)(ii), Customs Regulations, cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use does not result in a substantial transformation. The merchandise before us fits

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squarely within this proscription. In terms of time, labor, and complexity, the cutting to size and stitching performed in Cyprus are minor processing operations. Thus, dyeing the fabric in Cyprus is insufficient to result in a change in the country of origin. Considering all these factors, it is our view that the essence of the shop towel is the fabric woven in China or Pakistan.

In a recent ruling dated October 24, 1985, file 076879, this office ruled that the country of origin of shop towels was the country where the fabric is woven. Our analysis in the instant case leads us to a similar conclusion. Thus, the instant shop towels are products of China or Pakistan.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

078303

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 18 1986

REFER TO
CLA-2 CO:R:CV:G
078319 JGH

078319

Dr. H.G. Waider
Pyrion - Chemie
Geulenstrasse 94
4040 Neuss 1,
West Germany BDR

Dear Doctor Waider:

Your letter of April 30, 1986, concerns the tariff status of your product Sodium Omadin or Sodium Pyrion.

The chemical name of the product is given as natrium (sodium)-z-pyridinthiol-n-oxid(e).

Information available to Customs indicates that this product is chiefly used as a bactericide. As such it would be classifiable under the provisions for other anti-infective agents in item 411.96, Tariff Schedules of the United States. The rate of duty is 8.1 percent ad valorem.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

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83

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 27 1986

REFER TO

CLA-2:CO:R:CV:G
078335 c
816855

078335

Mr. Richard M. Polinsky
President
Clayton Enterprises
12381 Ross Ridge
St. Louis, Missouri 63146

Dear Mr. Polinsky:

Your letter dated December 31, 1985, addressed to our New York office concerning the dutiable status of a simulated pearl necklace imported packed in a satin brocade purse has been referred to this office for a direct reply to you. A sample of the necklace and purse manufactured in Taiwan was submitted for examination.

You suggest that the purse is dutiable as an entirety with the string of pearls because it is intended to be protective packaging for the contents.

Schedule 7, Part 1, Subpart D, Headnote 2(c), Tariff Schedules of the United States (TSUS), provides that "the term '<u>flat goods</u>' covers small flatwares designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change purses, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles."

The satin brocade purse imported with the string of pearls is not merely packaging of the pearls but rather is "ejusdem generis" with the purses listed in the above-cited headnote. The sample purse is designed to be carried on the person. It is a container which derives its name from the item it is designed to contain. It is of a type usually sold at retail separately as a flat good. Whether the instant string of pearls is imported with the purse is not determinative as to the tariff classification of the merchandise.

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It is our position that the simulated pearl necklace imported packed in a satin brocade purse does not constitute an entirety for tariff purposes. When combined, the jewelry and the purse do not form a new entity; instead they retain their individual identities. It should also be noted that the purse cannot be considered as a container ordinarily sold at retail with its contents because as many purses are sold with jewelry as are sold without.

The sample purse, whether or not imported with the string of pearls, is classifiable under the provision for flat goods of textile materials, other in item 706.3900, TSUSA, and dutiable at the rate of 20 percent ad valorem. The applicable textile category number is 670-F. As a product of Taiwan the purse is subject to quota restraints and visa requirements.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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078335

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUN 25 1986

REFER TO
CLA-2:CO:R:CV:G
078344 JGH

078344

Chief, Customs Information Exchange
6 World Trade Center
Room 450
New York, New York 10048

Dear Sir:

Customs Form 6431 executed at the port of Houston, Texas, concerns the entry in September 1980 of Sipernat 22, a product of Degussa AG, Frankfurt, West Germany and imported by Degussa Corporation, Teterboro, New Jersey.

The product is understood to be a synthetically produced amorphous silica. The question is whether it is classifiable as a silica, n.s.p.f., in item 523.11, TSUS, as an inorganic compound in item 423.00, TSUS, or an inorganic acid in item 416.45, TSUS.

Since synthetically produced amorphous silicas do not have the physical or chemical properties of the mineral silica, they would not be classifiable as the mineral silica in item 523.11. In addition, since its existence as silicic acid, based on bound water and adsorbed water content, is open to question, classification in item 416.45 is not established.

Therefore, a synthetic amorphous silica with bound water content of 6 percent or less, is classifiable as an inorganic compound in item 423.00. However, Customs has found that an established and uniform practice of classification existed to classify synthetically produced amorphous silica as silica, n.s.p.f., in item 523.11, TSUS, if entered prior to September 24, 1984 (T.D. 84-130).

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Accordingly, the merchandise in question would be classifiable in item 523.11, TSUS.

Sincerely,

Arthur P. Schiffrin
Chief, General
Classification Branch

078344

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 15 1986

REFER TO

CLA-2 CO:CV:G
078348 DW
818460

078348

Miss H.K.W. Ho
British Embassy
Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

Re: Your Reference #177/85

Your letter dated April 15, 1986, requested the tariff classification and category designation of a certain garment.

The submitted sample is a woven garment manufactured from a fabric that is 80 percent polyester and 20 percent cotton.

You state that Cutler Ridge Textile Inc. imported these garments at New York Seaport covered by entry No. 892555-7. It appears that Customs required an export license for category 641, whereas it is your opinion that the garments were correctly licensed as sleepwear in category 651.

On inspection of the sample, it is our judgment that the garment is used for sleeping, and is not classifiable as a shirt. It is classifiable in item 384.9440, Tariff Schedules of the United States Annotated, and requires an export license for category 651.

A copy of this letter will be sent to the Commerce Department along with your request for Commerce to adjust the 1986 import data in categories 641 and 651 to reflect that the shipment in question has been entered and charged to category 651.

In accordance with your request, the sample garment will be returned separately.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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88

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

25 JUL 1986

CLA-2 CO:R:CV:G
078350 c

078350

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Re: Decision on Application for Further Review of Protest No. 3801-6-000339

This protest was filed against your decision in the liquidation on December 27, 1985, of entry No. 79-138214 dated March 29, 1979, covering a shipment of athletic footwear.

The athletic shoes involved were classified in liquidation under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics in item 700.60, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 percent ad valorem.

Pursuant to Schedule 7, Part 1, Subpart A, headnote 3(b), TSUS, the athletic shoes involved were appraised on the American selling price of the domestically produced Brooks Super Villanova which was $12.60 less 2 percent packed.

The protestant argues that appraisement on the American selling price of the Super Villanova is in error because that shoe is not similar to the import. However, the arguments presented are moot inasmuch as the entry involved is part of the compromise agreement reached with Adidas pursuant to 19 U.S.C. 1617. In accord with that agreement bill No. 40181367 was cancelled or should have been cancelled.

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

John T. Lall

For Harvey B. Fox
Director, Classification
and Value Division

B7

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 18 1986

REFER TO
CLA-2 CO:R:CV:G
078358 TLL

078358

Ronald W. Gerdes, Esq.
1511 K Street, N.W.
Suite 525
Washington, D.C. 20005

Dear Mr. Gerdes:

This is in reply to your letter dated May 22, 1986, requesting Customs determination of the correct country of origin for certain milk products your client has imported but not yet entered.

The facts involved in your ruling request are not particularly unusual or in dispute. You state that your client has imported sweetened condensed milk from Trinidad through the port of Miami. Apparently, there is no dispute that the merchandise is classifiable under item 115.35, Tariff Schedules of the United States (TSUS). No formal entry had been made of the goods as of Thursday, May 22, 1986.

The ingredients used in the manufacture of sweetened condensed milk are Canadian milk powder, local fresh milk, local sugar, lactose, Canadian butter oil (anhydrous milk fat), and vitamins.

The product is derived when milk powder is tipped into a closed turbo mixer to which fresh milk and water are added. The dissolved powder and fresh milk are then added to a sugar and butter oil mixture which is then pumped through a Brogli mill to grind away any traces of undissolved powder which may be in suspension. This solution is then passed through a filter which further removes any undissolved milk powder particles.

The mixed product is then pumped into a stainless steel tank from where it goes to the pasteurizer at a temperature of 110 C°. The solution leaving the pasteurizer then goes into a sterilized holding vat and then into a vacuum (condenser) where water is removed. After the correct quantity is removed and the product is the desired consistency and viscosity, it is transferred into an Antonius cooler where the product is cooled down before entering a sterilized storage tank to be readied for filling.

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From the storage tank the product flows by gravity to an aseptic filling room where cans are filled with the product. After filling, the product goes to a can washer where any spilled milk on the outside of the can would be washed before going to a labelling machine and a can packer. At all stages during the manufacturing process bacteriological tests are carried out to ensure that all quality parameters are strictly adhered to.

It is your contention that the sweetened condensed milk is properly a product of Canada. You base this conclusion on the argument that the Canadian milk powder has not been substantially transformed by manufacturing into a product of Trinidad. In support of this position you place primary reliance on the case National Juice Products v. United States, Slip. Op. 86-113, 1986, wherein the court considered the question of whether foreign manufactured orange juice undergoes a substantial transformation in becoming frozen concentrated orange juice and reconstituted orange juice. You suggest that the finding of no substantial transformation in that case requires the same conclusion in the case before us. We disagree.

It is a well-settled principle of Customs law that in order for a substantial transformation to be found, a new article having a new name, character, and use, must emerge from the processing. United States v. Gibson-Thomsen Co. Inc., 27 C.C.P.A. 267, C.A.D. 98 (1940). Various criteria have been relied on by the courts to determine whether there is a substantial transformation. A recent pronouncement on this issue in the area of country of origin marking is contained in Uniroyal Inc. v. United States, 3 C.I.T. 220, 542 F. Supp. 1026 (1982), aff'd, 702 F. 2d 1022 (Fed. Cir. 1983), in which the court considered the complexity and cost of the processing operations and whether the essence of the article has been changed by such processing. In Uniroyal, the imported article was a shoe upper. The outsole was attached in the United States. The court found that there was no substantial transformation because it would be misleading to allow the public to believe that a shoe is made in the United States when the entire upper, which is the very essence of the completed shoe, is made in Indonesia and the only step in the manufacturing process performed in the United States is the attachment of an outsole.

Other factors that have been considered include whether the processing significantly enhances the value of the article undergoing the processing, United States v. Murray, 621 F. 2d 1163 (1st Cir. 1980). No matter how the test is applied, the courts recognize that each case must be decided on its own particular facts.

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078558

In National Juice Products, supra, the court stressed the approach set forth in Uniroyal and Murray, when it stated:

> Under recent precedents, the transition from producers' to consumers' goods is not determinative. Plaintiffs must demonstrate that the processing done in the United States substantially increases the value of the product or transforms the import so that it is no longer the essence of the final product. United States v. Murray, 621 F. 2d 1163, 1170 (1st. Ct. 1980) (Chinese glue blended with other glues in Holland were not substantially transformed because although it was transformed from a processors' good to an end-users' good there was no evidence that the glue had increased in value. Uniroyal, 3 CIT at 224 and 222, 542 F. Supp. at 1030 and 1028 (imported upper was "the very essence of the completed shoe," court also found the attachment of uppers to outsoles "significally less costly" than the process of manufacturing the upper).

In rejecting plaintiffs' claims that a substantial transformation had occurred, the court emphasized the minimal nature of the increase in value by stating:

> Plaintiffs in the instant case offer evidence that they claim demonstrates that domestic manufacturing substantially increased the value of the product from the manufacturing concentrate stage to the retail product stage. Contrary to plaintiffs' claim, however, the evidence offered indicates that the manufacturing concentrate constitutes the majority of the value of the end products. In fact, according to plaintiffs' evidence, the values added to the products involved here by the addition and blending of the orange essences, orange oil, and water, and related product range from 6.68 to 7.57 percent. This increase in value may be significant with regard to other products, but here the sum of all of the activities contributing to the added value are relatively minor, much like the addition of the soles in Uniroyal. In fact, plaintiffs' evidence shows that the addition of the oils and essences, the primary basis for plaintiffs' claim that substantial transformation has occurred, contributes only 1.75 to 1.86 percent to the value of the end products.

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078358

In the case before us, the processing operations involved are anything but minor. Since some of the information furnished us is said to be confidential in nature, we will not disclose it in the body of the ruling; however, it may be said that the value of the finished product has been significantly enhanced in Trinidad. For instance, the value of the local milk and sugar exceed the value of the Canadian milk powder and butter oil. Further, there can be little doubt that the essence of the product, sweetened condensed milk, has been enhanced by the addition of the sugar. In fact, it is the presence of the sugar which makes this product distinguishable from unsweetened condensed milk. See for instance, the definitions for "sweetened condensed milk" and "plain condensed milk" set forth on page 355 of Judging Dairy Products by Nelson and Trout 1964, which states:

> Sweetened condensed milk. Sweetened condensed milk, also known as "condensed milk," likewise is concentrated under vacuum at about the same ratio as evaporated milk, but differs from that product in that it contains about 40 to 45 percent added sugar for preservation.
>
> Plain condensed milk. Plain condensed milk is equivalent to evaporated milk except that it has not been sterilized and is marketed in bulk.

Accordingly, under these circumstances, we have no alternative but to consider the sweetened condensed milk to be substantially transformed in Trinidad.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078358

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 19 1986

REFER TO
CLA-2:CO:R:CV:G
078369 c
817068

078369

Mr. James F. Deloria
Marketing Executive
Trans-Border Customs Services, Inc.
P.O. Box 800
Trans-Border Building
Champlain, New York 12919

Dear Mr. Deloria:

Your letter dated January 28, 1986, addressed to our New York office concerning the tariff classification of a variety of decorative non-flexible, foamed or expanded polyurethane moldings manufactured in Canada, has been referred to this office for a direct reply to you.

Representative samples and descriptive literature covering a variety of plastic moldings, cornices, ceiling medallions and appliques, used as home decorative articles were submitted for examination. These articles are made in various sizes and shapes. We have been informed that other decorative moldings identified in the literature as items ML-901 and ML-899 are finished articles cut to size.

It is our position that these moldings are classifiable under the provision for other household articles not specially provided for, of rubber or plastics in item 772.15, Tariff Schedules of the United States, and dutiable at the rate of 4 percent ad valorem.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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B14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
078391 DW

11 AUG 1986

Mr. Ronald L. Rapaport
Metal Film Company, Inc.
1717 Patterson Plank Rd.
North Bergen, New Jersey 07047

Dear Mr. Rapaport:

This is in further response to your request for a reconsideration of the tariff classification of certain metallic yarns.

In our ruling dated May 9, 1986, file No. 077727, we stated that Lurex® yarns are not classifiable as metalized yarns in item 312.30, Tariff Schedules of the United States (TSUS), because they are not in chief value of tinsel wire or lame. We determined that the appropriate classification for the subject merchandise was under the provision for monofilaments in item 309.03, TSUS.

For years, the classification of Lurex® yarns has been a settled area in Customs jurisprudence. In affirming the decision of the trial court in Kaplan Products and Textiles Inc. v. United States, 51 CCPA 2 C.A.D. 828 (1963), the court ruled that yarn dyed jacquard satin brocade cloth with metal gold yarn was not classifiable as a woven fabric in chief value of tinsel wire, metal thread, or lame. Specifically, the court stated that a sheet of aluminum foil that is bonded between two sheets of transparent cellophane and slit into narrow widths is not considered to be lame for tariff purposes. We have enclosed a copy of that court decision. Your attention is directed to page 6 where the court quotes testimony from the trial to demonstrate that the aluminum-cellophane strips at bar were not within the ambit of the term "lame" for tariff purposes.

With specific reference to your claim that Customs has been permitting significant quantities of metallic yarn to enter the United States under the trademark Lurex®, we have examined the files of the Entry, Licensing and Restricted Merchandise Branch of the Customs Service in Washington, D.C., and the New York Regional Library, and have discovered that there is no record of the Lurex® trademark. It follows that Customs has not been enforcing this trademark. For Customs to protect a trademark, it must be registered with U.S. Customs Service in Washington, D.C., which will distribute the trademark to all ports. A copy of the regulations concerning the recordation of trademarks is enclosed for your information.

Sincerely,

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Harvey B. Fox
Director, Classification
and Value Division

Enclosure

078391

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 13 1986

REFER TO
CLA-2 CO:R:CV:G
077399 TLL

077399

Myron H. Nordquist, Esq.
Kelly, Drye & Warren
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Nordquist:

This is in reply to your letter dated November 13, 1985, regarding the status of tuna caught abroad. The particulars of this venture are outlined, as follows:

(a) A U.S. flag purse seiner vessel will catch tuna in the Exclusive Economic Zone of Indonesia;

(b) thereafter, the vessel will land its catch on Indonesian territory for processing. This procesing will include cooking the tuna, cutting the fish into tuna loins, then glazing and freezing the fish;

(c) a U.S. flag reefer vessel will transport the tuna loins from Indonesia to Guam, where the fish will be thawed and packaged with U.S. manufactured oil into U.S. manufactured tins; and, finally,

(d) the filled tins will be packaged in U.S. manufactured boxes and then transferred on either U.S. flag or foreign flag vessels to various U.S. ports to be entered for consumption.

Based on the foregoing description, you ask three questions, which we will restate and answer in order.

1. Will the cans of tuna in the venture described above be "Products of an American Fishery" for purposes of 19 C.F.R. 10.78(d)?

Response: The cans of tuna produced in the venture described above would not be considered products of an American fishery for purposes of 19 C.F.R. 10.78(d).

Section 10.78(d) provides, in part "Products of American fisheries shall be entitled to free entry although prepared, preserved, or otherwise changed in condition, provided the work is done at sea by the master or crew or owner of the fishery or by persons employed by and under the supervision of the master or owner of the fishery."

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Additionally, this section provides that fish (with the exception of several nontuna species) which are "the product of an American fishery landed in a foreign country and there not further advanced than beheaded, eviscerated, packed in ice, frozen and with fins removed, shall be entitled to free entry, whether or not such processing is done by the American fishery."

In addition, it should be noted that Headnotes 1 and 2, Subpart A, Part 15, Schedule 1, Tariff Schedules of the United States (TSUS), which define the scope of Products of American Fisheries set forth in items 180.00, 180.10, and 180.20, TSUS, provide:

1. An American fishery, for the purposes of this subpart, is a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or in foreign waters in which such vessels have the right, by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjuction with such vessels by the owner or master thereof.

2. None of the items in this subpart shall apply to fish, fresh, chilled, or frozen, in the form of fillets, steaks, or slices substantially free of bone (including any of the foregoing divided into sections), if produced in a foreign country, or its territorial waters, in whole or in part with the use of the labor of persons who are not residents of the United States.

In reviewing your proposal, it is in conflict with 19 CFR 10.78(d) because the proposed processing operation includes more than beheading, eviscerating, packing in ice, freezing and with fins removed. Additionally, your proposed appears to be in conflict with the above-cited Headnote 2.

2. Would the cans of tuna be "Products of an American Fishery" if the tuna were caught by a Korean flagged vessel instead of a U.S. flagged purse seiner vessel?

Response: Tuna taken by Korean flag vessel would not be considered to be products of an American fishery.

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An American fishery, as defined in Part 15A of Schedule 1, Tariff Schedules of the United States (TSUS), "is a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or in foreign waters in which such vessels have the right, by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof."

Noting this definition, it has long been held by the Courts that the identity of fish as products of American fisheries is determined (all other regulations complied with) at the time of their taking, — that is, these must be fish taken by American flag vessels. See, for example, Procter & Gamble Manufacturing Co. v. United States (No. 3488), 61 T.D. 45578 (1932) in which the Appelate Court defined the term "fishery," with reference to the provision for products of American fisheries, as "any enterprise conducted by vessels flying the flag and manned by seamen of the United States. United States v. Reading, 1 Ct. Cust. Appls. 515, T.D. 31534." See also E. E. Kelly & Co. v. United States, 3 Cust. Ct. 135, C.D. 219 (1939), in which the Court ruled that fish, taken by a vessel of alien registry, were not entitled to duty-free entry as products of American fisheries.

Since the fishing vessels in this second situation would be Korean flag vessels, rather than American flag vessels, the fish taken could not be considered products of American fisheries.

3. If the cans of tuna were not "Products of an American Fishery" for purposes of 19 C.F.R. 10.78(d), what is the country of origin of these products under the postulated fact that the fish are caught by a U.S. flag vessel?

Response: Without more detailed information about the nature of the processing or packing operations, we are unable to issue a ruling regarding country of origin. We can tell you, however, that the canned tuna in all likehood would be considered a product of Indonesia.

In addition, we note that you state that after the processed and frozen tuna is transported to Guam for canning, the canned product "will be transported by U.S. flagged or foreign vessels to U.S. ports for marketing." Under 46 U.S.C. 877, the coastwise laws, which generally prohibit the transportation of merchandise or passengers between points in the United States embraced in the coastwise laws by any but United States-built, owned, and properly documented vessel, apply to Guam. Pursuant to 46 U.S.C. 12105(b), however, a vessel for which a registry is issued by the United States Coast Guard may be employed in trade with Guam. A foreign-built, United States-owned vessel may be issued a registry (46 U.S. 12102).

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With regard to a related matter, we note that 46 U.S.C. 251(a), which generally prohibits the landing in a port of the United States by a foreign-flag vessel of fish or fish products caught or taken on the high seas, does not apply to Guam.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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cs

076399

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

078400

15 JUL 1986

REFER TO
CLA-2:CO:R:CV:G
078400 c
818671

Ms. Margaret Hudson
Tex-Thai Impex
P.O. Box 79782
Houston, Texas 77279

Dear Ms. Hudson:

Your letter dated May 7, 1986, addressed to our New York Office concerning the tariff classification of a ladies' travel case made in Thailand, has been referred to this office for a direct reply to you. A sample was submitted for examination.

The sample is a jewelry purse which is said to be 65 percent polyester and 35 percent cotton by weight. It measures approximately 9.5 inches by 6.5 inches when unfolded and 4.5 inches by 6.5 inches when folded. The purse contains, along its width, two interior pouches with nylon zipper closures and a center padded ring holder with a textile loop closure. There is an open interior pouch running along its length. When folded, it is secured by a velcro closure.

The sample, assumed to be in chief value of man-made fiber, is classifiable under the provision for flat goods of textile materials, other in item 706.3900, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 20 percent ad valorem. The textile category is 670. As a product of Thailand, it is not currently subject to quota restraints or visa requirements.

Item 706.3900, TSUSA, is currently subject to a countervailing duty order, investigation No. C-549-401 from Thailand. Importers are therefore required to post a cash deposit or bond equal to 1.23 percent ad valorem for the

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subject merchandise if entered or withdrawn from warehouse, for consumption, on or after March 12, 1985. For further information contact Barbara Tillman of the Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230.

Your sample is being returned under separate cover.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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078408

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 19 1986

CLA-2 CO:R:CV:G
078417 DW

078417

Ms. Shelia Rasimowicz
Johnson & Johnson
Baby Products Company
Sillman, New Jersey 08558

Dear Ms. Rasimowicz:

Your letter dated June 3, 1986, requested the tariff classification of an article described as a "Star Teether". A sample teether and a "Play and Learning Guide" which is published in the United States were submitted with the request.

The sample consists of a plastic star that surrounds a rattle, spinner. The article serves as a teether, a rattle and a toy.

It is our judgment that the instant article satisfies the definition of a toy in Headnote 2, Subpart E, Part 5, Schedule 7, TSUS, in that it is chiefly used for the amusement of children. In this regard, Customs classified a similar combination toy and teether as a toy in Headquarters Ruling Letter 064555 dated June 14, 1980.

Thus, the instant merchandise is classifiable as a toy in item 737.95, TSUS, and is dutiable at the rate of 8.3 percent ad valorem.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

C8

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 22 JUL 1986

FILE: CLA-2 CO:R:CV:G
078429 JAS

078429

TO : District Director of Customs
Seattle, Washington 98174

FROM : Director, Classification and Value Division

SUBJECT: Substantial Transformation of Structural Shapes; [redacted]

In a letter dated June 2, 1986, counsel for [redacted] has asked that we reconsider the tariff status of a fabricated structural unit currently in Customs custody which is scheduled for use in construction of the Washington State Convention and Trade Center. A blueprint of this structural unit and other technical data were submitted.

The unit under consideration is identified under installment number 3B, check number BR8-H51. In a memorandum to you, dated May 21, 1986 (078231), we held that this structural unit, along with thirteen (13) other units comprising part of the third of 11 total shipments of similar structural components, had not been substantially transformed in Taiwan. Unit BR8-H51 was held to be a product of Japan for tariff purposes and would require an appropriate export certificate prior to its release from Customs custody.

Our May 21, 1986, memorandum indicates that hot rolled wide flange (W) H beams from Japan were shipped to Taiwan where, after preparation of shop drawings, templates (patterns), and cutting plans, they are subjected to the following processing steps: straightening to remove deformations occurring during transportation or handling, ends cut to length, cambering or controlled heating to achieve a convex shape, welding or bolting on of drilled bracing angles, stiffener plates, and gussets, all cut from flat rolled Taiwanese plate, shot blasting to remove scale and rust, inspection and packing for shipment to the job site.

With respect to unit BR8-H51, the submitted blueprint depicts an article made from 2 wide flange (W) H beams, one 51 ft. 5-3/8 inches long and the other 4 ft. 9-7/16 inches long and slightly narrower in width, butt welded together. The total weight of the Japanese H beams is 32,614 lbs. At 12 points along the length of this unit, six on each side, are welded a series of drilled bracing angles and stiffeners, all cut from flat rolled Taiwanese plate, in box-like configurations. Two similar though slightly more sophisticated built-up configurations appear at equal distances from

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each end of the H beam. Each consists of two larger, 1-1/2 inch thick flat rolled plates of Taiwanese origin welded perpendicular to the H beam. An identical plate, drilled, is similarly welded to each of the perpendicular plates. It is stated that these angles and stiffeners represent 70 pieces of Taiwanese origin, and reflect a 7 percent weight increase or 1.2 tons of added material. It is further stated that 564 man-hours (480 in direct fabricating) were expended in Taiwan on unit BR8-H51. Finally, material and labor estimates from U.S. fabricators who bid unit BR8-H51, when converted to Taiwanese dollars, are said to represent a value added of 80 percent. Counsel orally confirmed the accuracy and verifiability of these figures by telephone on June 17, 1986.

Under the authority of Uniroyal, Inc. v. United States, 3 CIT 220, 542 F. Supp. 1026, aff'd. 702 F. 2d. 1022 (Fed Cir. 1983), and National Juice Products Association, et al. v. United States, Slip Op. 86-13 (Ct. Int'l. Trade, decided January 30, 1986), cited in counsel's original submission, the conclusion is reached that the Japanese hot rolled H beams must be considered as having been substantially transformed in Taiwan so that the resulting fabricated structural unit, BR8-H51, is a product of Taiwan for tariff purposes.

As previously stated in our May 21 memorandum, in order for the Japanese hot rolled H beams to be considered as having been substantially transformed in Taiwan, the record must establish that the processing operations there resulted in a product other than or materially different from the H beams of Japanese origin; that is, a new and different article must emerge from Taiwan, one having a new name, character or use. Anheuser-Busch Brewing Association v. United States, 207 U.S. 556 (1908). A mere change in a product's name, without more, is a relatively unimportant consideration in most instances. United States v. International Paint Co., 35 CCPA 87, C.A.D. 376 (1948). As to character and use, however, there must be evidence to show that the processing in Taiwan transforms the Japanese H beams in such a way that they are no longer the essence of the final product as imported.

The percent weight added in Taiwan is a relevant, though not controlling factor. Such added weight, though, is negligible. However, the man-hours expended in Taiwan to fabricate unit BR8-H51, and the number of angles and stiffeners of Taiwanese origin added, would suggest a substantial processing. More importantly, what must emerge from the processing is a new and different article of commerce, one having a distinctive name, character or use. In our opinion, there is sufficient evidence to show that the processing in Taiwan transformed the Japanese H beam in such a way that it is no longer the essence of the final product as imported. The attachment of the built-up support sections to the H beam results in a fabricated unit designed to support other loadbearing members. The extensive processing in Taiwan has transformed the butt welded Japanese H beam into a precision engineered structural unit capable of withstanding far greater stresses than the H beam itself. Structural unit BR8-H51 has lost the identifying characteristics of the Japanese H beam and has taken on significantly new attributes which dedicate it to an exclusive use in a particular building.

C10

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For these reasons, we are of the opinion that the fabricated structural unit designated ESB-851 has been substantially transformed in Taiwan and is to be considered a product of Taiwan for tariff purposes.

John T Rick

For Harvey B. Fox

078429

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C11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 14 1986

REFER TO

CLA-2 CO:R:CV:G
078431 DW

078431

Miss H.K.W. Ho
British Embassy
Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

Re: Your Reference - HK35/86

Your letter dated April 29, 1986, requested the tariff classification of wool knit headbands.

It appears that wool knit headbands were entered at Los Angeles Seaport. Customs required a license for category 469, whereas it is your view that the headbands were licensed correctly in category 459.

We have examined the wool headbands. It is our view that such merchandise is worn in cold weather and is used both to cover the ears and provide warmth to them. They are classifiable as other women's wearing apparel, not ornamented, of wool in item 384.5950, Tariff Schedules of the United States Annotated (TSUSA), if valued not over $5.00 per pound, or in item 384.6396, TSUSA, if valued over $5.00 per pound.Both tariff provisions require export licenses from Hong Kong for category 459.

A copy of this letter will be sent to the Commerce Department along with your request for Commerce to adjust the 1985 import data to reflect that the shipment in question has been entered and charged to category 459.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

C12

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

14 AUG 1986

CLA-2 CO:R:CV:G
078479 c

078479

Mr. David M. Thomas
D. M. Thomas, Inc.
W62 N 262 Washington Avenue
Cedarburg, Wisconsin 53012

Dear Mr. Thomas:

Your letter dated May 12, 1986, addressed to our New York office concerning the dutiable status of a cloth book entitled "My Quiet Book," has been referred to us for a direct reply to you.

The sample is a cloth book measuring 8 inches by 10 inches. Each page consists of an activity such as tying shoe laces, zippering, buttoning, opening doors, telling time, different fabric textures etc. Most of the pages of the book contain phrases describing the activity. The presence of text distinguishes this book from other book type toys without text.

It is our opinion that this merchandise is classifiable under the provision for toy books, including coloring books and books the only reading matter in which consists of letters, numerals, or descriptive words in item 737.52, Tariff Schedules of the United States (TSUS), and entitled to duty-free treatment.

Sincerely,

Arthur J. Schaffer
For Harvey B. Fox
Director, Classification
and Value Division

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C13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 11 1986

REFER TO
CLA-2 CO:R:CV:G
078490 c

078490

District Director of Customs
Detroit, Michigan 48226-2568

Re: Decision on Application for Further Review of Protest No. 3801-6-000300

Dear Sir:

This protest was filed against your decision in the liquidation on December 6, 1985, of entry No. 8586347 dated September 26, 1985, covering a shipment of circular, plastic, pressure sensitive discs manufactured in Canada.

FACTS:

The merchandise involved is a circular, plastic, pressure sensitive, three dimensional disc measuring 4-1/4 inches in diameter. It was classified in liquidation under the provision for sheets, strips, tapes, stencils, monograms, and other flat shapes or forms, all the foregoing articles (except articles provided for in item 790.50) which are pressure sensitive with or without protective liners, and whether or not in rolls in item 790.55, Tariff Schedules of the United States (TSUS).

The protestant claims that the merchandise is properly classifiable under the provision for other articles not specially provided for, of rubber or plastics in item 774.55, TSUS.

ISSUE:

Whether the circular, plastic, three dimensional disc is flat within the purview of that term as used in item 790.55, TSUS?

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LAW AND ANALYSIS:

In the case of Norman Jensen, Inc. v. United States, 84 Cust. Ct. 76, C.D. 4846 (1980), the court adopted a Webster's Third New International Dictionary (1966) definition of the word "flat" which reads as follows:

1. Having or marked by a continuous surface that is horizontal or nearly so without significant curvature or inclination or without noteworthy elevations or depressions.

In the case of United Mineral and Chemical Corporation v. United States, 63 Cust. Ct. 522, C.D. 3946 (1969), the court referring to a quote from the Explanatory Notes to Schedule 7 of the Tariff Classification Study, November 15, 1960, concerning the scope of item 790.55, TSUS, stated that "the cellophane, friction, rubber and plastic tapes referred to are well known articles which, we note, have firm, level, smooth surfaces that are "flat" within the common understanding of the term."

You choose to be guided by the Jensen court's definition of the term "flat" rather than the interpretation of the scope of that term set forth in United Mineral, supra. Following the definition set forth in Jensen, supra, which you believe is more definitive you would regard the disc as being "flat" for tariff purposes.

It is our view that the definition of the term "flat" and the interpretation of the scope of that term as used in 790.55, TSUS, in the cited cases complement each other.

We are of the opinion that the Jensen court's definition of the term "flat" is appropriate but the reference in United Mineral, supra, to the Explanatory Notes gives us a clearer idea of what Congress intended by the use of the term "flat" in item 790.55, TSUS.

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078490

We note that the disc in issue has been invoiced and described by the importer as a "three dimensional" article (as opposed to a two dimensional, or flat article). While it could be argued that the disc is essentially flat and thus within the scope of item 790.55, TSUS, such a viewpoint would in our opinion be based on subjective impressions and would certainly lead to inconsistent classifications of similar or identical merchandise depending on the perception of the classifier.

Following the ejusdem generis rule and noting United Mineral, supra, we believe that the shapes covered by 790.55, TSUS, should be flat, thin and about the thickness of scotch tape.

In conclusion, it is our opinion that only those products which are similar to cellophane, friction, rubber and vinyl tapes are flat within the purview of item 790.55, TSUS. Consequently, the circular disc in issue being three dimensional cannot be considered a flat shape or form for tariff purposes.

HOLDING:

Circular plastic discs represented by the sample are classifiable under item 774.55, TSUS. The protest should be allowed. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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D2

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 22 1986

REFER TO
CLA-2:CO:R:CV:G
078492 JGH

078492

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Re: Decision on Review of Protest No. 3801-5-002768, on the Classification of Frozen Reindeer Meat

Dear Sir:

The petitioner maintains that the merchandise, frozen reindeer meat, is classifiable under item 106.55, TSUS, as other frozen game animal meat. Customs classified it under item 106.75, TSUS, other frozen meat, valued over 30 cents per pound.

It is contended by the petitioner that the meat is from a free-roaming tundra herd of reindeer that are considered game animals. However, information from Canadian officials is to the effect that reindeers were introduced into Canada to be herded and farmed by the Inuit, as a source of industry in the region. An encyclopedia excerpt refers to reindeer as domestic animals. Additional information was to the effect that reindeer was introduced into Alaska to make the Eskimo self sufficient. The 1929 Summary of Tariff Information points out that reindeer meat is not a game variety, but does have a distinctive flavor, and a quality midway between high-grade beef and lamb. Under the Summaries of Trade and Tariff Information (1968) the meat of game animals is described as that of animals of the kind hunted and killed for sport or food, including rabbit, deer meat and the meat of animals such as anletope, bear, elk and moose. Additional information was to the effect that herds of reindeer are ranched commercially and are not hunted or killed for sport.

"Game" is defined as wild animals collectively, or any wild animal hunted or taken for sport or for its meat. The court has pointed out that in considering "wild" and "domestic" animals, domestic refers to the character of the animal rather than training. T.D. 37831.

D3

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It is concluded that reindeer are not game animals but are "ranched" and raised for food and other economic reasons, similar to the manner in which cattle are raised. Therefore, frozen reindeer meat is classifiable in item 106.75, TSUS. You are directed to deny the protest in full. A copy of this decision should be furnished to the petitioner with the Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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D4

078492

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 26 1986

REFER TO
CLA-2 CO:R:CV:G
078494 JGH

078494

Mr. William Winters
National Import Specialist
U.S. Customs Service
6 World Trade Center
New York, New York 10048

Dear Mr. Winters:

Our records show that IA 7/83 (072036), classification of dane salt was considered closed based on counsel's statement that the importer was no longer interested in pursuing the matter.

The chemical was classified under the provision for other amines having one or more oxygen functions, and their derivatives in item 405.09, TSUS.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

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D5

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
U.S. CUSTOMS SERVICE 1301 CONSTITUTION AVENUE WASHINGTON, D.C. 20229	ACTION R INFO.	UNCLASSIFIED
ACCOUNTING CLASSIFICATION	DATE PREPARED 7/9/86	FILE CLA-2 CO:R:CV:G 078503 JGH
FOR INFORMATION CALL		
NAME JOHN G. HERLEY	PHONE NUMBER 566-8181	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

B. K. MUDDIMAN
54725 STAVEX

REGARDING YOUR TELEX OF JUNE 5, 1986, ABOUT THE TARIFF STATUS OF DIMETHYL PHENYL ISOCYANATE. IT IS CLASSIFIABLE IN ITEM 405.82, TSUS, AT COLUMN ONE RATE OF DUTY OF 13.5 PERCENT AD VALOREM.

ARTHUR J. SCHIFFLIN
CHIEF, GENERAL
CLASSIFICATION BRANCH

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PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
1	1	UNCLASSIFIED

D6

078503

STANDARD FORM 14
REVISED 11-68
GSA FPMR (41 CFR) 101-11.304

Previous editions usable NSN 7540-00-634-3002

14-102

☆ GPO : 1985 O - 461-275 (20031)

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

REFER TO
CLA-2 CO:R:V:G
078515 DW

078515

JUL 14 1986

Miss H.K.W. Ho
British Embassy
Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

Re: Your Ref. HK34/86

We are responding to your letters dated April 14, and April 24, 1986, concerning four shipments of women's garments detained at the port of Los Angeles and two shipments of women's garments detained at the port of Seattle, Washington.

The garment involved in all six shipments is a halter top. Customs has detained the shipments because they lack export licenses for categories 338/9, whereas it is your view that they were correctly licensed in category 359.

It is our view that the garment in question is neither a blouse nor a tank top, because it does not extend to the waist or provide full coverage to the wearer's body. Thus, it is classifiable as a top in item 384.3438, Tariff Schedules of the United States Annotated, and requires an export license from Hong Kong for category 339.

Pursuant to your request, the sample garment will be returned under separate cover.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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D1

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

14 AUG 1986

REFER TO
CLA-2 CO:R:CV:G
078527 JNB
C148344

078527

Mr. Peter Kovacs
Vice President, Marketing
Kelco
8355 Aero Drive
San Diego, California 92123-1718

Dear Mr. Kovacs:

This is in response to your request of June 9, 1986, made as a domestic interested party pursuant to the provisions of section 516(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(a)). Specifically, you inquire as to the classification of and rate of duty being imposed on propylene glycol alginate being imported from Canada, West Germany and Japan.

The reaction of propylene oxide with alginic acid (a seaweed derivative) produces propylene glycol alginate, a food additive used as a stabilizer, thickener and emulsifier. Literature which you provide indicates that the product is commonly used to maintain foam in beer.

Headnote 2(a) of Schedule 4, Tariff Schedules of the United States (TSUS), defines the term "compounds" as follows:

> Substances occurring naturally or produced artificially by the reaction of two or more ingredients, each compound --
>
> (i) consisting of two or more elements,
>
> (ii) having its own characteristic properties different from those of its elements and from those of other compounds, and
>
> (iii) always consisting of the same elements united in the same proportions by weight with the same internal arrangement.

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D8

The subject product fits the noted tariff definition in that it is produced artificially by the reaction of two ingredients. A new chemical bond is formed. Propylene glycol alginate consists of two or more elements and clearly has properties different from its elements or other compounds. We are advised that the product maintains a chemical uniformity in its molecular structure thereby fulfilling the requirement of having the same internal arrangement. See Chemirad Corporation v. United States, 65 Cust. Ct. 137, C.D. 4067 (1970).

Propylene glycol alginate is classifiable as alcohols, polyhydric (including glycols, polyglycols, and polyols) ... : Other: other, under item 428.47, TSUS, dutiable at a rate of 12.3 percent ad valorem.

Sincerely,

Arthur P. Schaffner
For Harvey B. Fox
Director, Classification
and Value Division

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078527

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 12 1986

REFER TO
CLA-2 CO:R:CV:G
078634 jlj
818253

078634

Mr. John M. Ryan
Customs Administrator
3M Center, Customs/Import Transportation
Department
P.O. Box 33250
St. Paul, Minnesota 55133

Dear Mr. Ryan:

In your letter of April 1, 1986, you requested a tariff classification for a sandal which your firm plans to import from Mexico. You submitted a sample along with your letter.

The sample submitted consists of a sole of ethylene vinyl acetate coated on the top with a special reusuable adhesive which holds the sandal on the wearer's foot without an upper. You feel that the sandal should be classified under the provision for other footwear, other, other, in item 700.95, Tariff Schedules of the United States (TSUS).

This sandal is all plastic. It does not have a rubber or plastic foxing-like band. It is a form of slip-on footwear in that it is held to the foot without the use of laces or buckles or other fasteners.

In view of the foregoing, the sandal is classified under the provision for footwear which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics, other footwear, footwear of the slip-on type, in item 700.59, TSUS, dutiable at the 1986 Column 1 rate of 37.5 percent ad valorem.

We have referred a copy of your letter to the Entry, Licensing and Restricted Merchandise Branch for reply with regard to the country of origin marking question.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 12 1986

REFER TO
CLA-2 CO:R:CV:G
078637 SM
818403

078637

Mr. Mitchell Guzik
Flexstard Inc.
11755 Exposition Boulevard
Los Angeles, California 90064

Dear Mr. Guzik:

You recently received a letter, file 818403, of June 5, 1986, from the Area Director, New York Seaport, concerning the tariff classification of women's tights made in Taiwan. That letter inadvertently stated incorrectly that the tights were classifiable under item 384.8696, Tariff Schedules of the United States Annotated (TSUSA), quota category 659. Since the tights are in chief value of cotton, they are properly classifiable under item 384.3497, TSUSA, quota category 359. The column 1 rate of duty for 1986 is 10.2 percent. File 818403 is hereby modified, pursuant to 19 CFR 177.9(d), in accordance with this letter.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

D11

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

078649

CLA-2 CO:R:CV:G
078649 JLV

18 JUL 1986

Daniel A. Pinkus, Esq.
Assistant Chief Counsel
International Trade Litigation
26 Federal Plaza
New York, New York 10278

Re: S. Madill, Ltd. v. United States
Civil Action No. 77-12-04978

Dear Mr. Pinkus:

In your letter of June 11, 1986 (file ENM:ml MR 664.10-6), you requested our position on the classification of certain self-propelled yarders and parts of these yarders. Our position, explained to Mr. Maurer on July 14, is confirmed by this letter.

Concerning the classification of a self-propelled yarder as a motor vehicle in item 692.16, TSUS, we affirm the basic position taken in our ruling of June 2, 1978 (file 054990, I.A. 164-77), that the mobile article usually and customarily transports itself from work area or job site to another non-adjacent work area or job site. As pointed out by Mr. Maurer, however, the identification of "work site" and "non-adjacent work site" presents a major problem. Therefore, additional factors must be weighed: existence of a truck or automobile type of chassis; separate cab and controls for operation of the transport unit; road speed of the mobile article; and other features that are characteristic of automobile trucks.

In this case, it is our opinion that none of the crawler-based mobile yarders are classified in item 692.16. Not only are they usually transported, they do not have any features that are characteristic of automobile trucks. On the other hand, the Madill 046 rubber tire mounted yarder, the 071-R rubber tire mounted yarder, and possibly the 009 "S" series rubber tire mounted yarder have a top speed of 22 miles per hour or more, have the appearance of a truck chassis with equipment mounted on the bed, and have the capability of movement from site to site. Therefore, absent clear evidence to the contrary, we would continue to classify these in item 692.16, TSUS.

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Concerning the classification of parts of these yarders, it is our position that, with the exception of those parts that are specific to the truck chassis of a mobile yarder classified in item 692.16, all parts of the yarder, spar, or mobile base would be classified, applying the standard rules of classification, either under item 666.00, TSUS, under a specific provision pursuant to General Interpretative Rule 10(ij), or under item 870.45, TSUS, if applicable. Parts of the truck chassis would be classified as parts of motor vehicles or under a specific provision, if applicable.

If you have any questions, please call John Valentine, FTS 566-8181. We are enclosing the brochures and materials sent to you by the Department of Justice and forwarded to us with your letter of May 2, 1986 (file EWM:ta MR 664.10-6).

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

Enclosures

D13

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078649

[redacted]

AUG 12 1986

CLA-2 CO:R:CV:G
078653 c

078653

Mr. Nicholas C. Tolerico
Acting Director
Office of Agreement Compliance
United States Department of Commerce
International Trade Administration
Washington, D.C. 20230

Dear Mr. Tolerico:

Your letter dated June 26, 1986, addressed to our New York office concerning the tariff classification of certain types of decorative nails, has been referred to this office for a direct reply to you.

Two furniture nails were submitted with your letter. Each is of the two piece construction. One nail is entirely of steel with a brass plating. The other nail has a head said to be of solid brass and a steel shank. Information before us is that the chief weight of the brass headed nail is brass. Noting that brass costs much more than steel, it follows that the nail is in chief value of brass.

The nail with the brass head is classifiable under the provision for nails, of base metal: of two or more pieces, of copper in item 646.34, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 5.5 percent ad valorem.

The all steel nail is classifiable under the provision for nails, of base metal: of iron or steel: of two or more pieces in item 646.32, TSUS, and dutiable at the rate of 2.3 percent ad valorem.

Sincerely,

(Signed Arthur P. Schifflin

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

D14

CODE AND DATE						
SURNAME						
CODE AND DATE						
SURNAME						

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

Form 160 (11-15-73)

U.S. GPO: 1984-719-979

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 12 1986

REFER TO
CLA-2 CO:R:CV:G
078683 JGH

078683

Bart S. Fisher, Esq.
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037

Dear Mr. Fisher:

In your letter of July 18, 1986, you request information on the classification and rate of duty of a toner pursuant to section 516 of the Tariff Act of 1930, as amended.

You state that you represent Aunyx Corporation, a domestic manufacturer of toner used in copier machines, and that their toner competes directly in the market place with toner manufactured by Canon Inc., of Tokyo, Japan. Both the domestic toner and the imported one are described as an electrically resistive, negative-charging, monocompetent toner. The Canon product is said to consist of about 38 percent iron oxide, and 58 percent terpolymer of styrene, maleic anhydride and 2 ethylhexylacrylate, with small amounts of amorphous silica, cerium dioxide and a chrome complex in a silicone compound.

A product with the composition as stated above would be classifiable under benzenoid plastics materials: concentrated dispersions of pigments in plastics materials in item 408.44, TSUS. The rate of duty is 6.4 percent. Classification of this product is based on the composition as given. Classification of individual imports will be based on stated composition and/or analysis of a sample.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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E1

092903

MAY 13 1966
TC 017.6 o

092903

[redacted]

Dear [redacted]

In your letter of April 1, 1966, you describe your proposal to import U.S.P. grade CHLORAMPHENICOL in bulk into the Virgin Islands, where it would be mixed with a small proportion of lactose and magnesium stearate, and used to fill two-piece hard shell gelatin capsules. Free entry into the United States would be sought for the capsules under the provisions of General Headnote 3(a), Tariff Schedules of the United States.

The possible relationship between the proposed process and the tableting which you now conduct has been carefully considered. However, we are not able to equate the filling of gelatin tablets with the pressing of materials into tablets. Accordingly, the preparation of CHLORAMPHENICOL capsules from imported bulk CHLORAMPHENICOL which has been mixed with a diluent and a lubricant would not be considered to result in articles manufactured or produced in the Virgin Islands within the meaning of General Headnote 3(a), Tariff Schedules of the United States.

Sincerely yours,

(Signed) LESTER D. JOHNSON

Commissioner of Customs

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

E2

[redacted]

File

094135

0176

094135

EV 332.1 MK

[redacted]

APR 7 1966

Dear [redacted]

Your letter of March 30, 1966, refers to faced buttons which are drilled in the Virgin Islands and imported to the United States.

General headnote 3(a), Tariff Schedules of the United States, provides, in part, for free entry into the United States of articles manufactured or produced in an insular possession of the United States (such as the Virgin Islands) from materials the growth, product, or manufacture of any such possession, or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value. You inquire how this percent is computed.

The test for determining whether an article produced or manufactured in an insular possession contains foreign materials to the value of more than 50 per centum is set forth in section 7.8(d) of the customs regulations. This section provides in substance that such determination is made by comparing the actual purchase price of the foreign materials (excluding certain materials entitled to free entry into the United States), plus the cost of transportation to the insular possession (but excluding any duties and taxes assessed by the insular possession and any charges which may accrue after landing), and the final appraised value in the United States of the article determined in accordance with section 402, Tariff Act of 1930, as amended.

Copies of the above-cited references are enclosed.

Sincerely yours,

(Signed) E. J. DOYLE

E. J. DOYLE
Acting Assistant Director
Entry Procedures

Enclosure 31163 (3)

[redacted]

E3

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEC 08 1975

VES-3-02-R:CD:C
101845 DJF

District Director of Customs
San Juan, Puerto Rico 00903

Dear Sir:

This is in reply to your letter of September 17, 1975, which you forwarded with correspondence and enclosures from [redacted] acting on behalf of [redacted] owners of the [redacted] asking whether the vessel may remain in San Juan from 0800 January 17, 1976, until 1600 January 18, 1976, a stay exceeding 24 hours. You ask our advice regarding the proposed overstay.

The vessel carries approximately 400 students on round-the-world educational voyages. It is scheduled to depart Port Everglades, Florida, on January 3, 1976, and return to Port Everglades on January 31, 1976, via various Caribbean and South American ports.

Section 4.80a(a)(2), Customs Regulations, imposes a 24-hour limitation on the number of hours a vessel may remain in a coastwise port on a voyage touching nearby foreign ports and passengers on the vessel from other coastwise ports may go ashore temporarily without violating the coastwise laws. However, section 4.80a(b) provides that a vessel touching at a foreign port other than a nearby foreign port, such as the South American port of La Guaira shall not be deemed to be engaged in coastwise trade in the absence of evidence to the contrary. Therefore, passengers boarding in Port Everglades on January 3, 1976, and going ashore in San Juan as described will not be deemed landed in San Juan contrary to title 46, United States Code, section 289.

Sincerely yours,

[redacted]

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

E4

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

101845

NOV 10 1975

VES-3-02-R:CD:C
101878 BJF

[redacted]

Dear [redacted]

Your letter of November 3, 1975, requests an advisory ruling under section 4.80a(d), Customs Regulations, on a proposed cruise itinerary for the [redacted] The vessel is of Liberian registry.

The vessel will depart Port Everglades, Florida, on February 7, 1976, and following an itinerary which includes a visit to South America, arrive in Los Angeles, California, on February 25, 1976. There will be no stops at United States ports of call during the voyage.

Enclosed is a copy of section 4.80a, Customs Regulations (19 C.F.R. 4.80a), which is interpretive of title 46, United States Code, section 289.

Cartagena, Colombia, is a port on the South American mainland. It is therefore a foreign port other than a nearby foreign port. In the absence of evidence that coastwise transportation is the primary object of the voyage, passengers boarding at Port Everglades and disembarking at Los Angeles will not be deemed to have been landed at a coastwise port in violation of title 46, United States Code, section 289.

Sincerely yours,

(Signed) J. P. TEBEAU

[redacted]
J. P. Tebeau
Director

101878

ES

CODE AND DATE			Carriers, Drawback and Bonds Division				
S [redacted]							
CODE AND DATE							
SURNAME							

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

DEC 4 1975

VES-3-02-R:CD:C
101905 H

[redacted]

Dear [redacted]

Your letter of November 5, 1975, to the District Director of Customs, Los Angeles, about proposed cruises on the Panamanian [redacted] from San Diego to Avalon, Catalina Island, Ensenada, Mexico, and return has been forwarded to us for a ruling as to whether the primary object of the cruises would be considered to be coastwise transportation. Such requests for rulings may be submitted directly to Headquarters in accordance with section 177.2, Customs Regulations (19 C.F.R. 177.2).

On each cruise the vessel would originally embark all passengers at San Diego, proceeding thence to Avalon (10 hours), Ensenada (10 hours), and back to San Diego, where all passengers would ultimately disembark.

Section 4.80a, Customs Regulations, copy enclosed, provides in significant part:

> (a) A foreign vessel which takes a passenger on board at a port in the United States..... will be deemed to have landed that passenger in violation of the coastwise laws (46 U.S.C. 289) if:
>
> .....
> .....

101905

E6

CODE AND DATE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME							
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

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[redacted]

(4) The passenger goes ashore at any port other than the port at which he embarked if coastwise transportation is the primary object of the voyage.

Since, on the proposed voyages, the vessel will stop for the same length of time at one California port and one foreign port, it appears that the primary object of the voyages would not be coastwise transportation and passengers going ashore temporarily at Avalon and ultimately disembarking at San Diego would not be deemed landed in violation of the coastwise laws at either port.

Sincerely yours,

(SIGNED) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

E1

CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY-U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-15-73)

101 905

DEC 04 1975

VES-3-02-R:CD:C
101919 BJF

[redacted]

Dear Sir [redacted]

This is in reply to your letter of November 24, 1975, in which you request an advisory ruling on a proposed cruise of a foreign-flag vessel of the Bahama Cruise Line.

It is intended that the vessel will transport persons from New Orleans to Philadelphia, with a stopover at Nassau or Bermuda. In Philadelphia, the passengers would attend the 41st International Eucharistic Congress between August 1, 1976, and August 8, 1976. During that time the vessel would serve as a hotel for the cruise passengers.

Title 46, United States Code, section 289, prohibits foreign vessels from transporting passengers between ports and places in the United States, either directly or by way of a foreign port. Section 4.80a, Customs Regulations, a copy of which is enclosed, interprets that statute. You will see that section 4.80a(a)(2) states that a passenger will be deemed to have been landed in violation of the coastwise laws if he goes ashore, even temporarily, at another coastwise port on a voyage to such a port if the vessel touches at a nearby foreign port and remains in the coastwise port for more than 24 hours. New Orleans and Philadelphia are both coastwise ports. Nassau and Bermuda are both nearby foreign ports within the purview of section 4.80a(c).

101919

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E8

Inasmuch as the coastwise transportation of passengers between New Orleans and Philadelphia would be the primary object of the voyage, it is prohibited by section 289. Of course, mere use of the vessel in Philadelphia as a hotel, with no transportation of passengers by the vessel, would not be prohibited by the coastwise laws.

In accordance with the Act of December 27, 1950 (64 Stat. 1120), the provisions of section 289 may only be waived in the interest of National Defense (by the Secretary of Defense). We must therefore advise you that we see no means of accommodating you in this matter.

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

[redacted]

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

E9

101919

JAN 07 1976

VES-3-02-R:CD:C
101931 BJT

[redacted]

Dear [redacted]

Your letter of December 8, 1975, asks for an advisory ruling under Part 177, Customs Regulations, as to whether certain travel agents and cruise promotional personnel might cruise from Galveston, Texas, to Tampa, Florida, aboard the Greek-flag [redacted]

You state that the cruise will permit the passengers to become familiar with the shipboard operations of a cruise line and that the cruise is also a recognition of the passengers' efforts in promoting cruises.

The definition of the term "passengers" in section 4.50(b), Customs Regulations (copy enclosed), includes any person carried on a vessel who is not connected with the operation of the vessel, her navigation, ownership, or business. It has been in effect for more than 50 years. We are not aware of any ruling in effect that travel agents being transported as observers so that they could better sell and promote the services of a foreign vessel touching coastwise points are not considered passengers. The cruise personnel and travel agents in the situation you describe are not connected with the business of the vessel within the meaning of section 4.50(b), Customs Regulations.

Accordingly, title 46, United States Code, section 289, which prohibits the transportation of passengers between points embraced within the United States coastwise laws on foreign vessels, would preclude the contemplated cruise. Passengers embarked at Galveston, Texas, would be deemed landed in Tampa, Florida, in violation of section 289.

Sincerely yours,

[redacted]

J. P. TEBEAU

[redacted]

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

101931

E10

THIS DOCUMENT MAY BE RELEASED TO THE

OFFICE OF REGULATIONS AND RULINGS
U—) CUSTOMS SERVICE P
WASHINGTON, D.C. 20229

COLLECT 2/4/76
X

B. JAMES FRITZ R:CD:C 5706

FEB 05 1976

[redacted]

VES-3-18-R:CD:C
101938 BJF

REUR REQUEST FOR TELEGRAM RULING ON PROPOSED ITINERARY OF [redacted] THE VESSEL IS INTENDED TO EMBARK PASSENGERS IN MIAMI AND PROCEED TO NASSAU (BAHAMAS), HAMILTON (BERMUDA), ST. JOHN, HALIFAX, AND YARMOUTH (ALL IN CANADA), AND THEN PROCEED TO BOSTON, PHILADELPHIA, NEWPORT NEWS AND CHARLESTON AND RETURN TO MIAMI WHERE PASSENGERS WILL DISEMBARK. THE VESSELS WILL SPEND 9 HOURS IN EACH PORT NOT FOR ANY SPECIAL EVENT. ALTHOUGH THE CRUISE BEGINS AND TERMINATES AT MIAMI, SINCE IT WILL CALL AT A GREATER NUMBER OF FOREIGN PORTS THAN DOMESTIC PORTS AND HOURS IN FOREIGN PORTS EXCEED NUMBER OF HOURS INCIDENTALLY SPENT AT DOMESTIC PORTS, U.S. CUSTOMS SERVICE IS OF OPINION THAT THE PRIMARY OBJECT OF VOYAGE IS NOT COASTWISE TRADE.

101938

J. P. TEBEAU
DIRECTOR
CARRIERS, DRAWBACK AND BONDS DIVISION 1 1
BJFritz/mjn
2/4/76:S/N 76-5046 (2/2/76)

E11

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

ACTION: P
INFO:

ACCOMPANING CLASSIFICATION:

DATE PREPARED: 12/24/75

TYPE OF MESSAGE: [X] SINGLE [ ] BOOK [ ] MULTIPLE-ADDRESS

FOR INFORMATION CALL
NAME: DONALD H. REUSCH R:CD:C
PHONE NUMBER: 5706

THIS SPACE FOR USE OF COMMUNICATION UNIT

101941

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

DISTRICT DIRECTOR OF CUSTOMS
SEATTLE, WASHINGTON 98104

DEC 24 1975 VES-3-15-R:CD:C
101941 R

RETEL DECEMBER 16, 1975, VESSEL WITH CONTAINERS FOR YOUR PORT AND VANCOUVER. YOU ASK IF SEATTLE DESTINED CONTAINERS IN LOWER TIER MAY BE RETAINED ON BOARD DURING FIRST SEATTLE VISIT FOR UNLADING SEATTLE AFTER VANCOUVER VISIT AND, IF SO, WHAT WOULD BE LEGAL DATE OF IMPORTATION OF CONTAINER UNLADEN SEATTLE DURING SECOND VISIT. UNDER SECTION 4.89, VESSELS PROCEEDING PORT TO PORT IN UNITED STATES (INCLUDING MORE THAN ONE VISIT SAME PORT) MAY TOUCH INTERMEDIATE FOREIGN PORT TO DISCHARGE CARGO UPON COMPLIANCE PROCEDURES OUTLINED THAT SECTION. DATE OF IMPORTATION OF CONTAINERS UNLADEN SECOND SEATTLE VISIT IS DATE VESSEL RETURNS SEATTLE FROM VANCOUVER WITH INTENT TO UNLADE LOWER TIER OF CONTAINERS (SEE SECTION 1.11, DEFINING "DATE OF IMPORTATION," AND SECTION 141.1(a), CUSTOMS REGULATIONS).

Edward R. Dolff

ACTING DIRECTOR
CARRIERS, DRAWBACK AND BONDS DIVISION

[redacted]

PAGE NO. 1 | NO. OF PGS. 1

SECURITY CLASSIFICATION

REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-32.306

* GPO : 1973 — 493-857

E12

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

MAR 29 1976

VES-3-02 R:CD:C
101945 RJF

[redacted]

Dear [redacted]

This is in reply to your letter of December 16, 1975, in which you requested an advisory ruling under Part 177, Customs Regulations, on the proposed cruise itinerary of the British-flag [redacted]. We also acknowledge receipt of your telegram of March 4, 1976, providing us with additional details of the proposed itinerary.

The cruise is tentatively scheduled to begin at 1500 hours on June 16, 1976, in San Francisco and arrive at Los Angeles at 1300 hours on June 17. The vessel will then leave Los Angeles on June 17 at 1900 hours (a 6 hour stop) and proceed to Victoria, B.C. (7 hours), Juneau (7 hours), Skagway (10 hours), Sitka (7 hours), Prince Rupert (3 hours), Vancouver, B.C. (20 hours), San Francisco (5 hours), and then to Los Angeles, where the cruise will terminate. Passengers will embark at San Francisco and Los Angeles and, in all cases, disembark at their ports of embarkation. The vessel will remain in no coastwise port for longer than 10 hours, calling at 4 nearby foreign ports and six United States ports, including the ports at which the voyage begins and ends. A total of 30 hours will be spent in nearby foreign ports and 35 hours will be spent in domestic ports. The vessel will not call at any Alaskan port in coordination with a special event.

You are familiar with section 4.80a, Customs Regulations. It states (section 4.80a (a)(4)) that a passenger will be deemed to have been landed in violation of the coastwise laws (46 U.S.C. 289) if coastwise transportation is the primary object of the voyage. While the vessel will call temporarily at certain Alaskan ports as described, with the passengers permitted to go ashore, the primary object of the overall voyage is not considered to be coastwise trade, since the vessel's voyage is equally directed at calling at foreign ports.

101945

E13

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

Passengers embarked and disembarked at United States ports, and temporarily going ashore at Alaskan ports, as described, will not be deemed to have been landed in violation of the coastwise laws.

Sincerely yours,

J. P. Tebonn
Director
Carriers, Drawback and Bonds Division

101 945

[redacted]

E14

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

JAN 21

VES-3-02-R:CD:C
101973 F

Reviewing Officers

Attorney, Carrier Rulings Branch R:CD:C

Possible 46 U.S.C. 289, 19 U.S.C. 1202 violations of the [redacted] yacht. Penalties case, Providence, 75-0502-18.

The [redacted] is a foreign documented pleasure craft owned by a foreign corporation which we infer is wholly owned by citizens of the United States.

The vessel cruised United States waters with a cruising permit. It carried six persons who allegedly contributed to the cost of running the vessel and who helped to sail it (this makes a crew of 7-8 on a 64 foot schooner yacht). All aboard shared a common purpose in desiring to attend the America Cup Races. In arranging for the cruise, the petitioner-master used a prospectus, selectively mailed, stating, inter alia, "If you wish to charter [redacted] send a deposit...." An accompanying brochure describes the subject cruise as "our first split the costs ocean (cruise).... These will be working cruises...."

101973

The vessel was constructively seized under 19 U.S.C. 1592 on the basis that it was subject to entry as merchandise, being offered or used for charter purposes in the United States, but was not so entered. The vessel is also alleged to have been used in violation of its cruising license by carrying passengers in violation of 46 U.S.C. 289. The penalty notice merely specifies a 19 U.S.C. 1592 violation, so the question before Carrier Rulings is whether the vessel was so used in the United States as to make it subject to entry (having been offered either for sale or charter).

There was no 46 U.S.C. 289 violation since we have previously held that persons connected with the operation of the ship are not considered passengers within the meaning of the coastwise laws. It is true that this case is differentiated by an added circumstance, the passing of consideration from the crew to the master as a condition of being allowed to work aboard; however, the evidence establishes that each individual actually functioned as a regular working member of the crew; he cannot also be considered a passenger.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

F1

As to whether the vessel was offered for charter, charters can be broken down into two types; perhaps oversimplified below:

1. A bareboat charter involves leasing the vessel without a crew to the lessee. That does not apply here since the master and his wife continued to function as crew.

2. A time charter, in which there is a contract for transportation for hire, and the owner provides the personnel to run the vessel.

The corporate owner is probably an alter ego of the master. The master arranged for the crew; however, CIRCULAR: VES-6-MS, dated May 12, 1961 (which is primarily directed toward charter questions as applied to document violations), makes a relevant assumption when it states that "(Customs and Coast Guard) have agreed that when the owner...surrendered to the charterer anything less than the complete control and management of the yacht, the result was ...a time charter."

In this case, the evidence shows that the master (owner?) chose the itinerary, and picked all those aboard, kept full control of the vessel at all times and required all aboard to assist in the operation of the vessel. Thus, no element of a charter appears to exist or to have been advertised. There is no precedent holding that mere transportation of nonregular members of the crew suffices to establish a charter agreement. Absent a charter arrangement, either solicited or actual, there is no violation.

Thank you for allowing us to review this case.

Signed

B. James Fritz

[redacted]

101973

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F2

AUG 23 1976

VCS-3-TS-R:CD:C
802045 H

[redacted]

Dear [redacted]

Your letter of March 16, 1976, discusses and asks certain questions about problems encountered by the [redacted] in connection with the use of very large crude carriers (VLCCs) in bringing cargoes of oil to the United States.

You state that, under present practice, the VLCCs often stand off the coast and have their cargo, in whole or in part, lightered off by smaller vessels and that, in some cases, when a VLCC has been lightened sufficiently to permit it to enter port, it then will do so and complete the unlading. Your understanding is that, under existing requirements, the VLCC, when entering a port of the United States, would be required to take a State pilot and to enter and clear with Customs as a vessel engaged in the foreign trade of the United States; but that any lightering vessel, if undocumented or under enrollment and license or license, would not be required to enter and clear, although required to account to Customs for the foreign cargo on board. You ask for confirmation that your understanding with respect to Customs requirements is correct, and you wish to be advised whether such a lightering vessel is regarded "as engaged in the foreign trade of the United States."

A VLCC arriving in territorial waters would be required to report arrival as a vessel arriving from a foreign port or place and to enter: if foreign, as a foreign vessel arriving within the limits of a Customs collection district; if American, as a vessel arriving in the United States from a foreign port or place. In such case, a vessel lightering cargo from the VLCC would be considered engaged in coastwise trade, since it would be transporting merchandise between points in the United States, and would have to be qualified to engage in that trade. Since the American lightering vessel would have foreign merchandise for which entry had not been made, it would be required to report arrival, and the merchandise to be unladen would be subject to the same merchandise entry requirements as are applicable to any foreign merchandise imported into the United States.

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F 3

If the VLCC anchored outside territorial waters, it would not at that time be subject to vessel reporting or entry requirements. A vessel lightering cargo from the VLCC to the United States in these circumstances would not be considered engaged in coastwise trade. Such a lightering vessel would be required to report arrival: if foreign, as a foreign vessel arriving from a foreign port or place or from a domestic port from which it had proceeded to the VLCC; if American, as an American vessel carrying foreign merchandise for which entry had not been made. A foreign lightering vessel would be required in such case to make entry as a vessel arriving within the limits of a Customs collection district. An American lightering vessel would not be required in such a case to make entry as a vessel.

While the Customs Service has no immediate occasion or reason to determine whether American or foreign lightering vessels, when they lighter foreign cargo from a VLCC anchored on the high seas outside territorial waters to points in the United States, are engaged in foreign trade for the purposes of any navigation laws administered by it, we can say that merchandise landed from such lightering vessels would be subject to all the merchandise entry requirements applicable to foreign merchandise landed directly from a vessel arriving from a foreign port or place in foreign trade.

However, with respect to the withdrawal from a Customs bonded warehouse, free of duty and internal-revenue tax, of "supplies...of...vessels... actually engaged in foreign trade...," under title 19, United States Code, section 1309, we have held that lighters moving between a port in the United States and a VLCC outside territorial waters are not actually engaged in the foreign trade, while the VLCC would be so engaged.

What documentation is appropriate for an American vessel lightering cargo from a VLCC positioned outside territorial waters is a matter within the jurisdiction of the United States Coast Guard, to which the function of documenting vessels was transferred from the Customs Service by Treasury Department Order No. 167-31 (32 F.R. 2463), effective February 24, 1967. As you are aware, the Coast Guard also administers statutes relating to pilotage, including title 46, United States Code, section 364.

Sincerely yours,

(SIGNED) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

10205

F4

JUL 20 1976

VES-8-01-R:CD:C DR
102156

[redacted]

Dear [redacted]

Your letter of April 27, 1976, to the Secretary of the Interior concerning your difficulty in traveling to the United States by vessel in a direct route has been forwarded to this agency as the Customs Service is responsible for administering the coastwise laws. You state that because the condition of your health prohibits your flying, you are compelled to travel to the United States by vessel. However, because of the cabotage laws you advise you are unable to board a vessel in Puerto Rico for transportation directly to the United States, but must instead travel to St. Thomas, Virgin Islands, and board another vessel for the United States at that port.

You state that because of the condition of your health, it is very difficult for you to travel to the United States by having to first go to the Virgin Islands. You therefore ask permission for your family and you to board vessels bound for and to disembark foreign vessels arriving from the United States at San Juan, Puerto Rico.

Title 46, United States Code, section 289, prohibits a foreign vessel from transporting passengers between ports in the United States. That statute provides for a penalty against the vessel owners in the amount of $200 for each passenger transported and landed. In the circumstances, there is no administrative authority which would permit an exception to or waiver of this law.

In view of the foregoing, we must advise that we cannot grant your request.

If you have not already done so, we suggest you contact the Puerto Rican Maritime Shipping Association in San Juan, which may be of assistance to you.

Sincerely yours,

(Signed)

J. P. Tabeau
Director
Carriers, Drawback and Bonds Division

CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE							
SURNAME							

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FS

TELEGRAPHIC MESSAGE

OF AGENCY OFFICE OF REGULATIONS AND RULINGS U. S. CUSTOMS SERVICE WASHINGTON, D. C.	PRECEDENCE ACTION P INFO.	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED 6/10/76	TYPE OF MESSAGE
FOR INFORMATION CALL		☒ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS
NAME CHARLES W. HART	PHONE NUMBER 5706	

THIS SPACE FOR USE OF COMMUNICATION UNIT

[redacted]

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

[redacted]

VES-3-02
102207

RE JUNE 9 TELEGRAM REQUESTING APPROVAL ITINERARY FOR FIRST 1977 PACIFIC PRINCESS ALASKA/CANADA CRUISE WITH FOLLOWING STOPS AND HOURS IN PORT: STARTING LOS ANGELES, SAN FRANCISCO (2), VICTORIA (6), JUNEAU (7), SKAGWAY (10), SITKA (7), PRINCE RUPERT (3), VANCOUVER (20), SAN FRANCISCO (5), TERMINATING LOS ANGELES. PASSENGERS EMBARKED AND DISEMBARKED SAME UNITED STATES PORT AND TEMPORARILY GOING ASHORE OTHER UNITED STATES PORTS ON THIS ITINERARY WILL NOT BE DEEMED TO HAVE BEEN LANDED IN VIOLATION OF COASTWISE LAWS.

Alfred G. Scholle
ALFRED G. SCHOLLE
ACTING DIRECTOR
CARRIERS, DRAWBACK AND BONDS DIVISION

102207

[redacted]

PAGE NO	NO OF PGS	SECURITY CLASSIFICATION
1	1	F6

CS FORM 14

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

AUG 16 1976

VES-3-02-R:CD:C
102342 M

The Honorable
Jaime Benitez
House of Representatives
Washington, D.C. 20515

Dear Mr. Benitez:

Your letter of June 22, 1976, previously acknowledged by us, enclosed a copy of a letter from [redacted] of Guaynabo, Puerto Rico, to the Secretary of the Interior regarding his difficulties in traveling from Puerto Rico to the United States.

[redacted] letter to the Secretary of the Interior was referred to the Customs Service for reply, and we answered [redacted] in a letter of July 20, 1976. A copy of our reply [redacted] is enclosed.

We invite your attention to H.R. 1238, introduced on January 14, 1975, and pending before the House Committee on Merchant Marine and Fisheries. This bill, if enacted, would amend title 46, United States Code, section 289, to permit foreign vessels, under certain conditions, to transport passengers between United States coastwise ports when such transportation would not involve direct and immediate competition with vessels of the United States qualified to engage in the coastwise trade.

Please let us know if you need any further information on the matter.

Sincerely yours,

(Signed) Leonard Lehman

Leonard Lehman
Assistant Commissioner
Regulations and Rulings

[redacted]

102342

F7

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEC 7 1976

BOR-7-07-R:CD:C
102376 BF

102376

Dear [redacted]

This is in response to your letter of November 23, 1976, concerning our ruling of November 18, 1976, that metal cargo containers with liners, used for the transportation of threads and yarns, qualify as "instruments of international traffic" within the meaning of section 322(a), Tariff Act of 1930, as amended. We stated that the cargo containers referred to could be identified by a metal plate stating "Cargotainers: [redacted] attached on one side because such a plate was attached to the sample submitted to us. You inquire if the ruling designates as instruments of international traffic only those cargo containers manufactured by [redacted]

The reference to the metal plate attached to the cargo container is to assist the Customs officers at the port of entry in identifying the cargo containers as those articles which were designated as instruments of international traffic by our ruling of November 18. It is not intended to preclude identical cargo containers purchased from other manufacturers and bearing different identification plates from being treated as instruments of international traffic under that ruling.

A copy of this letter is being sent to the District Director of Customs at Buffalo, New York.

Sincerely yours,

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

[redacted]

F8

[redacted]				(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
[redacted]							
AND DATE				(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE

OFFICE OF REGULATIONS AND RULINGS
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

P

DEC 14 1976

12/14/76

X

CHARLES W. HART R:CD:C 566-5706

[redacted]

VES-3-02-R:CD:C
102506 CH

REURTEL DECEMBER 7 REQUESTING RECONSIDERATION OUR TELEGRAM DECEMBER 2 RE PROPOSED DISEMBARKATION FROM QUEEN ELIZABETH II AT NEW YORK DECEMBER 18 OF 350 PASSENGERS SHUTTLED NEW YORK TO BOSTON AND EMBARKED ON VESSEL AT BOSTON DECEMBER 3. ALTHOUGH DISEMBARKING OF PASSENGERS IN NEW YORK WILL VIOLATE 46 U.S.C. 289 AND MUST BE SUBJECT TO PENALTY, SPECIAL CIRCUMSTANCES OF THIS CASE WILL BE FULLY CONSIDERED IN RESPONSE TO ANY PETITION FOR RELIEF FILED PURSUANT TO 46 U.S.C. 320.

(Signed) LEONARD LEHMAN

LEONARD LEHMAN
ASSISTANT COMMISSIONER
REGULATIONS AND RULINGS

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY - U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-15-73)

102506

OFFICE OF REGULATIONS AND RULINGS
U.S. CUSTOMS SERVICE
WASHINGTON, D. C.

P

DEC 08 1976

X

CHARLES W. HART

566-5706

DISTRICT DIRECTOR OF CUSTOMS
WILMINGTON, NORTH CAROLINA

VES-3-02-R:CD:C
102519 CH

RETELCON DECEMBER 7. CUSTOMS SERVICE DOES NOT CONSIDER MEMBERS OF A CREWMEMBER'S IMMEDIATE FAMILY ACCOMPANYING HIM ABOARD HIS VESSEL AS PASSENGERS WITHIN THE MEANING OF 46 U.S.C. 289 AND SECTION 4.50(b), CUSTOMS REGULATIONS, WHEN THEIR TRANSPORTATION, ACCOMMODATIONS, FOOD AND OTHER NECESSITIES OF THE VOYAGE ARE SUPPLIED FREE OF CHARGE. ACCORDINGLY, IF TRANSPORTATION IS FREE IN THIS SENSE, NO VIOLATION OF 46 U.S.C. 289 WOULD TAKE PLACE IF WIFE OF THIRD MATE OF GERMAN [redacted] DUE TO ARRIVE WILMINGTON ON OR ABOUT DECEMBER 13 JOINS VESSEL AT WILMINGTON AND PROCEEDS WITH VESSEL TO ONE OR MORE PORTS IN THE UNITED STATES, DISEMBARKING AT A PORT OTHER THAN WILMINGTON.

102519

(SIGNED) J. P. TEBEAU

J. P. TEBEAU
DIRECTOR
CARRIERS, DRAWBACK AND BONDS DIVISION

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F10

[redacted]

CODE		(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER
SURNAME						

DEPARTMENT OF THE TREASURY - U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-15-73)

DEC 2 1976

VES-3-14-R:CO:C
102529 PC
T32433

[redacted]

Dear [redacted]

This refers to your letters of September 23 and November 26, 1976, relating to the proposed documentation and exclusive use of a foreign-built vessel for research purposes.

Enclosed is a copy of our reply to your letter of September 23, 1976. In your letter of November 26, 1976, concerning the same subject matter you enclosed a copy of a reply, dated November 1, 1976, which you received from the United States Coast Guard, in which the use of a foreign-built vessel for "training purposes" was mentioned.

We are unable to advise you whether a foreign-built vessel may be used for "training purposes," as distinguished from a use solely for research, unless you furnish us detailed information as to the proposed activity. We would point out, however, that use of a foreign-built vessel for the transportation of students between points in the United States, or on a cruise wholly within the territorial waters of the United States, could under certain circumstances be considered in violation of the coastwise laws.

Accordingly, if you are considering using the vessel for "training purposes," it is suggested that you write to us again, describing specifically the intended use, including whether any proposed curriculum is approved by an appropriate accrediting organization.

Sincerely yours,

For ALFRED G. SCHOLLE

Alfred G. Scholle
Acting Director
Carriers, Drawback and Bonds Division

F11

[redacted]

[redacted]						
[redacted]						

CORRESPONDENCE APPROVAL AND CLEARANCE

Form 1080 (11-16-73)

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1055201

OFFICE OF REGULATIONS AND RULINGS
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

P

JAN 1 8 1977

1/18/77

X

C. W. HART

566-6706

[redacted]

VES-3-02-R:CD:C
102604 CH

REUKTEL JANUARY 17 ASKING FOR RULING ON PASSENGERS FLYING FRANCE/ ORLANDO/JAMAICA, THENCE ON FRENCH RENAISSANCE TO HAITI/MARTINIQUE/ GUADELOUPE, DISEMBARKING GUADELOUPE, FLYING SAN JUAN, REEMBARKING RENAISSANCE SAN JUAN JANUARY 24, DISEMBARKING PORT EVERGLADES JANUARY 27, FLYING CANCUN, MEXICO, THENCE RETURNING FRANCE BY AIR.

PASSENGERS EMBARKING SAN JUAN AND DISEMBARKING PORT EVERGLADES WOULD BE IN VIOLATION 46 U.S.C. 289 AS IMPLEMENTED BY SECTION 4.80A(A)(3), CUSTOMS REGULATIONS, PROVIDING THAT IF FOREIGN VESSEL TAKES A PASSENGER ON BOARD AT A U.S. COASTWISE PORT, SUCH AS SAN JUAN, AND PASSENGER SEVERS HIS CONNECTION WITH THE VOYAGE AT ANOTHER COASTWISE PORT, SUCH AS PORT EVERGLADES, ON A VOYAGE WHICH TOUCHES NO FOREIGN PORT OTHER THAN A NEARBY FOREIGN PORT, A VIOLATION WILL HAVE TAKEN PLACE.

102604

F12

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JAN 18 1977

NO VIOLATION WOULD TAKE PLACE IF PASSENGERS EMBARK RENAISSANCE ANY OTHER CARIBBEAN ISLAND THAN PUERTO RICO OR ULTIMATELY DISEMBARK BAHAMAS PORT SUCH AS NASSAU OR FREEPORT.

(SIGNED) J. P. TEBEAU

J. P. TEBEAU
DIRECTOR
CARRIERS, DRAWBACK AND BONDS DIVISION

102604

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F13

AND DATE	[redacted]		(9) REVIEWED	(8) REVIEWED	(8) REVIEWED	(7) REVIEWED	
SURNAME							
CODE AND DATE			(10) REVIEWED	(11) REVIEWED	(12) REVIEWED	(13) REVIEWED	(14) REVIEWED
SURNAME							

DEPARTMENT OF THE TREASURY - U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-15-73)

VES-3-02-R:CD:C
102813 CH

[redacted]

Dear [redacted]

Your letter of April 20, 1977, states that the [redacted] left Los Angeles on February 25, 1977, on a 100-day round-the-world "Semester-at-Sea" student project conducted by the Institute of Shipboard Education and is due back at Baltimore on or about June 5, 1977, when most of the passengers ultimately will be disembarked. From Baltimore the [redacted] will proceed to Fort Lauderdale (6 hours), Port-Au-Prince, Haiti (15 hours), Cartagena, Colombia (34 hours), Cristobal, Canal Zone (18 hours), Acapulco, Mexico (35 hours), Mazatlan, Mexico (13 hours), and thence to Los Angeles. You ask whether additional passengers may be embarked at Baltimore and Fort Lauderdale for ultimate disembarkation at Los Angeles. No passengers originally embarked at Baltimore ultimately would be disembarked at Fort Lauderdale.

Section 4.80a, Customs Regulations (19 CFR 4.80a) provides in significant part:

> (a) A foreign vessel which takes a passenger on board at a port in the United States.... will be deemed to have landed that passenger in violation of the coastwise laws (46 U.S.C. 289) if:
>
> * * * *
>
> (3) The passenger severs his connection with the voyage at another coastwise port on a voyage which touches no foreign port other than a nearby foreign port; or
>
> (4) The passenger goes ashore at any port other than the port at which he embarked if coastwise transportation is the primary object of the voyage.

102813

F14

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(b) In the absence of evidence that coastwise transportation is the primary object, a foreign vessel engaged on a voyage touching or originating at any foreign port other than a nearby foreign port shall not be deemed to be engaged in the coastwise trade and may, without penalty, disembark a passenger at any coastwise port: Provided, that that passenger has proceeded or will proceed with the vessel to a foreign port other than a nearby foreign port.

Cartagena, as a port on the mainland of South America, is a foreign port other than a nearby foreign port within the meaning of section 4.80a. Between Fort Lauderdale and Los Angeles the vessel will stop at 4 foreign ports for from 10 to 35 hours, a total of 97 hours. Clearly the primary object of the voyages from Baltimore and Fort Lauderdale to Los Angeles will not be coastwise transportation. Passengers may therefore be originally embarked on the [redacted] at Baltimore and Fort Lauderdale and ultimately disembarked from it at Los Angeles without penalty under title 46, United States Code, section 289.

Sincerely yours,

(SIGNED) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

1028113

[redacted]

[redacted]

CODE AND DATE							
SURNAME							
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY-U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 160 (11-15-73)

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

JUN 2 1977

VES-3-02-R:CD:C
102874
~~102401~~
~~102146~~
~~101450~~ AGS

[redacted]

Dear [redacted]

Your letter of May 31, 1977, asks for an advisory ruling under section 4.80a(d), Customs Regulations, as to certain proposed 1977 Canada/Alaska cruises on the [redacted] operated by [redacted]. You state that the proposed cruises are similar to approved cruises for the 1973, 1975, and 1976 seasons, which were the subject of Headquarters rulings.

The proposed cruises will last 14 days, with all passengers originally embarking and ultimately disembarking at San Francisco. The vessel will proceed from San Francisco to Vancouver, B.C. (33 hours), Nanaimo, B.C. (minimum of 8 hours), Ketchikan (6 hours), Juneau (8 hours), Sitka (8 hours), Victoria, B.C. (28 hours), and thence back to San Francisco. The vessel will thus spend a minimum of 69 hours in three Canadian ports and 22 hours in three Alaskan ports. The schedule will be repeated seven times commencing from San Francisco on June 4 on the first cruise and arriving at San Francisco September 10 on the last cruise.

Since the itinerary of these cruises will include the same number of stops in foreign ports as in intermediate coastwise ports of call (three each), with more than three times the total time spent in the foreign ports as in the intermediate coastwise ports, it seems clear that coastwise transportation would not be the primary object of these cruises. Accordingly, passengers originally embarking and ultimately disembarking at San Francisco could go ashore temporarily at Ketchikan, Juneau, and Sitka as proposed without penalty under the coastwise laws (see section 4.80a(a)(4), Customs Regulations). If such passengers ultimately disembarked at any of the Alaskan ports, penalties would be incurred (see section 4.80a(a)(3),

102874

G2

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

Customs Regulations). If the disembarkation of such passengers was deemed necessary because of an emergency, a petition requesting relief from the penalties could be filed under title 46, United States Code, section 320.

Sincerely yours,

(Signed)

J. P. Tobeau
Director
Carriers, Drawback and Bonds Division

102874

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G3

AUG 25 1977

VES-3-02-R:CD:C
103005 BJF

[redacted]

Dear [redacted]

This is in reply to your letter of August 19, 1977, in which you request a ruling as to whether any laws administered by this agency would preclude [redacted] a Norwegian reporter, from being transported between United States ports on Norwegian vessels. It is intended that [redacted] will travel between, and land at, various United States ports for the purpose of writing articles concerning Norwegian shipping, crew conditions and other matters relating to the Norwegian maritime and mariner.

The Customs Service is of the opinion that an accredited newspaper reporter traveling on a foreign vessel in order to write a story based in whole or in part on her observations in the course of the voyage is closely enough connected with the operations of the vessel that she is not to be considered a passenger within the meaning of section 4.50, Customs Regulations. Hence her transportation between two points in the United States embraced within the coastwise laws shall not be considered in violation of title 46, United States Code, section 289.

103005

Sincerely yours,

(SIGNED) J. P. TEBEAU

[redacted]

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

G4

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[redacted]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JAN 5 1978

REFER TO
VES-3-02-R:CD:C
103196 JL

[redacted]

Dear [redacted]

This is in reference to your letter of November 28, 1977, asking for our comments on the proposed operation of a vessel to be built in Canada and owned by a yacht club. The vessel would act as a pilot boat escorting vessels from Canada through the Intercoastal Waterway to Florida in the fall and return in the spring. Yacht club members not bringing boats to Florida would be carried on board and use the vessel while in the United States. The vessel would be operated from club dues with food and drink being purchased by members ashore. You state the vessel would be registered as a pleasure yacht.

Although it could be said that the club members would be owners of the vessel by virtue of their membership in the club, it is our opinion that under the facts presented the members carried on board who will not be part of the ship's crew would be passengers within the meaning of title 46, United States Code, section 289. This statute prohibits the transportation of passengers by a foreign vessel between ports or places within the United States, under a penalty of $200 for each passenger so transported and landed. As we pointed out in our letter to you of November 2, 1977, copy enclosed, such cruises, involving the embarkation and disembarkation of passengers at various United States ports, constitute engagement in the coastwise trade and may only be accomplished by vessels documented under the laws of the United States for that purpose.

Sincerely yours,

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

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GS

103196

[redacted]

[redacted]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

FEB 7 1978

VES-3-02-R:CD:C
103279 CH

[redacted]

Dear [redacted]

We regret the delay in answering your letter of January 24, 1978, asking permission for the wife and son of [redacted] to travel coastwise on the Singaporean [redacted] on each call of the vessel while [redacted]s in command. On its current voyage the vessel is scheduled to arrive at Boston on February 8, proceeding thence to New York, Baltimore, Norfolk, and back to Europe.

Title 46, United States Code, section 289, provides:

> No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and carried.

However, a "passenger," for purposes of the navigation laws administered by the Customs Service, including the coastwise laws, is defined in section 4.50(b), Customs Regulations, as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business." The wife and son of [redacted] while traveling with him on the [redacted] will, accordingly, not be considered passengers within the meaning of the coastwise laws and their transportation between coastwise ports will not be violative of the coastwise laws.

103279

Sincerely yours,

Director
Carriers, Drawback and Bonds Division

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REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

Thomas J. Kelley
Assistant Director
Protective Operations
United States Secret Service
Department of the Treasury
Washington, D.C. 20223

VES-3-02:RCD:C
103312 FC

Dear Mr. Kelley:

This refers to your letter of February 22, 1978, in which you state that the United States Secret Service will assume protective coverage for [redacted] Malaysia, at Honolulu, Hawaii, on March 28, 1978. [redacted] will depart Honolulu on the same date on the [redacted] and arrive at San Francisco, California, on April 1, 1978. In order to fulfill your protective responsibilities, you state it will be necessary to have one of your agents [redacted] accompany the [redacted] on board the ship.

Your understanding that title 46, United States Code, section 289, prohibits a foreign vessel from transporting passengers between United States ports is correct. However, since your agent will be acting in the official performance of his duties, you ask that he be considered connected with the business of the vessel and therefore not a "passenger." The [redacted] would then not be in violation of section 289, nor liable for the $200 fine prescribed in that section.

A "passenger" is defined in section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)) as any person carried on a vessel who is not connected with the operation, navigation, ownership, or business of the vessel.

A Secret Service agent who is transported on a foreign vessel for the purposes stated in your letter is not a "passenger" within the meaning of either title 46, United States Code, section 289, or section 4.50(b) of the Regulations. Therefore, no liability under section 289 would accrue to the [redacted] for the transportation of such agent.

A copy of this letter is being sent to each of the appropriate Customs officials at the ports involved.

Sincerely yours,

[redacted]

(SIGNED) J. P. TEBEAU

G1

CODE AND DATE						
SURNAME	[redacted]		J. P. Tebeau Director Carriers, Drawback and Bonds Division			
DATE						
SURNAME						

DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE - CIVIL ENGINEERING DIVISION - TRANSMITTAL AND CLEARANCE Form 100 (11-15-73)

PUBLIC _____

103312

[redacted]

MAR 29 1978 VES-3-02-R:CD:C
103324 CH
X 102146-100178
102874-102460

Dear [redacted]

Your letter of March 3, 1978, asks for an advisory ruling under section 4.80a(d), Customs Regulations, as to seven proposed 1979 Canada/Alaska cruises on the [redacted] operated by [redacted] These cruises are similar to approved cruises for the 1973,1975,1976, and 1977 seasons, which were the subject of Headquarters rulings.

On each cruise the vessel would proceed from San Francisco to Vancouver (29 hours), Ketchikan (6 hours), Juneau (12 hours), Skagway (13 hours), Sitka (8 hours), Victoria (28 hours), and back to San Francisco. The vessel would thus spend 39 hours in 4 United States ports and 57 hours in 2 Canadian ports. You say that, except in an emergency, passengers would not be permitted to terminate their voyage in any port other than their port of embarkation.

The Customs Service has taken the position that, unless the total time to be spent in foreign ports is no less than the time to be spent in United States ports, and the number of foreign ports to be stopped at is no less than the number of United States ports to be stopped at (apart from a passenger's port of original embarkation and ultimate disembarkation) the object of the passenger's voyage will not be deemed to beas much to visit and spend time in foreign ports as to visit and spend time in United States ports and we must, accordingly, conclude that the primary object of their voyage will be coastwise transportation.

While on the proposed cruises the time spent in Canadian ports would be considerably longer than the time spent in United States ports, the vessel would stop at only 2 Canadian ports as against 4 United States ports. We must, accordingly, conclude that the primary object of these voyages would be coastwise transportation. Penalties under title 46, United States Code, section 289 would thus be incurred as to any passengers going ashore at any of the Alaskan ports.

103324

Sincerely yours,

[redacted]

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

G8

AND DATE	[redacted]				
SURNAME					
CODE AND DATE					
SURNAME					

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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE · CORRESPONDENCE APPROVAL AND CLEARANCE · Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

APR 06 1978 VES-3-02-R:CD:C
103370 CH
103367

[redacted]

Dear [redacted]

Your letter dated March 30, 1978, asks us to confirm that certain proposed 1979 Canada/Alaska cruises of the [redacted] operated by [redacted], will be in compliance with title 46, United States Code, section 289, and section 4.80a, Customs Regulations.

On each cruise the vessel would proceed from San Francisco to Nanaimo (10 hours), Vancouver (17 hours), Juneau (12 hours), Skagway (13 hours), Sitka (8 hours), Victoria (28 hours), and back to San Francisco. The vessel would thus spend 33 hours in 3 United States ports and 55 hours in 3 Canadian ports. You say that, except in an emergency, passengers would not be permitted to terminate their voyage at any port other than their port of embarkation.

In our opinion coastwise transportation would not be the primary object of these voyages and passengers may go ashore temporarily at intermediate coastwise ports without violating title 46, United States Code, section 289.

Sincerely yours,

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

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[redacted]

103370/103367

[redacted]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUN 27 [redacted]

REPLY TO
VES-3-02-R:CD:C
103439 JM

[redacted]

Dear [redacted]

This is in response to your letter of May 10, 1978, concerning ocean cruise itineraries planned by your client, [redacted] with the first cruise to begin on July 3, 1978. The vessel to be used is the [redacted] a Panamanian flag vessel.

Title 46, United States Code, section 289, provides that no foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port. Section 4.80a, Customs Regulations (19 C.F.R. 4.80a) states when a foreign vessel is deemed to have landed a passenger in violation of section 289.

In your letter you state that some cruises will leave New York and return without touching any foreign port or other domestic port. Other cruises will be voyages from New York to Halifax, Nova Scotia, and return. Since passengers will not go ashore at any domestic port other than the port of embarkation, these cruises would not constitute coastwise transportation and would not violate section 289.

In the third situation discussed in your letter, the voyage will originate at New York; the vessel will then proceed to Martha's Vineyard where the passengers would be allowed ashore during a seven hour stay at that port; then the vessel will proceed to Halifax, Nova Scotia, allowing the passengers to go ashore during a 24 hour stop at that port; it will then proceed to New York for discharge of all passengers. Since the passengers will be allowed ashore at only one United States port, other than the port of embarkation, for shopping and incidental sightseeing during a stay of less than 24 hours at the port, the primary purpose of the above-described

103439

G10

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REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

cruise is not considered to be the coastwise transportation of the passengers. Accordingly, the cruises as proposed in your letter will not constitute a violation of title 46, United States Code, section 289.

Sincerely yours,

John P. Tebeau
Director
Carriers, Drawback and Bonds Division

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G11

103459

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
United States Customs Service WASHINGTON, D.C. 20229	ACTION: P INFO:	
ACCOUNTING CLASSIFICATION	DATE PREPARED JUNE 19, 1978	TYPE OF MESSAGE [X] SINGLE [ ] BOOK [ ] MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME Russell Berger	PHONE NUMBER 566-5706	
THIS SPACE FOR USE OF COMMUNICATION UNIT		

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO: [redacted]

JUN 2 1978 103485 VES-3-17-CH

REURTEL JUNE 10 CONCERNING USE TUGS AND BARGES NOT QUALIFIED TO ENGAGE IN COASTWISE TRADE FOR TRANSPORTATION MERCHANDISE ON YUKON AND ITS TRIBUTARIES. FOURTH PROVISO STILL IN EFFECT AND 46 USC 883 DOES NOT APPLY TO TRANSPORTATION MERCHANDISE ON YUKON AND ITS TRIBUTARIES. FOURTH NOT APPLICABLE TO ALASKAN RIVERS WHICH ARE NOT TRIBUTARIES OF YUKON OR TO TRANSPORTATION OF PASSENGERS.

B. J. BRITZ
CHIEF, CARRIER RULINGS BRANCH
CARRIERS, DRAWBACK AND BONDS DIVISION

Info: R.C., SAN FRANCISCO
D.D., ANCHORAGE

103485

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
1	1	G12

STANDARD FORM 14
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-32.208

U.S. GOVERNMENT PRINTING OFFICE: 1974-535-402

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21 JUL 1978

~~21 JUL 1978~~

VES-2-R:CD:C
103550 JM

Wolf Haber, Esq.
Assistant General Counsel (ALFO)

21 JUL 1978

Chief Counsel

Request from OMB re draft report of the Special Representative for Trade Negotiations on H.R. 8715, regarding foreign-built inflatable rafts.

This responds to your request of July 6, 1978, with reference to the OMB request for comments on the Special Representative for Trade Negotiations report on H.R. 8715, "To provide for the transportation within the United States of passengers in foreign-built inflatable rafts, and for other purposes."

Similar bills, H.R. 5476, H.R. 5534 and S. 1076, have been introduced to exempt inflatable boats used in river running from the restrictions of the coastwise laws. Our comments on H.R. 5476 and S. 1076 have been previously forwarded to you, copies attached hereto.

Since the subject comments relate primarily to the liberalization of trade measures, a policy matter within the responsibility of the Special Representative for Trade Negotiations, we believe no comment should be made by the Customs Service on this aspect of the bill. However, we note that the comments concern hovercraft as well as inflatable rubber boats. We believe any comments on the bill should relate only to the matter covered by the bill, in this case inflatable rubber rafts.

(Signed) Richard H. Abbey

Thaddeus Rojek

G13

CODE AND DATE	[redacted]					
NAME						
CODE DATE						
NAME						

NT OF THE TREASURY - U. [redacted] AND CLEARANCE Form 100 (11-15-73)

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24

VES-3-06-R:CD:C
VES-3-07-R:CD:C
103792 PC

[redacted]

Dear [redacted]

In your letter of December 28, 1978, you refer to our ruling of April 17, 1978, addressed to Mr. Tozzoli, Director, Marine Terminals, Port Authority of New York and New Jersey, relating to certain proposed passenger-car ferry services to be offered passengers in the United States. You enclosed several advertising layouts which you plan to use in connection with the car-ferry services and ask for our comments.

We have reviewed the proposed advertising layouts and it is our opinion that the use of the advertising layouts would not adversely affect our ruling of April 17, 1978.

Sincerely yours,

J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

103792

G14

[redacted]

CODE AND DATE					
SURNAME					
CODE AND DATE					
SURNAME					

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

103819

MAR 26 1979

Dear [redacted]

This responds to your letter of January 24, 1979, in which you requested a temporary waiver of the coastwise shipping prohibition in the Jones Act (46 U.S.C. 883) on behalf of [redacted] to permit the use of a foreign vessel to transport crude oil from Apra Harbor, Guam, to Honolulu, Hawaii.

The Department of Energy (DOE) has advised me that it concurs that the waiver should be granted, if Commerce determined that the waiver was necessary to expedite this shipment. Commerce has indicated that if a United States flag vessel was used a delay would result.

The Department of Commerce has advised me that there was no United States flag tanker, in Guam, available to carry this cargo. Contracting for the closest United States flag carrier would involve a delay. Because of this it voiced no objection to granting a waiver of the Jones Act for the single shipment of this crude oil.

The Department of Defense (DOD) has advised me that, in this case, the crude oil is used to manufacture jet fuel necessary to maintain military readiness. DOD thus supports your request for waiver.

I have, therefore, found that the waiver you requested is presently necessary in the interest of national defense. Pursuant to the Act of December 27, 1950 (64 Stat. 1120), ~~I hereby grant your request to waive~~ the restrictions against engaging in the coastwise trade imposed on the [redacted] by Section 883 of Title 46 of the United States Code, for this single shipment of crude oil, are waived.

103819

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A3

We have notified appropriate officials of the United States Customs Service of this grant, waiver.

Sincerely,

(Signed) Richard J. Davis

Richard J. Davis
Assistant Secretary
(Enforcement and Operations)

[redacted]

103819

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A4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

25 JUL 1979

VES-3-04-R:CD:C
103961 TL

This ruling is the response to a request as to whether electronic equipment can be tested and demonstrated to people on board a foreign-built vessel during a ride in United States territorial waters without violating coastwise laws.

ISSUE:

Whether a foreign-built vessel can be used to take persons on rides entirely within United States territorial waters to demonstrate electronic equipment without violating title 46, United States Code, section 289.

FACTS:

The owner of a vessel built in Taiwan wishes to demonstrate electronic equipment on this vessel during a short ride in territorial waters of the United States.

LAW AND ANALYSIS:

Generally speaking, only vessels which have been built in and documented under laws of the U.S. may engage in coastwise trade. Coastwise trade includes the transportation of merchandise or passengers between points in the U.S. It also includes the carriage of passengers entirely within U.S. waters, even though they are returned to the point of departure.

If the electronic equipment is carried on board the vessel for demonstration purposes only, it is considered to be "merchandise" as that term is used in section 883 of title 46. Section 883 prohibits the coastwise transportation of merchandise in a foreign-built vessel, which involves the lading of merchandise at one point embraced within the coastwise laws and the unlading of this merchandise at another such point. A "passenger" is defined in section 4.50 of the Customs Regulations as a person carried on a vessel who is not connected with the operation, navigation, ownership or business of the vessel. Accordingly, the people carried on this vessel to observe the demonstration are "passengers".

Thus, the vessel cannot take passengers on board at one U.S. point to observe the equipment and discharge them at another such point. Nor can the vessel so transport the demonstration equipment. It also cannot take the passengers on a ride entirely within U.S. territorial waters, even though they are discharged at the port of departure, as this is also considered to be coastwise trade.

AS

REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

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103961

HOLDING:

The carriage of passengers entirely within United States territorial waters is considered coastwise trade, even though the passengers embark and debark at the same port or place, and a foreign-built vessel is prohibited from engaging in such activity. Similarly, a foreign-built vessel is prohibited from taking passengers on board at one port or place in the United States, carrying them entirely within territorial waters, and discharging them at another such port or place.

There is, however, no law administered by this agency which would prohibit the vessel from taking the passengers on board at a point in the U.S. and, after a voyage through waters beyond the territorial jurisdiction of the U.S. (three miles), returning to the same point to discharge the passengers. Additionally, it is not necessary to unlade the equipment at the termination of every demonstration ride, so long as when it is eventually unladed, it is at the point where it was laded.

George C. Steuart
Acting Director
Carriers, Drawback and Bonds Division

103961

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A6

VES-3-R:CD:C
104004 MKT

Commander Michael J. Jacobs
District Legal Officer
Fourteenth Coast Guard District
Prince Kalanianaole Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

Dear Commander Jacobs:

Your letter of May 17, 1979, requests our recommendation of reference materials which explain the coastwise trade laws in a comprehensive fashion. We wish that such works did exist to recommend. The operation of these laws has been essentially a product of the interpretations of the Customs Service of which you have already been apprised. Nevertheless, we will try to briefly describe the coastwise trade laws so that you may investigate them further should you desire to do so.

The prohibitions of the coastwise trade laws may be simply stated. Foreign-flag, foreign-built, or vessels once under foreign registry may not engage in the coastwise trade. Section 4.80(a), Customs Regulations, defines coastwise trade generally as the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, or merchandise for any part of the transportation. A passenger is any person carried on a vessel who is not connected with her operation, navigation, ownership, or business (19 CFR 4.50(b)). Merchandise includes goods, wares, and chattels of every description and merchandise the importation of which is prohibited (19 U.S.C. 1401(c)). The Customs Service has ruled that material without economic value of which the owner would be deprived by forfeiture, is not merchandise within the meaning of 46 U.S.C. 883.

The Customs Service considers the coastwise laws to be 19 U.S.C. 1588 and 46 U.S.C. 289, 316, and 883. Other statutory provisions which relate to the coastwise trade are:

> 19 U.S.C 81e; 46 U.S.C. 11, 13, 121 (third paragraph, first sentence), 251(a) (first sentence, 289a, 289b, 319, 725, 802(a), 808, 877, and 883-1; and 48 U.S.C. 1405c(d) and 1664.

A1

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The coastwise trade law prohibitions extend to points in the United States, including Districts, Territories and possessions unless otherwise exempted. Further, 43 U.S.C. 1333(a)(1) makes the coastwise laws applicable to artificial islands on the Outer Continental Shelf and all installations and certain other devices permanently or temporarily attached to the seabed for the purpose of extracting natural resources, and 33 U.S.C. 1518 may be construed as making the coastwise laws similarly applicable to deep-water ports.

The coastwise laws are expressly inapplicable to:

American Samoa (48 U.S.C. 1664);
U.S. Virgin Islands (48 U.S.C. 1405c(d) and Executive Order 9170);
Canton Island (Presidential Proclamation 3215);
Commonwealth of the Northern Marianas (48 U.S.C. 1681 note), except with respect to the activities of the United States Government and its contractors in the Northern Marianas Islands (subject to the qualification that 46 U.S.C. 883 does not apply to property of the United States government, 26 Opinions of the Attorney General 415, 426 (1907)).

The coastwise laws are also inapplicable to the Trust Territory of the Pacific Islands and the Panama Canal Zone.

The applicability of any of these statutes to a specific factual situation involves a number of considerations which we may not concisely summarize here. Thus we caution against speculation or the issuance of advice on the meaning of the coastwise laws and encourage anyone with a question about the interpretation of specific sections to contact us directly.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

George C. Steuart
Acting Director
Carriers, Drawback and Bonds Division

109009

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VES-3-02-R:CD:C
104013 TL

This ruling concerns the proposed use of a foreign vessel to transport passengers from one U.S. port to Canadian and Alaskan ports and back to the port of embarkation.

ISSUE:

Whether coastwise trade is the object of a voyage pursuant to section 4.80a(a), Customs Regulations, where passengers are transported from a United States port to three Canadian ports for a total of 42 hours and to three Alaskan ports for a total of 22 hours and back to the port of embarkation.

FACTS:

Passengers would be transported in a foreign flag vessel from San Francisco to three Canadian and three American ports. The passengers will be permitted ashore as follows: Vancouver, 16 hours; Nanaimo, 11 hours; Victoria, 15 hours; Ketchican, 6 hours; Juneau, 8 hours; and Sitka, 8 hours. Forty-two hours would be spent in the Canadian ports and twenty-two hours would be spent in the American ports. Except for an emergency, passengers are not permitted to terminate their voyage at any port other than their port of embarkation.

LAW AND ANALYSIS:

This cruise itinerary indicates that more time is spent in Canadian than American ports. Additionally, the number of Canadian ports visited is equal to the number of American ports visited. Thus, in our opinion coastwise transportation of these passengers is not the primary object of the voyage and passengers may go ashore temporarily at intermediate coastwise ports without violating title 46, United States Code, section 289.

HOLDING:

The primary object of a voyage in which passengers are transported to three Canadian ports to spend forty-two hours and three American ports to spend twenty-two hours is not coastwise transportation. Passengers may go ashore temporarily at the American ports without violating title 46, United States Code, section 289.

[redacted]

CODE AND DATE	[redacted]					
SURNAME	[redacted]					
CODE AND DATE						
SURNAME						

George C. Stewart
Acting Director
Carriers, Drawback and Bonds Division

DEPARTMENT OF THE TREASURY — CONCURRENCE, APPROVAL AND CLEARANCE

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

104013

26 FEB 1980

26 FEB 1980

VES-7-02-RRUCDC
104491 HS

Dear Mr

This is in response to your letter requesting whether the Jones Act prohibits either living aboard a Canadian-built barge and buying fish from an anchored position within the state waters of Alaska or using the barge to transport the fish over waters within the 3 mile limit of Alaska.

Section 177.2(b)(5), Customs Regulations (copy enclosed), provides that a request for a Customs Service ruling must include a statement whether, to the knowledge of the person submitting the request, the same transaction or one identical to it has ever been considered or is currently being considered by any Customs Service officer, or whether to the knowledge of the person submitting the request, the issues involved have ever been considered or are currently being considered by the U.S. Customs Court, the U.S. Court of Customs and Patent Appeals, or any court of appeal therefrom. If the requested ruling is with respect to one of a series of similar and related transactions, this fact shall also be stated. We cannot issue a binding ruling without the above required statement. We are however, furnishing the following general information which may be helpful.

Title 46, United States Code, section 883, commonly known as the Jones Act, prohibits with certain exceptions, the transportation of merchandise by water, or by land and water, between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in a vessel not qualified to engage in the United States coastwise trade. We have held that a foreign-built processing vessel is not precluded by laws administered by the Customs Service from operating within the territorial waters of the United States if the vessel is not harvesting or transporting fish, but is used solely to receive, process and store fish harvested by properly documented United States flag vessels. Any transportation in such a vessel of merchandise (fish or fish products) between points within the territorial waters (3 mile limit) to a United States port would be prohibited by section 883.

A/0

We have also held that a coastwise transportation of merchandise is not consumated until merchandise which has been laden at one coastwise point is unladen at a second coastwise point. If fish were laden on a processing vessel at one point in the territorial waters and transshipped to another vessel at another point in the territorial waters, a coastwise transportation would have been consumated. The transportation would not have been a coastwise transportation only if the transshipment took place either at the same point where the processing vessel received the fish or at a point on the high seas.

We hope you find the information furnished helpful. If you desire a binding ruling, please send the statement specified in this letter.

Sincerely,

/s/ B. J. Fritz

B. J. Fritz
Chief
Carrier Rulings Branch

Enclosure

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

13 MAY 1980

YES-3 RMCDC
7-01/7-03/7-06
104532 MKT

John G. Gissberg
Assistant Attorney General
State of Alaska
420 L Street, Suite 100
Anchorage, Alaska 99501

Dear Mr. Gissberg:

Your letter of April 17 which modifies letters of March 13 and April 2, 1980, from [redacted] of your office, requested a ruling on the application of the Jones Act (title 46, United States Code (U.S.C.), section 883) and the Nicholson Act (46 U.S.C. 251(a), second sentence) to foreign-flag vessels used to transport and land in the United States or abroad, fish transferred from United States vessels on the high seas, the territorial waters of the United States or the internal waters of Alaska.

Specifically, you contemplate several ways to operate three types of vessels to catch and deliver salmon to United States processing plants. The catching vessels will be United States-flag vessels of less than 5 net tons that are manned by United States citizens or resident aliens. United States-flag, coastwise-qualified, transporting vessels will receive salmon directly from the United States catching vessels. Foreign-flag transporting vessels will deliver salmon received from the United States transporting vessels to United States ports or onshore processing plants. The transfers of salmon from United States transporting vessels to foreign transporting vessels may occur in the internal waters of Alaska, in United States territorial waters, or in the 3-to-200 mile fishery conservation zone (FCZ).

You present six options for the fishing operations:

1. U.S. catcher vessels harvest salmon inside the territorial sea or the FCZ. The salmon are taken to internal waters and unladen to a U.S. transport vessel. The U.S. transport vessel unlades the fish to a foreign transport vessel that is in internal waters.

[a.] Is there any violation of U.S. Customs laws if the foreign transport vessel takes these salmon to a U.S. port? [b.] Is there any violation if the foreign transport vessel takes the salmon to a foreign port?

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Before we address the specific questions you ask, which we have labelled a. and b. for convenience, we wish to point out that by administrative precedent, vessels of less than 5 net tons, owned by United States citizens or by resident aliens, may engage in the American fisheries, including operations in territorial waters (T.D. 56382(6)). The ownership of the vessel is the controlling factor rather than by whom it is manned. The permissibility of using vessels manned by United States citizens or by resident aliens would depend upon whether the ownership of the vessels satisfies the requirements of T.D. 56382(6).

Furthermore, we remind you that the engagement of foreign vessels in fishing activities in the FCZ is a subject within the jurisdiction of the Department of Commerce under the Fishery Conservation and Management Act of 1976 (FCMA). In addition, any questions you have regarding the eligibility of a vessel for documentation for the fisheries is within the jurisdiction of the United States Coast Guard.

Our responses to your specific questions are as follows:

a. Yes. If the foreign transport takes these salmon to a United States port, the vessel would violate section 883 of title 46. Section 883 prohibits the transportation of merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, if the merchandise is transported directly between those points or via a foreign port, for any part of the transportation by a vessel of foreign-build, under foreign-flag, or a vessel once under foreign registry (section 4.80, Customs Regulations; 19 CFR 4.80). "Merchandise" includes goods, wares, and chattels of every description and includes fish (19 U.S.C. 1401(c)). When landed after its transportation on a foreign vessel during any part of its transportation between coastwise points, the salmon would be subject to the penalty of forfeiture or a monetary amount equal to its value.

b. No. No violation of any laws administered by the Customs Service would occur merely because the foreign vessel transports the salmon from the internal waters of Alaska to a foreign port.

2. Same as #1, but the U.S. transport vessel unlades the salmon to the foreign transport vessel while in territorial seas.

a. Yes. This activity would violate section 883 for the reasons stated in the answer to 1a.

b. No. No violation of any laws administered by the Customs Service would occur merely because the foreign vessel transports the salmon from United States territorial waters to a foreign port.

DOCUMENT MAY BE RELEASED TO THE

3. Same as above, but the U.S. transport vessel unlades the salmon to the foreign transport vessel in the FCZ.

a. Yes. Section 883 prohibits the transportation of merchandise by a foreign vessel for even part of the movement of the merchandise between coastwise points. The coastwise transportation would begin when the salmon is transferred to the United States vessel in the internal waters of Alaska and would be completed when the foreign vessel lands the fish at a coastwise point other than the place of lading.

The activity would also violate the Nicholson Act (46 U.S.C. 251(a), second sentence) which provides that:

> Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products.

The Nicholson Act prohibits the use of foreign-flag vessels to land in Alaskan territorial waters fish or fish products transferred to it on the high seas. This does not preclude the use of foreign-flag vessels to transport fish or fish products between points on the high seas if they will be landed by properly documented vessels of the United States. However, if this transportation is part of a movement between points in territorial waters, it would be prohibited by section 883 of title 46 as noted above.

b. No. No violation of any laws administered by the Customs Service would occur merely because the foreign vessel transports the salmon from the FCZ to a foreign port.

4. Same as above, but the U.S. transport vessel unlades the salmon to the foreign transport vessel in waters beyond the FCZ.

a. Yes. The vessel would violate the Nicholson Act for the reasons stated in the second paragraph of the answer to 3a.

b. No. No violation of any laws administered by the Customs Service would occur merely because the foreign vessel transports the salmon from the high seas beyond the FCZ to a foreign port.

5. The U.S. catcher boats unlade salmon they caught to the U.S. transport vessel in the FCZ. The U.S. transport vessel makes a record of the purchase and unlades the salmon to a foreign transport vessel in the FCZ. Under existing U.S. Customs laws, can the foreign vessel transport the salmon to a U.S. port?

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No. This activity would be prohibited by section 883 and section 251(a), second sentence, as described in the answer in 3a. above.

6. Would the answers to any of the above hypotheticals be changed if the foreign transport vessel stopped in the FCZ and transferred the salmon to a U.S. transport vessel for delivery to a U.S. processing plant?

Yes. The answers to the questions in 3a. and 4a. would be changed. No violation of the Nicholson Act section 251(a), second sentence, would occur in 3a or 4a. However, a violation of section 883 would still exist in 3a as described in its answer.

7. Under what emergency conditions, if any, can a foreign transport vessel obtain permission to enter a U.S. port in violation of the Jones Act or Nicholson Act to unlade fish for the purpose of preventing spoilage or waste?

Section 4.96(g), Customs Regulations, provides that:

> A...vessel which arrives in the United States in distress shall be subject to the usual requirements applicable to foreign vessels arriving in distress. While in the United States, supplies, equipment, or repairs may be secured, but, except as specified in the next sentence, fish shall not be landed unless the vessel's master, or other authorized representative of the owner, shows to the satisfaction of the district director that it will not be possible, by the exercise of due diligence, for the vessel to transport its catch to a foreign port without spoilage, in which event the district director may allow the vessel upon compliance with all applicable requirements, to land, transship, or otherwise dispose of its catch.

When the arrival of a vessel in distress is not apparent, the Customs Service has previously relied upon a verification by the United States Coast Guard that the vessel has indeed arrived in distress. The Coast Guard limits this determination to whether the arrival is a result of a force majeure (33 CFR 124.10(a)(3), 124.10(b)(6), 124.14(d)).

The Fifth Circuit has found that in the ordinary meaning of the phrase:

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A vessel is in distress when in a state of danger or necessity, "as from want of provisions or water," etc. (Webst. Dict.); or "in a situation of misfortune or calamity, as a steamer in distress" (Stand Dict.). A vessel, of course, is also in distress when wrecked, and needing salvage service;... The Saehelm, 99 F. 456, 458 (5th Cir. 1900).

If you have any further questions, please do not hesitate to contact us again.

Sincerely

/s/ B. J. Fritz

B. J. Fritz
Chief
Carrier Rulings Branch

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[redacted]

CODE AND DATE	[redacted]						
SURNAME							
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE · CORRESPONDENCE APPROVAL AND CLEARANCE · Form 100 (11-15-73)

U.S. CUSTOMS SERVICE
OFFICE OF COMMERCIAL OPERATIONS
WASHINGTON, D.C. 20229

P UNCLASSIFIED

6/27/80

PAUL HEGLAND 566-5706 104762

104762

[redacted] 30 JUN 1980

INFORMATION COPIES TO RC BALTIMORE, DD NORFOLK, PD NEWPORT NEWS

VES-3-12-RRUCDC
104762 PH

REURTEL 6-25-80 IN WHICH YOU ASK WHETHER A NON-COASTWISE-QUALIFIED VESSEL MAY BE USED TO TRANSPORT GARBAGE FROM VESSELS AT ANCHORAGE IN PORT OF HAMPTON ROADS TO SHORE FOR DISPOSAL. UNDER 46 U.S.C. 883, A NON-COASTWISE-QUALIFIED VESSEL IS PROHIBITED FROM TRANSPORTING MERCHANDISE BETWEEN POINTS IN THE UNITED STATES. CUSTOMS HAS RULED THAT REFUSE TRANSPORTED BETWEEN UNITED STATES POINTS WHICH HAS NO APPARENT VALUE AND WILL NOT BE USED COMMERCIALLY OR IN TRADE BUT IS BEING DUMPED AS WORTHLESS IS NOT CONSIDERED "MERCHANDISE" WITHIN THE MEANING OF SECTION 883. IF THE REFUSE HAS APPARENT VALUE AND WILL BE USED COMMERCIALLY OR IN TRADE, E.G., TO CREATE AN ISLAND OR JETTY OR TO OTHERWISE CREATE ADDITIONAL LAND AREA, IT IS CONSIDERED "MERCHANDISE" UNDER SECTION 883, AND ITS TRANSPORTATION BETWEEN

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(104762 CONTINUED)

UNITED STATES POINTS IN A NON-COASTWISE-QUALIFIED VESSEL IS PROHIBITED. ACCORDINGLY, IF THE REFUSE TO BE TRANSPORTED IN THIS INSTANCE HAS NO APPARENT VALUE AND WILL NOT BE USED COMMERCIALLY OR IN TRADE, ITS TRANSPORTATION IN A NON-COASTWISE-QUALIFIED VESSEL AS DESCRIBED WILL NOT BE PROHIBITED BY COASTWISE LAWS.

[illegible]

B. J. FRITZ, CHIEF
CARRIER RULINGS BRANCH

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...ENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

1 AUG 1980

VES-3-02-RRUCDC
104767 PH

[redacted]

Dear [redacted]

Your letter of May 5, 1980, to [redacted] concerning the use of a vessel to carry six or less passengers for hire on Michigan waters, was forwarded to us for a reply on whether the use of the vessel discussed in your letter is coastwise trade.

Section 177.2(b)(5), Customs Regulations, provides that a request for a Customs Service ruling must include a statement whether, to the knowledge of the person submitting the request, the same transaction or one identical to it has ever been considered or is currently being considered by any Customs Service office or whether, to the knowledge of the person submitting the request, the issues involved have ever been considered or are currently being considered by the U.S. Customs Court, the U.S. Court of Customs and Patent Appeals, or any court of appeal therefrom. If the requested ruling is with respect to one of a series of similar and related transactions, this fact shall also be stated.

Section 177.2(b)(2)(iv), Customs Regulations, provides that if the transaction involves a vessel, the request for a ruling should include information relating to place of build and nationality of registration and, if to be used in waters under the jurisdiction of the United States, the exact place or places of intended use, if known. If the request for a ruling involves a determination as to whether or not the primary objectof a cont of a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289, the request should completely identify the voyage, including the proposed time of arrival at and departure from every port on the itinerary and any coordination of the voyage with special events at coastwise ports, and should be accompanied by samples, if available, of brochures, advertising, and other information that may be relevant to a determination of the primary object of the proposed voyage.

We cannot issue a binding ruling without the above required statement and information. We are, however, furnishing the following general information which may be helpful.

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11 UG 1980

Title 46, United States Code, section 289, and other statutes (see e.g., 46 U.S.C. 11) prohibit unqualified vessels, foreign vessels, and vessels lacking proper documentation from transporting passengers between places in the United States either directly or by way of a foreign port.

We have ruled that the transportation by a foreign-built vessel of passengers to the high seas or foreign waters and back to the port of embarkation is not considered coastwise trade (see, 29 Opinion of the Attorney General 318 (1912), copy enclosed). However, we have also ruled that if the vessel does not proceed beyond the territorial waters of the United States, transportation of the passengers will be considered coastwise trade. It should also be noted that the carriage of offshore fishing parties for hire, whether or not trips extend beyond territorial waters, is considered coastwise trade. Treasury Decision 55193(2), copy enclosed.

Upon receipt of a further inquiry containing the above required information and statement, we will be pleased to issue a ruling on this matter.

Sincerely,

B. J. Fritz
Chief
Carrier Rulings Branch

[redacted]

[redacted]

[redacted]

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

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12 SEP 1980

VES-3-19-RRUCDC
104802 DHR

This ruling concerns the use of foreign vessels lying off the U.S. coast for the storage of Alaskan crude.

ISSUES:

Whether foreign vessels located off the coast of the United States may be used for temporary storage of Alsakan crude prior to its delivery to refineries on shore.

FACTS:

Due to a shortage of onshore facilities for the storage of Alaskan crude, it is proposed to transport the crude from Alaska and transfer the crude from the transporting vessel into foreign tankers located in the Gulf of Mexico off the coast of the United States. When onshore storage facilities become available, the crude would be discharged from the foreign vessel onto a coastwise-qualified vessel for transportation to the onshore facilities. The foreign storage vessels would remain within a specific location in the Gulf.

To ensure a safer operation, when the crude is both transferred onto a storage vessel and transferred from it, the vessels involved will necessarily be underway.

LAW AND ANALYSIS:

Title 46, United States Code, section 883 (Jones Act), generally prohibits the transportation of merchandise between U.S. coastwise points, or any part of such transportation, in a foreign vessel. A vessel used solely for the temporary storage of merchandise being transported in coastwise trade is not considered to be itself used for such transportation. The movement underway of a storage vessel incidental to the safe transfer of merchandise onto and off of that vessel would not be considered a transportation of the merchandise within the prohibition of section 883.

HOLDING:

There is no law administered by the Customs Service which would prohibit the use of a foreign vessel stationed off the coast of the United States from being used solely for the temporary storage of Alaskan crude

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being transported in the coastwise trade. Further, the movement underway of a storage vessel during loading and unloading operations is not considered a movement in coastwise trade, provided the movement is solely to facilitate the safe transfer of the crude and not to transport it.

/s/ B. J. Fritz

B. J. Fritz
Chief
Carrier Rulings Branch

104802

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND

6 OCT 1980

VES-3-07-RR:CDC
VES-3-21
104807 MKT

This ruling concerns the application of the coastwise laws to the movement of a foreign storage vessel from its permanent station, for safety purposes, during the transfer of Alaskan oil.

ISSUE:

Whether the movement of a foreign storage vessel from its permanent station, solely for safety purposes, during the transfer of Alaskan oil, would result in a violation of title 46, United States Code, section 883 (46 U.S.C. 883)?

FACTS:

Your company plans to station a foreign vessel on the high seas to store Alaskan oil. Transfers to and from the storage vessel may be accomplished while the storage vessel is moving slowly. This movement would afford greater safety in the transfer operation. After the transfers, the storage vessel would return to its permanent station. The storage vessel would receive oil from and transfer it to only coastwise-qualified vessels.

LAW AND ANALYSIS:

Section 883 of title 46, prohibits the transportation of merchandise between points embraced within the coastwise laws, either directly or via a foreign port, or for any part of such transportation in a vessel. However, the Customs Service has previously ruled that the movement of a storage vessel at a slow speed during transfer operations, solely to assure greater safety in the transfer, would not constitute any part of a coastwise transportation of oil, provided that the storage vessel has a permanent location from which it moves to lade and unlade the oil.

HOLDING:

The movement of a foreign storage vessel from its permanent station, solely for safety purposes, during the transfer of Alaskan oil, would not result in a violation of 46 U.S.C. 883, provided the vessel returns to the location at which it began to lade the oil immediately after the transfer is accomplished, and that no oil is transferred from the vessel except at or in the immediate vicinity of that permanent station.

EFFECT ON OTHER RULINGS:

This decision follows Customs Service letter ruling VES-5-02-RRUCDC 104744 CH, dated September 12, 1980.

/s/ B. J. Fritz

B. J. Fritz
Chief
Carrier Rulings Branch

104807

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2 OCT 1980

VES-3-07-RRUCDC
VES-3-21
104878 MKT

This ruling concerns the application of the coastwise laws to the movement of a foreign storage vessel from its permanent station, for safety purposes, during the transfer of Alaskan oil.

ISSUE:

Whether the movement of a foreign storage vessel from its permanent station, solely for safety purposes, during the transfer of Alaskan oil, would result in a violation of title 46, United States Code, section 883 (46 U.S.C. 883).

FACTS:

Your company plans to station a foreign vessel on the high seas to store Alaskan oil. Transfers to and from the storage vessel may be accomplished while the storage vessel is moving slowly. This movement would afford greater safety in the transfer operation. After the transfers, the storage vessel would return to its permanent station. The storage vessel would receive oil from and transfer it to only coastwise-qualified vessels.

LAW AND ANALYSIS:

Section 883 of title 46, prohibits the transportation of merchandise between points embraced within the coastwise laws, either directly or via a foreign port, or for any part of such transportation, in a foreign vessel. However, the Customs Service has previously ruled that the movement of a storage vessel at a slow speed during transfer operations, solely to assure greater safety in the transfer, would not constitute any part of a coastwise transportation of oil, provided that the storage vessel has a permanent location from which it moves to lade and unlade the oil, and to which it returns in each case.

HOLDING:

The movement of a foreign storage vessel from its permanent station, as necessary to enable it to safely lade oil, would not result in a violation of 46 U.S.C. 883, provided that in each case the vessel returns to a fixed point which is its permanent location point.

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EFFECT ON OTHER RULINGS:

This decision follows Customs Service letter ruling VES-5-02-RRUCDC 104744 CH, dated September 12, 1980.

/s/ B. J. Fritz

B. J. Fritz
Chief
Carrier Rulings Branch

104818

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11.15.73)

U.S. CUSTOMS SERVICE
OFFICE OF REGULATIONS AND RULINGS
WASHINGTON, D.C. 20229

P 104827

9/19/80

HAROLD SINGER 566-5591

29 SEP 1980

[redacted]

INFO COPY TO RC MIAMI
VES 3-07
VES 3-14 RRUCDC
104827 HS

TELEX 512545

REURTEL AUGUST 6, 1980, ASKING WHETHER AN AMERICAN BUILT TUG NOW UNDER THE PANAMANIAN FLAG DOING RESEARCH AND SALVAGE WORK CAN BE BROUGHT BACK UNDER AMERICAN FLAG AND USED FOR SIMILAR WORK IN AMERICAN WATERS.

AS WE INDICATED TO YOU BY TELEPHONE, SECTION 177.2(b)(5), CUSTOMS REGULATIONS, PROVIDES THAT A REQUEST FOR A CUSTOMS SERVICE RULING MUST INCLUDE A STATEMENT WHETHER, TO THE KNOWLEDGE OF THE PERSON SUBMITTING THE REQUEST, THE SAME TRANSACTION OR ONE IDENTICAL TO IT HAS EVER BEEN CONSIDERED OR IS CURRENTLY BEING CONSIDERED BY ANY CUSTOMS SERVICE OFFICER, OR WHETHER TO THE KNOWLEDGE OF THE PERSON SUBMITTING THE REQUEST, THE ISSUES INVOLVED HAVE EVER

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BEEN CONSIDERED BY THE UNITED STATES CUSTOMS COURT, THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS, OR ANY COURT OF APPEAL THEREFROM. IF THE REQUESTED RULING IS WITH RESPECT TO ONE OF A SERIES OF SIMILAR AND RELATED TRANSACTIONS, THIS FACT SHALL ALSO BE STATED. WE CANNOT ISSUE A BINDING RULING WITHOUT THE ABOVE REQUIRED STATEMENT. WE ARE, HOWEVER, FURNISHING THE FOLLOWING GENERAL INFORMATION WHICH MAY BE HELPFUL.

AS STATED IN OUR TELEGRAM OF AUGUST 7, CUSTOMS DOES NOT CONSIDER A VESSEL USED SOLELY IN RESEARCH AS BEING USED IN COASTWISE TRADE.CUSTOMS DOES, HOWEVER, CONSIDER A VESSEL USED IN SALVAGING IN DOMESTIC WATERS AS BEING USED IN COASTWISE TRADE. ACCORDINGLY, A FOREIGN-FLAG VESSEL MAY NOT ENGAGE IN SALVAGE OPERATIONS. FURTHER, A VESSEL, HAVING BEEN UNDER FOREIGN FLAG, IS NOT ENTITTLED TO BE DOCUMENTED FOR NOR ENGAGE IN THE COASTWISE TRADE AND THEREFORE MAY NOT BE USED IN ANY SALVAGE OR RECOVERY OPERATION WHICH CONSTITUTES ANY PORTION OF THE COASTWISE TRADE.

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104827 CONTINUED

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IF YOU DESIRE A BINDING RULING, PLEASE SEND A FURTHER INQUIRY CONTAINING THE REQUIRED STATEMENT.

/s/ B. J. Fritz

B. J. Fritz

Chief

CARRIER RULINGS BRANCH

[redacted]

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

MAR 0 5 1981

VES-3-02-CO:R:CD:C
105033 HS

The Honorable
Bob Dole
United States Senator
444 S.E. Quincy
Topeka, Kansas 66683

Dear Senator Dole:

This is in response to your letter dated January 12, 1981, to the Department of Commerce, enclosing a letter from [redacted] The Department of Commerce forwarded your letter and its enclosure to the Customs Service for reply.

[redacted] asks whether a Canadian-built vessel "rented" (chartered) by his company to Canadian citizens for an agreed amount for 6 months may be operated in United States waters in Florida or Texas for the winter.

He also asks whether his company may "sell time-shares" on a Canadian-built vessel to Canadian citizens for specified amounts: $5,000 for 2 weeks, $8,000 for 1 month, or $17,000 for 2 months. The vessel would be used in United States waters during the winter. The purchasers of the time-shares would pay approximately $90 per week into a fund to cover insurance, repairs, and replacement and maintenance expenses, and would pay for dockage, fuel, pumpouts, etc., while aboard. [redacted]. would be responsible for moving the vessel back and forth between Canada and the United States.

Foreign-built vessels generally may not engage in the United States coastwise trade, which is defined as the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws. Customs considers the coastwise trade to include the carriage of passengers entirely within territorial waters (including points within a harbor), even though the passengers may disembark at the point of original embarkation and touch no other coastwise point; and the carriage of fishing parties for hire, even if the vessel proceeds beyond territorial waters and returns to the point the passengers originally embark. Section 4.50(b), Customs Regulations (19 CFR 4.50(b)), defines a "passenger", within the meaning of the coastwise laws, as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership or business."

It is a long-established Customs policy, however, that a charterer under a bona fide bareboat charter arrangement, as distinguished from a time or voyage charter arrangement, is considered to be the "owner" of the vessel for the duration of the charter period, and not a passenger. Therefore, a foreign-built vessel under bareboat charter is not deemed to be engaged in coastwise trade when used solely for pleasure purposes.

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Customs applies the following guidelines in determining whether an agreement is a bona fide bareboat charter:

> The nature of a particular charter arrangement is a question of fact to be determined from the circumstances of each case. Under a bareboat or demise charter, the owner relinquishes complete management and control of the vessel to the charterer. On the other hand, if the owner retains any degree of management or control, however slight, the charter is a time or voyage charter, and the vessel is deemed to be engaged in trade. The crux of the matter is whether complete management and control have been wholly surrendered by the owner to the charterer so that for the period of the charter, the charterer is in effect the owner. Although a charter agreement on its face may appear to be a bareboat or demise charter, the manner in which its covenants are carried out and the intention of the respective parties to relinquish or to assume complete management and control are also factors to be considered.

Customs has not established guidelines to determine whether a purchaser of a time-share in a vessel, as described by [redacted] is a "passenger" within the meaning of section 4.50(b) or is an "owner". In arriving at such a determination, consideration would be given, among other things, to whether the purchaser of a time-share in fact obtained title to an undivided proportional interest in the vessel, whether title to the whole of the vessel was vested in time-share purchasers, the degree of control over the vessel's operation exercised by the time-share purchasers and the manner in which that control was exercised, and the arrangements made to satisfy the cost of operating the vessel.

There is insufficient information in [redacted] letter to enable us to determine whether a charterer or the purchaser of a time-share in the circumstances he describes may be considered a passenger as the term is defined in section 4.50(b). If he will furnish us copies of any proposed agreements, together with full details of the manner in which those agreements are to be carried out and the activities in which the vessel will engage, we will issue a binding ruling as to whether the proposed arrangements are in accord with the laws and regulations administered by Customs.

If we can be of any further assistance to you in this or any other matter, please feel free to contact us.

Sincerely,

(Signed) DONALD W. LEWIS

[redacted]

Alfred R. De Angelus
Assistant Commissioner
(Regional Operations)

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE · CORRESPONDENCE APPROVAL AND CLEARANCE · Form 100 (11-15-73)

105033

APR 1981

VES-3-02
CO:R:CD:C
105100 PH

This ruling is an advisory ruling, pursuant to section 4.80a(d), Customs Regulations, as to whether or not certain proposed cruise itineraries of a Liberian-flag vessel would be considered to be coastwise trade in violation of 46 U.S.C. 289.

ISSUE:

Whether certain Alaskan cruise itineraries of a Liberian-flag vessel, originating and terminating in Vancouver, British Columbia, constitute coastwise trade in violation of 46 U.S.C. 289.

FACTS:

The inquirer states that his company will be using the Liberian-flag vessel SS UNIVERSE to offer a number of Alaskan cruises during the summer of 1981. The itineraries proposed are as follows:

1. Embark Vancouver, British Columbia, May 24, June 21, July 12, and August 9; Prince Rupert, British Columbia (5 hours); Juneau (9 hours); Glacier Bay-cruising (2 hours); Homer (3 hours); Anchorage (20 hours); Columbia Glacier-cruising (2 hours); Valdez (3 hours); Sitka (7 hours); Ketchikan (5 hours); disembark Vancouver June 7, July 5, July 26, and August 23, respectively.

2. Embark Vancouver August 22; Prince Rupert (5 hours); Sitka (7 hours); Homer (8 hours); Anchorage (20 hours); Columbia Glacier-cruising (2 hours); Valdez (8 hours); Juneau (15 hours); Glacier Bay-cruising (10 hours); Ketchikan (5 hours); disembark Vancouver September 6.

3. Embark Vancouver June 7, June 1[illegible], July 5, and August 2; Wrangell (4 hours); Juneau (12 hours); Skagway (8 hours); Ketchikan (5 hours); disembark Vancouver June 14, June 21, July 12, and August 9, respectively.

LAW AND ANALYSIS:

Title 46, United States Code, section 289, prohibits the transportation of passengers by a foreign vessel between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed. Section 4.80a, Customs Regulations (19 CFR 4.80a), interprets section 289.

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We have ruled previously that Alaskan cruises with itineraries such as these, originating and terminating at a nearby foreign port, are not considered coastwise trade in violation of section 289, provided the passengers continue with the vessel for the full cruise.

If it is contemplated that any passenger will either join or leave the cruise at an Alaskan port, however, a ruling as to the applicability of section 289 to the specific case should be obtained.

HOLDING:

The cruise itineraries for a Liberian-flag vessel, as described in this ruling, originating and terminating in Vancouver, British Columbia, would not constitute coastwise trade in violation of 46 U.S.C. 289, provided that the passengers continue with the vessel for the full cruise.

EFFECT ON OTHER RULINGS:

None.

(Signed) Alfred G. Scholle

Alfred G. Scholle

105100

[redacted]

CODE AND DATE						
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

24 JUN 1981

VES-2-15-CD:R:CD:C
105117 MS

[redacted]

[redacted] letter of April 2, 1981, regarding the application of the [redacted] propulsion [redacted] sisted jack-up mobile deck platform.

[redacted]

[redacted] deck platform will be [redacted] from its original construction site to a drilling location [redacted] as an extended deck for a U.S.-documented drilling rig while the rig is drilling for oil, gas, and other minerals either within the territorial waters of the United States or upon and adjacent to the United States Continental Shelf and the Outer Continental Shelf.

The platform will be carrying the navigation, drilling, and operating crews and other personnel employed on the drilling rig, equipment for installation or use aboard the drilling rig, replacement parts and consumable and non-consumable supplies for use or consumption aboard the drilling rig or in the wells it drills, including fuel, lubricants, commisary stores, drill pipe, oil well tubular goods, wellhead fixtures, drilling mud, and chemicals. Normally, all crews, equipment, and stores will be those of the owner or operator of the drilling rig or its subcontractors. On occasion, however, at the request of the oil company for whom the drilling rig conducts drilling services, drilling equipment and supplies and personnel of the oil company may be placed on board the deck platform and there employed in connection with the drilling services.

The drilling platform will be towed between drilling locations and other points offshore and to other points on or near shore for the purposes of drydocking, repairing, cleaning or other maintenance, or berthing during inactive periods. The platform may also be towed to points on the high seas or to foreign waters. At these times the deck platform will have a crew apart from the drilling rig crew. Any tows will be accomplished by tugboats which will be U.S.-documented.

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During periods while the deck platform is used in connection with the drilling rig, it will be attached to the seabed by its legs. During such periods, crews, equipment and stores will be transported to and from the drilling rig and the deck platform by support vessels qualified to engage in the coastwise trade and by helicopters.

While the deck platform is used in connection with the drilling rig at a drilling location it is possible that certain elements of crews, equipment and stores of the drilling rig will be off-loaded from the deck platform for housing or storage on production platforms or other fixed structures, or removed from such production platforms or other fixed structures and loaded on the deck platform.

The coastwise laws generally prohibit the transportation of passengers or merchandise on a foreign vessel between coastwise points. Points embraced within the coastwise laws include all points within the territorial waters of the United States as well as, pursuant to 43 U.S.C. 1333(a), all artificial islands, installations and devices permanently or temporarily attached to the seabed of the Outer Continental Shelf erected thereon for the purpose of exploring for, developing, or providing resourses therefrom. A drilling rig attached to the Outer Continental Shelf would be considered a coastwise point.

Of course, if a vessel is U.S.-documented and U.S.-built, it may carry passengers and merchandise between coastwise points. From your letter we are unable to determine whether the deck platform will be coastwise-qualified. Even though built in a United States shipyard, a vessel may still be considered to be foreign-built. It is our understanding that the Coast Guard considers a vessel assembled in the United States of major components which are foreign- built to be a foreign-built vessel, and therefore will not document the vessel to engage in coastwise trade. You should also be aware that a vessel must be owned by a citizen to engage in coastwise trade and if owned by a corporation, at least a 75 percent interest in the corporation must be owned by a citizen. Also, note that pursuant to 46 U.S.C. 319, a vessel of 5 or more tons could be fined if found to be engaging in trade without a license. As the Coast Guard's views are of primary importance in these matters, we suggest that the Chief, Merchant Vessel Documentation Division, U.S. Coast Guard, 2100 V Street, S.W., Washington, D.C. 20593, be contacted.

If the deck platform is not coastwise-qualified, 46 U.S.C. 289 would prohibit the carriage on the platform of crewmembers of a drilling rig between the drilling rig, if attached to the Outer Continental Shelf or located within territorial waters, and another coastwise point, such as a shipyard. Section 4.50(b), Customs Regulations (19 CFR 4.50(b)) defines a "passenger" as any person carried on a vessel who is not connected with its operation, navigation, ownership or business. While Customs considers crewmembers and scientific personnel on a vessel in the operation or business of the vessel to not be passengers under 46 U.S.C. 289, the crewmembers of the rig would be considered passengers of the deck platform.

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100117

Similarly, carriage of equipment and stores of a drilling rig attached to the Outer Continental Shelf or located within territorial waters, on a non-coastwise-qualified deck platform between the rig and another coastwise point would be considered a violation of 46 U.S.C. 883. While Customs considers the legitimate equipment and stores of a drilling vessel for use during a drillling operation to not be merchandise under 46 U.S.C. 883, equipment and stores of the drilling rig would be considered merchandise on the deck platform.

A non-coastwise-qualified vessel may carry passengers and merchandise from a coastwise point to a place on the high seas or to a foreign place.

If the deck platform attaches to the Outer Continental Shelf, the platform itself becomes a coastwise point and supply vessels carrying crew and equipment to the platform would have to be coastwise-qualified. The Director, Bureau of Consumer Protection, Civil Aeronautics Board, Washington, D.C. 20428 should be consulted concerning the applicability of the air cabotage laws (49 U.S.C. 1508(b)) to helicopters carrying crew and equipment between coastwise points.

Finally, off-loading passengers or merchandise from one stationary structure to another stationary structure would not be considered coastwise trade.

While we hope the information furnished in this letter is helpful, this letter is not a binding ruling. Customs cannot issue a binding ruling without the statements required in section 177.2 of the Customs Regulations. Note particularly sections 177.2(b)(5) and 177.2(b)(2)(IV). Upon receipt of the required statements, we will issue a binding ruling on the proposed operation of the deck platform.

Sincerely,

/s/ J. C. Laderberg

Jerry C. Laderberg
Acting Chief
Carrier Rulings Branch

105117

THIS DOCUMENT [illegible] TO THE PUBLIC _____

[redacted]

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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

7 MAY 1981

VES-3-02-CO:R:CD:C
105141
104915 JM

[redacted]

Dear [redacted]

This is in response to your letter of April 21, 1981, concerning faculty members for the [redacted] to be held aboard the [redacted] in July 1981.

You state that [redacted] are faculty members for the seminar, that their spouses will accompany them, and that the spouses will assist in the seminar by taking attendance and setting up equipment. In your previous inquiry concerning this seminar, to which we responded on November 10, 1980, you indicated that faculty members and their spouses would not be charged for passage. The voyage will originate in San Francisco, visit several United States and Canadian ports, and terminate in Los Angeles. You state that prior commitments prevent [redacted] and their spouses from boarding and leaving the vessel at the same United States port. Instead, the [redacted] would board in San Francisco and leave in Sitka, and the [redacted] would board in Sitka and leave in Los Angeles.

Title 46, United States Code, section 289, prohibits a foreign vessel from transporting passengers between ports or places in the United States, either directly or by way of a foreign port. Section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)) defines a "passenger" as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership or business".

Under the circumstances outlined, we are of the opinion that [redacted] and their spouses will be sufficiently connected with the business of the vessel within the meaning of section 4.50(b), Customs Regulations, so that none of them will be deemed a "passenger" as that term is used in 46 U.S.C. 289. Accordingly, no violation of the coastwise laws will occur should [redacted] and their spouses leave the vessel at a United States port other than the United States port at which they boarded the vessel.

Sincerely,

(Signed) Alfred G. Scholle

Alfred G. Scholle
Chief
Carrier Rulings Branch

[redacted]

CODE AND DATE [redacted]

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105141/104915

RETAIN IN FILE

JAN 26 1982

VES 13-18 CO:R:CD:C
105378 JL

This ruling concerns the application of 19 U.S.C. 1466(e) to certain movements of an oceanographic research vessel.

ISSUE

1. Would the entry of a vessel into the U.S. Virgin Islands be considered entry into a port of the United States within the meaning of 19 U.S.C. 1466(e)?

2. Will the discharge of passengers from an oceanographic research vessel onto another vessel outside of Puerto Rico interrupt the two-year period specified in 19 U.S.C. 1466(e)?

FACTS

An American-flag oceanographic research vessel has been operating outside the United States since March, 1981. Its owner asks whether the entry of the vessel into Saint Thomas, Virgin Islands, or the discharge of passengers to another vessel "without formal entry into Puerto Rico" will toll the running of the two-year period specified in 19 U.S.C. 1466(e).

LAW AND ANALYSIS

19 U.S.C. 1466, the vessel repair statute, provides for a 50 percentum, ad valorem, duty on the costs of foreign repairs, parts, and equipment purchases for certain American-flag vessels. Subsection (e) of section 1466 provides for an exemption from duty on such costs incurred after the initial six months of the vessel's foreign voyage when the vessel is a "special purpose" vessel and the entire voyage lasts more than two years.

19 U.S.C. 1401(h) states as follows:

> The term "United States" includes all Territories and possessions of the United States except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the Island of Guam.

Since 19 U.S.C. 1401 specifically states that the definitions provided therein apply to subtitle III of Title 19, United States Code, and section 1466(e) is part of subtitle III, then the entry of a vessel into the U.S. Virgin Islands would not be deemed an entry into a port of the United States so as to toll the running of the two-year period.

Regarding the contemplated contact with Puerto Rico, the question arises as to whether the discharge will occur inside or outside the territorial waters.

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Customs has consistently ruled that where a vessel comes to rest in United States waters and there is direct or indirect contact with the mainland (e.g.; a smaller boat taking persons ashore), the vessel is deemed to have arrived in the United States. See T.D. 75-298. Accordingly, if the discharge of passengers from the subject vessel is accomplished inside the territorial waters of Puerto Rico, the vessel will be deemed to have arrived in the United States and, consequently, the running of the period of the vessel's voyage for purposes of 19 U.S.C. 1466(e) will have terminated at that point in time. See also, sections 4.2(b), and 4.6, Customs Regulations; 19 U.S.C. 1433 (requiring report of arrival).

HOLDINGS

1. The U.S. Virgin Islands are not a part of the United States for purposes of 19 U.S.C. 1466(e).

2. The discharge of passengers from a vessel inside the territorial waters of Puerto Rico would constitute an arrival of that vessel in the United States so as to toll the running of the vessel's foreign voyage within the meaning of 19 U.S.C. 1466(e).

EFFECT ON OTHER RULINGS

None.

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

MAY 24 1982

VES-13-18-CO:R:CD:C
105414 LLB

This ruling concerns potential duty liability arising under title 19, United States Code, section 1466, in regard to the extensive refurbishing of a passenger vessel in a foreign shipyard.

ISSUE:

Whether various operations to be performed upon a passenger vessel in a foreign shipyard in order to convert it to a luxury cruise ship might be dutiable under section 1466?

FACTS:

The inquirer plans to take an American-built passenger liner, which has been out of service for some years, to a foreign shipyard for a complete overhaul and re-fit. The planned changes are extensive and every element of the vessel will be affected by the changes. Estimates of the cost of the refurnishing program range up to 90 million dollars. Planned alterations and modifications to the vessel include the following:

1. Entirely new deck areas will be added to the vessel.

2. Replacement of virtually all windows on the vessel for purposes of style.

3. Replacement of all interior and exterior deck coverings to conform to the general design theme.

4. Modification to all interior doors to conform with laws and regulations concerning fireproofing, etc., as well as to conform with the general design theme.

5. Install new ladders, staircases, and elevators to conform with new fire zone requirements.

6. All new deck areas will be fitted with drains, pipes, fire extinguishing equipment, etc.

7. New electrical power system will be added to the new as well as the renovated spaces.

8. New lighting system will be installed in new and renovated areas.

9. Insulation and sheathing will be added throughout which will conform to fire code requirements.

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10. Ventilation, heating, and air conditioning systems will be installed throughout new portions of the vessel, with existing equipment being relocated and re-engineered.

11. Fire detection and extingishing equipment will be installed in all new areas, and existing equipment will be tested. Smoke detection devices will be installed throughout the vessel. A new central display panel, used to pinpoint fires, will be installed.

12. Existing navigation aids and equipment will be replaced with new apparatus.

13. The vessel will be completly outfitted with life-saving equipment with the exception of lifeboats. The existing lifeboats will be updated in line with Coast Guard requirements.

14. The commissary, galley, and pantry areas will be completely re-designed and re-equipped.

15. A new laundry facility with all necessary connections will be installed as will several new launderette facilities and a dry cleaning facility.

16. Hospital and dispensary facilities will be updated, with new offices for the surgeon and nurse.

17. New ice water and ice machine rooms and equipment will be installed.

18. New hardware will be installed in new areas, keeping all existing hardware in place. (i.e., door locks, signs, etc.).

19. Existing passenger bathrooms will be up-dated with new fixtures, floor coverings, etc., new bath areas will be similarly equipped.

20. A new Coast Guard approved sewerage system will be installed.

21. Much of the existing stateroom furnishings will be replaced and/or re-finished. All new areas will be fully furnished.

22. All non-furniture related interior items are to be re-newed or replaced.

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23. Decorative work, such as statues, carvings, art work, mirrors, draperies, etc., will be added.

24. Two tennis courts, two racquetball courts, facilities for scuba instructions, and a 1/3 kilometer running track will be installed. The scuba appartus will generally consist of standard scuba gear. Electronic games will also be provided.

25. The five existing bars will be refurbished and five new bars will be added. Computer billing machines will also be installed in each bar.

26. Seven food service areas will be developed and outfitted (tables, chairs, etc.).

27. Three new swimming pools and a hot tub will be installed, together with all necessary pumps, water lines, etc.

28. Six existing lifeboats will be replaced with new covered launches. A new power lifting system will be installed to handle these launches. The new lifeboats will include all necessary boat gear, life jackets, lines, etc.

29. Eleven existing elevators will be repanelled, and one additional elevator will be installed. Several existing elevator shafts will be extended.

30. Some 20,000 square feet of area on three decks will be cleared of existing subdivisions and the area will be outfitted to become a shopping mall, to include all necessary air conditioning, ventilation, lighting, machinery, and security systems.

31. Most of the existing telephone system will be removed and a new system integrating the phones with television and a central computer system will be installed. The existing wiring will be utilized wherever available.

32. A complete closed circuit television system, with receivers, will be installed. Recorders, cassette files, etc., will be provided.

33. A full computer system designed to handle virtually all necessary shipboard control functions will be installed. Ticketing, navigation assistance, and inventory control are among the specified functions to be performed. The equipment will include printers, transmitters, memory discs, drives, readers, etc.

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34. Some 3,000 tons of permanent ballast in the form of drillers mud will be pumped aboard.

35. Boilers, machinery, and equipment will be opened, inspected and where necessary, repaired.

36. The main galley will be rearranged and new equipment will be installed.

37. Fuel, water and ballast tanks, will be opened for cleaning and inspection.

38. Fin stabilizers will be installed.

39. A bow thruster unit will be installed.

40. The two inboard propellers will be replaced fuel for efficiency reasons.

41. The vessel will be drydocked to accomplish the fin stabilizer, bow thruster, and propeller operations.

42. The aluminum superstructure will be painted (painting for marine environment preservation is not required).

43. Existing lifeboats, davits, and winches will be cleaned and prepared for Coast Guard inspection.

44. All preservatives will be removed.

45. Pump packing and seals, and carbon packing and seals on turbines will be replaced (these were removed when the vessel was laid-up).

46. All condensers, coolers, heaters, etc., will be closed-up (covers were removed at the time of lay-up).

The file indicates that many of the above-enumerated changes or additions are to be accomplished for the purpose of achieving design theme consistency, or in order to comply with safety or design codes and regulations.

LAW AND ANALYSIS:

Section 1466 provides in pertinent part for payment of duty in the amount of 50 percent ad valorem on the cost of foreign repairs to vessels documented under laws of the United States to engage in the foreign or coasting trade, or vessels intended to engage in such trade.

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LAW AND ANALYSIS:

A leading case in the interpretation and application of section 1466 is United States v. Admiral Oriental Line et al., T.D. 44359 (1930). That case distinguished between equipment and repairs on one hand and permanent additions to the hull and fittings on the other, the former being subject to duty under section 1466. The Court in Admiral Oriental, supra, stated that permanent additions are:

> ... those appliances which are permanently attached to the vessel, and which would remain on board were the vessel to be laid up for a long period ... [and] are material used in the construction of the vessel within the meaning of the statute. (quoting 27 Op. Atty. Gen. 228).

For purposes of section 1466, dutiable equipment has been defined as:

> ... portable articles necessary or appropriate for the navigation, operation, or maintenance of a vessel, but not permanently incorporated in or permanently attached to its hull or propelling machinery, and not constituting consumable supplies. Admiral Oriental, supra, (quoting T.D. 31450, 1941).

It should be noted that the fact that a change or addition of equipment is made to conform with a new design scheme, or for the purpose of complying with the requirements of statute or code, is not a relevant consideration. Therefore, any change accomplished solely for these reasons, and which does not constitute a permanent addition to the hull and fittings of the vessel, would be dutiable under section 1466.

Any new areas added to the vessel, that is, bulkheads, permanent ballast, decks, staterooms, bars, storerooms, etc., are considered to be qualifying additions to the hull and fittings. Likewise, the extension of existing services into new areas would also be free of duty. This would include piping, air conditioning, ventilation, electrical service, glazing, etc., as well as final finishing for the new areas (such as painting).

On the other hand, among the dutiable operations would be providing furniture for any of the areas (new and old); providing new electronic navigation equipment; providing new lifesaving apparatus, to include lifejackets, floats, inflatables, flares, rings, etc.; adding household type laundering machines; outfitting

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the doctor's, nurse's, and surgeon's facilities with portable medical apparatus; providing portable mirrors, statues, and art work; providing silverware, etc., for food service areas; refurbishing existing lifeboats and supplying new lifeboats; supplying telephone instruments and television sets; providing computer apparatus; painting of existing areas of the vessel; and replacing worn packing seals.

The classification of the items detailed above is necessarily made on a conditional basis. Owing to the massive scope of the planned conversion project and the difficulity of determining exactly what is contemplated in each of the listed steps, a specific determination is best reserved until the refurbished vessel 's entered. The Customs officials at the port where the vessel rrives will make such determination.

OLDING:

The above-enumerated items which would be considered permanent additions to the hull and fittings, as detailed above, would not be considered dutiable operations pursuant to section 1466. Those items which are repairs not related to casualty, or amount to installation of equipment as contemplated in the statute, as set forth above, would be dutiable under section 1466 at the rate of 50 percent ad valorem.

Marilyn G. Morrison

Marilyn G. Morrison

[redacted]

105414

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

U.S. CUSTOMS SERVICE
1301 CONSTITUTION AVENUE
WASHINGTON, D.C. 21229

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UNCLASSIFIED

2/26/82

x

JOHN MATHIS

566-5706

105514

FEB 26 1982

[redacted]

CO:R:CD:C
105514 JM

IN URLET FEBRUARY 3, 1982, YOU REQUEST A RULING CONCERNING USE OF FOREIGN BUILT BARGE [redacted] AS SALVAGE BARGE BEYOND AMERICAN TERRITORIAL LIMITS, AND NOT ON FIXED POINTS ON OUTER CONTINENTAL SHELF, TO RAISE SUNKEN VESSELS. IN A TELEPHONE CONVERSTAION YOU STATED THAT THE VESSEL WILL BE DOCUMENTED AS A VESSEL OF THE UNITED STATES. SALVAGED ITEMS WILL BE TURNED OVER TO CONTRACTING PARTY AT SALVAGE SITE.

ASSUMING BARGE DOCUMENTED BY U.S. COAST GUARD FOR SALVAGE SERVICE, AND VESSELS USED TO TRANSPORT SALVAGED GOODS ARE COASTWISE QUALIFIED, THERE IS NO LAW ADMINISTERED BY THE CUSTOMS SERVICE WHICH WOULD PROHIBIT ACTIVITIES DESCRIBED IN ABOVE-CITED LETTER. SINCE [redacted] IS OWNED BY CITIZEN OF U.S. AND IS U.S. DOCUMENTED, 46 U.S.C. 316(D) WOULD NOT PROHIBIT USE OF [redacted]

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[redacted]

105514

SOLELY FOR SALVAGE VESSEL AS DESCRIBED ABOVE WITHIN U.S. TERRITORIAL WATERS.

/ DONALD H REUSCH

FOR
EDWARD B. GABLE, JR.
CHIEF
CARRIER RULINGS BRANCH

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUN 7 - 1982

VES-3-01-CO:R:CD:C
105644 JM

105644

Dear [redacted]

Your letter dated May 11, 1982, requested a ruling concerning the use of a foreign-built vessel in a cable laying operation.

Our reply to your request is contained in the enclosed ruling.

Sincerely,

Marilyn G. Morrison

Marilyn G. Morrison
Director
Carriers Drawback & Bonds Division

[redacted]

Enclosure

[redacted]

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 186 (11-15-79)

JUN 7 - 1982

VES-3-01-CO:R:CD:C
105644 JM

105644

This decision concerns the applicability of the coastwise laws to cable-laying operations by a foreign-built vessel.

ISSUE:

Whether the use of a foreign-built vessel to lay cable between points in the United States and to land surplus cable violates title 46, United States Code, section 883.

FACTS:

Cable will be laden aboard the subject foreign-built vessel at Newington, N.H. and will be transported to Wilmington, N.C. via Port Everglades, Florida, Newington, N.H. and St. Thomas, Virgin Islands. Approximately 1,100 nautical miles of cable will be laid between Vero Beach and St. Thomas, Virgin Islands. The operator of the vessel asks whether a coastwise violation will occur if the unused portion of the cable, as much as 40 natuical miles in length, (less than 5% of the cable laden on the vessel), is unladed at a United States port other than the port at which the cable was laden aboard the vessel.

LAW AND ANALYSIS:

Title 46, United States Code, section 883 provides in pertinent part that, "no merchandise shall be transported ... between points in the United States, including Districts, Territories and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States...."

The Customs Service has held that the sole use of a vessel to lay cable between points in the United States does not violate the coastwise laws. Such cable is not only laid, and not "transported," between points in the United States, but is also being used in furtherance of the primary mission of the cable-laying vessel and is therefore similar to vessel equipment. Headquarters has ruled that equipment laden on a vessel at a coastwise point and used by the vessel for reasons relating to the operation of the vessel may be later unladen at a second coastwise point without violation of 46 U.S.C. 883. The use of the equipment between American ports will have broken the continuity of the transportation between American ports. This rule applies to any small amount of similar equipment (5% or less of the equipment) that was laden for use but was not in fact needed during the operation of the vessel.

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While the use of the cable in connection with the operation of the cable-laying vessel does not violate the coastwise laws, the transportation and landing of cable that was not placed on the vessel to be used in a cable-laying operation, other than cable retrieved to be repaired, at a port in the United States other than at the port at which the cable was laden aboard the vessel constitutes a violation of 46 U.S.C. 883.

HOLDING:

A foreign-built vessel which transports cable used by the vessel in a cable-laying operation is not engaged in the coastwise trade of the United States. If up to 5% of the cable laden on a vessel and intended for use in a cable-laying operation is not used, it may be unladen at a second point in the United States without violation of title 46, United States Code, section 883. Such cable will be treated at the time of unlading as equipment of the vessel. However, if after loading cable at a place in the United States, a foreign-built vessel transports (i.e., does not lay out the cable between places) and lands the cable, other than cable to be repaired, at a second place in the United States, the vessel will be considered to have transported merchandise in the coastwise trade in violation of section 883.

Marilyn G. Morrison

Marilyn G. Morrison

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11 15-73)

105647

U.S. CUSTOMS SERVICE
OFFICE OF REGULATIONS AND RULINGS
WASHINGTON, D.C. 20229

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UNCLASSIFIED

12 OCTOBER 1982

x

HAROLD SINGER

566-5706

OCT 12 1982

[redacted]

TELEX: 328767

INFO TO DIST. DIRECTOR/SEATTLE

VES 3-02 CO:R:CD:C
105854 HS

REURTEL OCTOBER 6 REQUESTING PERMISSION FOR [redacted], CANADIAN-REGISTERED PASSENGER VESSEL TO LEAVE TACOMA, WASHINGTON ON SATURDAY, OCTOBER 9TH WITH A GROUP OF MARCH OF DIME DONORS, ALL OF WHOM WILL BE HAVING LUNCHEON ABOARD THE VESSEL AT PIERSIDE IN TACOMA ON THAT DATE, AND TO MAKE A SHORT WATER TRIP OF NOT MORE THAN 2 HOURS DURATION INTO TACOMA HARBOR AND PUGET SOUND AND RETURN TO SAME PIER IN TACOMA WITHOUT STOPPING OR LANDING AT ANY PLACE OR DISEMBARKING OR EMBARKING ANY PERSONS. PURPOSE OF PROPOSED CRUISE TO ENCOURAGE ADDED INTEREST IN CURRENT MARCH OF DIMES DRIVE. CRUISE WOULD BE OFFERED ABSOLUTELY FREE IN EVERY RESPECT WITH OPPORTUNITY GIVEN TO MAKE DONATIONS TO MARCH OF DIMES IF SO DISPOSED.

THE COASTWISE LAWS (46 U.S.C. 289, IN PARTICULAR) PROHIBIT THE TRANSPORTATION OF PASSENGERS BETWEEN COASTWISE POINTS ON FOREIGN VESSELS. SECTION 4.50(b), CUSTOMS REGULATIONS DEFINES PASSENGER AS ANY PERSON CARRIED ON A VESSEL WHO IS NOT CONNECTED WITH THE OPERATION OF SUCH VESSEL, HER NAVIGATION, 1 2

105647

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HAROLD SINGER 566-5706 OCT 12 1982

OWNERSHIP OR BUSINESS. EVEN THOUGH MARCH OF DIMES DONORS ARE NOT BEING CHARGED PASSAGE, THEY WOULD BE CONSIDERED PASSENGERS. WHILE "VOYAGES TO NOWHERE" IN WHICH PASSENGERS ARE TRANSPORTED ON FOREIGN VESSELS FROM A POINT IN THE UNITED STATES TO THE HIGH SEAS (BEYOND THE THREE-MILE TERRITORIAL LIMIT) OR TO FOREIGN WATERS AND BACK TO THE POINT OF EMBARKATION, AND THE PASSENGERS ARE NOT DISEMBARKED, EVEN TEMPORARILY, AT ANY OTHER POINT IN THE UNITED STATES, ARE PERMITTED, A VOYAGE, AS YOU PROPOSE, THAT DOES NOT LEAVE UNITED STATES WATERS IS PROHIBITED.

COASTWISE LAWS CAN BE WAIVED BY TREASURY ONLY IF IN THE INTEREST OF NATIONAL DEFENSE. PRIVATE LEGISLATION IS ONLY OTHER METHOD TO BE EXCEPTED FROM COASTWISE LAWS. ACCORDINGLY, CUSTOMS IS UNABLE TO PERMIT YOUR VOYAGE, AS PROPOSED, AND AS YOU WERE INFORMED ON OCTOBER 8TH.

[redacted]

MARILYN G. MORRISON
DIRECTOR
CARRIERS, DRAWBACK AND BONDS DIVISION

105 649

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 190 (11-15-73)

JUL 1 1982

VES-3-15-CO:R:CD:C
105698 PH

This ruling concerns the application of the coastwise laws to the transportation of a United States-flag jack-up drilling rig on a foreign-flag submersible barge between points outside United States territorial waters on the outer continental shelf.

ISSUE:

Are the coastwise laws violated when a United States-flag jack-up drilling rig is towed on a foreign-flag submersible barge from a point more than 40 miles off the shore of Alaska to a point more than 3 miles off the shore of Long Beach, California?

FACTS:

The inquirer represents the owners of a United States-flag jack-up drilling rig located more than 40 miles off the shore of Alaska in Norton Sound. The owners of the drilling rig intend to transport it to a drilling site more than 3 miles off the shore of Long Beach, California. The drilling rig is to be transported on a foreign-flag submersible barge. The inquirer requests a ruling that the proposed transportation is not in violation of the coastwise laws.

LAW AND ANALYSIS:

Title 46, United States Code, section 883, in part, prohibits the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by citizens of the United States. The Customs Service has long held that points in the territorial waters of the United States are points in the United States embraced within the coastwise laws. The territorial waters of the United States do not extend beyond the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline (Treasury Decision 78-440).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended by the Outer Continental Shelf Lands Act Amendment of 1978 (43 U.S.C. 1333(a)) (the Act), provides, in part, that the laws of the United States are extended to the

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subsoil and seabed of the outer continental shelf (shelf) and to all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom to the same extent as if the shelf were an area of exclusive Federal jurisdiction located within a state. The 1978 amendment to section 4(a) of the Act substituted "and all installations and other devices permanently or temporarily attached to the seabed" for "and fixed structures."

Treasury Decision 54281(1), publishing an abstract of a Customs decision dated December 11, 1956, stated, in part, that the coastwise laws are extended to mobile rigs during the period they are secured to or submerged onto the seabed of the shelf. Subsequent rulings applied the same principles to drilling platforms, artificial islands, and similar structures.

In ruling letter VES-3-15 RRUCDC 104880 JL, October 2, 1980 (published as Customs Service Decision 81-95), Treasury Decision 54281(1) was expanded so that the Customs and navigation laws, including the coastwise laws, apply to devices such as a buoy marker submerged onto or attached to the shelf for the purpose of resource exploration operations, and to a well casing with attendant accessory systems, when submerged into the seabed of the shelf. The basis for expanding Treasury Decision 54281(1) was the 1978 amendment to section 4(a) of the Act.

Our October 22, 1980, ruling letter was modified by ruling letter VES-3-15 CO:R:CD:C 104983/104880 JM, February 26, 1981. In this ruling, we held that a point at which no buoy marker is submerged onto or attached to the shelf and no well has been sunk into the seabed is not a coastwise point even if there are buoys or wells in the general vicinity.

We assume, for purposes of this ruling, that the drilling rig was attached to the shelf at the point off the Alaska shore from which it is being transported and, therefore, that it is being transported from a coastwise point. If the drilling rig is being transported to a point at which there is an installation or device submerged onto or attached to the seabed of the shelf (see ruling letter of October 22, 1980, as modified by that of February 26, 1981), the transportation would be between two points subject to the coastwise laws and prohibited if by the foreign-flag barge. If the drilling rig is being transported to a point at which there is no installation or device submerged onto or attached to the seabed of the shelf, the transportation would not be between two points subject to the coastwise laws and would not be prohibited if by the foreign-flag barge.

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The inquirer should be aware that if the points between which the drilling rig is being transported are both coastwise points and the coastwise laws require the barge upon which it is being transported to be coastwise-qualified, 46 U.S.C. 316(a) would require that the vessel towing the coastwise-qualified barge be a United States-owned and properly documented vessel. (See ruling letter VES-3-15/VES-10-03 CO:R:CD:C: 105063 PH, May 6, 1981 (published as Customs Service Decision 81-214): and Treasury Decision 54600(57.)

HOLDING:

The coastwise laws are violated when a United States-flag jack-up drilling rig is towed on a foreign-flag submersible barge from a point more than 40 miles off the shore of Alaska (assumed to be a point subject to the coastwise laws) to a point more than 3 miles off the shore of Long Beach, California, if there is an installation or device submerged onto or attached to the outer continental shelf at the latter point; but those laws are not violated if there is no installation or device submerged onto or attached to the outer continental shelf at the latter point.

EFFECT ON OTHER RULINGS:

None.

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.

105291

[redacted]

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SEP 14 1962

VES 3-06 CO:R:CD:C
105722 DHR

This ruling concerns the carriage of passengers by a foreign-built vessel on round-trip voyages out of a U.S. port.

ISSUE:

Whether a foreign-built vessel may carry passengers on round-trip voyages originating and terminating at the same U.S. port, if the passengers do not go ashore at any U.S. port other than the port of embarkation.

FACTS:

It is proposed to carry passengers on round-trip voyages out of Detroit, Michigan, on a foreign-built, foreign-flag vessel. The passengers would not go ashore, even temporarily, at any other port than the port of embarkation--Detroit.

LAW AND ANALYSIS:

Title 46, United States Code, section 289, prohibits the transportation of passengers on a foreign-flag vessel. Pursuant to 46 U.S.C. 651 only vessels which are built in the United States, generally speaking, may be documented to engage in the coastwise trade, i.e., the transportation of passengers or merchandise between points in the United States.

HOLDING:

1. A foreign-built, U.S.- flag vessel may be used to carry passengers on "voyage to nowhere" out of the port of Detroit without violating the coastwise laws, provided the vessel traverses foreign territorial waters during the course of the voyage.

2. A foreign-flag vessel may be used to carry passengers on "voyages to nowhere" out of the port of Detroit without violating the coastwise laws, subject to the same condition as in 1., above.

3. A cruising license issued to a foreign vessel allows the vessel to arrive at and depart from ports in the United States without the necessity of complying with the usual Customs formalities so long as the vessel is "used and employed exclusively as a pleasure vessel." (See 46 U.S.C. 104.) The use to which the vessel is proposed to be put would be considered trade and the vessel would no longer be entitled to such license.

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4. If the subject vessel engages in trade, its cruising license will be rendered invalid and it will be subject to all the reporting requirements to which any vessel engaged in trade is subject.

5. As indicated in paragraph 4, whether or not the cruising permit is surrendered, the vessel will be subject to all reporting requirements upon its engaging in trade. There is no authority to waive the navigation laws except when in the interest of national defense (sec. 1,2, 64 Stat. 1120). Therefore, the vessel would be required to report arrival (19 U.S.C. 1433) and make entry (19 U.S.C. 1435), including the filing of a manifest (19 U.S.C. 1431, 1432). A vessel which is not bound to a foreign port or place is not required to obtain clearance. A vessel which intends merely to traverse foreign waters during the course of a voyage is not considered to be bound to a foreign port or place.

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE Form 168 (11-15-73)

SEP 16 1982

VES-3-15-CO:R:CD:C
105794 PH

105794

This ruling concerns the applicability of the coastwise laws to a point on the United States outer continental shelf at which an oil well has been plugged because it has been determined to be non-productive.

ISSUE:

Whether a plugged or capped oil well on the United States outer continental shelf is a point subject to the coastwise laws?

FACTS:

The inquirer represents the owners of a United States-flag jack-up drilling rig located more than 40 miles off the shore of Alaska in Norton Sound. The owners of the drilling rig intend to transport it to a drilling site more than 3 miles off the shore of Long Beach, California. The drilling rig is to be transported on a foreign-flag submersible barge.

In a ruling dated July 1, 1982 (file VES-3-15-CO:R:CD:C 105698 PH), we ruled that the coastwise laws are violated when a United States-flag jack-up drilling rig is towed on a foreign-flag submersible barge from a point more than 40 miles off the shore of Alaska (assumed to be a point subject to the coastwise laws) to a point more than 3 miles off the shore of Long Beach, California, if there is an installation or device submerged onto or attached to the outer continental shelf at the latter point; but those laws are not violated if there is no installation or device submerged onto or attached to the outer continental shelf at the latter point.

In a request for a ruling supplementing our July 1, 1982, ruling, the inquirer submits additional information about the point from which the drilling rig is to be transported. That point is to be plugged and abandoned as a non-producing well. The procedure for plugging a non-producing well is described in an affidavit by the inquirer's client as set forth below.

After a determination is made that the well is a non-producing well, a cement plug is set at the bottom of the smallest diameter string of casing cemented in the well. This plug extends up into the casing and down into the uncased open hole in the earth below the casing. A second plug is then set at approximately mid-depth in the well, on top of a mechanical sealing component which is placed inside the smallest diameter

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casing. A third plug is then set approximately 200-500 feet below the mud line inside the smallest diameter casing. All casings are then severed at a point approximately 5-15 feet below the mud line so that nothing of the well is left protruding above the point at which the casings were severed. The rig is jacked down into the water until it is in a floating mode and the legs have been raised up from the seabed. Nothing remains behind protruding up from the seabed or in the water to identify where the drilling had taken place.

The inquirer requests a ruling that the point on the United States outer continental shelf from which the drilling rig is transported, as described above, is not a point subject to the coastwise laws.

LAW AND ANALYSIS:

Title 46, United States Code, section 883, in part, prohibits the transportation of merchandise between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by citizens of the United States. Section 316(d) of title 46, with certain exceptions not here relevant, prohibits the engagement in salvaging operations by a foreign vessel "... on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes ... or in territorial waters of the United States on the Gulf of Mexico ...." The Customs Service has long held that points in the territorial waters of the United States are points in the United States embraced within the coastwise laws. The territorial waters of the United States do not extend beyond the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline (Treasury Decision 78-440).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended by the Outer Continental Shelf Lands Act Amendment of 1978 (43 U.S.C. 1333(a)) (the Act), provides, in part, that the laws of the United States are extended to the subsoil and seabed of the outer continental shelf (shelf) and to all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom to the same extent as if the shelf were an area of exclusive Federal jurisdiction located within a state. The 1978 amendment to section 4(a) of the Act substituted "and all installations and other devices permanently or temporarily attached to the seabed" for "and fixed structures."

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Treasury Decision 54281(1), publishing an abstract of a Customs decision dated December 11, 1956, stated, in part, that the coastwise laws are extended to mobile rigs during the period they are secured to or submerged onto the seabed of the shelf. Subsequent rulings applied the same principles to drilling platforms, artificial islands, and similar structures.

In ruling letter VES-3-15 RRUCDC 104880 JL, October 22, 1980 (published as Customs Service Decision 81-95), Treasury Decision 54281(1) was expanded so that the Customs and navigation laws, including the coastwise laws, apply to devices such as a buoy marker submerged onto or attached to the shelf for the purpose of resource exploration operations, and to a well casing with attendant accessory systems, when submerged into the seabed of the shelf. The basis for expanding Treasury Decision 54281(1) was the 1978 amendment to section 4(a) of the Act.

Our October 22, 1980, ruling letter was modified by ruling letter VES-3-15 CO:R:CD:C 104983/104880 JM, February 26, 1981. In this ruling, we held that a point at which no buoy marker is submerged onto or attached to the shelf and no well has been sunk into the seabed is not a coastwise point even if there are buoys or wells in the general vicinity.

In a telegram dated July 27, 1979 (file VES-5-13/VES-10-01/VES-10-02-R:CD:C 104099 JL), we ruled that the use of a foreign-flag vessel in salvage operations and the removal of a drilling rig located on the outer continental shelf is prohibited by 46 U.S.C. 316(d).

Our October 22, 1980, ruling letter was predicated upon a factual situation in which the locations of activity (the points on the outer continental shelf where the merchandise and/or passengers were to be unladed) were "... either operational locations which are sites selected for drilling and marked by buoys attached to the seabed, or locations where a well has been drilled and casings and pipes are in place in the seabed awaiting the placement of a production platform or vessel for the extraction of the mineral deposit." Our July 27, 1979, telegram pertained to "... salvage operations and wreck removal of the rig which sustained a blowout ...."

In the case at hand, the drilling rig will be transported from a well that has been concluded to be non-producing and has been sealed. Thus this case is distinguished from our October 22, 1980, ruling letter. There is no apparent circumstance in this case which would result in the application of the statute covering coastwise salvage (46 U.S.C. 316(d)) and so this case is

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also distinguished from our July 27, 1979, telegram. (See definitions of "salvage" and related terms in de Kerchove's International Maritime Dictionary (1954 edition), pages 622 and 623, and Black's Law Dictionary (1968 edition), page 1506.) A non-producing well that has been sealed or plugged as described in the affidavit is not, in our opinion, an installation or other device attached to the seabed of the outer continental shelf for the purpose of exploring for, developing, or producing resources therefrom so that it would be a coastwise point by virtue of 43 U.S.C. 1333(a). Accordingly, we conclude that the abandoned and plugged well from which the drilling rig is to be transported is not a point subject to the coastwise laws.

105794

HOLDING:

A plugged or capped oil well on the United States outer continental shelf, plugged as described in this ruling, is not a point subject to the coastwise laws.

EFFECT ON OTHER RULINGS:

Ruling letter VES-3-15 RRUCDC 104880 JL, October 22, 1980 (C.S.D. 81-95), and telegram VES-5-13/VES-10-01/VES-10-02-R:CD:C 104099 JL, July 27, 1979, distinguished.

Marilyn G. Morrison

Marilyn G. Morrison

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 180 (11-15-75)

SEP 14 1982

VES-3-02-CO:R:CD:C
105800 JM

This ruling concerns the use of a foreign-flag vessel to transport passengers between points in the United States.

ISSUE:

Whether the cruise itineraries described in this ruling violate 46 U.S.C. 289?

FACTS:

The inquirer requests a ruling as to whether the following itineraries proposed for a foreign-flag vessel would violate 46 U.S.C. 289.

1. The vessel would leave Port Everglades, Florida, on Thursday: touch at Nassau, Bahamas, on Friday (10 hrs): touch at Tampa, Florida, on Sunday (14 hrs) and return to Port Everglades, on Tuesday.

2. The vessel would leave Nassau, Bahamas, on Friday: touch at Tampa, Florida, on Sunday (14 hrs) and proceed to Port Everglades, Florida, where the passengers would disembark.

The passengers will go ashore for sightseeing at ports touched on the proposed cruises.

LAW AND ANALYSIS:

Title 46, United States Code, section 289, provides that no foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed.

Section 4.80a(a), Customs Regulations (19 CFR 4.80a(a)), which is interpretative of 46 U.S.C. 289, provides, in pertinent part, that a foreign vessel which takes a passenger on board at a port in the United States will be deemed to have landed that passenger in violation of the coastwise laws if:

4. The passenger goes ashore at any port other than the port at which he embarked if coastwise transportation is the primary object of the voyage.

105800

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E6

In applying subparagraph (4) to section 4.80a(a) to cruises that originate and terminate at the same coastwise port, the Customs Service has taken the position that, in the absence of other evidence of the primary object of the voyage, if the total time spent in nearby foreign ports is equal to or more than the time spent in coastwise ports, and the number of nearby foreign ports visited is equal to or more than the number of coastwise ports visited (apart from a passenger's port of original embarkation and ultimate disembarkation), the primary purpose of the passenger's voyage will not be deemed to be coastwise transportation.

For purposes of section 4.80a, a nearby foreign port is defined as any port in North America, the West Indies (including the Bahamas Islands), or the Bermuda Islands. A port in the Virgin Islands is also treated as a nearby foreign port for purposes of section 4.80a.

In a previous ruling, we ruled that a passenger may embark at a nearby foreign port, then proceed to a United States port, where the passenger went ashore temporarily, and leave the vessel at a second United States port without violating the coastwise laws.

HOLDING:

1. On cruise 1, the vessel will call at one United States port for 14 hours (other than the passenger's port of original embarkation and ultimate disembarkation) and one nearby foreign port for 10 hours. Since the time spent in the United States port is more than the time spent in the foreign port, the primary purpose of cruise 1 will be considered to be coastwise transportation. Accordingly, if a passenger goes ashore at Tampa, a United States port other than the passenger's original port of embarkation and ultimate disembarkation, a violation of 46 U.S.C. 289 will occur.

2. The cruise itinerary covered by cruise 2 of the inquiry would not violate the coastwise laws.

EFFECT ON OTHER RULINGS:

None.

[redacted]

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.

E7

CODE AND DATE	[redacted]						
SURNAME	[redacted]						
CODE AND DATE							
SURNAME							

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 108 (11-15-73)

105700

JAN 24 1983

VES-3-02 CO:R:CD:C
105932 PH

This ruling concerns the applicability of the prohibition against the transportation of passengers between ports or places in the United States, in 46 U.S.C. 289, to the proposed cruise itinerary of a foreign-flag vessel.

ISSUE:

Whether the passengers on the cruise described in this ruling are transported in violation of 46 U.S.C. 289 and section 4.80a, Customs Regulations.

FACTS:

The inquirer requests a ruling as to whether the following itinerary for a foreign-flag vessel would violate the coastwise laws or Customs Regulations thereunder.

It is proposed that the vessel depart Port Everglades, Florida, on a Friday, touch on Sunday at Tampa (9 hours), Tuesday at Grand Cayman Island (5 hours), Wednesday at Cozumel Island (12 hours), and return to Port Everglades on Friday. Passengers will embark at Port Everglades on January 20, 1984, and while ashore in Tampa, Grand Cayman Island, and Cozumel Island, will participate in prearranged excursions. All passengers will disembark at Port Everglades on January 27, 1984.

In addition to requesting a ruling as to whether the proposed itinerary violates the coastwise laws, the inquirer asks whether the coastwise laws would be violated if any passengers on the cruise disembarked at Grand Cayman Island or Cozumel Island.

LAW AND ANALYSIS:

Title 46, United States Code, section 289, provides that no foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $200.00 for each passenger so transported and landed.

Section 4.80a(a), Customs Regulations, which is interpretative of 46 U.S.C. 289, provides, in pertinent part, that a foreign vessel which takes a passenger on board at a port in the United States will be deemed to have landed that passenger in violation of the coastwise laws if:

REPLY TO: CHIEF, CARRIER RULINGS BRANCH

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105-932

JAN 24 1983

* * * *

(3) The passenger severs his connection with the voyage at another coastwise port on a voyage which touches no foreign port other than a nearby foreign port; or

(4) The passenger goes ashore at any port other than the port at which he embarked if coastwise transportation is the primary object of the voyage.

In applying subparagraph (4) of section 4.80a(a), the Customs Service has taken the position that, in the absence of other evidence of the primary object of a voyage, if the total time spent in foreign ports is not less than the total time spent in coastwise ports, and the number of foreign ports visited is not less than the number of coastwise ports visited (apart from a passenger's port of original embarkation and ultimate disembarkation) the primary object of the passenger's voyage will not be deemed to be coastwise transportation.

In the cruise itinerary under consideration, the vessel will touch at three ports other than the port of embarkation and disembarkation. Two of the ports are nearby foreign ports (see 19 CFR 4.80a(c)) at which the vessel will touch for a total of 18 hours and one is a United States port at which the vessel will touch for 9 hours. In the absence of evidence to the contrary, we conclude that the primary object of the cruise is not coastwise transportation and the passengers may go ashore temporarily at Tampa. Of course, if any of the passengers ultimately disembark at Tampa, the coastwise laws will be violated (19 CFR 4.80a(a)(3)). The coastwise laws will not be violated by any of the passengers on this cruise ultimately disembarking at Grand Cayman Island or Cozumel Island.

HOLDING:

The passengers transported by a foreign-flag vessel on a cruise originating in Port Everglades, touching for 9 hours at Tampa, 6 hours at Grand Cayman Island, 12 hours at Cozumel Island, and returning to Port Everglades are not transported in violation of 46 U.S.C. 289. The passengers may go ashore temporarily at Tampa because the primary object of the cruise is not considered to be coastwise transportation.

EFFECT ON OTHER RULINGS:

None.

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CODE AND DATE	[redacted]			(Signed) Edward B. Gable, Jr.			
SURNAME				Edward B. Gable, Jr.			
AND DATE							
SURNAME							

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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

105982

NOV 10 1983

VES-2-CO:R.CD:C
106396 DMR

[redacted]

Dear [redacted]

This is with reference to your letter of September 30, 1983, in which you set forth the following voyage itinerary of the [redacted] for 1984 for our confirmation that it will not be in violation of the coastwise laws (46 U.S.C. 289):

PORT	ARRIVE	DEPART	Time In Port
NEW YORK		SAT. AUG. 25, 1984-72M	-
BERMUDA	MON. AUG. 27, 9 AM	TUE. AUG. 28, 1984-NOON	27 HRS.
CAPE CANAVERAL	THU. AUG. 30, 7 AM	THU. AUG. 30, 1984-4PM	9 HRS.
NEW YORK	SAT. SEPT. 1, 10 AM		

Pursuant to the provisions of section 4.80a(a)(2), the proposed cruise as described in your letter would be in violation of no law administered by the Customs Service, provided no passenger departs from the cruise at Cape Canaveral, i.e., all the passengers continue back to New York.

Sincerely,

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

106396

[redacted]

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CODE AND DATE						
SURNAME						

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

[redacted]

MAR 5 - 1984

VES-13-18-CO:R:CD:C
106418 GOB

106418

District Director Of Customs
Attn: Regional Vessel Repair Liquidation Unit
555 Battery Street
San Francisco, California 94111

Dear Sir:

Your memorandum of October 17, 1983, forwarded the application of [redacted] seeking remission of vessel equipment duties assessed pursuant to title 19, United States Code, section 1466. The entry was filed on November 15, 1982, in connection with the arrival of the [redacted]

Our position is contained in the accompanying ruling.

Sincerely,

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

Enclosure

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[redacted]

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CODE AND DATE	[redacted]						
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 168 (11-15-79)

MAR 5 - 1984

VES-13-18-CO:R:CD:C
106418 GOB

106418

This ruling concerns an application for relief from duties on the cost of foreign repairs or equipment assessed pursuant to title 19, United States Code, section 1466.

ISSUE:

Whether certain work related to a container stowage arrangement resulted in equipment, which is dutiable pursuant to 19 U.S.C. 1466, or a permanent addition to the hull and fittings, which is non-dutiable.

FACTS:

The evidence of record indicates that the work related to a container stowage arrangement. The applicant contends that the arrangement is a modification of its stacking frame design and therefore is duty-free.

LAW AND ANALYSIS:

Title 19, United States Code, section 1466, provides in pertinent part for payment of an ad valorem duty of 50 percent of the cost of equipment purchased in a foreign country for a vessel documented under the laws of the United States to engage in the foreign or coastwise trade.

Numerous court cases have distinguished between vessel equipment and additions to the vessel's hull and fittings, with the former ordinarily being portable objects and the latter being those things of a permanent character attached to the hull which would remain on board if the vessel were to be laid up for a long period. See, e.g., Southwestern Shipbuilding Co. v. United States, T.D. 40934 and United States v. Admiral Oriental Line et al., T.D. 44359.

In T.D. 78-170 we held that certain portable stacking frames were vessel equipment and were dutiable pursuant to 19 U.S.C. 1466.

In this case the applicant has not submitted sufficient evidence to establish that the work constitutes permanent additions to the hull and fittings. We believe that the container stowage arrangement is removable and therefore constitutes equipment rather than a permanent addition to the

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hull and fittings. We note that although the evidence of record is insufficient to so establish, the changes made to the fourth tier stacking frames may constitute permanent alterations which would be duty-free if separately invoiced.

HOLDING:

We are of the opinion that the work relating to the container stowage arrangement resulted in equipment, the cost of which is dutiable.

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

[redacted]

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CODE AND DATE						
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 180 (11-15-79)

106418

APR 4 - 1984

VES-3-21-CO:R:CD:C
106477 PH

106477

[redacted]

Dear [redacted]

In your letter of November 14, 1983, you request a ruling on two methods of storing cement on a foreign-flag vessel.

Our response to your request is contained in the enclosed ruling.

Sincerely,

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

Enclosures

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[redacted]

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AND DATE							
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CODE AND DATE							
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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

* U.S. GPO: 1983-417-790

APR 4 - 1984

VES-3-21-CO:R:CD:C
106447 PH

106447

This ruling concerns the applicability of the coastwise laws to the use of a foreign-flag vessel as a cement storage vessel.

ISSUES:

1. May a foreign-flag vessel, docked alongside a pier in the United States on a continuous basis, receive foreign cement into its hold for storage purposes and pump the cement onto shore into a small silo for truck loading?

2. May a foreign-flag vessel be towed to a location more than 3 miles from the shore of the United States where it receives foreign cement and then be towed back to shore where it pumps the cement onto shore into a small silo for truck loading?

FACTS:

The inquirer, a Florida corporation, request a ruling on two alternative methods of storing cement on a foreign-flag vessel. In the first method, the vessel would be docked alongside the pier on a continuous basis with foreign cement being discharged into the hold of the vessel for storage purposes and the vessel pumping the cement onto the shore into a small silo for truck loading. In the second method, the vessel would be loaded with cement in the same manner but more than 3 miles from shore. On both movements (we assume this refers to the movement of the vessel to the point more than 3 miles from shore and the movement of the vessel from that point back to shore) the vessel would not have a crew but would be moved solely by a tug.

LAW AND ANALYSIS:

Title 46, United States Code, section 883, (46 U.S.C. 883), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. Section 289 of title 46 (46 U.S.C. 289), as interpreted by the Customs Service, prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (see above). The coastwise towing statute, 46 U.S.C. 316(a), prohibits the use of a non-coastwise-qualified vessel (see above)

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to tow any vessel other than a foreign-flag vessel, or a vessel in distress, from any port or place embraced within the coastwise laws of the United States to another such port or place, or for any part of such towing.

For purposes of the coastwise laws, a point in United States territorial waters is considered a point embraced within the coastwise laws. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

The Customs Service has consistently ruled that the use of a non-coastwise-qualified vessel as a storage facility in United States territorial waters does not violate the coastwise laws, or any other laws administered by the Customs Service, provided that the vessel remains stationary. Customs also has held that if the vessel is being loaded or unloaded and must be moved to another location because of stress of weather or other reason involving the vessel's safety, subsequently is returned to the same point to continue its loading or unloading, and loads or unloads no merchandise at any other point in the United States, the coastwise laws are not violated. Accordingly, the first method of cement storage proposed by the inquirer, in which the vessel would be docked alongside the pier on a continuous basis with foreign cement being discharged into the hold of the vessel for storage purposes and the vessel pumping the cement onto the shore into a small silo for truck loading, would not violate the coastwise laws.

The coastwise merchandise statute (46 U.S.C. 883) does not prohibit the transportation by a non-coastwise-qualified vessel of merchandise from a non-coastwise point outside territorial waters to a point in the United States. The coastwise towing statute (46 U.S.C. 316(a)) does not prohibit the towing by a non-coastwise-qualified vessel of a foreign-flag vessel between coastwise points. In the second method of cement storage proposed by the inquirer, the storage vessel is to be towed to a location more than 3 miles from shore where it will receive foreign cement. The storage vessel is then to be towed back to shore where it will pump the cement onto land. Assuming that the location where the storage vessel will receive the cement is outside United States territorial waters, this method of cement storage would not violate the coastwise laws.

The inquirer should be aware that the storage vessel, if it is arriving from a foreign country to begin its operation as a storage vessel, will be subject to vessel report-of-arrival and entry requirements, as well as tonnage taxes. If the second

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106477

method of cement storage is used, the vessel may be subject to these and other vessel requirements (see Federal Register Notice of October 14, 1983 (48 FR 46808), concerning the application of entry and clearance requirements to vessels engaged in lightering operations on the high seas). Whichever method of cement storage is used, the foreign cement will also be subject to Customs entry and duty. Copies of the sections of the Customs Regulations concerning the foregoing vessel requirements are enclosed. For specific information on these requirements, we suggest that the inquirer contact his local Customs office.

HOLDINGS:

1. A foreign-flag vessel, docked alongside a pier in the United States on a continuous basis, may receive foreign cement into its hold for storage purposes and pump the cement onto shore into a small silo for truck loading without violating the coastwise laws.

2. A foreign-flag vessel may be towed to a location more than 3 miles from the shore of the United States where it receives foreign cement and then be towed back to shore where it pumps the cement onto shore into a small silo for truck loading without violating the coastwise laws, assuming that the offshore location where it receives the foreign cement is outside United States territorial waters.

EFFECT ON OTHER RULINGS:

None.

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

[redacted]

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SURNAME						
CODE AND DATE						
SURNAME						

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY 3 - 1984

REFER TO
VES-3-06/VES-10-03
CO:R:CD:C 106553 PH

106553

[redacted]

Dear [redacted]

Your undated letter, received in this office on January 6, 1984, requests advice on your plans to use a foreign-built vessel to support mining operations in a remote area. The enclosed ruling contains the answers to most of the questions you raised.

The enclosed ruling does not address questions pertaining to the vessel documentation and safety requirements administered by the United States Coast Guard. The Coast Guard may also be able to advise you about the steps necessary to transfer ownership of the vessel. If you wish to question the Coast Guard about the subject of your letter, you may contact the nearest Coast Guard office or write to Coast Guard Headquarters at the following address:

Mr. Joseph A. Yglesias
Chief, Merchant Vessel Documentation Division
G-MVD/13
U.S. Coast Guard
2100 Second Street, S.W., Room 1312
Washington, D.C. 20593

Sincerely,

Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

Enclosures

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

MAY 3 - 1984

REFER TO
VES-3-06/VES-10-03
CO:R:CD:C 106553 PH

106553

This ruling concerns the proposed use of a foreign-built vessel for transportation, towing, and anchor handling in support of a mining operation in a remote area of the United States.

ISSUE:

1. May a foreign-built vessel be used to transport mining equipment, tools, food, supplies, miners, and fuel between points in the United States?

2. May a foreign-built vessel be used to tow a dredging barge between points in the United States?

3. May a foreign-built vessel be used to set and change the location of anchors as necessary for a dredging barge in United States waters?

4. May a foreign-built vessel be used to transport ore to various ports in Alaska or Washington from the site in the United States where the ore is mined?

FACTS:

The inquirer, an Alaskan lumber company, requests advice on its proposed use of a foreign-built vessel in a mining operation in a remote area. The inquirer states that the vessel is 120' x 32' x 6' and has a house aft, a bow ramp, and fuel storage tanks amidships.

The inquirer states that the vessel would be used to -- (1) carry equipment, tools, food, supplies, miners, and (with Coast Guard approval) fuel; (2) tow a dredging barge to a mining location; (3) set and change the location of anchors as necessary for the dredging barge; and (4) transport ore from the mining operation to various ports in Alaska or Washington. For purposes of this ruling, we assume that the place from which the vessel would be transporting equipment, etc., or towing the dredging barge, and the site of the mining operation are in the United States. The inquirer states that the vessel will not be used for hire or any other use not legally permitted.

The inquirer also requests advice on the steps necessary to transfer ownership, enter United States waters, and any other problems he might encounter.

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LAW AND ANALYSIS:

Title 46, United States Code, section 883, (46 U.S.C. 883), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. Section 289 of title 46 (46 U.S.C. 289), as interpreted by the Customs Service, prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (see above). The coastwise towing statute, 46 U.S.C. 316(a), prohibits the use of a non-coastwise-qualified vessel (see above) to tow any vessel other than a foreign-flag vessel, or a vessel in distress, from any port or place embraced within the coastwise laws of the United States to another such port or place, or for any part of such towing.

For purposes of the coastwise laws, a point in United States territorial waters is considered a point embraced within the coastwise laws. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

The vessel under consideration may not engage in the coastwise trade because it is foreign-built. As a non-coastwise-qualified vessel, the vessel may not transport between United States coastwise points mining equipment, tools, or supplies, food for the miners, the miners themselves, or fuel. The vessel may not be used to tow a dredging barge between United States coastwise points unless the dredging barge is a vessel documented under a foreign flag or a vessel in distress. The vessel may not be used to transport ore between the mining operation and ports in Alaska or Washington.

For purposes of this ruling, we have assumed that the place from which the vessel under consideration would transport the mining equipment, etc., or tow the dredging barge, and the site of the mining operation are in the United States. If either or both of these locations are not in the United States, the transportation of mining equipment, etc., and the towing of the dredging barge would not be between coastwise points and could be performed by a non-coastwise-qualified vessel such as that

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under consideration. If the site of the mining operation is not in the United States, the transportation of the ore between that site and ports in Alaska or Washington would not be between coastwise points and also could be performed by a non-coastwise-qualified vessel such as that under consideration.

Customs has ruled that the use of a vessel in moving anchors for vessels located in United States territorial waters does not constitute coastwise trade. Accordingly, the vessel under consideration may be used to set and change the location of anchors as necessary for a dredging barge, even if the anchor handling operation occurs in United States territorial waters.

If the vessel under consideration is brought into the United States from a foreign country, its master will be required to report its arrival to Customs within 24 hours after arrival (19 U.S.C. 1433; section 4.2 Customs Regulations) and make entry of the vessel within 48 hours after arrival (19 U.S.C. 1434 or 1435; section 4.3 et seq., Customs Regulations). The vessel will be subject to tonnage taxes (usually $.02 or $.06 per net ton, depending on the foreign port from which the vessel is arriving; see section 4.20 et seq., Customs Regulations). The vessel may also be subject to permit to proceed requirements, when moving between ports of the United States, and vessel clearance, when departing the United States for a foreign port. Copies of sections of the Customs Regulations on the foregoing requirements are enclosed for the information of the inquirer. The inquirer may obtain further information on these requirements from his local Customs office.

This ruling does not address questions pertaining to the vessel documentation and safety requirements administered by the United States Coast Guard. The letter transmitting this ruling contains the address to which inquiries on these subjects may be sent.

HOLDINGS:

1. A foreign-built vessel may not be used to transport mining equipment, tools, food, supplies, miners and fuel between points in the United States.

2. A foreign-built vessel may not be used to tow a dredging barge between points in the United States unless the dredging barge is a vessel documented under a foreign flag or a vessel in distress.

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106553

3. A foreign-built vessel may be used to set and change the location of anchors as necessary for a dredging barge in United States waters.

4. A foreign-built vessel may not be used to transport ore to various ports in Alaska or Washington from the site in the United States where the ore is mined.

EFFECT ON OTHER RULINGS:

None.

Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

106552

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[redacted]

U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

P UNCLASSIFIED

106596

DONALD H. REUSCH 566-5706 X

X106597

[redacted]

VES 10-01
106596 DHR

REURTEL FEBRUARY 7, 1984, REQUEST FOR PERMISSION FOR PANAMANIAN TUG [redacted] TO SALVAGE LIBERIAN TRITON C WHICH IS AGROUND IN TAMPA BAY. YOU ADVISE THAT U.S. TUGS ATTEMPTED TO FREE THE TRITON C BUT HAVE BEEN UNSUCCESSFUL. YOU INDICATE THAT [redacted] SHOULD HAVE SUFFICIENT POWER TO FREE THE VESSEL, THAT TIME IS OF THE ESSENCE. OUR INVESTIGATION INDICATES THAT THERE ARE NO U.S. FLAG TUGS OF SUFFICIENT POWER TO FREE THE VESSEL. ACCORDINGLY, PURSUANT TO 46 U.S.C. 316(d), NO PENALTY WILL BE INCURRED IF SALVAGE OF THE TRITON C IS PERFORMED BY A FOREIGN-FLAG VESSEL.

/S/

JOHN P. SIMPSON
DIRECTOR
OFFICE OF REGULATIONS AND RULINGS

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CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

U.S. CUSTOMS SERVICE
OFFICE OF COMMERCIAL OPERATIONS
WASHINGTON, D.C. 20229

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UNCLASSIFIED

5/8/84

VES-3-02-CO:R:CD:C
106796 PH

PAUL HEGLAND

566-5706

x

MAY 10 1984

[redacted]

TELEX NO. 32-9430

INFO: R.C., PACIFIC REGION
D.D., SEATTLE, WASHINGTON

REURTELEX MAY 3, 1984, (YOUR REF: H-1100-1500-674; OUR REF: 106796), CONCERNING USE OF UNITED STATES-BUILT, FLAG, AND OWNED BUT NON-COASTWISE-QUALIFIED JETFOIL PASSENGER VESSEL ARIES (OUR RULINGS 105587 (C.S.D. 82-115) AND 105909 (C.S.D. 83-52) ALSO CONCERNED THIS VESSEL) TO TRANSPORT AMBASSADORS OF SIX ASIAN NATIONS WITH THEIR STAFFS FROM TACOMA TO SEATTLE AS PART OF THE HOSPITALITY FURNISHED THE AMBASSADORS ON THEIR VISIT TO THE SEATTLE AREA. THE AMBASSADORS AND THEIR STAFFS WOULD BE TRANSPORTED BY A BUS OF THE INQUIRER FROM THEIR HOTEL IN SEATTLE TO TACOMA. THE ROUND-TRIP TRANSPORTATION WOULD BE PROVIDED BY THE INQUIRER FREE OF CHARGE. IN addition TO THE AMBASSADORS AND THEIR STAFFS, PERSONNEL OF THE PORTS OF TACOMA AND SEATTLE, AND OF THE INQUIRER, WOULD BE TRANSPORTED.

106796

THE INQUIRER STATES THAT THERE IS A LONG-RANGE SALES ASPECT TO THE TRANSPORTATION BY THE JETFOIL BECAUSE

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THE SOME COUNTRIES OF THE AMBASSADORS ARE REGARDED AS SALES PROSPECTS AND ONE OF THE COUNTRIES HAS TAKEN DELIVERY ON ONE JETFOIL VESSEL, CONTRACTED FOR FOUR OTHERS, AND ENTERED A LICENSE AGREEMENT FOR CO-PRODUCTION. THE INQUIRER REQUEST A RULING THAT THE PROPOSED NON-REVENUE V.I.P. DEMONSTRATION WOULD NOT VIOLATE THE COASTWISE LAWS OR, AS A LESS DESIRABLE ALTERNATIVE, THAT A BRIEF DEMONSTRATION TRIP ORIGINATING AND RETURNING TO THE SAME POINT IN TACOMA OR SEATTLE WOULD NOT VIOLATE THE COASTWISE LAWS.

AS NOTE COMPLETELY DESCRIBED IN C.S.D.'S 82-115 AND 83-52, ALSO CONCERNING THIS VESSEL, THE COASTWISE LAWS PROHIBIT THE TRANSPORTATION OF MERCHANDISE OR PASSENGERS BETWEEN UNITED STATES COASTWISE POINTS IN A NON-COASTWISE-QUALIFIED VESSEL. GENERALLY, THIS PROHIBITION HAS BEEN INTERPRETED TO APPLY TO THE TRANSPORTATION OF PASSENGERS ON A NON-COASTWISE-QUALIFIED VESSEL WHEN THE VOYAGE IS ENTIRELY WITHIN UNITED STATES TERRITORIAL WATERS, EVEN THOUGH THE PASSENGERS ARE EMBARKED AND DISEMBARKED AT THE SAME COASTWISE POINT AND THE VESSEL TOUCHES AT NO OTHER COASTWISE POINT DURING THE VOYAGE. HOWEVER, THIS PROHIBITION DOES NOT APPLY TO SUCH A VOYAGE ENTIRELY WITHIN TERRITORIAL WATERS WHEN THE PURPOSE OF THE VOYAGE IS TO

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106 796

F11

DEMONSTRATE THE VESSEL. THIS "DEMONSTRATION" EXCEPTION HAS BEEN LIMITED TO DEMONSTRATION VOYAGES ORIGINATING AND TERMINATING AT THE SAME POINT BECAUSE TRANSPORTATION OF PERSONS BETWEEN DIFFERENT COASTWISE POINTS, EVEN ON A VOYAGE DESCRIBED AS A DEMONSTRATION VOYAGE, IS ITSELF CONSIDERED EVIDENCE OF A PURPOSE OTHER THAN DEMONSTRATION OF THE VESSEL.

ACCORDINGLY, WE CONCLUDE THAT THE JETFOIL VESSEL UNDER CONSIDERATION MAY NOT BE USED TO TRANSPORT THE AMBASSADORS AND THEIR STAFFS FROM TACOMA TO SEATTLE, A VOYAGE ENTIRELY WITHIN TERRITORIAL WATERS, BUT IT MAY BE USED TO TRANSPORT THE AMBASSADORS AND THEIR STAFFS ON THE ALTERNATIVE BRIEF DEMONSTRATION TRIP ORIGINATING AND RETURNING TO THE SAME POINT IN TACOMA OR SEATTLE, ASSUMING THAT THE VESSEL DOES NOT TOUCH AT ANY OTHER COASTWISE POINT DURING THE COURSE OF THE DEMONSTRATION TRIP. THE INQUIRER SHOULD BE AWARE THAT ALTHOUGH PERSONS CONNECTED WITH THE OPERATION, NAVIGATION, OWNERSHIP, OR BUSINESS OF THE VESSEL (E.G., THE CREW, CORPORATE OFFICIALS OF THE VESSEL OWNER, AND PERSONS NECESSARY TO

106976

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CONDUCT THE DEMONSTRATION) MAY ALSO BE TRANSPORTED ON THE ALTERNATIVE BRIEF DEMONSTRATION TRIP, TRANSPORTATION ON THE ALTERNATIVE DEMONSTRATION TRIP OF ANY PERSON OTHER THAN THE AMBASSADORS AND THEIR STAFFS, OR ANY PERSON NOT CONNECTED WITH THE OPERATION, NAVIGATION, OWNERSHIP, OR BUSINESS OF THE VESSEL, WOULD BE PROHIBITED BY THE COASTWISE LAWS (SEE C.S.D.'S 82-115 AND 83-52).

KATHRYN C. PETERSON
CHIEF
CARRIER RULINGS BRANCH

106 796

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CODE AND DATE	[redacted]						
SURNAME							
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

* U.S. GPO: 1983-417-799

U.S. CUSTOMS SERVICE
OFFICE OF COMMERCIAL OPERATIONS
WASHINGTON, D.C. 20229

P

UNCLASSIFIED

5/15/84

VES-10-03-CO:R:CD:C
106803 PH
X

PAUL HEGLAND

566-5706

MAY 16 1984

[redacted]

TLX. NO. 32 9636

INFO: R.C., PACIFIC REGION
D.D., SEATTLE, WASHINGTON
D.D., ANCHORAGE, ALASKA

COLLECT

106803

REURTELEX MAY 10, 1984 (OUR REFERENCE 106803), CONCERNING ALTERATION OF THE ITINERARY OF A CRUISE PROPOSED BY EXPLORATION HOLIDAYS AND CRUISES. OUR RULING VES-3-02-CO:R:CD:C 106722, SENT TO YOU ON APRIL 16, 1984, HELD THAT A CRUISE BETWEEN VANCOUVER OR VICTORIA, BRITISH COLUMBIA, AND AN ALASKAN PORT, WHICH INCLUDES CALLS AT FIVE INTERVENING UNITED STATES PORTS, WOULD VIOLATE THE COASTWISE LAWS, BUT SUCH A CRUISE WHICH INCLUDES CALLS AT THREE INTERVENING UNITED STATES PORTS WOULD NOT VIOLATE THE COASTWISE LAWS.

YOU NOW STATE THAT BECAUSE OF THE NATIONAL PARK SERVICE'S POLICY OF LIMITING ENTRY PERMITS TO GLACIER BAY, THE CRUISE VESSEL WHICH WAS THE SUBJECT OF OUR APRIL 16 RULING CANNOT SECURE AN ENTRY PERMIT ALLOWING IT TO CRUISE THE WATERS OF

F14

1 3

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GLACIER BAY NATIONAL PARK. IT IS PROPOSED THAT A UNITED-STATES-BUILT DAY EXCURSION VESSEL, OWNED BY THE UNITED STATES-OWNED COMPANY WHICH OPERATES THE CRUISE VESSEL, TAKE PASSENGERS FROM THE CRUISE VESSEL INTO GLACIER BAY AND RETURN THEM TO THE CRUISE VESSEL WITHOUT USING ANY DOCK FACILITY. THIS EXCURSION CRUISE WOULD LAST APPROXIMATELY 8 HOURS. YOU STATE THAT YOU DO NOT CONSIDER THIS TO BE AN INTERVENING UNITED STATES PORT BUT MERELY AN EXTENSION OF THE CRUISE AND REQUEST A FAVORABLE RULING.

GENERALLY, THE TRANSFER OF PASSENGERS OR MERCHANDISE FROM ONE VESSEL TO ANOTHER IN UNITED STATES TERRITORIAL WATERS IS CONSIDERED A "LANDING" BY CUSTOMS. IN THIS CASE THERE ARE UNUSUAL CIRCUMSTANCES. A PERMIT TO CRUISE IN GLACIER BAY CAN NOT BE SECURED FOR THE CRUISE VESSEL BECAUSE OF THE RULES OF ANOTHER GOVERNMENT AGENCY. PASSENGERS WILL BE TRANSFERRED TO A VESSEL OWNED BY THE CRUISE OPERATOR FOR AN EXCURSION CRUISE IN TERRITORIAL WATERS LIMITED TO APPROXIMATELY 8 HOURS. WE ASSUME, FOR PURPOSES OF THIS TELEX, THAT THE PASSENGERS WILL NOT SET FOOT ON LAND DURING THIS EXCURSION CRUISE. BASED ON THE FOREGOING, THE TRANSFER TO AND THE CRUISE IN GLACIER BAY ON THE DAY EXCURSION VESSEL WILL NOT BE CONSIDERED AN INTERVENING

106903

G1

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UNITED STATES PORT, FOR PURPOSES OF OUR APRIL 16, 1984, RULING. WE EMPHASIZE, HOWEVER, THAT THE DAY EXCURSION VESSEL MUST BE COASTWISE-QUALIFIED (SEE 46 U.S.C. 883), OR ITS TRANSPORTATION OF THE PASSENGERS WILL VIOLATE THE COASTWISE LAWS, AND THAT OUR APRIL 16 RULING STILL STANDS.

IN OUR TELEPHONE CONVERSATION ON MAY 9, 1984, [redacted] OF YOUR COMPANY DISCUSSED THE PART OF OUR APRIL 16 RULING WHICH HELD THAT A CRUISE WHICH INVOLVES CALLS OF NO MORE THAN 24 HOURS AT THREE INTERVENING UNITED STATES PORTS WOULD NOT VIOLATE THE COASTWISE LAWS. MR. REYNOLDS ASKED WHETHER THE REFERENCE TO 24 HOURS MEANS 24 HOURS IN ALL OF THE THREE PORTS OR IN EACH OF THE PORTS. THIS CONFIRMS THAT THE SUBJECT REFERENCE MEANS THAT EACH OF THE CALLS AT THE THREE UNITED STATES PORTS MAY BE NO LONGER THAN 24 HOURS.

106803

(Signed) Kathryn C. Peterson

FOR EDWARD B. GABLE, JR.
DIRECTOR, CARRIERS, DRAWBACK AND BONDS DIVISION

PAUL HEGLAND:ga: 5/15/84

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CODE AND DATE	[redacted]						
SURNAME	[redacted]						
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY - U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 188 (11-15-73)

* U.S. GPO:1983-417-700

JUL 3 - 1984

VES 3-02 CO:R:CD:C
106823 DHR

[redacted]

Dear [redacted]

This is with reference to your letter of May 18, 1984, in which you ask for an exception to the coastwise laws in order for the foreign passenger vessel [redacted] to carry the Mayor and City Council of New London, Connecticut, and travel agents from Newport, Rhode Island, to New London. The vessel would arrive in Newport from Nova Scotia and would then proceed to New London to embark on a cruise.

Section 289, title 46, United States Code, prohibits the transportation of passengers between ports of the United States on foreign vessels. The Customs Regulations define a "passenger" in this context as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business." The connection must be direct and immediate, not a remote or hypothetical connection or a connection related only to future voyages. The Customs Service has consistently held that, while travel agents may be tangentially connected with the business of a vessel, in that they may encourage future travel on that vessel, they are not directly enough connected with the business of the vessel to be classified as other than passengers. Consequently, the proposed transportation of the travel agents would be in violation of the statute, even though the cruise line would receive no revenue from it.

The Mayor and City Council will be traveling on board the vessel to promote New London as a cruise port. Therefore, their transportation will be connected with the business of New London, and not the business of the GALILEO. Accordingly, the proposed transportation of the Mayor and City Council would also be in violation of the statute.

106823

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There is no general authority to waive the coastwise laws except under the Act of December 27, 1950 (note preceding section 1, title 46, United States Code), which provides for waivers necessary in the interest of national defense. It follows that the Customs Service has no authority to permit the proposed transportation.

Sincerely,

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.
Director, Carriers, Drawback and
Bonds Division

106823

[redacted]

[redacted]

G4

CODE AND DATE	[redacted]					
SURNAME	[redacted]					
CODE AND DATE						
SURNAME						

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 11 1984
FILE: VES 13-18
CO:R:CD:C
106961 JM

106961

TO : DARC, Classification and Value Division
c/o Regional Commissioner of Customs
New Orleans, Louisiana

FROM : Chief, Carrier Rulings Branch

SUBJECT: New Orleans Vessel Repair Entry 80-269390-3, [redacted]

Your memorandum dated July 26, 1984, requested a ruling on the petition for relief from duty under 19 U.S.C. 1466 on the cost of foreign repairs to the subject vessel.

Our reply to your request is contained in the attached ruling.

Kathryn C. Peterson

Kathryn C. Peterson

Attachment

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GS

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 11 1984

REFER TO
VES-13-18 CO:R:CD:C
106961 JM

106961

This ruling concerns a petition for relief from duty under 19 U.S.C. 1466 on the cost of foreign repairs to an American-flag vessel.

ISSUE:

Whether duties on the cost of repairs effected to meet safety requirements administered by the U.S. Coast Guard are subject to remission under 19 U.S.C. 1466(d)(1).

FACTS:

The subject vessel arrived in the United States on March 13, 1980, at New Orleans, Louisiana, from Wellington, New Zealand. Vessel Repair Entry 80-269390-3 was filed covering repairs to the vessel in foreign countries.

The petitioner claims that repairs to the radars, the gyro compass and the radio aerial were effected to comply with safety requirements administered by the U.S. Coast Guard as set forth in 33 CFR 26.03(a), 164.35(d) and (e) and 164.37(a). The petitioner has furnished no evidence concerning the cause of the failure of the articles repaired aboard.

LAW AND ANALYSIS:

Title 19, United States Code, section 1466, provides in pertinent part for payment of an ad valorem duty of 50 percent of the cost of foreign repairs to a vessel documented under the laws of the United States to engage in the foreign or coastwise trade. Subsection 1466(d)(1) provides that the Secretary of the Treasury is authorized to remit or refund such duties if the owner or master of the vessel furnishes good and sufficient evidence that the vessel was compelled by stress of weather or other casualty to put into such foreign port to make repairs to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination.

In C.S.D. 79-272, we denied relief from duty on the purchase of fire extinguishers to comply with regulations governing the carriage of flammable or combustible liquids because the purchase was not compelled by stress of weather or other casualty. In like manner, the repairs to the subject vessel were effected to comply with safety requirements administered by the U.S. Coast Guard but were not necessitated by stress of weather or other casualty.

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HOLDING

Duties on the cost of repairs effected to meet safety requirements of the U.S. Coast Guard are not remissible under 19 U.S.C. 1466(d)(1) in the absence of proof that such repairs were necessitated by stress of weather or other casualty. Accordingly, remission of duty on the cost of repairs to the radars, gyro compass and radio aerial is denied.

Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

106961

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JAN 4 - 1985

REFER TO
VES-3-12 CO:R:CD:C
107122 ESA

107122

[redacted]

Dear [redacted]

This is in reference to your letter dated October 2, 1984, requesting information concerning the use of vessels in the transportation of sludge to an ocean dumping cite approved by the Environmental Protection Agency 106 miles from New York. Specifically you inquire as to any restrictions that would apply to such vessel, such as, where it was built, its manning and its flag.

Generally, title 46, United States Code section 883, provides, in pertinent part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of that transportation, in any vessel other than a vessel built in and documented under the laws of the United States. The restriction of the coastwise trade to an American flag vessel as provided in section 883 only applies if the material transported is "merchandise" and the "merchandise" is transported between points in the United States.

A point in the United States includes the territorial waters 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline, charts of which are maintained by the U.S. Coast Guard and are available for inspection in accordance with 33 C.F.R. 1.10-5(b).

If material is transported from one point to another within the territorial jurisdiction of the United States and dumped for the sole purpose of disposing of it, material will not be considered "merchandise" and its transportation will not be considered coastwise trade. If the material is transported from one point to another within the territorial jurisdiction of the United States for a purpose other than just disposing of it, such as for land fill, the material will be considered "merchandise" and its transportation will be deemed coastwise trade.

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107122

Thus, if the sludge is to be dumped beyond the territorial limits, or if transported only for disposal, the coastwise restriction set forth is section 883 cited above will not apply.

Sincerely,

Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

APR 18 1985

REFER TO
VES-3/VES-10-02
CO:R:CD:C 107283 PH

107283

[redacted]

Dear [redacted]

Your letter of November 30, 1984, concerns your intended operation of wood barges on the inland waters of Puget Sound to build rock bulkheads. You state that one barge would be used as a crane barge and two other barges would be used to move rocks to private beaches where the barges would be beached. The rocks would be placed on the beach to prevent erosion. You ask if this construction work constitutes coastwise trade requiring documented barges.

Title 46, United States Code, section 883 (46 U.S.C. 883), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. The Customs Service has consistently held that this statute applies to movements of merchandise between points in United States territorial waters, including points within a harbor or lake. Customs has ruled that "merchandise," for purposes of 46 U.S.C. 883, includes anything of value, including refuse and other articles used to create an island or jetty or to otherwise create additional land area.

Accordingly, transportation of the rocks between the point of their recovery in Puget Sound and the point where they are beached would be considered coastwise transportation of merchandise within the purview of 46 U.S.C. 883 requiring coastwise-qualified vessels.

If the crane barge does not transport the rocks and only moves them by operation of the crane on the barge, it will not be considered to be engaged in coatwise transportation and will not need to be documented. However, under 46 U.S.C. 292, (the dredging statute) it will be required to be built in the United States. We are enclosing a copy of our ruling VES-3-12

G10

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10-02-CO:R:CD:C 106844 PH, June 1, 1984, which concerns an operation similar to that you propose and addresses the question of the applicability of 46 U.S.C. 292 to the operation in more detail.

Sincerely,

Paul D. Hegland

for Kathryn C. Peterson
Chief
Carrier Rulings Branch

Enclosure

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107283

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

MAR 28 1985

REFER TO
VES-3-12-CO:R:CD:C
107483 PH

107483

Myron H. Nordquist, Esq.
Herrick & Smith
1800 Massachusetts Avenue, NW.
Washington, D.C. 20036

Dear Mr. Nordquist:

Your letter of March 4, 1985, concerning the applicability of the coastwise laws to an ocean incineration vessel, was forwarded to this office by the United States Coast Guard for direct reply. In your letter, you ask if a foreign-built, United States-flag ocean incineration vessel that went from a United States port to the high seas and back to the same United States port would violate the Jones Act.

Title 46, United States Code, section 883 (46 U.S.C. 883, often called the Jones Act), was amended by section 502 of the Fisheries Amendments of 1982 (96 Stat. 1949, 1954-1955) by the addition of a provision that:

> For purposes of this section, after December 31, 1983, or after such time as an appropriate vessel has been constructed and documented as a vessel of the United States, the transportation of hazardous waste, as defined in section 6903(5) of title 42, from a point in the United States for the purpose of the incineration at sea of that waste shall be deemed to be transportation by water of merchandise between points in the United States ....

In response to your letter, we are enclosing a copy of our ruling VES-3-15-CO:R:CD:C 106545 PH, January 20, 1984, which is still in effect and which interprets this provision.

Sincerely,

Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

Enclosure

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SEP 3 - 1985

CO:R:CD 107579 EBG

Mr. Peter J. Luciano
Executive Director
Transportation Institute
923 Fifteenth Street, NW.
Washington, D.C. 20005

Dear Mr. Luciano:

Reference is made to your issue of CURRENTS for August 1985. In the article entitled "Outer Continental Shelf," the statement is made that "The Customs Service has frequently favored the use of foreign-flag vessels when called upon to make a ruling."

I am very surprised that your publication would include the above-quoted statement. It is simply not true.

I have worked as closely as I can with representatives of the Transportation Institute for many years. I had assumed that you were well aware of the countless times we have [illegible] rulings the use of foreign-flag vessels in various operations. It is totally incorrect to say that we have "frequently favored" the use of foreign-flag vessels. What we do is apply the navigation laws enacted by the Congress. Where Congress has provided that a certain use of a foreign-flag vessel is against the law, we have always ruled that the proposed use is prohibited.

With regard to the applicability of the Jones Act (46 USC 883) to drilling rigs and other installations and devices on the Outer Continental Shelf, we are guided by section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)(1)). Under that law, we have prohibited the use of foreign-flag vessels on numerous occasions and for many years (our first published ruling was Treasury Decision 54281(1), dated January 9, 1957). When in December 1984 we were asked to determine whether the Jones Act applied to a foreign-flag warehouse vessel simply anchored to the Shelf, we concluded that such a vessel could not be said to be covered by the language of section 4(a) of the Outer Continental Shelf Lands Act, which reads in part "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of ...." There is no statutory definition or legislative history to indicate that the words "which may be erected thereon" could apply to a vessel simply anchored to the shelf. However, as stated in your article, we did state that we would welcome Congressional clarification on the issue. After the Congress informed us that the above-quoted statutory words were meant to apply to an anchored vessel when it is

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being used to supply drilling rigs on the Shelf, we determined that the Jones Act did apply to such an anchored vessel.

I hope this clarification of our position will be helpful.

Sincerely,

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

cc: Mr. Robert S. Agman
Executive Vice-President
Labor-Management Maritime Comm.
100 Indiana Ave., NW.
Washington, D.C. 20001

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 11 1985

REFER TO
VES-3
CO:R:CD:C 107723 PH

[redacted]

In your letter of June 14, 1985, you request a ruling on the applicability of the coastwise laws to certain transportation of liquified petroleum gas (LPG). The LPG will be transported by a foreign-flag vessel from one United States port to another United States port where it will be transshipped to a second vessel for transportation to and delivery at its ultimate foreign destination.

You contend that the first part of this movement, even though it is between two points in the United States, would not violate the Jones Act because it would be part of a continuous voyage with an intended destination outside the United States. You enclose a copy of a legal opinion prepared by your attorneys supporting this position.

Title 46, United States Code, section 883, (46 U.S.C. 883), often called the Jones Act, provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. In interpreting this provision, Customs has consistently held that transportation of merchandise between two points in the United States by vessel (i.e., the loading of the merchandise at one point in the United States and the transportation to and unloading or transshipment of the merchandise at another point in the United States) is coastwise transportation subject to the provisions of 46 U.S.C. 883, even if the merchandise is to be transported foreign from the second United States point (see, e.g., Customs Service Decision (C.S.D.) 84-2, copy enclosed).

In C.S.D. 84-2, we thoroughly considered this issue. We ruled that the transportation by foreign-flag vessel of coal from a port in the United States to a point in territorial waters where the coal was transshipped to another vessel for transportation foreign was coastwise trade. Our position has not changed.

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Therefore, the first leg of the movement you propose (i.e., the transportation by foreign-flag vessel of the LPG from one United States port to another United States port for transshipment to another vessel for transportation foreign) is coastwise trade and would be prohibited.

We note that the cases and court rulings referred to in your attorney's legal opinion concern the transportation between United States points via a foreign or non-coastwise point. Because 46 U.S.C. 883 specifically applies to such transortation (i.e., "either directly or via a foreign port, or for any part of the transportation"), the continuity of the voyage is, of course, not broken by the mere transshipment at a foreign port.

Sincerely,

Kathryn C. Peterson
Chief
Carrier Rulings Branch

Enclosure

107723

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VES-3-02-CO:R:CD:C
107778 PH

SEP 18 1985

[redacted]

Dear [redacted]

With your letter July 10, 1985, you enclosed a copy of your proposed itinerary for the foreign-flag cruise vessel [redacted] during the 1986 Alaska season. You request confirmation that the itinerary complies with the coastwise laws.

On the northbound portion of the itinerary, the vessel would depart from Vancouver, British Columbia, cruise Misty Fjords, call at Ketchikan, Juneau, and Skagway, Alaska, cruise Yakutat, Columbia Glacier, and College Fjord, and disembark passengers at Whittier, Alaska. On the southbound portion of the itinerary, the vessel would depart from Whittier, cruise College Fjord, Columbia Glacier and Yakutat, call at Skagway, Juneau, and Ketchikan, cruise Misty Fjords, and disembark passengers at Vancouver. We assume that passengers would only join the northbound portion of the itinerary at Vancouver and that passengers originally embarking at any Alaskan port would only disembark (i.e., permanently leave the vessel) at Vancouver.

This itinerary will not violate the coastwise passenger statute (46 U.S.C. 289), as interpreted under the newly amended Customs Regulations issued thereunder (19 CFR 4.80a) (see Treasury Decision 85-109, published in the Federal Register on July 1, 1985 (50 FR 26981)).

Sincerely,

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

[redacted]

107778

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CODE AND DATE	[redacted]						
SURNAME	[redacted]						
CODE AND DATE							
SURNAME							

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 180 (11-13-75)

U.S. GPO: 1984-719-979

APR 28 1969

MS 212.6 F
Your File:
VES-5-LIQ

198752

The Regional Commissioner of Customs
Houston, Texas 77061

Dear Sir:

I have your letters of January 15, and February 14, 1969, transmitting a petition and supporting documents from [redacted] their attorneys, filed under section 4.14(k), Customs Regulations. The petition requests review of your decision of January 8, 1968, which denied an application claiming relief under section 258, title 19, United States Code, in connection with foreign repairs declared on vessel repair entry V-835, dated July 18, 1967, relating to the [redacted]

The petitioner claims that at 5 P.M. on January 24, 1967, a tube failure in the atmospheric condenser led to flooding and heavy salt contamination in the main plant. Tank flooding was noted, the system stopped and repairs and decontamination steps were then undertaken. Twenty-two hours later, at 3 P.M. on January 25, the boilers were fired and steam leaks were noted. Boiler use was discontinued and further repairs were undertaken, following which steam was again raised. Immediately thereafter a blown tube again forced a shutdown of the plant. In short, a series of repairs while the vessel lay at anchor at Aruba and during several hours after she was underway finally resulted in her being towed into Curacao for repairs. The American Bureau of Shipping surveyor's report stated that the [redacted] was inspected while at anchor off Curacao and was found to require steam line and equipment repairs as well as electrical equipment repairs, basically resultant from salt contamination.

Past experience of the Bureau has demonstrated that boiler repairs are not uncommon occurrences. Generally, work of this description is regarded as maintenance in nature as distinguished from repairs which are attributable to stress of weather or other casualty within the meaning of section 258, title 19, United States Code. While it is recognized that the damage may have been a serious and extraordinary event, as stated in the petition dated May 21, 1968, we nevertheless remain unconvinced by the evidence presented that the repairs are not traceable to

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[redacted]

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the effect of ordinary wear and tear. See C.I.E. 935/60, dated June 29, 1960. Therefore, the petition is denied.

Your file is being returned.

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. TEBEAU
Director, Division of Marine
and Transportation Ratings

In duplicate

Enclosure No. 37362

[redacted]

1987152

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[redacted]

TREASURY DEPARTMENT

BUREAU OF CUSTOMS

WASHINGTON

CIRCULAR: VES-5-MA
JUL-9-1964

199566

To: All Principal Customs Field Officers

Subject: VESSELS; Exemptions from making entry

References: Section 441(4), Tariff Act of 1930, as amended; Section 4.3, Customs Regulations; and Bureau Circular VES-5-MA, September 13, 1963.

1. PURPOSE

This is to inform you of a recent ruling which permits the landing of a crewmember's immediate family from a vessel which arrives at a port for the purpose of lading bunkers, sea stores, or ship's stores, without causing the vessel to lose the exemption from entry which it may otherwise qualify for under section 441(4) of the tariff act.

2. BACKGROUND

The Bureau has been advised that some foreign countries permit the families of crewmembers to accompany the crewmembers on voyages for certain periods without the payment of passenger fare. In some instances, when the vessels call at United States ports for the purposes allowed under section 441(4), the families have expressed their desire to disembark.

A "passenger," for the purposes of the entry and clearance requirements, is defined in section 4.50(b) of the Customs Regulations as any person carried on a vessel who is not connected with the operation of such vessel, its navigation, ownership, or business. Further, the Bureau has held that a crewmember's immediate family, accompanying him aboard the vessel without the payment of fare, will not be considered passengers. Consequently, under the circumstances these persons may go ashore in the United States without causing the vessel to lose any exemption from entry which it may otherwise qualify for under section 441(4).

3. ACTION

A vessel which arrives at a port in any collection district, whether in distress or for the purpose of lading bunkers, sea stores, or ship's stores only, will not lose the exemption to which it is otherwise entitled under the provisions of section 441(4), Tariff Act of 1930, merely because a crewmember's immediate family, accompanying the crewmember aboard the vessel without the payment of fare, is landed.

Distribution: A13

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REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C., 20226

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4. EFFECTIVE DATE

This circular is effective upon receipt.

File: MS 213.214 R

Philip Nichols Jr.
Commissioner of Customs

1985266

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[redacted]

200403

1-15-73

TD73-88-CC

DB 731.1 T
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Mr. Fred R. Boyett
Regional Commissioner of Customs
New York, New York 10004

Dear Mr. Boyett:

T. D. 56549-T, authorizing the allowance of drawback on (1) white nylon staple fibers, (2) white acrylic staple fibers, and (3) white polyester staple fibers; all the foregoing either crimped or uncrimped and cut to variable specified lengths manufactured under the provisions of section 1313(b), title 19, United States Code, by Star Fibers, Inc., Cohoes, New York, at its Ridgefield, South Carolina, factory with the use of (1) white nylon thread waste, (2) white acrylic thread waste, white acrylic clip waste, and cut white acrylic thread waste, and (3) white polyester waste, white polyester clip waste, and cut white polyester thread waste, is hereby amended to cover such articles manufactured by the said company at its above factory with the use of white nylon feeder yarn or tow, drawn or undrawn; white polyester feeder yarn or tow, drawn or undrawn; and white acrylic tow, drawn or undrawn.

There is enclosed, approved, a copy of the manufacturer's supplemental drawback statement subscribed to on November 16, 1972 (page 2 amended December 11, 1972), requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

The quantity of imported white nylon feeder yarn or tow; white polyester feeder yarn or tow; and white acrylic tow, or of such merchandise manufactured under drawback regulations, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity of each class of merchandise, respectively, equivalent to the quantity of such merchandise of the same kind and quality as that designated which was used in the manufacture of the exported articles, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

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Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after September 1, 1972, and exported on and after September 7, 1972. Exportation shall be made within 3 years after importation of the imported merchandise.

There are enclosed an extra copy of the manufacturer's drawback statement and of this authorization, which may be furnished with the first drawback claim filed hereunder to the special agent in charge pursuant to section 22.4(g) of the Customs Manual.

Sincerely yours,

J. P. [redacted]
Director, Carriers,
Drawback and Bonds Division

Enclosure 13469

[redacted]

[redacted]

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CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
[redacted]							

MAR 8 1974

DRA-1-09 R:CD:D T
201.47

For Publication

Dear [redacted] . T.D. 74-149-C

You are hereby authorized to allow drawback upon compliance with the provisions of section 1313(b), title 19, United States Code, and Part 22 of the Customs Regulations, on zinc alloy slabs manufactured by Keeler Brass Company, Grand Rapids, Michigan, at its factories located at Grand Rapids, Lake Odessa and Cedar Springs, Michigan, with the use of zinc ingots, and on automotive and furniture parts manufactured under the provisions of section 1313(b) by the said company at its above factories with the use of zinc alloy slabs.

There are enclosed, approved, copies of the manufacturer's drawback statements subscribed to on February 12 and 26, 1974, requesting the foregoing action and containing the manufacturer's proposals as to the procedure it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

There is also enclosed a letter dated January 23, 1974, from Keeler Brass Company of Canada, Grand Rapids, Michigan, in which it transfers its drawback rights to Keeler Brass Company.

The quantity of imported zinc ingots, or of such merchandise manufactured under drawback regulations, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of such merchandise of the same kind and quality as that designated which appears in the zinc alloy slabs, as shown by the schedule on page 2 of the manufacturer's drawback statement of February 12, 1974.

The quantity of zinc alloy slabs manufactured under drawback regulations, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity thereof equivalent to the quantity of such merchandise of the same kind and quality as that designated which appears in the exported articles, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

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Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after April 25, 1973, and exported on and after May 25, 1973. Exportation shall be made within 5 years after importation of the imported merchandise.

There are enclosed extra copies of the manufacturer's drawback statements and of this authorization, which may be used in connection with verification of the first drawback claim filed hereunder.

Sincerely yours,

(Signed) J. P. TEBEAU
J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

[redacted]

Enclosures

[redacted]

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	[redacted]	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
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SURNAME							
DATE							

DEPARTMENT OF CUSTOMS CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (5-72)

201017

OCT 7 1976

MAR-1-03 R:CD:D LO
206865

[redacted]

Dear [redacted]

This is in reply to your letter dated June 22, 1976, regarding a proposed bonded warehousing operation.

You state that you are presently involved in the following duty-free operations:

1. Operating a duty-free tobacco and liquor shop at John F. Kennedy International Airport in New York for passengers flying overseas.

2. Supplying United Nations, Embassies, and Consulates for personnel entitled to Diplomatic privileges, bonded tobacco and liquor products for their personal use.

3. Supplying steamships and airlines with bonded tobacco and liquor for vessel supply.

4. Exporting to various countries.

You state you are presently expanding your product line to include gourmet food products. One of the most asked for items is liqueur and wine-filled candies. It is your understanding that this product may not be imported for consumption in the United States. However, you are of the opinion that it may be imported and stored in a bonded warehouse for exportation. Therefore, you are requesting a ruling pertaining to this product and the manner in which it may be withdrawn from warehouse in conjunction with your various operations.

In this regard, importations of food products into the United States are subject to the requirements of the Federal Food, Drug, and Cosmetics Act (21 U.S. Code 301, et seq.). Confectionery containing any alcohol other than less than one-half of one percent by volume of alcohol derived from flavoring extracts is, within the meaning of section 342 of the act (21 USC 342(d)(2)),

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adulterated food. As such, liquor-filled candies may not be imported into the United States (21 USC 381 (a)).

The U.S. Customs Service has been informed by a representative of the Food and Drug Administration that the importation of liqueur or wine-filled candies into the United States under any of the commercial operations described by you would be prohibited pursuant to the Federal Drug and Cosmetic Act, regardless of the fact that consumption would not occur within the United States. Though the character of the operation may affect the duty status of imported merchandise, it would not serve to make an otherwise illegal importation legal.

Consequently, as the articles you seek to import are prohibited, they could not be entered into a Customs bonded warehouse because title 19, United States Code, section 1557(a) only authorizes the entry of merchandise "subject to duty" into a Customs bonded warehouse. Accordingly, your request is denied.

Sincerely yours,

J. P. Tebeau

J.P. Tebeau
Director
Carriers, Drawback and Bonds Division

[redacted]

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Carriers Branch 103288
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12810

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO
CON-9-09-R:CD:D
209262 JL GS

[redacted]

Reference: Your letter of April 11, 1978, concerning [redacted]

Dea[redacted]

A DC-10 aircraft owned and operated by [redacted] a British corporation, enters the United States in international traffic. The plane then proceeds to the [redacted] factory for maintenance and repair work lasting in excess of two weeks. You ask legal decisions on two issues:

(a) Is a temporary importation under bond (TIB) entry necessary or may the work be performed with the plane remaining in international traffic?

(b) If TIB entry is necessary, may the TIB bond be cancelled in such manner that the plane may depart the United States in international traffic?

The first issue presented is whether or not an aircraft which is entered into the United States for the purposes of undergoing major repairs and modifications is subject to treatment as imported merchandise, for which appropriate Customs entry must be made. In this regard section 6.2(d)(1) of the Customs Regulations provides in relevant part as follows:

> Aircraft are subject to Customs entry when brought in for repairs or when otherwise treated as imported articles.

That a TIB is not required in those instances where temporary repairs, or repairs involving stays of short duration, are effected to an aircraft, is based upon the Customs view that the aircraft has not actually been withdrawn from international traffic. Not being withdrawn from international traffic, such aircraft will not be considered to have been imported within the meaning of section 6.2(d)(1) of the Customs Regulations. There is no doubt that aircraft not ordinarily used as instruments of international traffic would be considered imported merchandise no matter how short the intended stay in the United States for the purposes of being repaired. It is Customs view that withdrawal of aircraft from regular service for considerable periods of time is not in consonance with the customary exceptions from the application of Customs laws that the Secretary of the Treasury is authorized to grant pursuant to 19 U.S.C. 1322(a).

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We therefore hold that Customs practice of requiring TIB's for aircraft ordinarily used as instruments of international traffic but which are withdrawn from such traffic is proper, and is in fact required by section 6.2(d)(1) of the Customs Regulations.

We come now to the second issue. Section 113.55(a) of the Customs Regulations defines exportation as "a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country." This means that to export its plane Laker must sever it from the mass of things of this country and intend to unite it to the mass of things belonging to Britain.

The job which the DC-10 performs for Laker is to fly in international traffic. It is not therefore possible to unite it with the mass of things in Britain by keeping it confined to the British Isles. In its regular course of duty the plane perhaps spends as much time in the United States as in Britain. To determine to what country a plane in international traffic is united we do not look to see where it is parked but rather to the flag it flies and the registration it carries.

The definition of exportation makes it clear that intent is vital for exportation. Laker must intend to sever its plane from the United States and unite it to Britain. The question is how does Laker manifest this intent.

In practice this will mean that after maintenance and repair work on a plane is completed, the plane's captain will offer Customs the opportunity to inspect his plane with its British flag and its British registration. He will state to Customs that he is ready to assume command of the plane which will reenter international traffic under the British flag. Thereupon the plane is exported for TIB purposes and Customs will cancel the TIB bond.

This ruling revokes Treasury Decisions 54619(4), 54619(6), 54644(4) as well as the two underlying letter rulings dated June 16, and July 3, 1958, on which these Treasury Decisions were based.

Sincerely yours,

Leonard Lehman

Leonard Lehman
Assistant Commissioner
Regulations and Rulings

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103288/209262

05 JUL 1984

DRA-1-CO:R:CD:D
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Dear [redacted]

We have reviewed your request for reconsideration on our decision (215973) of June 10, 1983.

Classification for tariff purposes is not determinative of same kind and quality. There are two different statutes involved: 19 U.S.C. 1202 and 19 U.S.C. 1313. Further, the request for internal advice is not a ruling. Internal Advice 64-77 dealt solely with the issue whether the steel coated with zincromet would qualify for treatment under item 806.30, TSUS.

As you point out in your letter of October 21, 1983, the Drawing Quality Aluminum Killed Steel is not interchangeable with the other steels except in the sense that a purchaser generally will accept a better quality product in satisfaction of an order for one of inferior quality. Interchangeable connotes mutual substitution.

Accordingly, we adhere to the positions expressed in our letter of June 10, 1983.

Sincerely,

George C. Steuart

[redacted]

George C. Steuart
Chief
Drawback and Bonds Branch

[redacted]

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CODE AND DATE	[redacted]						
SURNAME							
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

04 SEP 1986

FOR-1-CO:R:CD:D
218442 L

District Director of Customs
335 Merchant 228 Fed. Bldg
Post Office Box 1641
Honolulu, Hawaii 96806

Reference: Decision on Application for Further Review of Protests No. 3201-4-000041, 3201-4-000044, and 3201-4-000051

Dear Sir:

The above captioned protests and applications for further review were filed against rate advances imposed on various lots of jet fuel manufactured in a foreign trade zone (FTZ) from privileged foreign (PF) crude oil and subsequently mixed with imported finished jet fuel.

ISSUE:

The issue raised is whether the mixing of imported finished jet fuel, dutiable at a rate of 1.25 cents per gallon, with jet fuel manufactured from PF crude oil in a FTZ and dutiable at a rate of 0.25 cents per gallon results in a loss of their respective identities and imposition of duty based on the hightest rate applicable to the mixed components.

FACTS:

Finished foreign jet fuel was admitted to a FTZ with the status of PF. The tanker cargo tanks were gauged prior to discharge into shore tanks in the FTZ containing jet fuel manufactured in the FTZ. The shore tanks were gauged prior to receipt of finished foreign jet fuel discharged from the tanker. After the finished foreign jet fuel was discharged into the shore tanks, the shore tanks were again gauged and compared with the initial gauges of the tanker and shore tanks to determine any gain or loss resulting from the mixture of the two jet fuels. Both the imported foreign jet fuel and the jet fuel manufactured in the FTZ from PF status crude oil are said to be assigned zone lot control numbers and identified and tracked through storage and eventual shipment from the FTZ by the zone lot inventory control system.

Zone lot control numbers assigned to crude oil used to manufacture jet fuel in the FTZ and zone lot control numbers for finished foreign jet fuel admitted to the FTZ are shown respectively, on CF 7502 and CF 214, and recorded on CF 5215.

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Transfers from the FTZ are said by the Protestant to be done on a first-in, first-out (FIFO) basis without regard to zone status and intended use, i.e., the oldest zone lot is transferred first even though it may mean transferral of a finished foreign jet fuel zone lot for a domestic delivery despite the availability of finished domestic jet fuel which may be in a newer zone lot. Recording of the transferral is made on CF 5215 until all of the product in a given zone lot is used. Of course, a specific product may be exhausted before the entire lot is used. Transfers are also recorded and duty-paid using CF 7505.

Mixing of finished foreign jet fuel and jet fuel manufactured in the FTZ is done because tankage is not sufficient to maintain the finished foreign jet fuel separately from jet fuel manufactured in the FTZ and also to blend jet fuels having different specifications to result in a jet fuel mixture meeting the requirements of the customer.

Protestant contends that that portion of the jet fuel transferred from the FTZ to Customs territory for consumption that was produced in the FTZ from PF crude oil is dutiable at the rate of 0.25 cents per gallon (the crude rate) since PF status once attained cannot be abandoned.

The opposing contention is that General Headnote 7(a), Tariff Schedules of the United States (TSUS), applies and that contrary to their assertion the mixing was done by the Protestant without known volumes resulting in a mixture in which the components lost their identity. The law then requires assessment of duty based on the highest rate applicable to the mixed compoents. Further, it is contended that the Protestant did not comply with the provisions of General Headnote 7(b), TSUS.

Finally, two of the protests note that assessments for additional duty were made on October 31 and December 1, 1983, before and after the existence of ZL A-2043, and on December 1, 1983, after ZL A-2032 was closed.

LAW AND ANALYSIS:

General Headnote 7(a) (19 U.S.C. 1202), provides that:

> Whenever articles subject to different rates of duty are so packed together or mingled that the quantity or value of each class of articles cannot be readily ascertained by Customs officers (without physical segregation of the shipment or the contents of any entire package thereof), by one or more of the following means:

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(i) sampling,

(ii) verification of packing lists of other documents filed at the time of entry, or

(iii) evidence showing performance of commercial settlement tests generally accepted in the trade and filed in such time and manner as may be prescribed by regulations of the Secretary of the Treasury.

the commingled articles shall be subject to the highest rate of duty applicable to any part thereof unless the consignee or his agent segregates the articles pursuant to subdivision (b) hereof.

Privileged foreign merchandise in a FTZ is merchandise that, pursuant to 19 U.S.C. 81c and 19 CFR 146.41, has been classified and appraised and had duties and taxes determined as of the date application for privileged status is filed. Once attained, a status of privileged foreign cannot be abandoned (19 CFR 146.41(e)).

C.S.D. 82-152 authorized the mixing of known volumes of jet fuel with the retention of the zone status of the components of the mixture when the proportions of the components in the mixture have been determined by independent volume measurements prior to their being mixed. Subsequently, by letter dated April 11, 1983 (215284) the authorization was extended to motor gasoline, diesel fuel, and residual fuel oil. By letter dated December 14, 1984 (217575), to the District Director, Honolulu, it was pointed out that the intent of C.S.D. 82-152 was that measurements of the components of a mixture be made in a rational and consistent manner and not that any specific order or procedure be followed.

In our view the components of the mixtures the subject of these protests were measured in a rational and consistent manner and their transfers from storage for export or consumption were documented in a manner sufficient for the components to maintain their identity.

Using the documents in protests 3201-4-000041 and 3201-4-000044, the sequence is as follows:

1. On October 9, 1983, a shipment of 17,837,241 gallons of crude oil was imported and admitted to the FTZ in PF status as zone lot (ZL) A-2032. Between October 9 and October 24, 1983, there was

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produced from this crude oil 2,998,532 gallons of jet A-1 fuel. This jet A-1 was placed in a storage tank, still identified as ZL A-2032.

2. On October 9, 1983, a shipment of 11,389,764 gallons of crude oil was imported and admitted to the FTZ in PF status as ZL A-2023. Between October 9 and October 24, 1983, there was produced from this crude oil 2,092,616 gallons of jet A-1 fuel. This jet A-1 was placed in a storage tank, still identified as ZL A-2033.

3. On November 11, 1983, a shipment of 7,835,568 gallons of finished jet A-1 was imported and admitted to the FTZ in PF staus as ZL A-2043. It was placed in the same storage tank as the 5,091,148 gallons of jet A-1 of ZL A-2032 and ZL A-2033.

4. The Protestant states that prior to discharge of the finished jet A-1 from the tanker, both the tanker and the shore storage tank (containing ZL A-2032 and ZL A-2033, jet A-1) were gauged and that after receipt of the cargo the shore tank was again gauged. There were, therefore, measurements of the components of the mixture both before and after mixing. There is no controversy over the quantity admitted, entered for consumption, or exported, only over the applicable rate of duty on the quantity entered for consumption.

5. It is known that a total of 12,926,716 gallons of jet A-1 were placed in the storage tank between October 9, 1983 and November 11, 1983, composed of ZL A-2032 (2,998,532), ZL A-2033 (2,092, 616), and ZL A-2043 (7,835,568). On the basis of the submitted Customs Forms 5215 and 7505 the transfers from the 3 ZLs were as follows ("Ex" means exported):

Permit date 1983	A-2032 Lot open 10/9	A-2033 Lot open 10/9	A-2043 Lot open 11/11
10/31		44,973	
11/3	1,040,222 Ex		
11/4	378,000 Ex		
11/6		378,000 Ex	
11/7	189,490		
11/11	942,746 Ex	467,459 Ex	
11/13		59,568	
11/14		233,251 Ex	
11/15		162,789	
11/16		105,399	1,411,530 Ex
11/17			3,733,459 Ex
11/19		98,291	1,415,335 Ex

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11/22		49,172	
11/24	186,010 Ex	316,695 Ex	
11/25		134,199	
11/27			1,275,244 Ex
12/1	262,064	42,820	
	2,998,532	2,092,616	7,835,568

Out of ZL A-2032, 2,546,978 gallons were exported and 451,554 gallons were entered for consumption. Out of ZL A-2033, 1,395,405 gallons were exported and 697,211 were entered for consumption. All of ZL A-2043 was exported. ZL A-2032 and ZL A-2033 (which were composed of products in addition to jet A-1) were closed on December 8, 1983; ZL A-2043 was closed on December 1, 1983.

Because the jet fuels comprising ZL A-2033 and ZL A-2043 were in the same tank, they were mixed and could not be physically separated. However, this fact alone does not mandate application of General Headnote 7, TSUS. In Amoco Oil Co. v. U.S., CIT 1984 (Slip Op. 84-6), 584 F. Supp. 581 (1984), the Court stated:

> Futhermore, a reading of General Headnote 7 establishes that its application is limited to two conditions: (1) that the articles involved be subject to different rates of duty; and (2) that the quantity or value of those articles cannot be ascertained.
>
> * * *
>
> Where the quantity and value of the merchandise, as well as the rate or duty, have been determined, it is unncessary to reach beyond the pertinent statutory provisions and apply General Headnote 7(a).

U.S. Industrial Chemicals, Inc. v. U.S., C.D. 1458 (1952), involved a quantity of molasses imported in bulk from the Dominican Republic and Cuba. The molasses from the two countries, which was dutiable at different rates, was mixed together in the tanks of the importing vessel and was unladen in a mixed condition. The highest rate of duty was applied against the entire shipment under section 508, Tariff Act of 1930 (the predecessor of General Headnote 7, TSUS).

After a thorough discussion of the facts the Court stated:

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> It goes without saying that the two different portions of the cargo of molasses in controversy herein could not have been physically separated after being commingled. The law does not exact the impossible and neither does it demand a quality of proof beyond peradventure of doubt ... [B]ut here we have documentary evidence of the number of pounds of molasses laden on board ship in the Dominican Republic and also that laden on board ship in Cuba.

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The Court went on to hold that the portion of molasses imported from Cuba could be readily ascertained by the Customs officers by utilizing the documents available and that assessment of the higher rate of duty on the entire cargo was not justified.

General Headnote 7(a) is not applicable here. The quantity of jet A-1 and its source has been determined by documentary evidence. For example, in protest 3201-4-000044, the documents submitted for ZL A-2033 indicate 697,211 gallons of jet A-1 were entered for consumption; although it is contended that the jet A-1 has lost its identity the rate advance (from 0.25 cents per gallon to 1.25 cents per gallon) is $6,972.11 or 697,211 x 1.00 cents suggesting there is no disagreement as to quantity. We are satisfied that ZL A-2032 contained 2,998,532 gallons of jet A-1 manufactured from PF crude oil; that ZL A-2033 contained 2,998,532 of jet A-1 manufactured from PF crude oil; and the ZL A-2043 was composed of 7,835,568 gallons of foreign finished PF jet A-1.

However, the Protestant in its description of the blending operation states that "Withdrawals from the zone are done on a FIFO basis without regard to status and intended use. That is, the oldest zone lot is withdrawn first even though it may mean withdrawal of a finished foreign jet fuel zone lot for a domestic delivery despite the availability of domestic product which may be in a newer zone lot."

FIFO accounting was authorized for FTZs by C.S.D. 81-62. That decision held that the significant date for FIFO is the date of admission into the zone. ZL A-2032 was opened on October 9, 1983; ZL A-2033 was opened on October 9, 1983 (but on the basis of the lot number, after ZL A-2032); and ZL A-2043 was opened on November 11, 1983.

Following straight FIFO, and on the basis of the documents submitted with protests 3201-4-000041 and 44, the sequence should have been as follows:

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	A-2032	A-2033	A-2043
Total A-1	2,998,532	2,092,616	7,835,568
Permit date			
10/31	44,973		
11/3	1,040,222 Ex		
11/4	378,000 Ex		
11/6	378,000 Ex		
11/7	189,490		
11/11	942,746 Ex		
11/11	25,101 Ex	442,358 Ex	
11/13		59,568	
11/14		233,251 Ex	
11/15		162,789	
11/16		105,399	
11/16		1,089,251 Ex	322,279 Ex
11/17			3,733,459 Ex
11/19			98,291
11/19			1,415,335 Ex
11/22			49,172
11/24			186,010 Ex
11/24			316,695
11/25			134,199
11/27			1,275,244 Ex
12/1			262,064
12/1			42,820

The jet A-1 component of lots A-2032 and A-2033 was exhausted on November 11 and November 16, respectively; lot A-2043 was exhausted and closed on December 1. Accordingly, 563,219 gallons of jet A-1 (234,463 gallons from A-2032 and 327,756 gallons from A-2033) manufactured from PF crude oil were entered for consumption and are dutiable at a rate of 0.25 cents per gallon; 903,241 gallons of finished imported jet A-1 were entered for consumption and are dutiable at a rate of 1.25 cents per gallon.

It is noted that three transfers occurred on November 16; the order of the transfer for consumption and the transfers for exportation is not apparent from the documents submitted. The results will change if the transfer for exportation occurred before the transfer for consumption. If records of Customs or the Protestant do not establish to your satisfaction the chronological order of the transfer for consumption and the transfers for exportation, the order of transfer will be deemed to be that which results in the maximum collection of revenue. That is, transfers for consumption on that day will be deemed to be from the imported finished jet A-1, to the extent available, and transfers for exportation on that day will be deemed to be from the jet A-1 manufactured from PF crude oil, to the extent available.

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In view of our interpretation of the sequence under straight FIFO, Protestant's comments relating to assessments for additional duty made on October 31 and December 1, 1983, with respect to ZL A-2043, and on December 1, 1983, with respect to ZL A-2032, are not relevant.

Protest 3201-4-000051 involves similar facts but different ZLs, namely A-2046 and A-2055. ZL A-2046 included jet A-1 manufactured from PF crude; ZL A-2055 was composed of finished foreign jet A-1. ZL A-2046 was opened on November 14, 1983, but no transfers of jet A-1 occurred before December 6, 1983; ZL A-2055 was opened on December 8, 1983. The jet A-1 component of ZL A-2046 was 1,943,215 gallons; ZL A-2055 was composed of 5,450,205 gallons. On straight FIFO the sequence of transfers should have been as follows:

	A-2046	A-2055
Total A-1	1,943,215	5,450,205
Permit date		
12/6	361,172	
12/8	1,278,508 Ex	
12/8	7,895	
12/16	292,962 Ex	
12/16	2,678 Ex	
12/16		803,612
12/22		2,464,340 Ex
12/30		754,253 Ex
1/2		800,339 Ex
1/3		627,661 Ex

The jet A-1 component of ZL A-2046 was exhausted on December 16. ZL A-2055 was exhausted and closed on January 3. Accordingly, 369,067 gallons of jet A-1 manufactured from PF crude oil in ZL A-2046 were entered for consumption and are dutiable at a rate of 0.25 cents per gallon; 803,612 gallons of finished imported jet A-1 in ZL A-2055 were entered for consumption and are dutiable at a rate of 1.25 cents per gallon.

It is noted that three transfers occurred on December 16; the order of the transfer for consumption and the transfers for exportation is not apparent from the documents submitted. The results will change if the transfer for consumption occurred before the transfers for exportation. If records of Customs or the Protestant do not establish to your satisfaction the chronological order of the transfer for consumption and the transfers for exportation, the order of transfer will be deemed to be that which results in the maximum collection of revenue. That is, transfers for consumption on that

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day will be deemed to be from the imported finished jet A-1, to the extent available, and transfers for exportation on that day will be deemed to be from the jet A-1 manufactured from PF crude oil, to the extent available.

The Protestant also notes that while in the past it has used a straight FIFO accounting system in making entry of petroleum products it reserves the right to use a selective FIFO system, citing letter ruling 216658, also published as C.S.D. 84-42 and Legal Determination 84-0073.

If by a selective FIFO system Protestant means that it intends to identify transfers for consumption on a FIFO basis to jet A-1 manufactured in the zone and to identify transfers for exportation on a FIFO basis to imported finished jet A-1, such action is precluded by the ruling cited. When foreign merchandise is imported and mixed with fungible merchandise produced in a zone, transfers may not be accomplished at the discretion of the person making the transfers.

Inventory accounting in such circumstances may be effected using either FIFO as approved in C.S.D. 81-62, or "foreign-first" as approved by C.S.D. 83-30. In addition, Customs will entertain other proposals, which, like the foregoing, account for transfers in a fixed, definite order or sequence. A system in which the person making the transfers would account for the merchandise at its discretion is arbitrary in the context of the Foreign-Trade Zones Act and is not acceptable as a method of inventory identification thereunder.

Holding:

The mixing of imported finished jet fuel (jet A-1) with PF status in a FTZ with finished jet fuel (jet A-1) manufactured in the FTZ from imported crude oil with PF status does not result in a loss of their respective identities where the quantities of each component can be readily ascertained by utilization of the documents available.

On the basis of the foregoing, we are of the opinion that the quantities of jet A-1 manufactured in the FTZ from PF crude oil and dutiable at the rate of 0.25 cents per gallons in each of the protests was readily ascertainable from the quantities of imported finished jet A-1 with which it was mixed, and which was dutiable at the rate of 1.25 cents per gallon, from the documents available.

It is our further opinion that a straight FIFO system of accounting for transfers, as authorized by C.S.D. 81-62, was not observed.

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Therefore, the protests are allowed to the extent that, consistent with the foregoing, recalculation of the duty due on jet A-1 entered for consumption in each of the protests shows collection of any excess duties. The protests are denied to the extent that such recalculation shows that there has been no collection of excess duties.

Sincerely,

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

16 MAY 1986

REFER TO

BON-1-CO:R:CD:D
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ISSUES:

1. When is the final determination made on the admissibility of imported merchandise with respect to the Customs bond obligations on redelivery, destruction, exportation, or any other performance that might be required to comply with the laws governing admission into the United States?

2. What is the time limit in section 113.62(d) of the Customs Regulations for the Customs Service to demand redelivery of merchandise?

FACTS:

No facts were presented.

LAW AND ANALYSIS:

Apparently some confusion exists with respect to the proper Customs officer to decide questions with respect to bond matters. This should not be the case since Congress required all Agencies to publish a list of the Agency employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decision. 5 U.S.C. 552(a)(1)(A). Pursuant to that legislative requirement, the Commissioner of Customs published Customs Delegation Order No. 1 (Revision 1) as T.D. 69-126 (34 F.R. 8208). Under that order, as amended by T.D. 72-321 (37 F.R. 25060), the Director, Carriers, Drawback and Bonds Division, was made responsible for decisions relating to legal questions on bonds. It seems obvious that an interpretation of the language in a customs bond is best characterized as a decision relating to a legal question on a bond.

In the past some laws expressly provided that the issue of admissibility of merchandise was to be decided within a specific time interval from the date of entry. An example of this procedure was illustrated in the case of V.G. Nahrgang v. U.S., T.D. 47134 (Cust. Ct., 1934). In that case the court discussed the law and regulations of the Food and Drugs Act of June 30, 1906, as amended, as they related to the importation of food. Under

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section 11 of that Act, the Secretary of the Treasury was required to deliver samples of imported foods and drugs to the Secretary of Agriculture on the latter's request and to notify the importer of that delivery. The importer had a statutory right to appear before the Secretary of Agriculture to give testimony on the issue of admissibility before a decision to exclude was made. The section went on to provide that after the hearing, if the Secretary of Agriculture determined the food to be adulterated or falsely labeled, the Secretary was to refuse admission and notify the importer of that refusal. At that point the Secretary of the Treasury was to act to destroy any of the merchandise which was not exported by the importer.

The regulations promulgated under section 11 of the Act required Customs to show the Food and Drug Administration (FDA) all invoices on the imported food or drugs as soon as the importer made entry. The FDA officer was required either to stamp the invoices "no sample desired" or to request samples. On the same day that samples were requested, Customs was required to notify the importer that samples were to be taken and that the rest of the shipment was to be held intact pending notice of the result of the inspection and analysis. If no violation was disclosed by the inspection and analysis, the FDA officer was required to notify the importer of that fact in writing, with a copy to Customs. If the FDA officer tentatively determined that the shipment was in violation, a notice of the violation was to be sent to the importer to enable the importer to present evidence in opposition. One day after the hearing, if there is a finding of a violation, or if the importer failed to respond, the importer was to be notified of the refusal to admit.

It can be seen that within a definite time period shortly after entry, the importer and its surety knew whether the bond condition with respect to admissibility was satisfied.

The situation is less clear when the legal basis for the prohibition does not specify a definite time for the final determination of inadmissibility to the importer. A review of the relevant statutes suggests that the final determination on admissibility must occur before the entry is liquidated.

The first import exclusion law, the Act of June 26, 1848, C. 70, 9 Stat. 237, required all drugs, medicines, medicinal preparations, and chemical preparations used as medicine to be examined and appraised in reference to their quality, purity, and fitness for medical purposes before being released from

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Customs custody. Under section 3 of that Act, the examiner was required to notify the importer of any adulteration or unfitness. Under section 4, the importer had a right to call for a reexamination to show that the examiner's return was erroneous. If there was no request for reexamination or if the report of the reexamination supported the examiner's finding, that decision to exclude became final.

The Act of June 26, 1848 was codified into Rev. Stat., sects. 2933-2937. An illustration of this law's operation is in T.D. 18223 (Bd. Gen. App. 1897). Article 325 of the Customs Regulations of 1857 required the appraiser to make a special report to the collector if the appraiser found any article in the package that was prohibited by law from entry. Article 349 of those Regulations provided that if no appeal was taken by the importer the appraisement was final and conclusive. See also Articles 1241 and 1249 of the Customs Regulations of 1899.

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The change from that law to the current law had its genesis in a report to Congress by the Tariff Commission which suggested certain changes to the Customs administrative laws. Report of the U.S. Tariff Commission Upon the Revision of the Customs Administrative Laws (1918). At pages 116 through 119, the Commission suggested a proposed section 102 to replace the provisions in Rev. Stat. sections 2912, 2914, 2915, 2916, 2933, 2935, 2936, 2937, 2938, 2939, and 2942. The pertinent portion of suggested section 102 provided:

> No imported merchandise required by law or regulations made in pursuance thereof to be inspected, examined, or appraised, shall be delivered from Customs custody, except as otherwise provided in this act, until the same has been inspected, examined or appraised and is reported by the appraiser to have been truly and correctly invoiced and found to comply with the requirements of the statutes of the United States.

Suggested section 103 proposed to make the decision of the appraiser final on all parties unless a written appeal for reappraisement was made within 30 days by the collector or within 10 days after notice by the importer. All appeals were to be sent to the Board of General Appraisers for a hearing. The proposed section provided for further judicial proceedings. No action having been taken on the 1918 report, the procedure was brought

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again to the attention of Congress during the 1921 tariff hearings. Hearings on General Tariff Revision before the Committee on Ways and Means, 66th Cong. 4163-4181 (February 15, 1921).

The language suggested by the Tariff Commission was set forth as section 507 of H.R. 7456, 67th Cong. 1st Sess. The Senate and House conferees on the bill made various clerical changes, including renumbering the section from 505 to 499. Conference Report, H. Rept. 1223, 67th Cong., 2d Sess., 52, 53 (1922) and Conference Report, H. Rept. 1207, 67th Cong., 2d Sess., 155 (1922). As section 499, the relevant text of H.R. 7456, 67th Cong., 2d Sess. provided:

> Sec. 499. Examination of Merchandise. Imported merchandise required by law or regulations made in pursuance thereof to be inspected, examined, or appraised, shall not be delivered from Customs custody, except as otherwise provided in this Act, until it has been inspected, examined, or appraised and is reported by the appraiser to have been truly and correctly invoiced and found to comply with the requirements of the law of the United States.

That language was enacted in law as section 499 of the Tariff Act of 1922 (Act of September 21, 1922, 42 Stat. 965). The language was repeated as section 499 of the Tariff Act of 1930 (Act of June 17, 1930, 46 Stat. 728). The Customs Administrative Act of 1938 (Act of June 25, 1938, 52 Stat. 1084) struck out the words "except as otherwise provided in this Act" and substituted the words "except under such bond or other security as may be prescribed by the Secretary of the Treasury to assure compliance with all applicable laws, regulations, and instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce." The change in language was initiated by the Customs Service and was explained by Mr. Clinton M. Hester, Assistant General Counsel, Treasury Department, at the Hearings before the Committee on Ways and Means on H.R. 6738, 75th Cong., 1st Sess., 39, 85, and 86 (May 24, 1937):

> In the 1922 Tariff Act there was a provision, section 486, which authorized the immediate release from Customs custody of the portions of shipments not required for examination.

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In the 1930 Act this special provision was repealed.

The purpose of this proposed amendment is to reinstate that special provision of the act of 1922, and thus provide expressly for requiring a bond to assure compliance with all laws and regulations applicable to the goods released before examination of the retained packages.

An analysis of the proposed Customs Administration Bill that appears to have been prepared by the Customs Service more completely explained the change in the following manner:

Section 13. Section 499 of the Tariff Act of 1930 (U.S.C. 1934 ed., title 19, sec. 1499) prohibits the release of any merchandise required to be inspected, examined, or appraised until it has been inspected, examined, or appraised "except as otherwise provided in this Act." The phrase "except as otherwise provided in this Act" has reference to section 633 of the Act (U.S.C. 1934 od., title 19, sec. 1623). Section 436 of the Tariff Act of 1922 (42 Stat. 962) which was repealed by the Act of 1930, specifically authorized the release of imported merchandise under bond conditioned upon compliance with all laws and regulations applicable to the importation of merchandise. Section 623 of the Act of 1930, which was intended to supersede section 436 of the Act of 1922, authorizes the Secretary, among other things, to exact such bonds as he may deem necessary under certain conditions, but this authority is limited by its terms to bonds for the protection of revenue and to assure compliance with the customs laws and regulations. In view of this limitation the Secretary's authority in some cases to release merchandise under bond when no customs question is involved is questionable.

It is thereof believed to be desirable that the Secretary have express statutory

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> authority to release merchandise not required for inspection, examination, or appraisement upon the filing of a bond to assure compliance with all laws and regulations governing the admission of the merchandise into the commerce of the United States. The proposed amendment is designed to accomplish this purpose.

The language was incorporated into section 13 of H.R. 8099, 75th Cong., 1st Sess. H. Rept. 1429, 75th Cong., 1st Sess., 1, 4 (1937). Section 13 of that bill was redesignated as section 14 but the language was not changed. S. Rept. 1465, 75th Cong., 3d Sess., 9 (1938) and H.R. 8099, 75th Cong., 3d Sess.

Under Treasury Department Order No. 165-17, T.D. 56464 (1965), the office of appraiser of merchandise was abolished. Section 301 of the Customs Courts Act of 1970 (Act of June 2, 1970, Pub. L. 91-271, 84 Stat. 289) in recognition of that change, amended section 499 of the Tariff Act of 1930, as amended, by changing the word "appraiser" to "appropriate Customs officer." The statutory change was viewed as implementing the authority granted to the Secretary of the Treasury under Reorganization Plans No. 1 and No. 26 to delegate performance and responsibility for any of the functions within the Customs Service. H. Rept. 91-1067, 91st Cong., (1970), reprinted in 1970 U.S. Code Congressional and Administrative News 3188, 3210 and 3218. Clearly, the change made to section 499 of the 1930 Tariff Act by the Customs Court Act of 1970 was not a change in the scope of the appraisement function. 1970 U.S. Code Congressional and Administrative News 3211.

The language of section 499 makes the determination of admissibility a part of the appraisement function. The Customs Regulations show that the issue of admissibility was to be settled as part of the appraisement function.

Article 453 of the Customs Regulations of 1884 required the appraiser to report the existence of any merchandise in an importation that was prohibited from entry. The same requirement was set by article 833 of the 1890 Customs Regulations, article 1249 of the 1899 Customs Regulations, article 867 of the 1908 Customs Regulations, article 583 of the 1915 Customs Regulations, article 701 of the 1923 Customs Regulations, article 774(d) of the 1931 Customs Regulations, article 772(d) of the 1937 Customs Regulations, and 19 CFR 12.4 (1938 ed.) (2 F.R.

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1446ff). In the Customs Regulations of 1943 (8 F.R. 8099 ff), section 8.22 provided for the designation of merchandise to be examined pursuant to section 499, Tariff Act of 1930, as amended. As noted above, that statute required merchandise to be inspected, examined, or appraised, and reported by the appraiser to have been found to comply with the requirements of the laws of the United States.

Until the Customs Court Act of 1970, an importer had the ability to challenge the appraiser's findings before liquidation and unless the appraisement was held to be valid, any liquidation based on an invalid appraisement was itself held to be null and void. James S. Kean v. U.S., 20 CCPA 388, T.D. 46186 (1932), Pistorino and Co., Inc. v. U.S. 2 Cust. Ct. 222, CD 127 (1939), reh. den. 2 Cust. Ct. 684 (1939) New York Merchandise Co. v. U.S., 15 Cust. Ct. 72, CD 945 (1947). The case of U.S. v. A.N. Deringer, Inc., 66 CCPA 50, CAD 1220 (1979) shows that appraisement must proceed liquidation and include a decision on admissibility even after the changes made by the 1970 Act. In that case food was imported from Canada which required labels under the food and drug laws. In one of the entries, the importer was notified of the labeling nonconformity and of the detention to await a hearing. The importer did not appear at the hearing and a formal notice of refusal was issued. Customs, on one of the entries involved in the case, liquidated the entry before the formal notice of refusal was issued. The Court found the liquidation to be premature. 66 CCPA 50 at 55. However, the importer failed to protest the liquidation timely. The court held that the failure to protest timely meant that the importer's complaint against the illegal liquidation was properly dismissed on the ground of lack of jurisdiction. 66 CCPA 50 at 56. It seems obvious from the discussion that the court did not believe that an entry could be liquidated legally until after a decision was made on the admissibility of the merchandise in the entry. The case is particularly enlightening because it involved an entry that was made after the Customs Courts Act of 1970 was enacted which had eliminated the separate appraisement challenge procedure in the interest of streamling administrative and judicial review of protests. The stated purpose of that Act was to develop a single, continuous procedure for deciding all issues in any entry of merchandise and not to change the scope of the appraisement function. H. Rept. 91-267, 91st Cong. (1970) reprinted in 1970 U.S. Code Congressional and Administrative News 3194, 3196, 3210, and 3211. It is equally clear that Congress recognized that a final appraisement had been a condition precedent to a legal liquidation, and the change simply

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did away with the interlocutory right to contest the appraisement before the liquidation. 1970 U.S. Code Congressional and Administrative News 3210.

Another illustration of the principle that the decision on admissibility was part of the appraisement function is in the case of U.S. v. W. X. Huber, 41 CCPA 69, CAD 531 (1953). Article 315 of the Customs Regulations of 1937, which applied to the entry, provided that if the collector determined from the appraiser's report or otherwise that an importation of merchandise was not entitled to admission into United States commerce, the collector was to promptly demand return of the merchandise. The Article also provided that all demands for redelivery were to be made within 20 days after the appraiser's report. The bond given by the importer repeated those provisions. Two shipments of merchandise were entered; one shipment was entered on June 19, 1940, and the other shipment was entered on August 13, 1940. On July 9, 1940, and August 21, 1940, the appraiser notified the collector that appraisement was being withheld because of a value investigation. The Government argued that the appraiser's report referred to in the regulations and the bond was the report of the appraiser when he completed his appraisement of the merchandise. The importer argued that the earlier tentative report of the appraiser was the report which started the running of the 20-day period for Customs to demand redelivery. The lower court, in W. X. Huber v. U.S., 29 Cust. Ct. 92, CD 1451 (1952), agreed with the importer and the United States appealed. The appellate court reversed, holding that only a final report of the appraiser had any legal significance. See 41 CCPA 69 at pages 72 and 73. It is clear that the final decision with respect to the appraisement function included the final decision on admissibility and that decision had to be made before there could be a valid, legal liquidation.

From 1848, when Congress enacted the Act of June 26, 1848, which expressly provided that drugs, medicines, and related articles were, before leaving the Custom-house, to be examined and appraised, as well in reference to their quality, purity, and fitness for medical purposes, as to their value and identity specified in their invoice, to the present enactment of 19 U.S.C. 1499 which requires all imported merchandise to be inspected, examined or appraised, and found to comply with the requirements of the laws of the United States, it is clear that Congress intended the determination of admissibility to take place as a part of appraisement and to be done before liquidation. In short it seems obvious that the word "appraise" meant

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to judge and analyze the worth, significance or status of the imported merchandise rather than in the narrow sense of determining only the worth of the imported goods. Websters Third New International Dictionary (unabridged), G and C Merriam Company, 1968.

The next point is the binding effect of a liquidation if the Customs Service discovers after the expiration of the time for protest that the merchandise should not have been allowed admission into J.S. commerce. Assuming there is no fact which would support a finding of probable cause to suspect fraud in the entry which would trigger 19 U.S.C. 1521 and that no protest was filed on any ground so as to justify a reliquidation, the plain words of the statute, 19 U.S.C. 1514, would bind the Government to the liquidation.

The court cases offer further confirmation that a mistake in the liquidation process can be corrected only by one of the statutory methods set forth in 19 U.S.C. 1514. Consequently, once the protest period expires without a protest being filed, the courts will not consider the legality of the liquidation. A good example of the judicial position on this point is the case of John S. Phipps v. U.S., 22 CCPA 595, T.D. 47601 (1935). In that case, an importer entered on June 21, 1930, a necklace valued at $29,100. While at the appraiser's stores, the necklace was manipulated by removing the precious stones. Duty was assessed for the separated precious stones and mountings at $2,116 on August 28, 1930. On that same date the duty was paid. Although the court did not find any liquidation stamp on the entry documents, the court did find that the entry papers were stamped as paid. The court found that the entry apparently was liquidated on August 28, 1930, although it noted that the entry papers contained a liquidation stamp dated July 27, 1931, and for purposes of the decision it treated that date as the liquidation date. 22 CCPA 595 at 597. The court found that the Customs Service reappraised the entry on September 29, 1930, and on September 30, 1930, made a demand on the importer for $818 as additional duty based on the ground that the appraiser had no authority to permit the manipulation of the necklace under 19 U.S.C. 1562 while it was in the appraiser's stores. When the importer refused to pay the additional duty that was demanded, the then Acting Commissioner of Customs entered the dispute. On February 28, 1933, that official directed the collector to cancel the liquidation of the entry and send a notice of appraisement to the importer. The lower court held that the so-called second appraisement, the purported cancellation of the

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liquidation, and the last notice of appraisement were null and void because no action was taken by the Government within the then existing 60-day period on expiration of which the liquidation became final even though that liquidation may have been based on an illegal act. 22 CCPA 595 at 601. The appellate court affirmed the lower court quoting 19 U.S.C. 1514 and stating:

> We confess our astonishment at the action of the Acting Commissioner of Customs in February, 1933, directing the collector at New York to cancel his liquidation of July 27, 1931, and ordering the collector to issue the notice of appraisement here involved, dated May 8, 1933. This order of the Acting Commissioner of Customs was clearly in violation of law.

At page 602 of the decision, the court said:

> ... the liquidation of July 27, 1931, had become final and was not open to question after the expiration of 60 days from the date thereof. (emphasis supplied)

To the same effect was an earlier decision of the court in Gallagher and Asher v. U.S., 21 CCPA 313, T.D. 46832 (1933). In that case a notice of appraisement, which was required to be sent to the importer to make the appraisement final, was not sent. The Customs Service liquidated the entry without sending that statutorily required notice. However, the importer failed to protest the liquidation within the protest period. The Government contended that the failure to protest timely even on the liquidation's legality barred further inquiry into that liquidation. The trial and appellate courts agreed with the Government.

In the case of McKesson Wholesale Drug Co. v. U.S., T.D. 46955 (Cust. Ct. 1934) the facts involved a reliquidation after the time period on the original liquidation expired. However, the concept of finality remains the same. On the original liquidation the collector assessed a certain amount as duty. The then existing 60-day protest period expired without any protest being filed. Thereafter, the collector reliquidated the entry at a higher rate of duty and demanded the excess from the importer. The importer contended that once the protest period

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expired, the collector was without authority to open the entry. The court agreed. Other cases that reach this same conclusion are Gulbenkian v. U.S., 186 F. 133, 135, T.D. 31732 (2nd Cir. 1911); U.S. v. Mexican International R. Co., 151 F. 545, 547, T.D. 28182 (5th Cir. 1907), and cases cited therein; Hambro Automotive Corp. v. U.S. 66 CCPA 113, 117, CAD 1231 (1979); Saji and Kariya Co. et al. v. U.S., 9 Ct. Cust. Apps 78, 82-84, T.D. T.D. 37945 (1919), and Alberta Gas Chemicals, Inc. v. U.S., 515 F. Supp 780, 785, 1 CIT 312 (1981). In this latter case the court considered the general rule governing the effect of time periods. If it expressly required an Agency to act within a time period and specified a consequence for a failure to act, it was considered to be mandatory. It seems clear that the statutory scheme set up under 19 U.S.C. 1514 is precisely that type of statutory time limit. A failure to demand redelivery or a failure to exclude prior to liquidation would bind the Government to those failures once the liquidations became final.

In other cases, the question of admissibility turned on the classification of the imported articles. In each of these cases, the courts held that because admissibility had to be determined before liquidation, an importer had the right to protest twice: at the time the decision to exclude was made and at the time the entry was liquidated. U.S. v. A. N. Deringer, Inc., 66 CCPA 50, CAD 1220 (1979); Schenley Distillers, Inc. v. U.S., 65 Cust. Ct. 651, 653, CD 4152 (1970); Border Brokerage Co. v. U.S., 43 Cust. Ct. 226, 230, CD 2131 (1959) rev'd. on other grounds 48 CCPA 10, CAD 754 (1960); A. N. Deringer, Inc. v. U.S., 37 Cust. Ct. 166, 168, CD 1818 (1956), and Alberta Gas Chemicals, Inc. v. U.S. 84 Cust. Ct. 217, 225, C.R.D. 80-1 (1980). These cases simply would not support a view that admissibility could be decided after the entry was liquidated. The question of admissibility is subsumed within the liquidation.

A corollary issue is the effect of the change made by Act of October 3, 1978, Pub. L. 95-410, 92 Stat. 902, to 19 U.S.C. 1504. Under 19 U.S.C. 1504, an entry shall be deemed liquidated within 1 year from the date of entry unless a proper extension is made. The statute requires notice of suspension to be given to the importer and the importer's surety. This provision has been considered by the Court of International Trade. In the case of Pagoda Trading Co. v. U.S., CIT Slip. Op. 85-87 (August 27, 1985) (Appeal docketed) the court held that because the Government failed to give proper notice the entry was liquidated by operation of law. The Government contended that there was actual notice which rendered the failure to give formal

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notice harmless. Regardless of the outcome of that case, it seems obvious that a liquidation by operation of law under 19 U.S.C. 1504 will become final unless timely protested. That is, it will be binding on all parties once the protest period expires unless 19 U.S.C. 1521 comes into play.

The final point is the effect of 19 U.S.C. 1521 on a liquidation that becomes final by operation of 19 U.S.C. 1514. That is, should the liquidation be treated as tentative until the 2-year period under 19 U.S.C. 1521 expires since there is always a possibility that a Customs officer may have probable cause to suspect fraud in an entry and thereby reliquidate that entry? In C.S.D. 80-138, the Customs Service held that liquidation of an entry constituted waiver of a demand for the production of a missing document. The decision also held that bond liability ended when the 2-year period of 19 U.S.C. 1521 ended. An argument might be made that because the bond obligation could be asserted within that 2-year period, a reliquidation under 19 U.S.C. 1521 was not needed in order to assert a demand for redelivery after the liquidation. In short, that analysis would treat the liquidation as something less than final. The courts have taken a different view. In the case of Bertrose Co. v. U.S., 12 Ct. Cust. Appls. 19, T.D. 39893 (1923) the court held that a reliquidation under section 21 of the Act of June 22, 1874 (18 Stat. 190), a predecessor of 19 U.S.C. 1521, was an abandonment of all prior liquidations. As an abandonment, the court in effect would treat those prior liquidations as never having been made. There had to be a reliquidation and that reliquidation had to be based on an allegation of fraud. Unless those two criteria were met, the liquidation was final. See also U.S. v. Parkhurst and Co. et. al., 12 Ct. Cust. Appls. 370, T.D. 40522 (1924) with regard to the finality of a liquidation on the Government and the effect of a reliquidation. The court in McKesson Wholesale Drug Co. v. U.S., T.D. 46955 (Cust. Ct. 1934) considered the effect of section 521 of the Tariff Act of 1922, the immediate predecessor of 19 U.S.C. 1521. In that case the court held that in order to disregard the finality of a decision made under 19 U.S.C. 1514, there had to be a reliquidation and that reliquidation had to be based on the ground of fraud. In the case of John S. Phipps v. U.S., 22 CCPA 595, 602 T.D. 47601 (1935), the court held that 19 U.S.C. 1521 does not hold a liquidated entry "open"; the court decided that the statute applies only if the entry is reliquidated because the collector finds probable cause to believe there is fraud in the case. Where there is no charge of fraud and no evidence of fraud, the statute does not apply. The case

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of Sweet Briar, Inc. v. U.S., 73 Cust. Ct. 93, CD 4558 (1974) holds that there must be a finding of probable cause to believe fraud exists and that the court will examine the basis of that finding. In Guy B. Barham Co., etc. v. U.S., 35 CCPA 138, CAD 385 (1947), the collector attempted to reliquidate an entry of tobacco four months after the original liquidation because the collector was unaware, at the time of liquidation, that the entry exceeded the relevant quota for tobacco. The court ruled at page 140 that a stipulation that "no fraud was disclosed or has ever been suspected" rendered 19 U.S.C. 1521 inapplicable. The court held that the attempted reliquidation was void ab initio. See also A. N. Deringer, Inc. v. U.S., 59 Cust. Ct. 148, CD 3101 (1967), which held that there is no presumption of correctness to a reliquidation under 19 U.S.C. 1521 and that the Government must show the existence of probable cause to suspect fraud in order for the reliquidation to be valid. The concept that a valid reliquidation renders the original liquidation void can be seen in the cases of U.S. v. New Drinks, Ltd, 14 Ct. Cust. Appls. 16, T.D. 41530 (1926) and Miyako Hotel Co. v. U.S., Abs. 29188 (Cust. Ct. 1934). In both cases, the importers protested the original liquidation and those protests were accepted by the Customs Service. In both cases the reliquidations went beyond the matter protested and the importers protested the reliquidations. The importers argued that the Customs Service was limited to the matters protested in the original liquidations. The courts disagreed with those arguments. The courts ruled that a protest suspends the statute of limitations and that any matter involving the same merchandise may be considered in the reliquidation. In short, it is as though the original liquidations did not exist for the Government or the importer. See also U.S. v. Pensterer, 12 Ct. Cust. Appls. 410, 413, T.D. 40586 (1924) which held that an importer who did not protest the original liquidation could protest a reliquidation because a reliquidation is regarded as an abandonment of all prior liquidations.

To summarize, the decision as to whether an article is admissible must be made before liquidation of the entry in which the article was imported. After liquidation upon expiration of the protest period further consideration of the matter is barred unless there is a valid reliquidation under 19 U.S.C. 1521 or other law. The mere possibility of a reliquidation under 19 U.S.C. 1521 or any other law does not have any effect on the finality of a liquidation. Once the protest period expires, the liquidation binds all parties, and it is too late to consider

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the issue of admissibility under the Customs laws even if there is evidence to show that the merchandise should not have been admitted.

The second issue concerns the interpretation of the sentence "It is understood that any demand for redelivery will be made no later than 30 days after the date that the merchandise was released or 30 days after the end of the conditional release period (whichever is later)" in section 113.62(d) of the Customs Regulations. This provision is part of the bond obligations of an importer and the importer's surety.

Section 151.113(f) of the Customs Regulations provides that a demand for redelivery shall not be made after the liquidation of the entry becomes final. Section 141.0a of the Customs Regulations provides that unless the context requires otherwise or a different definition is prescribed the following terms shall have the meanings indicated when used in connection with the entry of merchandise. Paragraph(i) of section 141.0a states that released conditionally means any release from Customs Custody before liquidation.

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In view of the above discussion on the finality of liquidation, the provision of 19 CFR 141.113(f), that a Customs officer shall not demand redelivery of any merchandise in an entry on which liquidation has become final, is an acknowledgement that issues with respect to an entry on which there has been a finalized liquidation simply are not within the power of the Customs Service to act upon, absent facts to show fraud in the entry. The language in 19 CFR 141.0a(i) does not purport to affect the meaning of bond language which is set forth in another Part of the Customs Regulations. In any event, the provision in 19 CFR 141.0a(i) merely states a general truism; that is liquidation of an entry, when that liquidation becomes final, closes all issues on that entry, absent fraud, for the Government and the importer.

If the bond language read "It is understood that any demand for redelivery will be made no later than 30 days after the date that the merchandise was released" there could be no doubt as to the extent of the period for the Customs Service to demand redelivery. Is it possible that the term "conditional release period" in the additional phrase "or 30 days after the end of the conditional release period" refers to the liquidation? If the provisions in 19 CFR 141.0a(i) and 141.113(d) were intended to control the last phrase of the bond language in issue, the

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terms "end of the conditional release period" can only refer to the liquidation of the entry. Since the bond language contains the parenthetical "whichever is later", such an interpretation would make the entire first clause meaningless because a period that ended 30 days after liquidation would always be subsequent to a period that ended 30 days after release.

Another problem caused by this interpretation is that it expressly allows a redelivery demand to be sent 30 days after the end of the conditional release period, or in other words, after liquidation. A decision on the entry that is made after the liquidation occurs contradicts the concept of finality that is inherent in a liquidation of an entry. There is no legal significance to a tentative liquidation. Either the liquidation embodies a final decision on all aspects of an entry by the appropriate Customs officer against which a protest may be filed or it is not a liquidation within the meaning of 19 U.S.C. 1500 and 1514. See U.S. v. Nils A. Boe, 64 CCPA 11, 17, CAD 1177 (1976); U.S. v. Franklin Sugar Refining Co., 137 F 677, T.D. 26316 (E.D.Pa. 1905); and Wesendonck Lorenz Co. v. U.S., T.D. 18634 (Bd. Gen. App. 1897).

Assuming that a proper interpretation of the bond language would give meaning to both parts of the phrase in issue, the question is whether another time limit exists in the Regulations. An example of such a provision is 19 CFR 12.80(e)(2). Under that provision, unless a district director receives notification of approval from the Administrator, National Highway Traffic Safety Administration, within 180 days after entry, the district director is supposed to demand the redelivery of any vehicle subject to the National Traffic and Motor Vehicle Safety Act of 1966, as amended. The provision was promulgated as T.D. 78-478. With respect to the redelivery issue the stated purpose was to provide more effective administration and enforcement of the law. The Customs officials who submitted comments complained that the possibility of unlimited periods for decisions on admission had led to a backlog of open Customs entries. It is clear that by the use of the word "open" those commenting officials were referring to unliquidated entries. The establishment of a definite deadline in the provision was intended to curb that problem. That is, within a known period of time Customs officers could expect that the vehicle would be eligible for admission or it had to be excluded. Thereafter, the normal processing of the entry would not be subject to any further delay. The needs of the Administrator, National Highway Traffic Safety Administration, in examining the vehicle, the Customs Service in

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liquidating the entry and collecting any supplemental duties due, if any, and the importer in completing the importation were thought to have been met by the provision.

It seems obvious that the phrase "or 30 days after the end of the conditional release period" was intended to cover those definite dates as set forth in 19 CFR 12.80(e)(2) rather than the date of liquidation, when all conditional releases end. Only by such an interpretation does the first part of the phrase have any possibility of being employed with respect to an entry of merchandise.

Finally, the applicable rules of contract construction support the interpretation that the words "end of the conditional release period" refer to periods such as the 180-day period found in 19 CFR 12.80(e)(2) rather than to liquidation. One rule of construction is that all parts of a contract are to be given effect and an interpretation which gives a reasonable meaning to all provisions is preferred to one which leaves a portion of the contract useless or meaningless. 4 Williston, A Treatise on the Law of Contracts, section 619 (3rd. Ed., 1972) and Stearns, The Law of Suretyship, section 2.4 (5th. Ed. 1951). If the words "the end of the conditional release period" refer to the liquidation of the entry, the first part of that provision, "no later than 30 days after the date that the merchandise was released" becomes useless and meaningless as a limitation. If the words "end of the conditional release period" is interpreted to refer to the 180-day period in 19 CFR 12.80(e)(2) and similar periods, both parts of the bond provision have meaning.

A Customs bond is to be interpreted in accordance with the Customs laws and regulations. 4 Williston, A Treatise on the Law of Contracts, section 625 (3rd. Ed. 1972); U.S. v. De Visser, F. 642, 648 (S.D. N.Y. 1882); U.S. v. Dieckerhoff, 202 U.S. 303, 309-310 (1905); Simmons v. U.S., 120 F. Supp. 641, 646 (M.D. Pa. 1954); and U.S. v. Gissel, 353 F. Supp. 768, T.D. 83-86 (1973), aff'd. 493 F. 2d. 27 (5th. Cir. 1974), cert. den. 419 U.S. 1012. If the Words "the end of the conditional release period" are interpreted to mean liquidation then the statutory scheme for processing an entry of merchandise set by 19 U.S.C. 1499, 1500, and 1514 will be frustrated. The statutory procedure insures that all imported goods will be examined, appraised, classified, duties fixed on them, and the entry which contained those goods liquidated, in that order, and that that liquidation will be a final decision. See H. Rept. 91-267, reprinted in 1970 U.S. Code Congressional and Administrative

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News 3194, 3196, 3210, and 3211. If any decision to demand redelivery or to exclude merchandise can be made up to 30 days after the so-called liquidation, that liquidation cannot be characterized as a final decision. An interpretation which leads to those results cannot be described as being in accordance with the Customs laws and regulations. On the other hand, an interpretation that the conditional release period refers to a period such as that set forth in 19 CFR 12.80(e)(2) does not conflict with the concept of finality in a liquidation or the concept that appraisement includes a decision on admissibility and becomes part of the liquidation decision and can be viewed as being in accordance with the Customs laws and regulations.

HOLDINGS:

1. Unless a specific prior period is otherwise provided, liquidation of an entry comprises the final determination on the admission of merchandise into the United States.

2. The words "end of the conditional release period" in 19 CFR 113.62(d) refers to time limits such as the 180-day period in 19 CFR 12.80(e)(2) and does not refer to the liquidation of the entry.

Edward B. Gable

Edward B. Gable, Jr.
Director, Carriers,
Drawback and Bonds Branch

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

21 AUG 1986

REFER TO
FOR-1-CO:R:CD:D
218799

ISSUE:

Whether C.S.D. 83-96 (Headquarters letter dated June 1, 1983, file FOR-1-CO:R:CD:D 215870) has been effectively overruled by section 146.71 of the revised Customs foreign-trade zone (FTZ) regulations (T.D. 86-16, 52 Fed. Reg. 5040, 5061-5062).

FACTS:

C.S.D. 83-96 (Ruling 215870) basically permits a component, mistakenly included in an entry of merchandise from a foreign-trade zone, to be retained in the zone in privileged domestic status, a separate entry being filed for the particular component actually used in the merchandise removed therefrom.

LAW AND ANALYSIS:

C.S.D. 83-96 relates to merchandise in a zone which is desired to be entered, duty-paid, and thereafter retained in the zone, whereas section 146.71 is actuated by an intent actually to remove merchandise from a zone. There is thus no contradiction between the ruling which is limited in scope, and the regulation.

Furthermore, there is nothing in the regulatory language or the responses to the comments to the revised FTZ regulations indicating an intent to overrule C.S.D. 83-96.

HOLDING:

C.S.D. 83-96 is hereby reaffirmed.

Edward B. Gable

Edward B. Gable, Jr.
Director, Carriers,
Drawback and Bonds Division

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FOR PUBLICATION

25

OCT 25 1949

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The Collector of Customs

Chicago 7, Ill.

Sir:

You are hereby authorized to allow drawback upon compliance with the provisions of section 313(a), title III, Tariff Act of 1930, and the drawback regulations (Part 22, Customs Regulations of 1943), on cured, sorted, and packed, or cured, sorted, bleached, dyed, and packed Brazil nuts produced by Robert L. Turner Company, Chicago, Ill., with the use of Brazil nuts in the shell imported in bulk.

The producer has filed a sworn statement subscribed to on June 14, 1949, in accordance with the provisions of section 22.4(h), Customs Regulations of 1943, describing the methods which it will follow and the records which it will keep for the purpose of establishing that the articles described therein have been produced with the use of properly identified imported merchandise in accordance with the provisions of section 313(a) of the tariff act and the regulations (sec. 22.4). The producer shall follow the methods described and shall keep the records outlined in this sworn statement, a copy of which is enclosed for your information.

The records shall show, as to each lot of articles produced hereunder for exportation with benefit of drawback, the lot number and the date or inclusive dates of production, the identity of the imported Brazil nuts used, the quantity and description of the Brazil nuts obtained, and the quantity and identity of the imported merchandise appearing in the exported products. A sworn abstract of the production records shall be filed with the drawback entry.

The drawback allowance shall not exceed the duty paid, less 1 per centum thereof, on the quantity of imported Brazil nuts appearing in the exported products, as shown by a sworn abstract of the production records.

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UCI-00049

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are produced and exported on and after August 1, 1949. Exportation shall be made within three years after importation of the imported merchandise.

Very truly yours,

(Signed) D. B. STRUBINGER
Acting Commissioner of Customs

Enclosure No. 143511

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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[redacted]

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56406-L

MAR 29 1965

FOR PUBLICATION

DB 731.1 LS

Honorable Joseph P. Rostenkowski
Collector of Customs
Chicago, Illinois 60607

Dear Mr. Rostenkowski:

You are hereby authorized to allow drawback upon compliance with the provisions of section 313(b) of the Tariff Act of 1930, as amended, and Part 22 of the Customs Regulations, on pen points and pens manufactured by W. A. Wheaffer Pen Company, Fort Madison, Iowa, with the use of 24kt and 14kt gold bar stock, palladium silver bar stock, and 24kt gold in pellet form.

There are enclosed, approved, copies of the manufacturer's drawback statement subscribed to on September 16, 1960, and its supplemental drawback statement subscribed to on April 13, 1964, requesting the foregoing action and containing the manufacturer's proposals as to procedures it will follow and records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations.

The quantity of imported gold or palladium silver of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder, shall not exceed a quantity of gold or palladium silver, respectively, equivalent to the quantity of such merchandise of the same kind and quality as that designated, which appears in the exported articles, as shown by the schedule annexed to the supplemental statement of April 13, 1964.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured on and after April 6, 1960, and exported on and after June 14, 1960. Exportation shall be made within five years after importation of the imported merchandise.

In accordance with the recommendation of the investigating agent, the first claim for drawback filed under this authorization shall be forwarded to the customs agent in charge, Chicago, Illinois, for verification.

[redacted]

Sincerely yours,

(Signed) W. E. HIGMAN

Deputy Commissioner

Enclosure 79688

[redacted]

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APR 1 1955

Dear [redacted]

Reference is made to your letter of March 22, 1955 [redacted] requesting information regarding the dutiable status of certain goods said to be produced in the Virgin Islands as follows:

> "a corporation of the Virgin Islands imports raw materials worth $5.00 from Spain which would be subject to duty in the United States and are subject to duty in the Virgin Islands. Virgin Islands labor to the extent of $10.00 is used to fabricate this material into a product having a market value of $17.50, which product is then exported to the United States. Does the product enter the United States duty free?"

You ask particularly whether the product is excluded from duty-free entry by reason of the fact that the entire material used in making the product was derived from Spain and is a type of material which is dutiable when imported into the United States.

The Bureau, of course, cannot ascertain with certainty from the information disclosed whether the work performed in the Virgin Islands on the foreign materials constitutes a production or manufacture within the meaning of those terms as used in section 301, Tariff Act of 1930, as amended by the Customs Simplification Act of 1954. However, it will assume that a production or manufacture has taken place for purposes of answering the primary question presented.

The test for determining whether a product or manufacture of the Virgin Islands is entitled to duty-free entry into the customs territory of the United States is not dependent upon the quantity of foreign material used in making the product. It is possible for such an article to be made entirely from foreign materials or no foreign materials and yet be entitled to duty-free treatment as a Virgin Island product.

The test for determining the dutiable status of a Virgin Island product is described in section 7.8(d) of the Customs Regulations as follows: "In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 per centum, a comparison shall be made between the actual purchase price of the foreign materials (excluding any material which at the time such article is entered, or withdrawn

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from warehouse, for consumption in the United States, may be imported into the United States from a foreign country, other than Cuba or the Philippine Republic, free of duty), plus the cost of transportation to such insular possession (but excluding duties and taxes, if any, assessed by the insular possession and any charges which may accrue after landing), and the final appraised value in the United States determined in accordance with section 402, Tariff Act of 1930, as amended, of the article brought into the United States." A copy of section 402 is enclosed for your convenience.

If the "actual purchase price" of all the foreign materials in question is $5 and the dutiable value of the Virgin Island product is $17.50, the product would be entitled to duty-free entry under the method of determination employed in the preceding paragraph.

Very truly yours,

(Signed) W. F. HIGMAN

Chief, Division of Classification
and Drawbacks

[redacted]

Enclosure No. 70356

[redacted]

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[redacted]

2794180

TREASURY DEPARTMENT TELEGRAM

Where Written

Washington,

February 28, 1951

[redacted]

(Signed) W. E. Hamil

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Mr. L. P. Hill -Sr.407

TREASURY DEPARTMENT ~~TELEGRAM~~ NIGHT LETTER

WHERE WRITTEN

Washington,

What may smelt

March 8, 1941

718.6

See also Roasting

Collector of Customs
St. Louis, Missouri

Metal Seventh roasting operation may be performed in class seven warehouse at your port and treated as manipulation in constructive warehouse class eight under Section 562 if identity concentrates maintained throughout. No separate bonds necessary to cover manipulation. Withdrawal for transportation and reexchange must be filed for concentrates in condition and quantity and weight at time of withdrawal and applicable smelter bond charged such basis. On withdrawal of spelter for exportation warrants authorized for particular smelter will be applied Collect

(Signed) Johnson
JOHNSON

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[redacted]

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299698

Withdrawal May smelt → see Roasting

Departmental Stock Form 2[illegible]

299955

FOR PUBLICATION

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299955

FEB 19 1942

The Collector of Customs,

New York, N. Y.

Sir:

T. D. 48262-H, as extended by T. Ds. 48042-I, 48068-T and 48226-H, providing for the allowance of drawback on imported raw pistachio nuts and shelled cashew nuts which are roasted and salted, fumigated, assorted and graded, or cleaned, graded and fumigated, as the case may be, by Zenobia Company, Inc., New York, N. Y., under the provisions of section 313(a), Tariff Act of 1930, is hereby further extended to cover said products produced by the Zenobia Company (a partnership), New York, N. Y., as successor to the above-mentioned concern.

The successor has filed a supplemental sworn statement, subscribed to on January 29, 1942, in accordance with the provisions of paragraph (k) of article 1042, Customs Regulations of 1937, setting forth that the methods which it will follow and the records which it will keep for the purpose of establishing that the articles exported have been produced in accordance with the provisions of section 313(a) of the tariff act and the regulations (art. 1041) will be the same as those described in its sworn statements upon which the above-mentioned Treasury Decisions were predicated. The successor shall follow the methods and keep the records referred to in this supplemental sworn statement, a copy of which is inclosed for your information.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on products which are exported on or after December 16, 1941, the date of succession. In cases where the imported merchandise was imported on or after June 18, 1930, exportation shall be made within three years after importation of the imported merchandise.

Very truly yours,

~~299455~~

[redacted]

(Signed) W. R. Johnson

299955

Commissioner of Customs.

D12

Inclosure No. 62773.

[redacted]

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Customhouse Brokers; Transfer of books and records.

LEGAL DETERMINATION 3532-02

SEP 20 1977

BRO 3-06 R:Z:E
304888 W

District Director of Customs
New Orleans, Louisiana 70130

Dear Sir:

This is in reference to your memorandum of August 16, 1977, requesting a ruling as to whether you have authority to authorize X to transfer their customhouse broker's records from their New Orleans office to their Houston office upon temporarily ceasing operations at the port of New Orleans, which you state was effective as of August 15, 1977. We note that the few minor discrepancies noted during X's last audit in January 1977, were resolved and that there are no outstanding obligations due to the government from X.

As you point out, section 111.23(a), Customs Regulations, requires that those books and papers which the regulations require a broker to keep, other than powers of attorney, must be retained within the Customs district to which they relate for at least six years after the date of entry. We interpret this provision to allow for transfer of X's records to the port of Houston only upon X's actual surrender of its license for District 20, Region 5. Under this interpretation, X will be required to re-apply for a new corporate customhouse broker's license for an additional district, the Customs District of New Orleans, if the firm desires to return to New Orleans at a later date to transact Customs business there.

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Furthermore, the records pertaining to New Orleans must actually and in fact be retained by Novo at Houston for the prescribed time set forth in section 111.23(a). Novo will also be required to retain all powers of attorney, revoked powers of attorney and letters of revocation thereof for the time periods specified in section 111.23(a) for those records.

Sincerely yours,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

304888

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305578

MAY 10 1978

[redacted] 1-01 R:E:E
305578 M

[redacted]

Dear [redacted]

This is in reply to your letter of January 24, 1978, requesting information as to those ports of entry of the United States which have been designated by the Secretary of the Treasury for the entry of merchandise classifiable under items 766.20 and 766.25 of the Tariff Schedules of the United States (TSUS).

Experts are not designated at specific ports of entry. Therefore, you can enter your merchandise at any port.

Sincerely yours,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

[redacted]

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PUBLIC _____

FEB 24 1975

R:CV:V JK
75-540528

[redacted]

Dear [redacted]

This is in reference to your letter of January 13, 1975, in which you request a ruling concerning the classification, rate of duty, and appraisement of automobiles assembled in a foreign-trade subzone to be established as an adjunct to a foreign-trade zone within the Port of Hampton Roads, Virginia. It is our understanding that both domestic and foreign parts are to be used in the assembly process.

Passenger automobiles are provided for in item 692.10, Tariff Schedules of the United States, with duty at the rate of 3 percent ad valorem.

Parts for passenger automobiles are classifiable under item 692.27 TSUS, with duty at the rate of 4 percent ad valorem unless the part is specifically provided for elsewhere in the Tariff Schedules. Bodies and chassis for passenger automobiles are provided for in item 692.22, TSUS, with duty at the rate of 3 percent ad valorem.

We are enclosing for your information a list containing common automobile parts which are specifically provided for in the Tariff Schedules and which are classifiable elsewhere than under item 692.27, TSUS. It should be noted that this list is advisory only. Questions on the classification of specific articles should be directed to Headquarters, U.S. Customs Service.

When passenger automobiles are assembled in a foreign-trade zone combining privileged domestic components (section 146.22 and 146.24, Customs Regulations), nonprivileged foreign components (section 146.21 and 146.23), and domestic labor, duty will be assessed at a rate applicable to passenger automobiles (section 146.48(e)). In determining dutiable value, the total cost of the labor expended in the zone in combining the components shall be distributed to the privileged domestic and nonprivileged foreign components in accordance with their relative value. The dutiable value of the assembled automobiles

75-540528

	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
CODE								
SUR-NAME							E2	
DATE								

DEPARTMENT OF THE TREASURY - U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-8-73)

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shall equal the sum of the dutiable value of the nonprivileged foreign components prior to manipulation and a proportionate part of the cost of manipulation attributed to the nonprivileged foreign components (T.D. 53493(2), dated February 26, 1954, copy enclosed).

When passenger automobiles are assembled combining privileged domestic components, privileged foreign components, and domestic labor, duty will be assessed at the rates applicable to the foreign components at the time of filing the application for privileged treatment of foreign components (section 146.21(c)(3)(i)). Dutiable value will equal the value of the foreign components at the time of their exportation, without addition for labor performed in the foreign-trade zone (section 146.21(c)(3)(i)).

A copy of Part 146, Customs Regulations, relating to foreign-trade zones, is also enclosed for your information.

Sincerely yours,

(Signed) Salvatore E. Caramagno

Salvatore E. Caramagno
Director
Classification and Value Division

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MAR 27 1981

CLA-2:RRUCV
542412 BLS
TAA# 20

542412

[redacted]

Dear [redacted]

This is in reference to ruling letter TAA #16, our file No. 542144, dated February 4, 1981, which was addressed to you.

It has been brought to our attention that the second paragraph on page 2 is subject to several interpretations. In order to avoid a multiplicity of interpretations on an important issue at an early date in the application of changes made by the Trade Agreements Act of 1979, we are amending our response to you. Accordingly, please substitute the following, designated TAA #20, for TAA #16. We regret any inconvenience this change may cause you.

In your letter dated May 29, 1980, you asked whether certain costs incurred by your company will be considered dutiable assists under section 402, Tariff Act 1930, as amended by the Trade Agreement Act (TAA) of 1979.

You advise that the merchandise entered through the port of Del Rio, Texas, under item 807.00, Tariff Schedules of the United States (TSUS); that your assembly plant is located in Acuna, Mexico; and that most of the purchasing, receiving inspection, warehousing, production control, design engineering, accounting, and sales functions are located in your corporate headquarters in Illinois.

A number of employees working at the Mexican plant live in the United States, and are paid in U.S. dollars from the corporate headquarters in Illinois. You ask whether the salaries of these people should be added to the transaction price. The positions of the employees are the General Manager, Production Manager, Quality Control Manager, Production Foreman, Production Engineer, Engineer Manager, and New Production Design Engineer.

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It is apparent from the described facts that the personnel involved are employees of the parent company in the United States. You advise that under the old law, the salary costs were treated as assists and became part of the cost of production of the product assembly in Mexico.

You assume that your merchandise will be appraised on the basis of transaction value. Under transaction value the value of any assist will be added to the price paid or payable for the merchandise.

As "assist" is defined as certain specified items that the buyer of imported merchandise provides directly or indirectly, free of charge or at reduced cost, for use in the production or the sale for exporation to the United States of the imported merchandise. Included among such items are "Engineering, development, art work, design work, and plans and sketches undertaken outside the United States." However, such work will not be treated as an assist if the service or work is (1) performed by a person domiciled within the United States; (2) performed while that person is acting as an employee or agent of the buyer of the imported merchandise; (3) is incidental to other engineering, development, art work, design work, or plans and sketches undertaken within the United States.

We wish to emphasize at this point that if a cost item is not specifically included within the assist definition, it will not be treated as an assist. Thus, unlike its predecessor statutes, the TAA does not permit various costs heretofore known as "assists" to be imputed to the cost of producing imported merchandise. Of course, the question of whether a particular cost item is to be treated as an assist may vary from case to case. However, we can state that the services listed in your inquiry will not be added as an assist cost to the price actually paid or payable.

You also asked whether the cost of "procurement assists" such as purchasing, receiving inspection, warehousing, and transporting component parts from your plant in Illinois to the Mexican facility should be added to the purchase price of such component parts. These parts are purchased in the United States and are either of foreign or United States origin for use in assembling the merchandise in Mexico.

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We assume for these purposes that the components themselves are furnished free of charge or at reduced cost to the Mexican assembler. Under these circumstances, the components are included within the assist definition as "materials, components, parts, and similar items included in the imported merchandise."

In determining the value of an assist, there must be added (1) the cost of acquiring the assist, if acquired by the importer from an unrelated seller; and (2) the cost of transporting the assist to the place of production, including the cost of freight and insurance.

In our opinion, the cost of acquiring an assist is limited to the purchase price if purchased from an unrelated party. Accordingly, the cost of procuring the assist is not to be included in its value. Neither are receiving inspection and warehousing costs. Actual transportation costs are a part of the value of the assist.

Sincerely,

(Signed) Paul G. Giguere

Harvey B. Fox
Director Classication
& Value Division

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[redacted]

APR 12 1982

CLA-2 CO:R:CV:V
542710 LD

542710

Dear [redacted]

This is in regard to your letter of December 30, 1981, requesting information concerning the dutiability of assists under the Trade Agreements Act of 1979 (TAA), and your telephone conversation of March 29, 1982, with Mr. Dunham of the Value Branch.

Because the questions raised in your letter appear to have been answered in a Headquarters ruling issued to you on February 26, 1982 (542713 MK), we will not address them again here.

For your further reference, the Customs Regulations pertaining to the valuation of merchandise under the TAA are set forth in Part IV, "Customs Valuation Under the Trade Agreements Act of 1979," which you have. In particular, sections 152.102(a), 152.103(d), 152.105(g) and 152.106(d) discuss the dutiability of assists.

Sincerely,

(Signed) Irving W. Smith, Jr.

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

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[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 169 (11-13-73)

CLA-2 CO:R:CV:VS
543125 MK

15 AUG 1983

543125

[redacted]

Dear [redacted]

This refers to your letter of May 14, 1983, forwarded to us from the Area Director, New York Seaport. Your inquiry concerns the dutiable status of adhesive and release paper, manufactured in the United States, shipped to Taiwan, processed, applied to individual vinyl tiles and sent back to the United States. You also ask whether the marking, "The adhesive and release paper are products of the U.S.A., tile is a product of Taiwan," printed in equal size on the release paper is acceptable.

In a telephone conversation with a New York Customs officer you advised that the adhesive is sent to Taiwan in cake form, melted, and then applied to the individual vinyl tiles. The release paper is sent to Taiwan in rolls, cut there to various sizes and then applied to the adhesive on the tiles.

Item 807.00, Tariff Schedules of the United States, provides for an allowance in duties for American components which are returned to the U.S. as parts of articles assembled abroad. However, we conclude that the above-described operations go far beyond a mere assembly, as the adhesive has to be further fabricated (melted), before it can be applied to the individual tiles, and the release paper must be cut to various sizes before being applied to the adhesive on the tiles. Consequently, the articles will be fully dutiable upon importation.

The marking you propose, if printed in equal size, is acceptable. Though the adhesive is transformed it remains adhesive. Similarly, the release paper, though cut to various sizes, remains release paper. In both cases they retain their distinctive name, character and use.

Sincerely,

(Signed) J. T. Ro[illegible]

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY / U. S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-15-73)

DEC 14 1984

DATE:

FILE: CLA-2 CO:R:CV:V
543407 CN

543407

TO : District Director of Customs
Great Falls, Montana 59401

FROM : Director, Classification and Value Division
Headquarters

SUBJECT: Internal Advice Request No. 92-84; Valuation of Assembled Integrated Circuits Imported by [redacted]

This is in response to your memorandum of August 1, 1984, received in this office on August 9, 1984, which forwarded the above-referenced internal advice request initiated by [redacted] representing [redacted]

Two issues are presented for our consideration. The first concerns whether the "price actually paid or payable," as those words are used in section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), for the imported integrated circuits is properly represented by the invoice price from the foreign assembler, [redacted] to its related firm in the United States [redacted] (hereinafter referred to as "U. S. firm"), or by the invoice price from the U. S. firm to the importer [redacted] the importer is not related to either the assembler or the U. S. firm. The second issue concerns whether the value of certain assists (integrated circuit components furnished free of charge by the importer to the assembler) to be added to the price actually paid or payable for the imported circuits includes the value of rejected, lost or destroyed components.

Counsel for the importer, in a letter of March 22, 1984, to your office, states that prior to late August, 1983, the subject integrated circuits were imported through the San Francisco port of entry but that since that time importations have been through the Denver port of entry. Counsel further states that pursuant to the current arrangement between the parties, the importer forwards component materials directly to the foreign assembler and receives assembled products directly from the assembler. Payment for the assembled products, however, is made by the importer to the U. S. firm pursuant to invoices received by the importer from the U. S. firm.

We understand in regard to the first issue described above that the office of the District Director, San Francisco, takes that position that the price paid or payable is represented by the price from the U. S. firm to the importer. According to a report, dated June 17, 1983, prepared by a San

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Francisco import specialist:

> It has been a long standing practice in San Francisco, based on interviews with importers as well as (the U. S. firm) themselves, to include the mark-up to (the U. S. firm) as dutiable as the non-dutiable elements in the sales price have never been identified or quantified. It is felt that (the foreign assembler) and (the U. S. firm) are essentially the same company with (the U. S. firm) acting as a sales office.

In the opinion of the Denver port of entry, the sale from the U. S. firm to the importer "most directly causes the merchandise to be exported to the United States" and, therefore, this price should be used to establish transaction value, section 402(b) of the TAA.

As you know, section 402(b) defines transaction value as "the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts" for certain items not already included in that price (emphasis added). We held in TAA #57 (542928) that:

> ... the transaction to which the phrase 'when sold for exportation to the United States' refers when there are two or more transactions which might give rise to a transaction value, is the transaction which most directly causes the merchandise to be exported to the United States.

That case involved a sale between a United States importer and a middleman located in a foreign country and another sale for the same merchandise between the middleman and a manufacturer located in another foreign country. The merchandise was shipped directly from the manufacturer to the importer. We held that the sale between the middleman and the importer most directly caused the merchandise to be exported to the United States.

Under the circumstances of this case, it is our opinion that the transaction between the foreign assembler and its related United States firm most directly causes the merchandise to be exported from the country of assembly to the United States. Therefore, we believe that the "price actually paid or payable" for the imported integrated circuits is represented by the invoice price between the assembler and the U. S. firm, assuming that the transactions between those two entities are bona fide sales. We should note that there is insufficient information in the record before us to determine whether those sales are bona fide. However, a decision on this issue should be in accord with the holding in J. L. Wood v. United States, 62 CCPA 25, CAD 1139 (1974), which held that, for appraisement purposes, the term "sale" should be given its ordinary meaning; namely, "transfers of property from one party to another for a consideration." The court also held that the fact that the

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parties are related will not, of itself, preclude the existence of a sale.

If, as the San Francisco District Director's office contends, the U. S. firm acts merely as the assembler's sales agent in the United States, it appears that transaction value would be represented by the invoice price between the assembler and the U. S. firm plus an amount, pursuant to section 402(b)(1)(B) of the TAA, for the selling commission paid to the U. S. firm. The selling commission would consist of the difference between the assembler's invoice price and the U. S firm's invoice price to the importer. If, however, it is determined that the sales between the assembler and the U. S. firm are bona fide, a determination would then have to be made as to whether the transaction value between those related parties is "acceptable" as that word is used in section 402(b)(2)(B) of the TAA.

In regard to the second issue presented for consideration, it is the opinion of the San Francisco district office that the value of the assists to be added to the price paid or payable for the imported circuits should include the cost or value of all components provided, without charge, to the assembler by the importer, including rejected, lost and destroyed components. The Denver port of entry appears to concur in this view.

This same issue was considered in a ruling, dated April 30, 1984 (543093), issued by this office (copy attached). We held that components which are destroyed, scrapped, or lost, and which are not physically incorporated into the imported articles are not assists under the TAA (see section 402(h)(1)(A)(i) of the TAA). Thus, the value of the component assists to be included in the transaction value of the subject imported integrated circuits is limited to the cost or value of the components which are actually incorporated in the returned imported circuits.

(Signed) Harvey B. Fox

Harvey B. Fox

Attachments

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[redacted]

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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

* U.S. GPO: 1983-417-788

543407

APR 1 1985

DATE:

FILE: CLA-2 CO:R:CV:V
543434 MK

543434

TO : District Director of Customs
Seattle, Washington, 98174

FROM : Director, Classification and Value Division

SUBJECT: Appraisement of Frozen Crabmeat; I.A. 75/84

This refers to your memorandum of June 28, 1984 (received from the CIE on August 27), requesting Internal Advice on behalf of Seatech Corp., an importer of frozen crabmeat. The importer purchases Alaska crab frozen in clusters with the shell on, and ships it to an unrelated processor in Korea. There, the crab is removed from the shell, frozen into blocks, and returned to the United States. Approximately three pounds of crab clusters are required to produce one pound of imported crab.

The importer pays the processor $1.18 per pound of crabmeat produced by the processing. The basis of appraisement is transaction value, and there is no dispute as to the inclusion of the processing charge under transaction value. The issue concerns the value of the crab clusters which the importer purchases in the United States. The importer argues, alternatively, for the applicability of item 806.20 or item 807.00, Tariff Schedules of the United States (TSUS), or for an allowance for the discarded crab shells.

As you pointed out, Headquarters Ruling No. 051909 rejected the application of item 806.20, TSUS, to the facts presented. Item 807.00 is inapplicable because the processing abroad does not involve any assembly. We also agree with your position against any allowance for the crab shells.

Please advise the importer of our decision.

(Signed) Harvey B. Fox

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Harvey B. Fox

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[redacted]

CODE AND DATE					
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DEPARTMENT					

APPROVAL AND CLEARANCE

Form 100 (11-15-73)

U.S. GPO: 1984-729-970

553996

DATE: APR 18

FILE: CLA-2 CO:R:CV:V
553996 MR

TO : District Director of Customs
Los Angeles, California 90731

FROM : Chief, Value and Special Classification Branch

SUBJECT: Application for Further Review of Protest No. 2704-4-002514, Concerning the Tariff Classification of a Certain Self-Contained Portable Color Video Camera/Recorder, Designated by the Importer/Protestant as a BMC-110K

We have recently issued a decision (554005; April 2, 1986) concerning a [illegible] similar to the subject article, which is commonly called a "camcor[illegible]. A copy is attached. We believe it is dispositive of the question p[illegible]ted in the instant application for further review.

HOLDING:

The subject BMC-110K is properly classified as a combination tape recorder television camera under item 685.50, TSUS (1984; now item 685.49).

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to satisfy the notice requirements of section 174.30(a), Customs Regulations, as amended by T.D. 80-271.

(Signed) RUSSELL ARNOLD

Russell Arnold

Attachment

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-13-73)

U.S. GPO: 1984-719-079

SEP 2 1979

ENF 4-02.6 R:E:M
609686 A

SEP 27 1979

District Director of Customs
Mobile, Alabama 36601

Dear Sir:

Your letter of March 27, 1979, forwarded a petition on behalf of [redacted], seeking relief from a penalty of $165,110 equal to the domestic value of merchandise unladen in violation of Section 1433, Title 19, United States Code. The violation was incurred when cargo was unladen from the [redacted] during other than working hours, without a proper customs permit, on Sunday, January 21, 1979.

Petitioner does not deny that the violation occurred but states that they were operating with less than an approved IRS at that time. Furthermore, it is contended that petitioner now has a very capable person responsible for customs work and that this kind of violation will not happen again.

The record shows that neither the vessel nor the illegally unladed cargo, consisting of canned corned beef and bundles of steel pipe, were seized, but the penalty notice advised that the vessel and cargo remained subject to forfeiture. However, it is noted that the same petitioner and same vessel were involved in the same kind of violation in 1977.

After consideration of all factors in the case, and consistent with other cases of this nature, the forfeiture liability and penalty are remitted upon payment of $800. Please notify the petitioner of this decision and furnish a copy of this decision with that notification.

Sincerely,

(Signed) Harvey B. Fox

Donald W. Lewis
Director, Office of
Regulations and Rulings

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

DEC 17 1979

REFER TO

ENF 4-02.7 RRUEM
610217 JB

610217

District Director of Customs
Ogdensburg, New York 13669

Dear Sir:

Your letter of October 9, 1979 (District Case No. 79-0712-00101), forwarded the offer in compromise of counsel on behalf of [redacted]. The offer, in the amount of $53,406, was made to satisfy the forfeiture of a 1977 Lincoln Continental automobile, 82 proof gold coin-like articles known as Canadian Gold Beavers, 10 uncirculated gold coin-like articles known as Canadian Gold Beavers and 22 proof silver coin-like articles known as Canadian Silver Beavers. The coin-like articles were seized under the provisions of title 19, United States Code, section 1460, for violation of title 19, United States Code, section 1459, for failure to manifest merchandise brought into the United States from a contiguous country. The vehicle was seized under the same provisions for transporting the unmanifested merchandise. A penalty in the amount of $47,606, the domestic value of the unmanifested merchandise, also was imposed. Loss of revenue amounts to $7,934.40.

The record indicates that petitioner entered the United States at Champlain, New York, on September 5, 1979. In primary inspection, he claimed that he was employed as a social worker. He also claimed that he had nothing to declare. Inspection of the trunk of his automobile revealed the undeclared coin-like articles. Further, a check of petitioner's background revealed that he is vice-president of [redacted], a firm that exports the coin-like articles to the United States. Petitioner was arrested and charged with a violation of title 18, United States Code, section 545. On October 15, 1979, petitioner pled guilty to this charge.

Pursuant to section 161.5 of the Customs Regulations (19 CFR 161.5), no offer in which a specific sum of money is tendered in compromise of a government claim under the Customs laws will be considered until such sum

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has been deposited in the name of the person submitting the offer with the Treasurer of the United States or a Federal Reserve bank. No funds have been so deposited, thus the offer in compromise must be rejected.

After review of the file, it is the opinion of this office that a violation clearly occurred. However, the desired deterrent effect would not be diminished by mitigation of the penalty. The forfeiture of all merchandise, including the automobile, is remitted and the penalty is mitigated upon payment of $53,406.

You may notify petitioner of this decision and include a copy of this letter with your notification.

Sincerely,

Donald W. Lewis

Donald W. Lewis
Director, Office of
Regulations and Rulings

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612219

55000

JUL 1 7 1980

ENF 4-02.14 RMEM
610230 A

District Director of Customs
Seattle, Washington 98714

Dear Sir:

Your memorandum of October 1, 1979 (ENF-4-D:PEH), with attachments, forwarded a request for internal advice as to whether transportation of the spouse of a crewmember between two United States ports by a foreign vessel is a violation of title 46, United States Code, section 289, when no remuneration is involved.

Section 4.50(b), Customs Regulations, defines "passenger" as any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership or business. Customs has further ruled that persons connected with the operation, navigation, ownership or business of a vessel, and members of their immediate families traveling with them are not considered passengers within the meaning of the coastwise laws. Accordingly, the transportation of the spouse of a crewmember between two United States ports by a foreign vessel is not a violation of title 46, United States Code, section 289.

Any penalty case established under the facts reported in your transmittal should be canceled forthwith.

Sincerely,

Marilyn G. Morrison

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

[redacted]

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 160 (11-15-73)

610230

11935

MAR 4 1980

ENF 4-02.5 RRUEN
510242 JB

District Director of Customs
Houston, Texas 77002

Dear Sir:

Your memorandum of October 1, 1979 (District Case No. 78-5301-30848), forwarded the petition of [redacted] requesting relief from a penalty assessed against [redacted] in the amount of $770,670 incurred for violation of title 19, United States Code, section 1433, for unlading merchandise without a permit. The penalty amount represents the domestic value of numerous cases of wine, liquor, books, aluminum sheets and foodstuffs, the merchandise so unladen.

The record indicates that the subject merchandise was landed at Houston on October 18, 1978, from the [redacted]. The merchandise was not listed on the manifest thus a permit for its unlading was not procured.

Petitioner states that the merchandise was originally scheduled to be discharged in New Orleans and relayed to the West Coast via rail. However, the vessel had a departure deadline in New Orleans and had to sail without discharging the merchandise. Petitioner does not deny that a violation occurred. It should be noted that when the violation was discovered a CF-5931 to amend the manifest was filed.

It is the opinion of this office that the violation was the result of ordinary negligence. This is the first offense of this type incurred by the Master. The penalty is mitigated upon payment of $100.

You may notify petitioner of this decision and include a copy of this letter with your notification.

Sincerely,

Signed Harvey B. Fox

Donald W. Lewis
Director, Office of
Regulations and Rulings

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CORRESPONDENCE APPROVAL AND CLEARANCE

Form 100 (11-15-73)

SEC
2/3/81

03 FEB 1981

EMF 4-02.2 CO:R:E:C
652185 BG
x652039

652185

[redacted]

Dear [redacted]

This is in reference to your letter of April 14, 1980, with which you forwarded a proposed waiver of the statute of limitations executed by [redacted] for period of 2 years commencing April 11, 1980, with respect to Boston District Case No. 76-0401-00004.

The waiver is accepted and an executed copy is enclosed.

Sincerely,

(Signed) Anthony L. Pianese

Salvatore E. Caramagno
Director, Entry Procedures
and Penalties Division

Enclosure

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

DEC 31 1980
ENF 4-02.2 CO:R:E:C
652506 LR

652506

District Director of Customs
Boston, Massachusetts

Acting Chief, Commercial Fraud and
Negligence Penalties Branch

[redacted] Offer in Compromise (Boston District Case No. 78-0401-50342; New York District Case No. 78-1001-57061)

Attached for your information is a letter signed by the Director, Office of Regulations and Rulings, rejecting the offer in compromise submitted in connection with the above-referenced cases. Please note that our previous decision of January 22, 1980, 651755 AB, remains in effect and must be complied with by January 30, 1981, or the cases should be referred to the United States attorney for appropriate action. The latest waiver of the statute of limitations submitted by [redacted] expires on February 24, 1981.

/s/E. Rosse

Edward Rosse

Attachment

[redacted]

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to SEC 12/15

DEC 31 1980

ENF 4-02.2 CO:R:E:C
652506 LR

652506

[redacted]

Dear [redacted]

This is in reference to the offer in compromise submitted pursuant to title 19, United States Code, section 1617, on behalf of [redacted] in connection with New York District Case No. 78-1001-57061 and Boston District Case No. 78-0401-50342.

The liability was incurred because [redacted] falsely invoiced, as American Goods Returned under item 800.00, Tariff Schedules of the United States (TSUS), semiconductor devices of foreign manufacture. The merchandise was entered under cover of 742 consumption entries filed at Boston between July 1974 and September 1977, and 34 consumption entries filed at New York between May and August 1974.

In a decision dated April 4, 1979, the Customs Service determined that the violation was attributable to gross negligence. This determination was affirmed in a decision dated January 22, 1980, in response to a supplemental petition submitted by [redacted] Based on this determination, the claims for forfeiture value were mitigated to $491,859, provided $157,863.94 is deposited as withheld duties (Boston case) and to $80,192 (New York case). The mitigated amounts represent approximately four times the reported loss of revenue.

[redacted] have offered to pay a total of $407,000 in full settlement of the above cases. This figure represents approximately two times the reported loss of revenue plus the payment of $121,000 in withheld duties. According to the terms of the promissory note submitted, the $121,000 will be paid within 30 days of receipt of written acceptance of the offer. No interest would be paid on this amount. The remaining $286,000 would be paid over a period of 5 years commencing 1 year from the date of written acceptance by Customs, payable in equal installments of $57,200 per year. Ten percent interest would be paid on this amount.

We have carefully reviewed the terms of the submitted offer and have concluded that acceptance would not be in the best interest of the Government. First, it is our view that the record supports the two previous determinations that the violations were the result of gross negligence. Second, the terms of the offer are unfavorable from the Government's standpoint. Both the length of time (effectively 6 years

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from acceptance) in which the penalty amount would be paid plus an interest rate of 10 percent, well below the current rate, lead us to our decision to reject the proposed offer.

In view of our rejection of the settlement offer, our decision of January 22, 1980, 651755 AB, remains in effect. That decision must be complied with by January 30, 1981, or the case will be referred to the United States attorney for appropriate action. Since we have already considered a supplemental petition, in accordance with Chapter IX, Part B, Fines, Penalties and Forfeitures Handbook, March 1978 revision, no further petitions will be considered unless accompanied or preceded by full payment of all penalties and withheld duties.

Sincerely,

(Signed) Salvatore E. Carmagno
Donald W. Lewis
for Director, Office of
Regulations and Rulings

[redacted]

[redacted]

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03 FEB 1981

ENF 4-02.2 CO:R:E:C
652562 BG
X ref. 652039

652562

[redacted]

Dear [redacted]

This is in reply to your letter of January 21, 1981, with which you forwarded four (4) proposed waivers of the statute of limitations executed by [redacted] individually and on behalf of [redacted] for a period of 1-year commencing January 16, 1981, in Boston District Case No. 79-0401-50027/1; and by [redacted] individually and on behalf of [redacted] for a period of 1-year commencing January 9, 1981, in Boston District Case No. 79-0401-50027/2.

The waivers are accepted for the period ending January 15, 1982, in Boston District Case No. 79-0401-50027/1 and January 8, 1982, in Boston District Case No. 79-0401-50027/2 and executed copies are enclosed.

Sincerely,

(Signed) Anthony L. Piazza

Salvatore E. Caranagno
Director of Entry Procedures
and Penalties Division

Enclosures

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

[redacted]

CODE AND DATE							
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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

attorney

JAN 22 1982

ENF-4-02.2 CO:R:E:C
652870 & 652876 SLG

652870/652876

[redacted]

Dear [redacted]

This is in reference to your letters dated December 29, 1981, and January 8, 1982, whereby you forwarded the waivers of the statute of limitations defense contained in title 19, United States Code, section 1621 and any other applicable statutes of limitations by [redacted] respectively, in connection with the 46 entries of various leather and sheepskin articles covered by Boston District Case Nos. 79-0401-50027-1 and 2. The waivers are made for a period of six months commencing from the dates thereof, which are December 23, 1981, for waivers submitted by [redacted] and January 4, 1982, for waivers submitted by [redacted]

The waivers submitted on behalf of [redacted] are accepted for the period ending on June 22, 1982, while the waivers submitted on behalf of [redacted] and [redacted] are accepted for the period ending on July 3, 1982. Executed copies of the four waivers are enclosed.

Sincerely,

for (Signed) Anthony L. Piazza
Donald W. Lewis
Director, Entry Procedures
and Penalties Division

Enclosures

[redacted]

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12 MAY 1982

HRF 4-02.2 CO:R:E:C
652945 LR

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Re: Protest No. 0401-1-000616; Application for Further Review

Dear Sir:

The issue involved in the above-captioned matter is whether the protestant is liable for additional duties assessed by the Customs Service in connection with Entry No. 745420. The protestant claims that any liabilities therefor were settled and resolved when the Customs Service accepted its offer to compromise two penalty claims.

BACKGROUND

In 1978, the Customs Service assessed two penalty claims for forfeiture value against protestant 1/ for violations of title 19, United States Code, section 1592 (Boston District Case No. 78-0401-50342 and New York District Case No. 78-1001-57061). The liabilities were incurred because protestant allegedly entered semiconductor devices into the commerce of the United States under cover of 776 consumption entries pursuant to false invoices. One of these entries is the subject on the instant protest. As a result of the violations, the Government suffered an actual loss of revenue 2/ of $157,863.94 and a potential loss of revenue 3/ of $52,402.33.

1/Although both penalty cases involved joint and several claims against protestant and its president, for purposes of this decision, we will refer only to the protestant's liability.

2/The actual loss of revenue is the duties of which the Government has been deprived by reason of the violation in respect of entries on which liquidation had become final. Section 162.71(a)(1) Customs Regulations (19 CFR 162.71(a)(1)).

3/The potential loss of revenue is the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final. Section 162.71(a)(2), Customs Regulations (19 CFR 162.71(a)(2)).

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Upon consideration of the petitions for relief, the Customs Service mitigated the claims for forfeiture value to $491,859, provided the actual loss of revenue of $157,863.94 was deposited as withheld duties 4/ (Boston case) and to $80,192 (New York case).

On July 2, 1980, in lieu of payment, protestant submitted an offer in compromise pursuant to title 19, United States Code, section 1617 (19 U.S.C. 1617).

According to the terms of the offer, protestant would pay the Customs Service $407,055 ($286,026 representing penalties and $121,029 representing duties on liquidated entries) in full settlement of the penalty claims. With regard to the payment of duties on unliquidated entries, the offer specifically states:

> The amounts set forth above do not include any allowance for payment of duties in respect of unliquidated entries in Boston or New York. As such entries are still subject to assessment of duties, petitioners [protestants] understand that the final assessment of duties as to such entries will be established in consultation between petitioners and Customs in Boston and New York. Therefore, the question of how much duty will be paid on unliquidated entries in Boston and New York is not part of this offer to compromise (emphasis added).

The offer further indicated that the parties would later agree upon the terms of payment.

By letter dated August 26, 1980, the Customs Service advised protestant that the offer in compromise would not be considered until a promissory note setting forth the terms of payment was submitted.

In September 1980, protestant submitted an amendment to its offer, reducing the proposed amount from $407,055 to $407,000 along with the requested promissory note. According to the note, the $407,000 was comprised of $286,000, representing penalty, and $121,000, representing "the amount of lost revenues that the petitioners have agreed to pay the Customs Service."

By letter dated December 31, 1980, the Customs Service rejected the offer. The terms of payment were unsatisfactory because the penalty would not be paid until six years after acceptance of the offer, and because the proposed interest rate of 10 percent was well below the then current rate. The amount of penalty was also deemed to be too low. It is significant to note that the rejection letter identified the $121,000 as withheld duties.

After further negotiations, protestant submitted an amended promissory note during a meeting at Customs Headquarters on January 14, 1980. While the sums of $286,000 (penalties) and $121,000 (duties) were left unchanged,

4/The term "withheld duties" is synonymous with actual loss of duties. Payment of withheld duties is generally made a condition of mitigation. Payment of the potential loss of revenue, however, is always collected upon liquidation of the entries.

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payment was to be made in a shorter period of time and at a higher rate of interest. These changes were made directly on a copy of the original promissory note. The remaining language, including the designation of the $121,000 as "lost revenues that the petitioners have agreed to pay to the United States Customs" was left unchanged. The amended promissory note, unlike the original, was not accompanied by an offer of compromise.

By letter dated February 6, 1981, protestant was advised that the Customs Service had accepted its settlement offer. As in the previous decision letter, the $121,000 was characterized as withheld duties.

In accordance with the terms of the settlement, protestant deposited $121,000 in duties on March 10, 1981. The Customs Service issued a cash receipt for this amount stating:

> Withheld duties (actual loss of revenue) on 646 liquidated entries subject of district cases above (78-0401-50342 and 78-1001-57061)... (emphasis added).

Following the settlement, the Customs Service began liquidating the unliquidated entries which were involved in the penalty cases. Consumption Entry 745420, the subject of this protest, was liquidated on October 9, 1981, and protestant was billed for increased duties.

ISSUE:

The issue is whether the $121,000 deposited by protestant satisfied its liability for duties on both liquidated and unliquidated entries. Protestant argues that it does and that it has no further liability for any increased duties. It is our position that the $121,000 covered duties due only on liquidated entries (withheld duties) and that protestant is liable for increased duties on those entries which were unliquidated at the time of the settlement.

ANALYSIS:

As indicated above, protestant's initial offer in compromise plainly provided that it did not cover duties on unliquidated entries but was limited solely to duties on liquidated entries: "the question of how much duty will be paid on unliquidated entries...is not part of this offer to compromise." In the original promissory note submitted with the offer, the duties to be deposited were characterized as "the amount of lost revenue that the petitioners have agreed to pay the United States Customs." Reading these documents together, the "lost revenue" in the quoted phrase can only be interpreted as meaning duties on liquidated entries (withheld duties).

We believe that the first offer, although initially rejected by the Customs Service, formed the basis of protestant's second offer which was later accepted. This conclusion is inescapable in view of the following:

1. The first promissory note makes express reference to the offer with which it was submitted. After Customs rejected that offer, protestant submitted an amended promissory note which also referred to an offer. In view of the fact that no amended offer was submitted therewith, the only inference that

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could be drawn was that reference was again being made to the original offer. This inference was proper because, in effect, the only differences between the original and the amended note were the terms of payment.

2. The amended promissory note merely sets forth the terms of payment, without any reference to the substance of the proposed settlement. Therefore, unless the amended note is considered in conjunction with the offer itself, there was no offer to compromise at all, just a promise to pay a certain sum to the Customs Service.

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Accordingly, we find that the settlement agreement was comprised of protestant's original offer and the amended promissory note. Therefore, according to the settlement terms, the $121,000 deposited by protestant represented duties on liquidated entries only.

We reach the same conclusion even if we were to determine that protestant's second offer consisted solely of the amended promissory note.

As stated above, protestant's amended settlement offer was made by merely changing certain language on the original promissory note. The language identifying the disputed $121,000 as "lost duties the petitioners have agreed to pay the United States Customs Service" was left unchanged. Prior the amendment, Customs issued the rejection letter which clearly reflected its interpretation that the quoted language meant withheld duties.

Since protestant did not dispute Customs interpretation of that phrase, and left that language unaltered in the amended note, it impliedly accepted Customs interpretation of the language as meaning withheld duties.

Under either theory, Customs position that the $121,000 represented withheld duties is supported by the language both in the acceptance letter dated February 6, 1981, ("the $121,000 representing withheld duties is payable within 30 days") and in the cash receipt issued to protestant on March 10, 1981, upon payment of this amount (the $121,000 represents "withheld duties, actual loss of revenue, on 646 liquidated entries").

It is also significant to note that while it has been held that the Customs Service has the authority to compromise duties on unliquidated entries, see Zenith Radio Corporation v. United States, 509 F. Supp. 1282 (CIT 1981), this authority is rarely exercised because the exact amount of such duties is unknown until the entries are liquidated. Thus, it is the policy of the Customs Service not to compromise duties on unliquidated entries. In view of this policy compromise agreements are interpreted to encompass only the actual loss of duties unless express reference is made to the potential loss of duties. In this case, the settlement agreement clearly states that duties on unliquidated entries are not covered. Therefore, protestant's position must be rejected.

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DETERMINATION

Based on the above considerations, we find that the $121,000 deposited by protestant in connection with the settlement of two penalty cases did not satisfy its liability for the additional duties which are the subject of this protest. Accordingly, you are directed to deny the protest in full.

Sincerely,

(Signed) DONALD W. LEWIS

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

District Director of Customs
Boston, Massachusetts 02109

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 149 (11-15-73)

653162 MKT

ENF-04-02 CC:DWH
EO-82-10-28

FEB 24 1983

653162

Dear Mr. Cohen:

Re: United States v. Accurate Mould Company, Ltd., et al., CIT No. 82-2-00164

This is in response to your letter dated October 20, 1982, in which you request our views on a settlement offer of $2,500 from defendant Accurate Mould Company, Ltd. In addition, you ask our position relative to alleged violations by Accurate and its customhouse broker. For the reasons discussed below, we believe that Accurate's settlement offer is fair and reasonable, given case circumstances, and that its acceptance would be in the best interests of the Government.

In light of the decision on Accurate's protest by the Classification and Value Division that the mold was originally entitled to duty-free treatment under item 806.20, TSUS, we are constrained to recommend acceptance of Accurate's offer. The Classification and Value Division found from the "overall circumstances and . . . the documentary evidence surrounding the transaction" that Accurate and [redacted] (the American owner of the mold) intended alterations to be made to the mold when it was originally exported, thereby allowing 806.20 treatment. According to the Classification and Value Division's original decision on the protest, dated May 5, 1982, Accurate's customhouse broker, requested a copy of the lease because of a "seemingly misguided assumption that the mold had been exported under a lease agreement and was being returned thereunder." The Classification and Value Division has further stated that the propriety of the lease is immaterial to the determination of whether or not 806.20, TSUS was applicable to the importation.

We do not believe it is practical to amend the complaint, alleging a non-revenue loss violation, in the wake of the Classification and Value Division's determination that the lease was submitted only because of a misunderstanding between the parties. Litigation on the issue of whether the lease constitutes a material false statement for purposes of section 592, where Customs itself has found that it is immaterial to classification, would likely prove very difficult.

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Notwithstanding the ruling of the Classification and Value Division, we do not believe that the action should be dismissed without the payment of some penalty by Accurate. Therefore, we recommend that Accurate's $2,500.00 offer be accepted. In reviewing Accurate's First Interrogatories, it is obvious that they are not only aware of the Classification and Value Division's original favorable determination but also of the Region's request for reconsideration which was submitted on August 5, 1982. We believe that Accurate will be just as willing to settle on its original terms even when it learns that the Region's request for reconsideration was denied by the Classification and Value Division on October 26, 1982. Faced with the possibility of the Government amending the complaint and protracted litigation, it does not seem practical for Accurate to withdraw their offer. This is particularly true in view of the fact that since Accurate's protest has been granted, they will be entitled to a refund of their $2,255.00 tender of duty; therefore, they will actually be resolving the matter for a mere $245.00 plus interest, attorneys fees and costs.

In view of the above, we recommend that the $500.00 offer received from [redacted] the other defendant in this case, be accepted in settlement of our section 1592 claims against them. Suit was filed against the broker only after it failed to submit an administrative petition for relief under 19 U.S.C. 1618. Acceptance of this offer is compatible with Customs policy to mitigate section 1592 claims against brokers to a flat sum, usually not exceeding $500.00 upon submission of a petition, absent a showing of fraud or that the broker directly profited from the violation. Therefore, as the claim against [redacted] would probably have been resolved upon payment of a nominal amount, there is no legitimate reason for the Government not to accept their offer.

Sincerely,

/s/ David O. Bates

John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

David M. Cohen
Director, Commercial Litigation Division
Civil Division
Department of Justice
550 11th Street, NW.
Washington, D.C. 20530

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4 NOV 1985

ENF 4-02.2 CO:R:E:C
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District Director of Customs
Los Angeles, California 90731

Dear Ms. Rigdon:

This is in response to your referral of the petition and offer in compromise submitted by counsel for [redacted] ("petitioner"). Petitioner requests relief and offers to settle the claim for monetary penalty assessed in the amount of $74,722,461, for violations of title 19, United States Code, section 1592 (Los Angeles District Case No. 79-2704-51915). The amount of $189,538.73, has been offered pursuant to title 19, United States Code, section 1617, to settle the above penalty claim.

Liability for the above penalty claim was incurred because petitioner d/b/a, [redacted] and majority stockholder of [redacted] [now defunct], committed the following acts allegedly as a result of fraud:

a) During the period of September 7, 1977, to March 12, 1979, petitioner entered cotton denim jeans into the commerce of the United States by means of false labeling and false statements as to the country of origin.

b) During the period of June 11, 1976, to May 22, 1979, petitioner entered cotton denim jeans into the commerce of the United States by means of false values, in that deductions were made from the invoiced values for false buying commissions and for quota charges falsely claimed to have been included in the invoice prices and paid.

As a result of the above material false statements, cotton denim jeans were admitted into the United States in violation of the textile quota restrictions. Moreover, there also resulted a reported actual loss of duties in the amount of $308,796*, a reported potential loss of duties in the amount of $221,917, for a total loss of duties in the amount of $530,893.

---

*We are advised that petitioner has made voluntary tenders in the amounts of $29,763.87 and $8,748, toward the actual loss of duties. Thus, the net amount of the unpaid duties claimed is $270,284.13 on the liquidated entries.

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Prior to a consideration of petitioner's offer of settlement, we wish to discuss the substantive claims raised in connection with the petition for relief from the penalty claim. Petitioner's primary claim in this regard is that there has been a prior disclosure under section 1592(c)(4) by virtue of letters to Customs dated April 20, 1979, and July 24, 1979.

Primarily, it should be noted that we do not find that the letter dated April 21, 1979, from petitioner's counsel [redacted] to the District Director, Los Angeles, represented a disclosure of the "circumstances of a violation" of section 1592. The purpose of that letter was, as counsel then stated, i.e., "to give [Customs] notice" of a proposed making of a prior disclosure. The only statement relating to any circumstances of a violation of section 1592, consisted of the following:

> "Based upon our very preliminary view of [its client's importations from Indonesia, Macao, Philippines, South Korea, and India from 1976 to date of letter] it appears that our clients [sic] entries may have been out of compliance with Customs requirements with respect to some or all of the following factors: A. Buying Commissions B. Country of Origin C. Quota Charges D. Sample Shipments E. Design Assists."

It is our opinion that the foregoing represents no more than advice to Customs of petitioner's intent to make a disclosure in the future. Inasmuch as no false statements and/or material omissions constituting violations of section 1592, were described in the above submission, it did not constitute a prior disclosure under section 1592(c)(4).

By letter dated July 24, 1979, counsel for petitioner submitted what was purported to represent a "detailed disclosure" of the circumstances of the alleged violations. With regard to the violations that have been alleged in this case, this letter advised of the following: A) A certain portion of the cost of merchandise had been allocated on the invoices as a buying commission by [redacted] at petitioner's request with such allocations amounting to 5 percent of the total cost of the goods beginning in 1976 increasing to 7.5 percent of the total cost by 1977; a list of entries having a total loss of duties of $288,044.05, resulting from the false buying commissions was attached. B) In a few cases, charges paid for quota allocations were not disclosed at the time of entry. C) While the April 20, 1979, letter from petitioner's counsel expressed an intent to make a disclosure of violations involving country of origin, petitioner through counsel states

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in the July 24, 1979, letter that "there is no indication that we imported merchandise which was not properly marked and declared with the correct country of origin stated."

Of the foregoing only the information relating to the false buying commissions represents a disclosure of the circumstances of one of the types of violations alleged in this case. Although petitioner does not characterize this violation as involving "false" claims of buying commissions, petitioner pleaded guilty to the following count of a violation of title 18, United States Code, section 1001 relating to the the buying commissions:

> "[redacted] knowingly and willfully made and caused to be made, false, fictitious, and fraudulent statements..., that buying commissions in the following amounts [$2,964.84 and $2,625.36] had been paid to [redacted] in connection with the purchase, importation, and entry... of cotton denim jeans,...."

With regard to a formal investigation of the foregoing violations (false buying commissions), the record is clear that such commenced prior to the date of petitioner's disclosure by letter dated July 24, 1979. On April 21, 1978, a referral was made by Senior Customs Inspector Shiroshi for the investigation of false country of origin designations on petitioner's importations of the subject goods. Pursuant to the foregoing referral, the Office of Investigations interviewed Import Specialist Hinkley on October 5, 1978, and discovered the circumstances of the false buying commissions violations. As a result of this discovery, a foreign investigation into whether [redacted] acted as a bona fide buying agent was requested by Report of Investigation dated November 30, 1978. Thus, in accordance with section 162.74(c)(4) of the Customs Regulations in effect at the time of the disclosure, the investigation into the false buying commission claims commenced on October 5, 1978, "the date on which [the investigating agent] discovered facts and circumstances which caused him to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to petitioner and the false buying commissions claims."

Moreover, in view of other events reflected in the record, it is our view that petitioner has not sustained its burden of proving that it was not aware of the commencement of the foregoing investigation by the time of its disclosure on July 24, 1979. Although it was not until July 26, 1979, that [redacted] manager of [redacted] company through which the subject importations were

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made] disclosed the fact that this company did not receive a commission, but only a salary from [redacted] the record reflects that as early as June 28, 1979, [redacted] was interviewed by Customs concerning the company's status as a bona fide buying agent of petitioner in connection with the subject shipments.

At the time of the June 28, 1979 interview, [redacted] reportedly was very uncooperative, explicitly declining to answer any questions or give access to any records before discussing the matter in full with petitioner and [redacted] attorney's in Hong Kong. We have no reason to believe that such discussion between [redacted] and petitioner did not take place after [redacted] was served notice of the specific areas under investigation by Customs. Under the foregoing circumstances, we find that petitioner has not sustained his burden of proving that at the time of his disclosure, he was not aware of the commencement of the investigation into the buying commissions violations. Accordingly, we deny petitioner's claim that there was a prior disclosure of the violations relating to the false buying commissions claims within the meaning of section 1592(c)(4).

Concerning the merits of the instant claim, petitioner also has claimed that he had no knowledge of the transshipments and thus, should not be assessed a penalty based upon such acts. Petitioner should be advised that there has been no penalty assessed simply for the transshipment of the merchandise from one country through another country before shipment to the United States, because such action, in and of itself, is not a violation of section 1592. Rather, the transshipments involved in the subject case were made in connection with petitioner's false claim of the countries of origin of the goods on entry documents presented to Customs as well as on the labels of the garments in order to avoid quota restrictions applicable thereto. With regard to the latter, the record reflects that petitioner indeed did have knowledge of the false country of origin and transshipment arrangements.

In a sworn statement taken on May 20, 1981, in connection with the previous related criminal proceeding, [redacted] stated that an offer to have the subject jeans manufactured in Hong Kong and finished in Indonesian so that they could be shipped to the United States without quota restrictions, was made by a [redacted] (a Hong Kong factory), who claimed to have had an Indonesian factory. This offer was relayed to petitioner prior to commencement of the proposed operations. With regard to [redacted] criminal violations in Hong Kong for jeans shipped to the United States via Singapore as products thereof, [redacted] stated that petitioner paid his fines. With respect to

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the subject garments that were made in Macao, but transshiped through and as products of Indonesia, [redacted] stated that even though petitioner was advised of these facts after the transshipments, petitioner was advised of the true facts and of the false explanation to be presented to Customs concerning this matter. Finally, [redacted] stated that when the decision to end the transshipments was made by him in 1978 because of the risks involved, petitioner agreed with this action. In addition to the above, one [redacted] hired by petitioner to work at [redacted] in Hong Kong also reportedly stated that petitioner participated in meetings wherein he indicated an understanding that by transshiping jeans through Indonesia, the company would save the cost of purchasing quota. Thus, another person confirms that petitioner was aware of the scheme involving the false country of origin and transshipments in order to avoid the quota restrictions.

In view of the foregoing, we find that petitioner's actions with respect to the false claims of countries of origin made in the subject entries resulted from his intent to avoid the quota limitations on textile products imported into the United States from Hong Kong.

With regard to the false claims relating to quota charges, petitioner maintains that the invoiced prices did include quota charges the deductions of which were proper to arrive at the dutiable values. In this regard, by letter dated January 17, 1985, petitioner has forwarded a letter (undated) purported to have been written by [redacted] which states as follows:

> "The quota charges that [redacted] incurred at Hong Kong were paid separately because it was purchased from third parties who were not the manufacturers of the jeans. The cost of purchasing the quota for each shipment of jeans was included on the invoices and they were subtracted together with the buying commissions to arrive at net dutyable (sic) value.
>
> ... The quota charges were never deducted improperly from the cost of the jeans, instead, they were always added to the cost of the jeans on the invoices."

[redacted] however, subsequently stated to Customs Hong Kong Representatives on May 22, 1985, that after careful review, he would not consider the statements made in the aforecited January 17, 1985 letter to be accurate and that, to the best of his recollection, the invoiced values of goods from [redacted] always included quota charges. The foregoing directly contradicts [redacted] purported statement

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in the above letter that the "cost of purchasing quota for each shipment of jeans was included on the invoices." The record reflects that [redacted] was one among many Hong Kong manufacturers of the goods involved in the subject case. [The records at Headquarters do not verify that some shipments also were made by [redacted].] Moreover, [redacted] further advised that petitioner prepared the January 17, 1985 letter and sent it to him for his signature and that since [redacted] was in a hurry, he authorized one of his employees to sign the statement.

We, however, find more credible, [redacted] statements made during a Customs interview of him on July 26, 1979. At that time, [redacted] reportedly stated that [redacted] always charged [redacted] for quota whether or not such had been obtained free of charge by [redacted] that the invoice unit prices were adjusted for [redacted] "commissions" and for [redacted] quota charges at petitioner's request. [redacted] further stated during the initial Customs interview that quota charges were paid separately and not included in the invoice prices even though quota charges were deducted from the unit prices. In light of the above, we conclude that petitioner's claims for deductions of quota charges from the invoices were false and resulted from an intent to defraud the revenue.

In connection with the offer of settlement, petitioner also has claimed that the actual loss of duties claimed by Customs should be reduced by the following amounts: a) approximately, $44,673.35, representing the loss of duties attributed to the alleged deductions of false quota charges; b) $38,511.87, representing the total payments on the actual loss of duties already made by petitioner; and c) $50,000, representing the amount paid by [redacted] to the United States Attorney, Central District of California as "restitution" pursuant to the United States Attorney's agreement not to prosecute. Since we have found above that the declarations of quota charges were false, petitioner's subsequent deductions therefor, negatively affected the assessment of duties. Thus, we find that Customs claim for the approximate amount of $44,673, in duties attributable to the quota violations, represents a lawful demand for duties under section 1592(d).

With regard to the $50,000, amount paid by [redacted] as "restitution", however, it is our view that this amount is properly deductible from the actual loss of duties remaining unpaid in this case. The letter dated May 19, 1981, from [redacted] to counsel for [redacted] memorialized an agreement by his office to provide use immunity and to defer prosecution with respect to any transactions on

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which they would be providing information on the condition that inter alia, [redacted] would "make restitution to the United States Government in cash in the amount of $50,000".

The term, "restitution" in the legal context means "the act of restoring; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury." BLACK'S LAW DICTIONARY, 1180 (5th ed. 1979). In connection with criminal proceedings, it is well-settled that a court may order restitution as a condition of probation "only for actual damages flowing from the specific crime charged in the indictment of which the defendant is convicted either after a trial or a plea of guilty." United States v. Elkin, 731 F.2d 1005, 1011 (2d Cir. 1984), cert. denied, 105 S. Ct. 97 (1984). Moreover, it also has been held that a defendant who agrees to make restitution in amounts that are greater than sums charged in an indictment may be compelled to honor his agreement. United States v. Elkins, supra at 1012. Even in the latter situation, however, restitution has been interpreted to include only those actual damages or loss caused by the offense or conduct relating to the indictment. Phillips v. United States, 679 F.2d 192, 195 (9th Cir. 1982).

It was recognized in United States v. Tiler, 602 F.2d 30 (2d Cir. 1979) that in a Customs criminal proceeding the Government's actual damages represented the total amount of import duties avoided as a result of the offense. Moreover, the court in United States v. Tiler, supra, noted that the upper limit of the amount that could be ordered to be paid as restitution by the defendants was to be reduced by the sum already paid to the Government by [redacted] [which was involved but not charged in the criminal proceeding] in settlement of both civil and criminal liability relating to the charges.*

In this case, [redacted] neither were indicted nor charged in a civil proceeding for their actions relating to the subject case. Moreover, the record does not reflect

*In United States v. Tiler, supra, the amount of restitution ordered as a condition of probation, was limited to $100,000, above the amount that the government had received as a result of the civil/criminal settlement from [redacted] The court, however, recognized that the amount ordered as restitution did not fix an upper limit on the defendants obligations to the government as a result of their violations.

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that there were negotiations with [redacted] of a settlement of potential civil claims against them for purposes of our considering that the $50,000, paid as "restitution" represented payment of a penalty. Under the foregoing circumstances, the $50,000, amount paid by [redacted] as "restitution" hardly can be recognized as anything other than payment toward the total amount of actual damages, i.e., lost duties, suffered by the government as a result of the material acts and omissions committed by them and petitioner in this case.

While we are aware of no express prohibition against Customs issuing a subsequent claim for duties which includes the above amount, all of the equities would be weighed against our taking such action in this case. Hence, for purposes of the instant section 1592 proceeding, the loss of duties is deemed reduced by the amount of $50,000, in restitution paid to the Government by [redacted] pursuant to one of the conditions for the Government's agreement not to prosecute them.

With regard to petitioner's claims of inability to pay the penalty claim, we have considered petitioner's income tax returns for the years 1983 and 1984, his financial statement dated August 14, 1985, as well as other evidence of record. While petitioner has reported on his 1983 and 1984 federal income tax returns, negative incomes of ($209,236) and ($63,835), he has reported to Customs on his financial statement, a net worth of $123,823. We also have been advised that petitioner's home is listed for sale at $900,000, reduced from the asking price of $1,095,000.

While we feel that petitioner sufficiently has demonstrated an inability to pay, which we have considered with respect to the principal offered amount of $189,538.73, we do not find petitioner's proposed payment plan providing for $5,000, per year for two years, with increased annual payments thereafter depending upon the financial status of petitioner at the end of the two-year period, acceptable. Therefore, petitioner's offer of compromise is rejected.

In consideration of petitioner's claims of inability to pay, the instant claims for penalties and actual loss of duties under section 1592, are mitigated to the amount of $190,000. This amount may be paid by execution of a promissory note by January 1, 1986, which shall provide for the following terms of payment:

Payment Plan A

1. $10,000, to be deposited at the time of execution of the promissory note (which would include this amount);

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2. $100,000 to be paid upon the closing of the sale on petitioner's house; provided that such takes place within three years of the date of execution of the note; and

3. $80,000, to be paid in equal annual installments with interest, (computed at the prevailing rate at the time of execution of the note) over a period of eight years.

OR

Payment Plan B

1. $10,000, to be deposited at the time of execution of the promissory note; and

2. $180,000, to be paid in equal annual installments over a period of eight years, with interest to be charged on the outstanding balance during the last five years.

Under both payment plans the promissory note may provide for prepayment of the principal amount without interest.

Please advise petitioner, through counsel of this decision and enclose a copy of this letter with your determination. Petitioner also should be advised that unless a promissory note, as prescribed above, is executed by January 1, 1986, the matter will be referred for judicial enforcement of the $74,722,461, penalty claim.

Sincerely,

(S) Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures and
Penalties Division

[redacted]

[redacted]

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31 AUG 1983

ENF 4-02.2 CO:R:E:C
653374 BLS

District Director of Customs
Los Angeles, California 90731

Re: Petition on behalf of [redacted] for relief from a demand for monetary penalty of $168,711, assessed against [redacted] for violation of title 19, United States Code, section 1592. District Case No. 82-2720-01373.

Dear Sir:

This is in reference to the memorandum dated July 13, 1983, from the Acting District Director, involving the above-captioned matter. The monetary penalty was assessed under the statute for attempting to enter gold jewelry into the commerce of the United States by means of false documents and material and false acts, and was based upon a finding of gross negligence. The Immediate Delivery Application filed with the submitted invoices reflected a shipment of gold jewelry valued at $203,015. In fact, petitioners failed to submit additional invoices which reflected that the actual value of the shipment was $629,053. There is a reported potential loss of revenue of $42,178. The shipment was seized to protect the revenue since the petitioners are non-residents.

The record shows that upon their arrival at Los Angeles Airport (LAX), passengers [redacted] furnished the broker, [redacted] with four invoices for gold jewelry, reflecting a total value of $203,015, and a weight of 31,299.5 grams. [redacted] in turn submitted these invoices and appropriate Customs documentation to the Customs inspector for entry. The inspector asked [redacted] if any additional invoice had been presented to him by the importers at the time of entry and he replied in the negative. The inspector then proceeded to weigh the shipment, and a total weight of 98,728 grams was recorded. Six additional invoices, reflecting the balance of the undeclared shipment, were subsequently submitted to the inspector by petitioner [redacted]

Petitioners do not dispute the substantial discrepancy between the invoiced value of the imported jewelry and the declared value. However, they contend that the failure to declare all of the merchandise immediately upon arrival was the result of jet lag, disorientation, and a language barrier. Petitioners allege that the commercial invoices covering the initial declaration were given to [redacted] by petitioner [redacted] that [redacted] arrived at the weighing station sometime after the others, and subsequently gave his invoices (covering the balance of the jewelry) to [redacted] who then attempted to submit them to the Customs inspector before he weighed the shipment. Petitioners allege that the inspector refused to accept the additional invoices before the weighing took place. The concerned inspector states that he accepted the completed entry form

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and invoices from [redacted] at the baggage counter, with the understanding that it was complete and represented the entire shipment of jewelry. Both petitioners were present when it was submitted. The inspector states that he then advised he was going to weigh the merchandise, and escorted the petitioners and [redacted] to an office for that purpose. Upon finding the office locked, he left for several minutes to obtain a key, and upon return proceeded with the weighing process. He advises that he does not recall any of the individuals offering additional invoices before he weighed the shipment. However, after the discrepancy was noted, he recalls that [redacted] advised that there was a misunderstanding and that one of the petitioners at that time removed six (6) invoices from his bag covering the additional jewelry. (While there appears to be some confusion in the recitation of events as to who submitted the additional invoices, the petitioners claim, and so it appears from the record, that it was petitioner [redacted] who produced these documents.)

Petitioners' claim that a language barrier was partially the cause of the difficulty is not accepted. True, an interpreter was needed to interview petitioner [redacted] who is an Italian resident. However, it was petitioner [redacted] a British subject, who had the additional invoices in his bags and did not produce them upon entry. This petitioner had no difficulty with the English language.

Furthermore, whether or not petitioners attempted to submit the additional invoices to the inspector at the weighing room before the weighing took place is, we believe, irrelevant. Petitioners had already discussed the entry with their broker, and the Immediate Delivery Application with supporting invoices reflecting only part of the shipment had been prepared and submitted to the inspector. The latter accepted the entry with all parties present with the obvious understanding that the entry represented the entire shipment. A period of time passed during which the inspector advised that he was going to weigh the jewelry, and escorted the three gentlemen to the weighing room. Additional time was expended while the inspector obtained the key to the room and returned to unlock the door. Assuming, arguendo, that petitioners submitted the additional invoices upon the inspector's return and before the merchandise was weighed, at this point in time petitioners would have been aware that the discrepancy was going to be revealed upon weighing the merchandise. Therefore, they would have nothing to lose by disclosing the violation before the jewelry was actually weighed. In any event, whether petitioners had attempted to submit the additional invoices before or after the merchandise was weighed, at either point in time the false entry had already been filed with Customs.

We also find it difficult to believe that in making entry through the broker petitioner [redacted] would inadvertantly omit listing approximately two-thirds of the imported shipment, some $400,000 worth of jewelry, when in fact he had six (6) invoices covering such merchandise in his possession.

The record also shows that upon interview on the date of the seizure, petitioner [redacted] stated through an interpreter that this was the first time he had brought in merchandise. However, in an affidavit [redacted] states that he was aware that both petitioners had previously delivered Italian jewelry to the same consignee. He also alleges that prior to arrival

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065374

of the passengers, he advised a Customs inspector at LAX by telephone that a shipment of gold chains with an approximate value of $500,000 would be arriving from England on board a particular flight, and as broker, he would be there for the purpose of meeting the shipment and assisting in its processing.

While there is no verification of the telephone call, we note that if [redacted] was aware of the approximate value of the shipment, why did he not question petitioners when they presented invoices to him for jewelry valued at only $203,000?

In summary, the record shows that petitioners made entry for gold jewelry with commercial invoices reflecting a value of $203,015, and a weight of 31,299.5 grams, when in fact they had in their possession invoices reflecting a value of $629,053 and a weight of 98,728 grams; that petitioners had ample time to make proper entry and engaged the services of a customhouse broker for this purpose; that petitioners have previously imported gold jewelry into the United States and therefore are not inexperienced in Customs matters; and that no language barrier prevented petitioner [redacted] from understanding Customs requirements and submitting his invoices to [redacted] or the Customs inspector for proper entry.

In accordance with your finding, these facts reflect that the violation was the result of gross negligence, for the reason that petitioners acted with actual knowledge of or wanton disregard for their obligations under the statute. The statutory penalty in cases of gross negligence is an amount not to exceed (in this case) four times the loss of revenue, or $168,711 (4 X $42,177.76).

You recommend no relief from the assessed penalty.

We concur. Under the circumstances, relief from the monetary penalty of $168,711 is denied.

Please advise petitioners through counsel of this decision, and include a copy of our letter with your notice.

Sincerely,

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

[redacted]

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655374

05 NOV 1983

DATE:

FILE: ENF 4-02.2 CO:R:E:C
653444 BNS

653444

TO : District Director of Customs
Baltimore, Maryland 21202

FROM : Director, Entry Procedures and Penalties Division

SUBJECT: Settlement of Civil Liability Assessed Pursuant to Title 19, United States Code, Section 1592, of [redacted] Case No. 77-5401-10803 and J.F.K. Area Case Nos. 76-4701-00081 and 77-4701-02174

In our memorandum to you dated September 26, 1983, (652398 BNS) a copy of which is enclosed, we indicated that certain jewelry seized from [redacted] and stored in your district could be returned: upon receipt of a certified check for $85,000; upon advice from the United States Attorney, E.D.N.Y., that the jewelry was no longer needed as evidence in connection with an ongoing criminal proceeding, and; provided that Customs had not been prevented from releasing the jewelry through receipt of a court order or writ of attachment. Subsequent to our initial memorandum your office was orally informed by us that the above conditions could not be fulfilled by October 3, the date initially set for release, because the criminal proceeding would not be concluded by that time.

Please be advised that the United States Attorney's office has now informed us that the criminal proceedings were recently concluded. Accordingly, there appears to be no impediment to releasing the jewelry. In this regard, Mr. Perregoy of your staff has orally indicated that it would be convenient to release the jewelry on November 7 at 11:00 A.M. Therefore, assuming that you are presented with a check for $85,000 and are not judicially prevented from releasing the jewelry, it may be returned to [redacted] or his representative on November 7.

/S/

Donald W. Lewis

Attachment

[redacted]

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02 JUL 1985

ENF 4-02.2 CO:R:E:C
653560 SLG

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[redacted]

Dear [redacted]

This is in reply to your letter dated June 26, 1985, whereby you confirmed the offer by [redacted] (hereinafter [redacted]) to settle pursuant to title 19, United States Code, section 1617, the potential civil penalties arising as a result of a Houston grand jury investigation of the company's steel importation during the period of July 1, 1980, through June 30, 1982.

Specifically, the amount of $2,400,000, has been offered to settle "any and all liabilities arising out of possible violations of 19 U.S.C. 1592 relating to 77 entries" described in paragraphs (a) through (f) on pages 2 through 3 of the above letter (hereby incorporated by reference). Upon acceptance by the Customs Service, the check for $2,400,000, will be delivered to the Customs Service on the day that the plea is entered in the related criminal proceeding.

In addition to the offered amount of $2,400,000, you state that as further conditions of the settlement, [redacted] will provide:

A schedule identifying the entries covered by the grand jury investigation;

The specific 77 entries encompassed by the subject settlement and indications of the violations related thereto, along with a schedule of their f.o.b. values and resale invoice numbers;

A copy of the "Supplemental Proffer In Re the Matter of Grand Jury Investigation of [redacted] relating to the nine entries to which [redacted] will plead guilty under title 18, United States Code, section 1001;

An agreement to an order under Fed. R. Cr. P. 6(e)(3) for disclosure of the grand jury documents to Customs; and

A waiver of the statute of limitations dated July 1, 1985, with respect to the 77 entries covered by the instant settlement offer.

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You also advise that [redacted] recognizes that any information provided will be subject to verification by the Customs Service.

In accordance with the specific conditions set forth above and in further detail in your letter dated June 26, 1985, the offered amount of $2,400,000, is accepted for settlement of the potential civil penalty claims with respect to the 77 entries described above; provided that the check for the above amount is delivered to the Customs Service Headquarters on the same day that the plea is entered in the United States District Court for the Southern District of Texas in the related criminal proceeding.

Sincerely,

/s/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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[redacted]

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FEB 12 1985

ENF 4-02.2 CO:R:E:C
653755 SLG

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Dear [redacted]

This is in response to your letter dated November 26, 1984, concerning Customs' continued seizures of wearing apparel in Miami, to which your client, [redacted] (hereinafter, [redacted] has claimed an ownership interest (Miami Seizure Case No. 84-5201-00282.) The shipments of wearing apparel, which consisted of textile products subject to quota and visa requirements that had been smuggled into the United States, were seized pursuant to title 19, United States Code, section 1592 and title 18, United States Code, section 545.

In our previous response to your inquiry concerning the above seizure you were advised that there was insufficient evidence establishing your title to the above goods prior to the dates of the seizures. We concluded that the evidence of record indicated that the contracts governing the purchase of the goods by your client, [redacted] from the seller, [redacted] called for delivery to [redacted] and that inasmuch as tender of delivery had not been made within the meaning of U.C.C. 2-503(1), at the time of the seizures of the shipments in Miami on January 24 and 25, 1984, and in accordance with the criteria set forth under U.C.C. 2-401(2), title to the goods had not passed to [redacted] Contrary to your present contention, however, the Customs Service did not conclude that because full payment had not been made for the goods, [redacted] did not have title to the goods seized in Miami. It was concluded that although the time of [redacted] payment for the goods was relevant to the parties' intent regarding the passage of title, there was insufficient evidence that full payment in fact had been made for the goods.

You also now contend that the position that title to the goods had not passed to [redacted] because delivery of the goods had not been accomplished in accordance with the terms of the purchase orders, was erroneous. As we understand your present contention, the fact that the contract provided for a "landed" price sales transaction, signified the parties intended that title pass to [redacted] at the moment that the shipper, through its agent, notified [redacted] that the goods were available for delivery from the warehouse.

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It remains our opinion that title to the shipments of wearing apparel under seizure in Miami had not passed to [redacted] by the time the goods were seized. You concede that a "landed" price purchase transaction would require that a seller such as [redacted] "ship the merchandise to the United States, enter and clear the merchandise through Customs and comply with all relevant laws and regulations." In this case, however, [redacted] obviously did not comply with the terms of "landed price" sale even under your interpretation, inasmuch as proper entry of the goods had not been made through Customs. Nevertheless, you claim that legal title to the goods still had passed to [redacted] with respect to the subject smuggled goods. More significantly, the Supreme Court decision, Hoover & Allison v. Evatt, 324 U.S.652, 660 (1945), cited in your letter not only held that the components of a "landed price" included the contract cost of the goods at the point of origin, charges for ocean freight, marine and war risk insurance and United States Customs clearance, but the Court also held that landed price included "the expense of arranging for transshipment from the port of entry [to the purchaser at the designated place for delivery.]"

It is our position that the contracts governing the sale by [redacted] of the seized wearing apparel to [redacted] specifically called for delivery of the shipments to New York. This determination was not based upon the "shipped to" provisions of the purchase orders. We indeed are aware of the principle of law that the "ship to" provision has "no significance in determining whether a contract is a shipment or destination contract" and that a "ship to" address must be supplied to the seller in any case in which carriage is contemplated [noted in Electric Regulator Corporation v. Sterling Extruder Corporation, 280 F. Supp. 550, 557 (D. Conn. 1968) and Eberhard Manufacturing Co v. Brown, 61 Mich. App. 268, 232 N.W. 2d 378 (1975) cited in your letter]. Rather, as stated in our previous letter to you on this matter, the fact that the price was a "landed" price coupled with the existence of specific terms in the delivery section of the contract, citing dates for delivery in New York, formed the basis for our conclusion that the contract covering the subject shipments was a "destination" contract. Thus, in order for title to have passed otherwise than at the time physical delivery to New York was accomplished, the subject contracts must have so explicitly provided.

The contract relating to [redacted] purchases from [redacted] on a "landed price" basis is contrasted to the F.O.B. "shipment" contract between [redacted] and [redacted] (hereinafter [redacted]) also reflected in the records. In

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the [redacted] contract, the terms of sale specifically provide for an F.O.B. price of $28.00, and a delivery date of July 25 through November 30, 1983, at "Thailand," even though the "shipped to" provision specified, "New York". Unlike [redacted] contract with [redacted] its contract with [redacted] did not require [redacted] to "deliver" the goods to the "shipped to" destination specified: "New York". Thus, we indeed would have recognized that title to the goods covered by the [redacted] contract passed to [redacted] at the time and place of shipment of the goods (U.C.C. 2-401(2)(a)).

In view of the express provision of U.C.C. 2-401(2), specifying when title passes to a purchaser of goods in the absence of explicit agreement to the contrary, the issue of whether full payment had been made is only remotely relevant to the subject seizures. Nevertheless, you still have not substantiated that [redacted] in fact had paid for the seized shipments in full prior to the dates of the seizure. Although you have provided copies of wire transfers to [redacted] in the respective amounts of $75,000, $200,000, and $70,000, date-stamped as received on December 19, 29, 1983, and January 24, 1984, respectively, there still is no evidence as to which shipments these payments pertained.

Hence, although you submit that the amount of $80,606, which we cited as unpaid [redacted] charges in our previous letter, actually pertained to different merchandise, at the same time there is no evidence that the $345,000 amount, actually pertained to the shipments under seizure in Miami. It remains our opinion that any representations by [redacted] as to its lack of ownership of the subject seized goods are self-serving since [redacted] and [redacted] allegedly were responsible for the smuggling and attempted smuggling of the goods into the United States, a matter still under criminal investigation.

We, however, have been advised that the Assistant United States Attorney handling the criminal investigation of the smuggling of the subject goods will not seek forfeiture of the goods. We also recognize that the fact that [redacted] has repeatedly claimed that it has been paid for the goods and has no ownership interest therein demonstrates that the continued seizure of the goods would not penalize [redacted] for its violation of section 1592.

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Therefore, in view of the foregoing circumstances and the equities involved, we are authorizing the release of the goods held under Miami Seizure Case No. 84-5201-00282 to [redacted] for export only under Customs supervision, provided; that (1) [redacted] agrees to hold the United States and its officers and employees harmless with respect to any matter relating to the seized goods; and (2) samples are provided from the seized shipments to the United States Attorney, as necessary, for the criminal proceedings.

Sincerely,

(Signed) Edward T. Stevenson
Acting

John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

[redacted]

[redacted]

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[redacted]

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CODE AND DATE			
SURNAME			
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SURNAME			

DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

65375

18 MAR 1985

ENF 4-02.2 CO:R:E:C
653834 SLG

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[redacted]

Dear [redacted]

This is in response to your letter dated February 26, 1985, whereby on behalf of [redacted] you tendered the amount of $175,000, for our consideration pursuant to title 19, United States Code, section 1617. The offered amount is submitted as a full settlement of "all sums and amount of whatever nature, including without limitation, penalties or damages of any kind...,relating to any of the entries involved" in Ogdensburg District Case No. 83-0701-50019.

We are advised by the District Director, Ogdensburg that he is aware of no other claims relating to the subject entries. We also are advised that the potential loss of duties cited for some of the entries in this case was paid upon liquidation of these entries at the corrected rates. As you noted in your letter, however, the offer in compromise has been made pursuant to section 161.5 of the Customs Regulations. Section 161.5(a) specifically provides that the "offer shall be limited to the civil liability of the proponent in the matter which is the subject of the Government's claim." Thus, the current offer of compromise has been considered only with reference to the claim for monetary penalty and demand for duties that have been assessed pursuant to title 19, United States Code, section 1592 in the above-entitled case.

Upon review of the entire file in this case, including your presentation accompanying the offer, the offered amount of $175,000, is accepted in full settlement of the Customs Service's claims for penalty and duties under section 1592 with respect to the entries in Ogdensburg District Case No. 83-0701-50019.

[redacted] Sincerely,

[redacted] /s/ Donald W. Lewis

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CODE AND DATE	[redacted]					
SURNAME	[redacted]					
CODE AND DATE						
SURNAME						

Donald W. Lewis
Director, Entry Procedures and
Penalties Division

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE · CORRESPONDENCE APPROVAL AND CLEARANCE · Form 100 (11-15-73)

20 MAY 1985

ENF 4-02.2 CO:R:E:C
653858 CR

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Area Director of Customs
Newark, New Jersey 07114

Dear Sir:

This is in response to your memorandum dated March 19, 1985, forwarding a petition dated October 22, 1985, submitted by petitioner, [redacted] The petition seeks relief from a seizure and a claim for a monetary penalty in the amount of $92,115, assessed against petitioner for a violation of title 19, United States Code, section 1592, in your Newark Area Case No. 84-4601-50870.

The penalty claim under section 1592 arose on the basis that petitioner attempted to introduce into the commerce of the United States merchandise by means of false and material entry documents. The documents were false because 900 ladies coats were misdescribed as ladies dresses. The merchandise was invoiced as dresses and had visas indicating quota category No. 436, whereas the merchandise was actually ladies coats with a proper quota category of No. 435. In addition the Government claims it suffered a potential loss of revenue of $446.71.

As we understand the facts, on November 30, 1983, petitioner filed an Immediate Delivery Application, Customs Form 3461, No. 1001-84-701-884-4 reflecting in Block 11 a description of"...900 pcs ladies dress." [redacted] The commercial invoice of the exporter, [redacted] reflected a visa category number of "436". Upon examination of the merchandise by a Customs officer, it was determined that the merchandise was not ladies dresses as described but rather were ladies coats. The proper quota category should have been 435. Accordingly, on December 1, 1983, the 900 ladies coats were seized to prevent the unlawful introduction of the merchandise into the commerce of the United States.

It is reflected in the file that on two previous occasions, penalty notices in the total amount of $25,872 were issued against the petitioner for the same type of violation. The claims were assessed because the shipments of ladies coats were misdescribed as ladies dresses. By letter dated July 9, 1984, the Director, Newark Area, determined that there were negligent violations of section 1592, and mitigated the penalties to $6,468.

It is further reflected in the file that on December 9, 1983, Customs officers visited petitioner and were advised that petitioner received a written opinion from a Customs officer that the garments which are the subject of the current

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penalty case could be classified as dresses. However, petitioner advised then that the opinion was verbal. Moreover, the Customs officer later advised that a sample of the seized merchandise was not the same style as shown by petitioner.

On January 23, 1984, Customs issued a prepenalty notice to petitioner in the amount of $92,115 for violation of section 1592 with a tentative determination of fraud as the level of culpability.

In a meeting on February 3, 1984, petitioner stated to Customs officers that (1) after the two previous violations, it conceded that the merchandise was coats, not dresses; (2) it notified the exporter that it did not want the third shipment (the subject of the current penalty action); (3) it was notified by the exporter that it was too late to cancel the shipment; (4) it sent the exporter a telex dated November 1, 1983, to concel the shipment but that it did not receive a response (petitioner never produced this telex); and (5) it still attempted to make entry because the merchandise represented only a small portion of its volume.

By letter dated March 12, 1984, [redacted], filed a response to the prepenalty notice on behalf of petitioner. It is stated therein that petitioner intended to refuse delivery of the merchandise, had cancelled the order, but the merchandise was included in the same container with garments for a "Spring Program" thereby precluding the possibility of refusal.

On August 1, 1984, Customs issued a "no change" penalty notice. By letter dated October 22, 1984, petitioner filed a petition in response to the penalty notice. Petitioner states (1) it cancelled the shipment after receiving the two previous penalty notices; (2) the shipper included the merchandise in the same container with spring merchandise using a spring letter of credit; (3) concedes that it should not have made entry, but that the documents were processed by an import clerk who was not aware of the importance of this matter and forwarded the documents to the broker for entry; and (4) it never had any intention to import the merchandise under a false category or to deceive the Government.

Upon review of the entire file, it is our decision that petitioner violated section 1592 by misdescribing the merchandise as ladies dresses with an improper quota category of No. 436, whereas the proper description of the merchandise is ladies coats with a proper quota category of No. 435.

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Petitioner had actual knowledge that on two prior occasions, it had similarly violated section 1592. Notwithstanding these violations, petitioner made entry and failed to notify Customs. Moreover, petitioner improperly advised Customs agents that it had obtained a written opinion on the merchandise in question. A sample provided to Customs for the opinion was not the same as the merchandise seized. Furthermore, petitioner failed to provide any documentation evidencing cancellation of the shipment in question.

It is our opinion that the evidence establishes that petitioner acted in a fraudulent manner with intent to avoid quota restrictions. Furthermore, we consider the merchandise seized in this case to be a prohibited entry and, therefore, for purposes of mitigation, this case does not involve a loss of revenue.

In accordance with our national guidelines relating to mitigation of assessed penalties, we conclude that the merchandise be released from seizure and the penalty claim be mitigated to $19,930 which represents an amount of 80 percent of the dutiable value of the merchandise ($24,912), provided petitioner exports the merchandise under Customs supervision, and pays storage charges incurred by Customs. If petitioner fails to make payment timely and comply with the conditions of this decision, summary forfeiture proceedings under title 19, United States Code, section 607, (as amended by Pub. L. 98-573, October 30, 1984), should be instituted.

Please notify petitioner of this decision and enclose a copy of this letter with your notification.

Sincerely,

'S/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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15 JUL 1985

ENF 4-02.2 CO:R:E:C
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[redacted]

Dear [redacted]

This is in response to your letter dated June 14, 1985, in which you submitted an offer in compromise pursuant to title 19, United States Code, section 1617, on behalf of your client, [redacted] involving entries of flanges imported into the United States from and including May 1, 1979, and May 1, 1984.

In the referenced matter, Customs has conducted an investigation with respect to alleged violations by your client of United States laws involving the removal of country of origin markings on the imported flanges during the aforementioned period. You indicate that your client has tendered a certified check in the amount of $250,000 with the District Director of Customs in Houston, Texas, which represents civil penalties and the full and complete settlement of all Customs civil claims and potential Customs civil claims concerning the entries filed during the aforementioned period, <u>except</u> for the 10 percent marking duty due (if any) with respect to these entries, as specified under title 19, United States Code, section 1304(c). Also, upon acceptance of the subject offer, your client has agreed to provide Customs with the documentation and information as set forth in Exhibit A attached to your June 14, 1985, letter.

After careful consideration of the record in this matter, and the terms of the proposed settlement, we hereby accept the subject offer. The terms of the settlement as described in your letter and accompanying Exhibit A are incorporated herein by reference.

Sincerely,

[redacted]

/s/ Edward T. Rosse

Ronald W. Lewis
Director, Entry Procedures
and Penalties Division

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[redacted]

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DATE: 28 JUN 1986

FILE: ENF 4-02.2 CO:R:E:C
653941 SLG

653941

TO : District Director of Customs
Boston, Massachusetts 02109

FROM : Chief, Commercial Fraud and Negligence Penalties Branch

SUBJECT: Settlement of Prepenalty Claim Against Medical Devices of Fall River in Boston District Case No. 84-0401-50293/1

Please be advised that the claims involved in the above entitled penalty case have been settled by the Stipulation For Dismissal entered on June 14, 1985, in United States v. Medical Devices of Fall River, No. 84-1835-C (D. Mass.).

By letter dated November 13, 1984, the Assistant Secretary of Treasury (Enforcement and Operations) authorized the Assistant United States Attorney handling the above case to include the potential section 1592 penalty claims against Medical Devices in the settlement of the civil action. Medical Devices had offered the amount of $100,000, to settle all pending claims by the government due to its poor financial condition. Authorization to include the Customs service in the above settlement was granted on the condition that the company's financial condition was as poor as represented and provided that the Customs Service share of the $100,000, was no less than the $28,791, in marking duties not assessed because of the company's alleged violations of section 1592. Last October 1984, Headquarters Regulatory Audit Division reviewed the company's financial data for fiscal years 1982 and 1983 and concluded that at year end September 30, 1983, the company would have had current assets of only $26,608 and that the $100,000 offer over a period of three years appeared acceptable if the company's financial situation had not changed materially in fiscal year 1984.

In May of this year, the Assistant United States Attorney began negotiating the exact terms of the settlement agreement, which provided for payment of the $100,000, over a period of four years with 8 percent interest. At that time, we were advised that Customs total share of the settlement would be $34,944. We also were advised by the United States Attorney that the company had represented that its current financial

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condition was worse than before and that submission of its latest financial statements reflecting such would be a condition provided in the stipulation for dismissal. Thus, in accordance with the previous authorization from Treasury, the stipulation for dismissal was drafted to include the Customs claims in Boston District Case No. 84-0401-50293/1.

Attached is a copy of the Stipulation For Dismissal of the complaint against Medical Devices approved by the United States Magistrate on June 14, 1985, which settles the Customs claims pending in Boston District Case No. 84-0401-50293/1 (paragraph 6). Also attached is a copy of a letter dated June 4, 1985, from Assistant United States Attorney [redacted] to [redacted] outlining the specific shares of the recovery by DLA, GSA, and Customs: DLA and GSA to receive $44,928, and Customs to receive $34,944.

The actual payments by Medical Devices pursuant to the stipulation will be made to the collections department at United States Attorney's Office. Please forward copies of the above stipulation and letter to the regional financial management office so that appropriate action may be taken to ensure that Customs receives credit against the above penalty case for the amount of $34,944, which will be paid over a period of four years.

/s/Edward T. Rosse

Edward T. Rosse

Attachment

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

[redacted]

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65 39 41

21 AUG 1985

ENF 4-02.2 CO:R:E:C
653971 ELS

District Director of Customs
Honolulu, Hawaii 96806

Re: Petition on Behalf of [redacted] for Relief from a Monetary Penalty of $27,854, Assessed Under Title 19, United States Code, Section 1592; Case No. 85-3205-00604

Dear Sir:

This is in reference to your letter dated July 26, 1985, concerning the above-captioned matter.

The record reveals that petitioner arrived at Honolulu Airport on March 4, 1985, and presented a Customs Declaration which reflected the total value of goods purchased or acquired abroad as $500. Upon secondary examination, petitioner was specifically asked if she had purchased or was given any jewelry, to which she responded in the negative.

Upon examination, two pro forma invoices for the same commercial shipment of pearls were found. One invoice reflected the total cost of the shipment at $8,837, and the second at $22,713 (converted from yen). Petitioner then brought forth the invoiced pearls from a bag she was carrying, and advised that the higher priced invoice represented sample prices from another company. She was permitted to amend her declaration and declared the pearls at a value of $8,037. The actual price paid for the pearls was found to be $22,713, as reflected on one of the two discovered invoices.

As a result of the violation, a potential loss of duties totalling $305.26 was sustained. The pearls were seized as security for payment of a monetary penalty, but have now been released upon deposit of $3,053.

Counsel advises that the owner of the pearls is the [redacted] and that in importing the merchandise from Japan, [redacted] was merely doing a favor for the owner, who had purchased the items.

In an affidavit, petitioner claims that she verbally declared the jewelry and since she was inexperienced in Customs matters, asked the Customs official for assistance in fulfilling the required procedures. She contends that she did not conceal the merchandise nor did she intend to

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653971

mislead Customs officers regarding the value of the merchandise, nor did anyone else request that she do so. The owner of the [redacted] also advises that he had no knowledge that the seller was providing two conflicting invoices.

Petitioner's explanation as to the circumstances do not reconcile with the facts as described by the involved Customs inspector. As noted above, petitioner failed to declare the pearls when asked about the presence of any jewelry, but finally showed the inspector the merchandise only when the invoices had been found upon examination of petitioner's handcarry. While petitioner was allowed to amend her Customs declaration, she refrained from declaring the true purchase price of the merchandise as reflected on the higher-valued invoice by falsely stating that this invoice did not relate to the subject pearls. She then declared a much lower value as the price paid for the pearls.

Under the circumstances, we concur with your finding that the violation was the result of a deliberate intent to defraud the United States of lawful revenues. Accordingly, also in concurrence with your recommendation, the monetary penalty is mitigated to $3,053.

Please advise petitioner, through counsel, of this decision, and include a copy of our decision with your notice.

Sincerely,

/S/ Donald W Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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[redacted]

B7

165590

12 MAR 1976

TEK-2-R:E:R
706137HW

[redacted]

Dear [redacted]

This is in reply to your letter of February 11, 1976, regarding the trademark "Jarlsberg" owned by Norske Meieriers Salgssentral (Norwegian Daires Sales Association) and recorded with United States Customs (COP-4-R:E:R) dated July 10, 1974).

Your letter states that a cheese from West Germany marked [redacted]" is being or may be imported into the United States. You indicate the owner of the recorded trademark has reason to believe this mark is an attempt to simulate the Jarlsberg trademark and request that Customs deny entry to shipments of [redacted] cheese. Recently, a shipment of cheese bearing the [redacted] mark was detained by Customs pending final determination of this trademark issue.

After examining both marks, we have concluded that [redacted] does not copy or simulate the mark recorded with Customs within the meaning of section 133.21 of the Customs Regulations (19 CFR 133.21). The similarity of the last syllable of each mark would not, in our opinion, be likely to cause the public to associate [redacted] with the recorded trademark "Jarlsberg". Accordingly, we have directed Customs Officials in New York to release the shipment of [redacted] cheese.

Sincerely yours,

(Signed) DONALD W. LEWIS

Donald W. Lewis, Director
Entry Procedures & Penalties Division

[redacted]

[redacted]

RA-R(1)

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B8

27 MAR 1978

MAR-2-05-R:E:R
708644 AB

708644

[redacted]

Dear [redacted]

This is in reply to your letters of December 16, 1977 and January 6, 1978, concerning the country of origin marking requirements applicable to strapped bundles of sawed lumber and timbers that your client imports from Mexico.

As you know, sawed lumber and sawed timbers are exempt from the requirement for marking to indicate their country of origin, pursuant to 19 U.S.C. 1304(a)(3)(J) and section 134.33 of the Customs Regulations (19 CFR 134.33). In the case of any article described on the "J" list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is generally required to be marked to indicate the origin of its contents.

TD 74-36(1), however, ruled that the containers of Canadian sawed lumber and timbers were also excepted from the country of origin marking requirement. The ruling stated that, by operation of Article IX of the General Agreement on Tariffs and Trade, the exemption was extended to the containers of foreign sawed lumber and timbers of any other member country of the GATT.

The Customs Service is of the opinion that this marking exception also applies to containers of sawed lumber and timbers of all foreign countries, including Mexico, that are entitled to the application of the most-favored-nation principle of 19 U.S.C. 1881, even though they may not be member countries of GATT. Accordingly, the bundles of sawed lumber and timbers imported by your

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

[redacted]

client from Mexico are not required to be marked to indicate the country of origin.

A copy of this ruling is being circulated to all ports of entry, to ensure uniformity in its application.

Sincerely yours,

(Signed) D. D. KAST

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

708644

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[redacted]

B10

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

708832

15 FEB 1978

MAR-2-07-R:E:R
708832 JB

[redacted]

Dear [redacted]

This is in reference to your letter of January 8, 1978, concerning marking requirements for hand-woven wool blankets imported from Mexico.

Pursuant to 19 U.S.C. 1304, all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States, unless certain marking exceptions are applicable. For purposes of 19 U.S.C. 1304, the country of origin (Mexico) may be included on the fabric label also indicating textile fiber content and care labeling.

As marking of wool products also concerns compliance with the Wool Products Labeling Act, we are forwarding your letter to the Division of Special Statutes, Federal Trade Commission, 33 Indiana Ave., N.W., Washington, D.C. 20580 for direct reply to your regarding those labeling requirements.

In addition to our pamphlets "Marking of Country of Origin on U.S. Imports" and "Import Quotas," we enclose a Department of the Treasury News Release indicating import restraint levels of December 2, 1977 (Mexico; page 6), and the visa requirement for wool textile products imported from Mexico (page 10).

Sincerely yours,

[redacted] (Signed) [illegible]

Harvey B. Fox, Director
Entry Procedures & Penalties Division

Enclosures [redacted]

B11

CODE AND DATE			(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER	
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DEPARTMENT OF THE TREASURY-U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-18-73)

JUL 1 0 1978

MAR-2-05-R:E:R
709207 DB

[redacted]

Dear [redacted]

This is in reference to your letter of June 8, 1978, regarding the country of origin marking of plastic bags which are to be used as a holder for advertising material which will be given away free to the public. You indicated that the bags will have the name of a large department store printed on it, and the department store's advertisement will be inside the bag. The name of the department store without the address or any other printed information will appear on the bag.

You would like to know if the marking on these bags meets the requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), copy enclosed.

The Customs Service has ruled that plastic bags of this type must be marked to indicate the country of origin pursuant to the requirements of 19 U.S.C. 1304. The ultimate purchaser of these bags, for purposes of 19 U.S.C. 1304(a), is considered to be the consumer who is given the bags as part of advertising material.

Accordingly, the individual bags must be legibly and conspicuously marked to indicate the country of origin. The marking does not have to appear in proximity to the name of the department store. However, if the bags carry the name and address of the U.S. company which imports or distributes the bags, the country of origin marking must appear in proximity thereto, in accordance with section 134.46 of the Customs Regulations.

Sincerely yours,

(Signed) D. D. KAST
for

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

[redacted]

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SEP 12 1978

MAR-2-05-R:E:R
709422 JB

[redacted]

Dear [redacted]

This is in reference to your letter of August 22, 1978, concerning the marking of country of foreign origin of the "USA OLYMPICS" shoe. The Olympic emblem is a registered trademark and appears on each shoe in several locations (inner tongue, middle outer sole and heel).

This is to confirm that we advised you in conference on August 15, 1978, that marking by permanently and conspicuously printing the country of foreign origin on the inner sole of each heel in a contrasting color or, alternatively on a side inner lining near the heel of each shoe in lettering at least more prominent than shoe size marking would, in our opinion, satisfy the marking requirements of 19 U.S.C. 1304.

Sincerely yours,

(Signed) D. D. KAST

Darrell D. Kast
Chief, Restricted Merchandise Branch
Entry Procedures & Penalties Division

709422

[redacted]

B13

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AUG 3 1979

ENT-1-01-R:E:E
711039 M

Chief, Miscellaneous Penalties Branch

Chief, Entry, Licensing and
Restricted Merchandise Branch

Request for Definition of the Terms "Discharge" or "Land" of Passengers as Used in 19 U.S.C. 1459

We have reviewed our files and cannot find any case whereby we have defined those terms in connection with passengers. However, since those terms are used in this statute in connection with merchandise and baggage, as well as passengers, we believe that those two terms do not have any unique meaning when used in connection with passengers.

The terms "land" and "discharge" in reference to cargo is referring to the unlading of cargo. For example, section 4.30 of the Customs Regulations requires that a permit or special license must be issued to the vessel before any passengers, cargo, baggage, etc., may be unladen from the vessel.

Therefore, we believe that those two terms would likewise refer to the unlading of passengers. Thus, taking into account the fact that cargo is taken off a vessel or vehicle, whereas passengers are able to take themselves off, we believe that the two definitions suggested by the Regional Commissioner of Customs at Los Angeles are satisfactory. Hence, in reference to passengers, "land" would refer in the case of vessels to the setting foot by the passenger on the dock, wharf, etc., and "discharge" would refer in the case of vehicles to the setting foot by the passenger on the ground from the vehicle.

In those instances where a vehicle carrying passengers departs a port of entry without a permit and is later apprehended, we believe that there was no discharge of such passengers. However, the vehicle itself would have proceeded farther inland without receiving the requisite permit and would violate that provision of 19 U.S.C. 1459.

711039

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Also, it would appear to us that where Customs apprehends a vehicle which has left a port without the requisite permit and orders the driver and passengers out of the car, there was no discharge of the passengers without a permit in the connotation as used in this statute. Such discharge was done under Customs orders. The reason for requiring a permit before permitting passengers and cargo to be discharged is to make sure that Customs has had an opportunity to make the necessary examinations and receive the necessary declarations, entries and duties before the passengers and cargo are released from Customs supervision. In this case the ordering of the passengers out of the vehicle would in effect serve for the limited purpose needed as a permit for that purpose.

(Signed) D. D. KAST

Darrell D. Kast

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711089

AUG 17 1979

MAR-2-05 R:E:E
711079 MC

[redacted]

Dear [redacted]

This is in reference to your letter of August 9, 1979, concerning the country of origin marking of two ancillary forms included with travelers checks.

The first form, positioned at the top of the check pack, bears the words "Printed in Canada" on the reverse side next to the consumer's check cashing record. The second form, the purchase agreement form, also bears the words "Printed in Canada." The positioning of this marking is to the left of the purchaser's signature and address.

We are of the opinion that both of these forms can be considered "articles" and as such must be marked with the country of origin in accordance with section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). We are also of the opinion that the "Printed in Canada" designation described above satisfies Customs requirements.

If you have any other questions concerning this matter please feel free to contact us again.

Sincerely,

(signed) Harvey B. Fox

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

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711430

MAR-2-05 R:E:E
711430 SO

The Honorable
Samuel L. Devine
Member of Congress
Federal Building
Columbus, Ohio 43215

OCT 12 1979

Dear Mr. Devine:

This is in response to your letter of September 21, 1979, enclosing copies of correspondence you received from [redacted] is concerned about the notice of proposed rulemaking which, if implemented, would remove imported nuts, bolts, and rivets from the so-called J-List of exceptions to the individual marking of country of origin requirements of the law (19 U.S.C. 1304). [redacted] points out that if the proposal were enacted, it would have a pronounced restraint on fasteners imported into this country, creating a production shortage that our domestic industry would be unable to absorb, thus adding to inflationary pressures. You asked for information concerning the reasons for the impending change and the current status of the products in question.

The "J-List," established by legislation (19 U.S.C. 1304(a)(3)(J)), excepts from country of origin marking requirements articles which the Secretary of the Treasury, pursuant to public notice published in the Treasury Decisions before July 1, 1939, determined "were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to indicate their origin." Nuts, bolts and rivets appear on the list, which is set forth in section 134.33, Customs Regulations (19 CFR 134.33). The notice in the Federal Register of August 10, 1979, was published as a result of our receipt of a petition from the attorney for the [redacted] alleging that bolts, nuts and rivets were not imported into the United States in substantial quantities from 1932 to 1936 and, therefore, should not be excepted from marking requirements. [redacted] comments will be considered along with others we have received in response to the notice of proposed rulemaking, and a decision will be reached in due course as to what action, if any will be taken in response to the petition, and the substance of that decision will be published in the Federal Register and the Customs Bulletin.

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If we can provide any additional information or be of further assistance, please feel free to call on us.

Sincerely,

(Signed) John R. Thorne
FOR Commissioner of Customs

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

711446

MAR-2-05 R:E:E
711446 SO

The Honorable
John Glenn
United States Senate
Washington, D. C. 20510

Dear Senator Glenn:

OCT 12 1979

This in response to your letter of September 25, 1979, enclosing correspondence you received from [redacted] is concerned about the notice of proposed rulemaking which appeared in the Federal Register of August 10, 1979, which, if implemented, would remove imported nuts, bolts, and rivets from the so-called "J List" of exceptions to the country of origin marking requirements of the law (19 U.S.C. 1304). [redacted] feels that this move would be highly inflationary and would help the domestic manufacturers by decreasing the importation of fasteners.

The "J-List," established by legislation (19 U.S.C. 1304(a)(3)(J)), excepts from country of origin marking requirements articles which the Secretary of the Treasury, pursuant to public notice published in the Treasury Decisions before July 1, 1939, determined "were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to indicate their origin." Nuts, bolts and rivets appear on the list, which is set forth in section 134.33, Customs Regulations (19 CFR 134.33). The notice in the Federal Register of August 10, 1979, was published as a result of our receipt of a petition from the attorney for the [redacted] alleging that bolts, nuts and rivets were not imported into the United States in substantial quantities from 1932 to 1936 and, therefore, should not be excepted from marking requirements. [redacted] comments will be considered along with others we have received in response to the notice of proposed rulemaking, and a decision will be reached in due course as to what action, if any will be taken in response to the petition, and the substance of that decision will be published in the Federal Register and the Customs Bulletin.

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If we can provide any additional information or be of further assistance, please feel free to call on us.

Sincerely,

(Signed) John R. Thorne

FOR Commissioner of Customs

Enclosure

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PUBLIC _____

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-75)

APR 10 1980

MAR-1-01 RRUEE
712749 PO

712749

[redacted]

Dear [redacted]

This is reference to your letter of March 26, 1980, that refers to a ruling we issued to you on behalf of the [redacted] dated March 21, 1980, (MAR-2-05 RRUEE 712458 PO). In pertinent part, we ruled that "MADE IN TAIWAN FOR [redacted]" was an acceptable country of origin marking under section 304 of the Tariff Act of 1930, as amended, (19 U.S.C. 1304).

You now request that we approve the marking "MADE IN TAIWAN FOR [redacted] deleting [redacted]. As we stated in our March 21, 1980, ruling, the proposed marking must be legible and conspicuous with the English name of the country of origin, "Made in Taiwan" clearly indicated to the ultimate purchaser in accordance with 19 U.S.C. 1304. You stated in a telephone conversation with Fred Burns-O'Brien of this office on March 26, 1980, that all facts in the prior ruling are the same, but you merely wish to delete [redacted] from the marking, which you said was the original intent of [redacted].

The marking now proposed, with all other facts in our prior ruling unchanged, "Made in Taiwan for the [redacted]" meets the country of origin marking requirements of 19 U.S.C. 1304, as amended.

Sincerely,

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(Signed) D. D. KAST

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 25 1980

REFER TO
ENT-1-01 RRUEE
713122 DK

713122

The Honorable
David L. Boren
United States Senate
Washington, D.C. 20510

Dear Senator Boren:

This is in reply to your letter of May 28, 1980, concerning a ruling issued by the Customs Service, Legal Determination 80-0001, April 28, 1980, to the effect that imports from Taiwan must not carry any reference to the "Republic of China" or "R.O.C.". The ruling was to become effective on December 1, 1980.

As you undoubtedly know, the Department of State has been in further communication with the Customs Service about this matter, and has requested us to revise our ruling and reissue it. A copy of the revised ruling is enclosed. You will note that it provides that the marking "Republic of China" or "R.O.C." following "Taiwan" will not be a cause for refusing to admit the goods.

In general, all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States, pursuant to 19 U.S.C. 1304 and the Customs Regulations issued thereunder, copies enclosed. Ordinarily, determining the name of a country that is acceptable for country of origin marking purposes presents no problems.

Occasionally, however, as in the case of East Germany during the period 1953-1975 (copies of T.Ds. 53210, 53281(3), 55104, 67-94, and 75-172 enclosed), the status of a particular country will be somewhat unusual and it is the policy of the Customs Service to be guided by the views of the Department of State as to appropriate country of origin markings. This is the policy we have followed in connection with the marking of goods from Taiwan.

C8

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Pursuant to your request, there are also enclosed the text of letters dated January 8 and 16, 1980, from the Department of State requesting us to issue our initial ruling requiring the deletion of "Republic of China" and "R.O.C." on goods imported from Taiwan.

If we can be of further assistance in this matter, please do not hesitate to let us know.

Sincerely,

Donald W. Lewis

Donald W. Lewis
Director, Office of
Regulations and Rulings

Enclosures

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713122

[illegible]

[illegible]

[illegible]

AUG 28 1980

MAR-3 BRUEE
713151 F10

This ruling concerns the country of origin marking requirements for fur animal pelts, snake skins, wild animals and birds plus the eggs of wild birds.

ISSUE:

What are the marking requirements of fur animal pelts, snake skins, wild animals, wild birds and eggs of wild birds.

FACTS:

The importer wishes to ship fur products, snake skins, wild animals, wild birds, and the eggs of wild birds from Mexico to the United States. The importer wants to know the marking requirements for those items.

LAW AND ANALYSIS:

Unless excepted by law, section 304 Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (container) will permit, in such manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article at the time of importation into the Customs territory of the United States. There are some articles which are excepted from the requirements of country of origin marking in accordance with the provisions of 19 U.S.C. 1304(a)(3)(J), known as the "J-List." Skins, furs, hides, eggs, animals and birds are on the "J-List." However, in the case of any article on the "J-List" which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked with country of origin according to Subpart C of this part (copy enclosed).

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54237

HOLDING:

Fur animal pelts, snake skins, wild animals and birds plus the eggs of wild birds are on the "w-List" and excepted from marking under 19 U.S.C. 1304(a)(3)(J), if they are permitted to be imported into the United States under laws and regulations administered by the U.S. Fish and Wildlife Service.

(Signed) Darrell B. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

C12

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NOV 26 1980

ENT-1-01 RRUEE
~~71317~~ FO
713717

713717

This ruling concerns the country of origin marking requirements of brochures imported from West Germany.

ISSUES:

Whether country of origin marking requirements may be waived for brochures imported from West Germany.

FACTS:

The importer wishes to import brochures from West Germany unmarked with the country of origin. A waiver of marking requirements under Section 304 of the Tariff Act of 1930, as amended, (19 U.S.C. 1304) has been requested. The importer claims that the brochures by their very nature would suggest their foreign origin. The brochures are printed in both English and German. The name and address of the distributor is on the back of each brochure and they have been distributed free of charge at an exhibition in Washington, D.C., of merchandise manufactered by a foreign company.

LAW AND ANALYSIS:

Title 19 U.S.C. 1304 provides generally that all articles of foreign origin must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. Section 134.1(d)(4) of the Customs Regulations (19 CFR 134.1(d)(4)) holds that if the imported articles are distributed as gifts, or as in this case free of charge, the recipient is the ultimate purchaser.

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C13

There are waivers of marking country of origin permissible under 19 U.S.C. 1304. However, they are not applicable in this case and we cannot grant your waiver request.

HOLDING:

The brochures in question must be marked with the country of origin "West Germany."

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry Licensing
Restricted Merchandise Branch

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C14

CODE AND DATE	[redacted]						
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MAR-2-01 RRUEE
714332 DK

714332

OCT 20 1980

The Honorable
Andrew Maguire
Member of Congress
277 Forest Avenue
Paramus, New Jersey 07652

Dear Mr. Maguire:

This is in further reference to your letter of August 26, 1980, forwarded to us by the Regional Commissioner of Customs, New York, New York, transmitting a copy of a letter dated May 21, 1980, from your constituent, [redacted] letter expressed his concern over a ruling that had been issued by the Customs Service concerning the country of origin marking of goods imported from Taiwan.

The Customs Service did issue a ruling dated February 7, 1980, 712176, which was circulated to Customs officers as Legal Determination 80-0001, April 28, 1980, which stated that goods from Taiwan should be marked only "Taiwan," and that the words "Republic of China" or the letters "R.O.C." should not appear on the goods. This ruling was issued pursuant to a request from the Department of State. Subsequently, however, the Department of State requested us to modify our ruling to provide that the presence of "Republic of China" or "R.O.C." following "Taiwan" would not cause Customs to refuse to admit goods produced in Taiwan. A copy of the modified ruling dated July 25, 1980, is enclosed.

If we can be of further assistance to you please do not hesitate to let us know.

Sincerely,

(Signed) William C. Byrd

Acting Special Assistant to the Commissioner
(Congressional Affairs)

Enclosure

[redacted]

D1

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. OF THE TREASURY - U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUL 7 1982

MAR-1 CO:R:E:E
719520 CMM

719520

Dear [redacted]

This is in response to your letter of May 19, 1982, requesting the procedures for obtaining an import license to import articles of linen and wool.

The United States Customs Service does not require an importer to obtain a license to import merchandise into the United States. However, Customs officers are required to aid in the enforcement of regulations administered by other government agencies, some of which require import licenses for particular commodities. This subject and other aspects of importing are outlined in the enclosed publications. (See page 14 of "Importing Into the United States" for the requirements on imports of wool and textiles).

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the United States shall be marked in a legible and conspicuous manner to indicate the English name of the country of origin to the ultimate purchaser in the United States.

In the past, the Customs Service has ruled that wearing apparel should be marked to indicate the country of origin by means of a cloth label sewn or otherwise permanently attached to the garment, preferably in the neck area on blouses and/or shirts.

Under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act administered by the Federal Trade Commission, there are certain marking and labeling requirements to be included on imported textile and wool products; in addition to the country of origin marking requirements.

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We are forwarding your correspondence, for further reply to you, to the Federal Trade Commission, Los Angeles Regional Office, Suite 11209, 1160 Wilshire Boulevard, Los Angeles, California 90024, Attention: Mr. Charles McCarty.

Sincerely,

(Signed) Darrell B. Kast

Darrell B. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

[redacted]

[redacted]

D3

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719520

MAR 2 - 1983

DRT 1-01 CO:R:E:E
720369 M

Dear [redacted]

This is in reply to your letter of September 14, 1982, concerning the clearance of passengers in the Virgin Islands on direct flights between New York and the Virgin Islands when forced to make a fuel stop in either Bermuda or Nassau, Bahamas.

You note that such unscheduled landings in either Bermuda or Nassau are due to factors beyond your company's control. Due to the refueling stop, no one boards or exits the aircraft and no cargo is loaded or unloaded. However, under present practice, whenever this flight has been required to make an unscheduled landing, upon arrival in St. Thomas, it is classified as a foreign arrival with the attendant formal entry procedures. This results in a delay in the processing of passengers.

In order to expedite the processing of passengers, you suggest that one of the following two procedures be adopted:

1. Since the U.S. Customs Service has personnel in Bermuda and Nassau, you suggest that one of those officials would simply sign off on a form acceptable to us attesting to the fact that no one enplaned or deplaned and that no cargo was onloaded or offloaded, or

2. For U.S. Customs in the Virgin Islands, to accept a statement from the pilot certified in writing upon arrival in St. Thomas that no one enplaned or deplaned during the refueling stop and that no cargo was removed or loaded.

We oppose the adoption of either of your two proposals. Arriving aircraft in the Bahamas and in Bermuda fall under the jurisdiction of the host government. The use of U.S. Customs officers to provide security during a fuel stop is not provided for under the bi-lateral agreements and may be looked upon unfavorably by the host government. In addition, positions in preclearance are tightly controlled by U.S. Customs in cooperation with the U.S. State Department. Customs does not have the manpower available to provide for such service and continue to perform our normal functions there. In regard to your second proposal, we believe that it does not provide for sufficient control or guarantees of security. Finally, in regard to both proposals, we are unaware of any current provision in the Customs Regulations which would allow for either procedure.

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In addition, you submitted on July 20, 1980, a proposal to amend the Customs Regulations to permit the preclearance by Customs officers in the U.S. Virgin Islands of unaccompanied parcels destined for the United States. As pointed out by you, from 1978 to 1980 local procedures were established by Customs in the Virgin Islands which permitted such preclearance. This was done without Customs Headquarter's or even the Region's approval. It was discovered that the package preclearance procedures were frequently abused. Dutiable goods and shipments exceeding size, value, and weight requirements were often presented to and cleared by Customs, despite prior agreements to preclear only nondutiable shipments of acceptable size and limited value.

Furthermore, Customs officers stationed outside the U.S Customs territory are authorized to inspect U.S. bound travelers and their accompanying baggage. Any duties and taxes collected are considered to be voluntary tenders by the importer, since duties and taxes do not accrue until goods are actually imported.

Also, cargo preclearance of express parcels would pose additional operational problems. It would impede passenger facilitation by diverting manpower to outbound cargo examinations at peak passenger processing periods, as express parcels usually arrive near the time of aircraft departure. Serious enforcement problems could also result if such cargo preclearance procedures were to be implemented at all preclearance stations. It would be much more difficult to selectively perform thorough cargo exams as the volume of cargo preclearance increases.

For the reasons mentioned in the above three paragraphs, we do not believe an amendment to the Customs Regulations which would provide for the preclearance of unaccompanied parcels by Customs officers in the U.S. Virgin Islands would be justified.

If you have any further questions on this matter, please feel free to contact us.

Sincerely,

(Signed) DONALD W. LEWIS

[redacted]

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

720369

MAY 20 1983

CPR-3-CC:R:E:E
720802 SO

Dear Mr. Thompson:

In your memorandum of November 9, 1982, you asked for our advice regarding whether certain used firearms bearing the "WALTHER IN DESIGN" trademark, imported from Mexico and entered into a bonded warehouse in the United State States before the effective date for enforcement of the import prohibitions applicable to genuine Walther firearms by Customs, may be withdrawn from warehouse for consumption in the United States.

Our response to your request is contained in the enclosed ruling.

Sincerely,

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

720802

Mr. Robert R. Thompson
District Director
Classification and Value
U.S. Customs Service
Dulles International Airport
P.O. Box 17423
Washington, D.C. 20041

[redacted]

[redacted]

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MAY 20 1983

TMK-3 CO:R:E:E
720802 SO

This ruling concerns the applicability of the prohibitions set forth in 19 U.S.C. 1526 against the importation of foreign merchandise bearing an American trademark.

ISSUE:

Would the entry from bonded warehouse of a shipment of used firearms from Mexico, placed in warehouse on August 22, 1981, bearing the "WALTHER IN DESIGN" trademark (the name WALTHER in a banner), infringe the registered trademark "WALTHER IN DESIGN," owned by International Armament Corporation (Interarms) and recorded with the U.S. Customs Service for import protection pursuant to applicable regulations (19 CFR Part 133, Subpart A).

FACTS:

The trademark, "WALTHER IN DESIGN," was recorded with the Customs Service for import protection effective November 2, 1981. Since the trademark owner (Interarms) is a corporation organized under the laws of the State of Delaware, with no foreign parent firm, subsidiary firms or firms under common ownership or control, the Manual Supplement issued to Customs officers in the field stated that articles bearing genuine trademarks applied by the foreign manufacturer could not be imported unless said articles were consigned to or for the account of the American trademark owner, or unless importation by a third party was specifically authorized by Interarms. Subsequently, Customs Headquarters was asked by our Washington, D.C. field office to decide whether or not the pistols referred to under ISSUE above could be entered into the commerce of the United States.

Subsequently, On July 14, 1982, the registered trademark "WALTHER" (without the banner) was recorded with the Customs Service for import protection by Interarms. Our notice to Customs officers in the field specified that the trademark "WALTHER" is also entitled to the same broad protection against the importation of articles bearing genuine trademarks as is the "WALTHER IN DESIGN" trademark.

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LAW AND ANALYSIS:

Section 526 of Tariff Act of 1930, as amended (19 U.S.C. 1526), prohibits the importation into the United States of any merchandise of foreign manufacture bearing a trademark owned by a corporation created or organized within the United States, provided a copy of such trademark registration is filed with the Secretary of the Treasury and recorded in the manner provided by regulations (19 CFR 133.1 - 133.7). Infringement of federally registered marks is governed by the test of whether defendant's use of a similar (or identical) mark is likely to cause confusion, or to cause mistake, or to deceive.

The Customs Procedural Reform Act of 1978, Public Law 95-410, contains a new section 19 U.S.C. 1526(e) which provides a different disposition for seized and forfeited merchandise "bearing a counterfeit mark." The term "counterfeit" is defined as, "A spurious mark which is identical with, or substantially indistinguishable from, a registered mark" (15 U.S.C. 1127, 19 CFR 133.23a(a)). We are of the opinion that this stringent definition does not include the trademarks "WALTHER IN DESIGN" and "WALTHER" when applied to genuine goods manufactured by Manurhin under a licensing agreement with Carl Walther, Waffenfabrik, since these trademarks would not be "spurious marks" within the definition of the term "counterfeit."

In view of the fact that Interarms has recorded both the "WALTHER" and the "WALTHER IN DESIGN" trademarks with Customs for import protection after the date the used firearms in question, bearing the genuine trademark "WALTHER IN DESIGN," arrived in the United States and were entered for bonded warehouse, we are of the opinion that used firearms referred to above may be withdrawn from warehouse and entered into the United States without restriction. In the case of American Parfums Corporation v. Stramiello, 66 Civ. 1670 USDC S.D.N.Y., the court said that:

> "'Import' as used in 19 U.S.C. Sec. 1526 means simply to bring in, and refers to the time when the goods were brought into the United States."

The Court concluded in the American Parfums case, that since importation within the meaning of 19 U.S.C. 1526 was not restricted at the time the trademarked goods in question were entered for warehouse, they were subsequently admissible to entry upon withdrawal for consumption in the United States.

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HOLDING:

Used firearms, bearing the genuine trademark "WALTHER IN DESIGN," which were imported into the United States and entered into a Customs bonded warehouse before the dates the trademarks "WALTHER IN DESIGN" and "WALTHER" were recorded with Customs by Interarms for import protection, may be withdrawn from warehouse and entered for consumption in the United States without restriction after the dates of recordation for these trademarks. You may furnish a copy of this decision to all concerned parties.

(Signed) Darrell D. Kast

Darrell D. Kast, Chief
Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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720902

JUN 15 1983

MAR-3-05 CO:R:E:E
721940 FRO

This ruling concerns the country of origin marking requirements for imported printed plastic bags.

ISSUE:

1. Is the marking as suggested at the bottom of the bag in "close proximity" to suggested advertisements in the upper portion of the bag.
2. Whether a marking at the bottom of the bag near the supplier's name and address is adequately legible and conspicuous.

FACTS:

[illegible] bags are manufactured in [illegible] product will be manufactured, extruded, [illegible] and [illegible] the bags will be shipped directly to the United States from [illegible] factory in China. Samples submitted to Customs indicate that [illegible] side of the bottom of each bag is printed indicating the [illegible] company's name. The importer would like to mark the bags in the [illegible] position and manner with clear identification of the country of origin in the same space.

LAW AND ANALYSIS:

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304) provides in general that all articles of foreign origin imported into the United States shall be legibly and conspicuous marked to indicate the country of origin to an ultimate purchaser in the United States.

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Section 134.46, Customs Regulations (19 U.S.C. 1304) provides generally that in any case in which the name of any city, country, or other locality other than the country of origin appears on an article or its container, the name of the country of origin preceded by such words as "Made in" or "Product of" must appear in proximity thereto. The purpose of this requirement is to try to prevent ultimate purchasers from being misled or confused as to the origin of imported products. The printing of the country of origin at the bottom would be in close proximity to advertisement above, however, the actual size of the letters should be larger than is presently indicated on the samples to be legible and conspicuous.

HOLDING:

1. For purposes of 19 U.S.C. 1304, the marking at the bottom of the bag near the supplies name is adequate.

2. The lettering as shown on the sample is too small and must be larger to be legible and conspicuous.

[redacted]

Darrell D. East
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

731840

JUN 15 1983

MAR 2-05 CO:R:E:E
721967 FBO

721967

This ruling concerns the country of origin marking requirements for handbags.

ISSUE:

Whether a hang tag will be sufficient to mark handbags.

FACTS:

An importer imports nylon handbags from Korea. The handbags have on them a leather patch that has the legend [redacted] The importer asks if the handbags can be marked with the hang tags indicating that Korea is the country of origin to meet the test of close proximity. There is also a sewn-in tag denoting Korea as the country of origin.

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin (or their container) imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

Section 134.46 of the Customs Regulations (19 CFR 134.46) states that in any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there

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shall appear, legible and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," Product of," or other words of similar meaning.

If the hang tags are secure and they state in legible and conspicuous characters that the handbag is of Korean origin so that the ultimate purchaser will know the origin upon reasonable inspection without mistaking the [redacted] for the origin, we will permit the hang tags to mark the handbags. This meets the test of close proximity to the use of [redacted]

The use of a sewn-in label follows a Circular Letter dated January 16, 1970 (MAR-2-RM) which held that handbags must be marked by a fabric label sewn to the lining of the handbag so it can be seen easily when the handbag is opened, or a permanently stamped marking in a contrating color, or by some other form of permanent marking.

HOLDING:

The requirements of 19 U.S.C. 1304 will be met if the hang tags clearly indicate "Korea" as the country of origin and hang in close proximity to the legend [redacted] and 19 CFR 134.46 is met by the sewn-in label.

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Signed John W. Smith

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

D13

L96127

JUL 1 8 1983

MAR 2-05 CO:R:E:E
722131 PBO

722131

This ruling concerns the country of origin marking requirements for peas packaged in Canada.

ISSUE:

Whether "Product of U.S.A., Packaged by [redacted] is an acceptable marking for purposes of 19 U.S.C. 1304.

FACTS:

A Maine grower will grow and shell a pea crop in Maine and then send the crop to Canada where it will be graded, blanched, frozen and packaged by the growers parent company then brought back to Maine for marketing in the Northeast of the United States. The grower asks Customs to approve the marking, "Product of U.S.A., packaged by [redacted]

LAW AND ANALYSIS:

Unless excepted by law, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requries that every article of foreign origin (or its container) be legibly and conspicuously marked to indicate the country of origin to the ultimate purchaser in the United States.

"Product of U.S.A., Packaged by [redacted] is an acceptable marking designator.

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HOLDINGS:

For purposes of 19 U.S.C. 1304, "Product of U.S.A. Packaged by [redacted] is acceptable.

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

722131

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-79)

AUG 2 6 1983

MAR-2-05 CO:R:E:E
722848

722848

This ruling concerns the country of origin marking requirements of imported bags.

ISSUE:

Whether the marking designation on the bags are adequate to meet the country of origin marking requirements of 19 U.S.C. 1304.

FACTS:

An importer wishes to import carrying bags that have a sewn in label stating "Made in Korea." On the outside of the case there is the legend [redacted] Also a hang tag bears a similar legend. The importer asks that Customs permit entry of these bags as they are marked.

LAW AND ANALYSIS:

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin or its container imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

Section 134.46 of the Customs Regulations (19 CFR 134.46) states that in any case in which the words "United States," or

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"American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the United States, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similiar meaning.

In this case, the outside of the bag and the hang tag, both bearing U.S. address, must be marked with the country of origin in close proximity to the U.S. address. An arrangement should be worked out with local Customs officials to correct present marking discrepancies.

HOLDING:

The marking designations on the outside of the bag is not adequate for purposes of 19 U.S.C. 1304 and must be corrected.

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(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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732847

NOV 1983

MAR 2-05 CO:R:E:E
723045 FBO

723045

This ruling concerns the country of origin marking requirements for imported tennis balls.

ISSUE:

Whether tennis balls may be marked on the container rather than the balls themselves.

FACTS:

An importer wishes to import tennis ball in a can. The can will be marked with the country of origin, but the tennis balls to be sold in the can will not be individually marked.

LAW AND ANALYSIS:

Unless excepted by law, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) be legibly and conspicuously marked to indicate the country of origin to the ultimate purchaser in the United States.

The imported tennis balls may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D), if the containers in which they are imported are legibly and conspicuously marked to indicate the country of origin and Customs officers at the port of entry are satisfied that the tennis balls will reach the ultimate purchaser in the original marked containers in which imported and not otherwise sold.

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[redacted]

723045

HOLDING:

The imported tennis balls are excepted from marking under 19 U.S.C. 1304(a)(3)(D), if the balls reach the ultimate purchaser in the marked container.

(Signed) Darrell D. Kest

Darrell D. Kest
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE

OCT 31 1983

MAR-2-05 CO:R:E:E
723488 EL

723488

This ruling concerns country of origin markings on advertising brochures which will be distributed without charge by the importer to prospective customers.

ISSUE:

Whether imported advertising brochures and flyers, to be distributed without charge by the importer to prospective customers of the importer's business, may be exempted from country of origin marking requirements under the exceptions to marking set forth in 19 U.S.C. 1304(a)(3)(F) or (H).

FACTS:

An importer intends to have advertising brochures and flyers printed abroad. These advertising materials will then be imported and distributed by the importer to prospective customers in connection with the importer's business. The imported advertising materials will not be resold, but will be distributed without charge. The importer requests a ruling excepting the advertising materials from country of origin marking requirements on the ground that "(s)uch article is imported for use by the importer and not intended for sale in its imported or any other form." 19 U.S.C. 1304(a)(3)(F). In the alternative, the importer believes it is the "ultimate purchaser" of the advertising materials because the ultimate users, i.e., the prospective customers, will not purchase the materials, but receive them free of charge. 19 U.S.C. 1304(a)(3)(H).

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LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides in general that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the English name of the country of origin to the ultimate purchaser in the United States.

The imported advertising brochures are intended for use not only by the importer, but also for the use of customers or prospective customers of the importer's business. Therfore, an exemption under 19 U.S.C. 1304(a)(3)(F) cannot be granted.

The importer has stressed that the imported brochures will not be resold, but distributed without charge. The importer believes it may be the "ultimate purchaser" under the exemption provided in 19 U.S.C. 1304(a)(3)(H). The term "ultimate purchaser" is defined by the Customs regulations as "the last person in the United States who will receive the article in the form in which it was imported." 19 CFR 134.1(d). The regulations further explain that "(i)f the imported article is distributed as a gift the recipient is the 'ultimate purchaser.'" 19 CFR 134.1(d)(4).

Because the imported advertising materials will be distributed without charge, they are virtual gifts to customers who are the "ultimate purchaser" for the purposes of the marking exception.

In conclusion, no marking exception may be granted under either 19 U.S.C. 1304(a)(3) or (H).

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HOLDING:

Imported adverising brochures and flyers, to be distributed without charge by the importer to prospective customers of the importer's business, are subject to country of origin marking requirements under 19 U.S.C. 1304.

(Signed) DONALD W. LEWIS

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

FEB - 1 1984

MAR 2-05 CO:R:E:E
724100 HL

[redacted]

Dear [redacted]

This is in reply to your submission of November 22, 1983, requesting Customs approval for the following country of origin marking which your company proposes to print on cartons or packages which contain related computer articles: "Packaged in (designated country) with certain components of multiple countries of origins as specified thereon." Each article will be individually marked with its particular country of origin.

According to your submission, each of several different components may be produced in one or more production facilities located in various countries, including the United States. The different components (each individually marked) will be shipped to a particular country to be packaged in a consumer carton and then imported into the United States. The consumer package will bear the company name and its United States address. Thus, the country or countries of origin must appear in close proximity to the U. S. address in accordance with 19 CFR 134.46. However, because one permanently labeled master package is desired, the countries of origin of the package contents cannot reasonably be identified precisely, i.e., it would not be feasible to maintain, in the packaging country, lot segregation of the components by their vendor countries.

Although we agree in principle with your proposal, we would require that the label on the master package indicate the "foreign" origin of the package contents as follows: "Packaged in (name of country) with certain components from foreign countries of origin as specified thereon." We believe this label would be adequate for the purposes of 19 U.S.C. 1304 in view of the fact that each article in the package would be individually marked.*

If you have any further questions, please do not hesitate to contact us.

Sincerely,

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

* The word "foreign" need not be underlined on the label.

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DATE: JAN 02 1985

FILE: COP-2-83 CO:R:E:E
724382 KP

TO: District Director of Customs
Dallas/Fort Worth, Texas

FROM: Chief, Entry, Licensing and Restricted Merchandise Branch

SUBJECT: Decision of Disputed Claim of Copyright Infringement; Detention No. 83-5581-843

On September 13, 1983, your office notified [redacted] that you were detaining a microcomputer and a disk drive which that company had ordered. The detention was made under section 133.43(a), Customs Regulations (19 CFR 133.43(a)), on suspicion of copyright infringement against certain computer programs that are recorded with the Customs Service. Pursuant to 19 CFR 133.43(a), the importer filed a statement with your office denying that the merchandise contained infringing copies of any copyrighted programs. Consequently, you notified [redacted] the owner of the copyrights on the programs in question, of the action you had taken and advised the company that you intended to release the imported equipment unless, within 30 days, they filed a written demand for its exclusion from entry accompanied by a bond conditioned to hold the importer harmless in the event of wrongful detention, as required by 19 CFR 133.43(b). [redacted] filed such documents with your office. Accordingly, under 19 CFR 133.43(c)(1), you submitted the case to Customs Headquarters for a decision regarding the disputed claim of copyright infringement.

Title 17, United States Code, section 602(b) (17 U.S.C. 602(b)) authorizes Customs to prevent the importation of copies or phonorecords of copyrighted works whose making would have constituted an infringement of copyright if title 17 had been applicable. To establish copyright infringement, one must prove ownership of a valid copyright and copying by another. Atari, Inc. v. North American Philips Consumer Electronics Corp., 672 F.2d 607, 614 (7th Cir.), cert. denied, 459 U.S. 880 (1982); Novelty Textile Mills, Inc. v. Joan Fabrics Corp., 558 F.2d 1090, 1092 (2d Cir. 1977). Because direct evidence of copying often is unavailable, copying may be inferred where the alleged copier had access to the copyrighted work and the accused work is substantially similar to the copyrighted work. Atari, 672 F.2d at 614; Warner Bros., Inc. v. American Broadcasting Cos., Inc., 654 F.2d

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284, 287 (2d Cir. 1981). On the issue of whether similarities between two works are sufficient to prove copying, detailed analysis ("dissection") of the works is relevant. Universal Athletic Sales Co. v. Salkeld, 511 F.2d 984, 987 (3d Cir.), cert. denied, 423 U.S. 863 (1975); Arnstein v. Porter, 154 F.2d 464, 468 (2d Cir. 1946). If evidence of access is absent, the similarities between the works must be so striking as to preclude the possibility that the two parties independently arrived at the same result. Arnstein, 154 F.2d at 468.

Title 17, United States Code, section 410(c) (17 U.S.C. 410(c)) provides in part:

> In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate.

To record its copyrights with the Customs Service, [redacted] furnished Customs with duplicate certificates of registration for its computer programs. The certificate of registration for the [redacted] 16-Sector Boot ROM" copyright lists [redacted] as the copyright claimant. It also shows that that program was first published on January 2, 1979, and registered on May 4, 1982. Thus, under 17 U.S.C. 410(c), that certificate of registration would constitute prima facie evidence of [redacted] ownership of the copyright in question as well as the validity of that copyright in any judicial proceedings. Accordingly, we similarly regard the certificate as prima facie evidence of the ownership and the validity of the copyright in issue, and the importer has not demonstrated sufficient facts to overcome this presumption of validity.

We have no direct evidence that the manufacturer of the detained computers copied any of [redacted] copyrighted works. Nevertheless, copying may be inferred upon a showing that the manufacturer had access to the copyrighted work and that his work is substantially similar to the copyrighted one.

The program that Customs suspects the imported merchandise of infringing is embodied in a Read-Only Memory (ROM) chip that is affixed to Disk Controller peripheral cards sold for [redacted] computers. Inasmuch as [redacted] computer peripheral cards are sold and distributed in [redacted] foreign countries, we find that the manufacturer had access to the copyrighted work. Having found access, we may therefore infer copying if the computer program contained within the detained computer's ROMs is substantially similar to [redacted] copyrighted program.

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724382

On the issue of whether similarities between two computer programs are sufficient to prove copying, evidence of identical bytes of information is relevant. See, Midway Mfg. Co. v. Strohon, 564 F. Supp. 741, 752-753 (N.D.Ill. 1983); Midway Mfg. Co. v. Artic Int'l, Inc., 547 F. Supp. 999, 1004 (N.D.Ill. 1982), aff'd, 704 F.2d 1009 (7th Cir.), cert. denied, 104 S. Ct. 90 (1983). A detailed analysis of the imported computer by Customs' Technical Services Division shows that it has a ROM chip containing a computer program that is 100% identical to the [redacted] 16-Sector Boot ROM" program. Thus, the imported computer's disk interface program is a duplicate of the 256-byte string that comprises the [redacted] 16-Sector Boot ROM" program. Accordingly, we conclude that the computer program contained in the imported computer is substantially similar to the copyrighted program found on [redacted] Disk Controller peripheral cards.

Our finding of substantial similarity between the program in the detained computer's ROMs and the copyrighted program in conjunction with our finding that the manufacturer of the detained computer had access to the copyrighted program compels the conclusion that the manufacturer of the imported computer copied that copyrighted program. We add, however, that in our opinion, the similarities between the works in this case are so striking as to preclude the possibility that the two parties independently arrived at the same result. Therefore, even had we not found that the manufacturer had access to the copyrighted work, we believe our conclusion that the manufacturer of the imported computer copied the Apple programs would still be legally correct under the Arnstein rule.

We have already established that [redacted] owns a valid copyright on the subject copyrighted work. Therefore, with our conclusion that the manufacturer of the imported computer copied the copyrighted program, we deduce that the making of the program in the imported computer would have constituted a copyright infringement if title 17, United States Code, had been applicable. Accordingly, under 17 U.S.C. 602(b), Customs is authorized to prevent the importation of this copy of [redacted] copyrighted work.

Under section 133.44(a), Customs Regulations (19 CFR 133.44(a)), when it is determined that an article detained on suspicion of copyright infringement is in fact an infringing copy, the district director must seize and forfeit the imported article. However, 17 U.S.C. 603(c) provides that articles imported in violation of the importation prohibitions of title 17 may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his acts constituted a violation of law.

E12

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Accordingly, if you are satisfied that [redacted] had no reasonable grounds to believe that it was violating the Copyright law by importing the detained computer, then you may offer that importer the option of shipping the computer back to the country of export. On the contrary, if you find that the importer does not want to return the computer to the country of export or is not entitled to that option, then you should seize the computer pursuant to 19 CFR 133.44(a), and forfeit it as follows: The ROM chips containing the copies of the copyrighted software shall be forfeited under 17 U.S.C. 603(c), for violation of 17 U.S.C. 602(b), and destroyed. All other seized computer components shall be forfeited under 19 U.S.C. 1595a(a), and reported to the Chief, Commercial Fraud and Negligence Penalties Branch, as per Headquarters Telex No. 84871, dated May 17, 1984. Any questions concerning the reporting of seized computer components may be directed to Mr. Lou Cegala at U.S. Customs Headquarters (FTS 566-8717).

The imported disk drive does not contain any of the copyrighted programs in question. Accordingly, it does not fall within the importation prohibitions of 17 U.S.C. 602(b) and cannot be prevented from entering the country on that basis.

Section 133.44(b), Customs Regulations (19 CFR 133.44(b)), provides that upon a determination that an article detained on suspicion of copyright infringement is not an infringing copy, the district director must release the imported article and transmit the bond that was posted by the copyright owner pursuant to 19 CFR 133.43(b) to the importer. With this ruling, we have determined that the disk drive in fact is not prohibited from importation under 17 U.S.C. 602(b). Therefore, please turn the copyright owner's bond over to [redacted] along with its disk drive even though the imported computer cannot enter the country.

I. Pinter

Stephen I. Pinter

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E13

JUL 19 1984

MAR 2-05 CO:R:E:E
725791 HL

725791

[redacted]

Dear [redacted]

This is in reply to your letter of July 9, 1984, requesting approval of certain garment labels for country of origin marking purposes under 19 U.S.C. 1304 and 19 CFR 134.47.

The subject labels on their front side indicate the trade name of your company which contains the state name, "Florida." The labels are also legibly marked to indicate the country of origin, i.e., "Assembled in Honduras" or "Assembled in Jamaica." We believe that these labels satisfy the requirements of 19 CFR 134.47.

In order that the subject labels satisfy the general requirements of the marking statute, 19 U.S.C. 1304, they must appear in a conspicuous place on the garment itself if such labels provide the only indication of the country of origin. We are enclosing information on the placement of country of origin marking labels on garments. If we can be of further assistance, please call Hal Loring of this office at 202-566-5765 or contact local Customs officials.

Sincerely,

(Signed) Darrell D. [redacted]
Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

Enclosures

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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

AUG 09 1984

MAR 2-05 CO:R:E:E
725976 HL

[redacted]

Dear [redacted]

This is in reply to your letter of June 21, 1984, forwarded to us by the New York Seaport (File No. 809959), concerning the country of origin marking requirements applicable to small plastic boxes which will be imported and sold by the carton to firms in the United States which will fill the boxes with items for resale.

We have examined the submitted sample. It may be described as a small clear plastic container comprised of two identical square sections which interlock to form a closed box. Each side is approximately 1.25 inches in length. The boxes will be sold by the carton to firms which will fill the boxes with an item for sale. It is our position that these boxes are disposable containers.

Accordingly, the individual plastic boxes may be excepted from country of origin marking requirements pursuant to section 134.24(c)(1), Customs Regulations, on the theory that the firms which fill these disposable containers are the ultimate purchasers of the boxes under section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). However, the cartons which reach these firms must be legibly and permanently and conspicuously marked to indicate the country of origin of the plastic boxes contained therein. Such cartons should reach these firms unopened.

Sincerely,

(Signed) Darrell D. Kast

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

F1

CODE AND DATE	[redacted]					
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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 199 (11-15-73)

* U.S. GPO: 1993-447-708

MAR 2-05 CO:R:B:E
726100 HL

SEP 20 1984

[redacted]

Dear [redacted]

This is in reply to your letter of July 31, 1984, concerning the country of origin of towels finished in Argentina from cloth woven in Brazil.

According to your letter, you wish to purchase unfinished woven cloth made in the designs and specifications you require from a textile mill in Brazil. The cloth will then be shipped to Argentina for cutting, finishing, and packaging. The finished product, beach towels, will then be imported into the United States. You request us to identify Argentina as the country of origin for marking purposes under section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304).

We cannot comply with your request in view of the new Customs Regulations which were published in the Federal Register on August 3, 1984 (49 FR 31248) (copy enclosed). We invite your attention to 19 CFR 12.130 in particular and note that the information necessary to the criteria for determining country of origin in subsection (b) has not been presented in your letter.

Please review the enclosed document. If you wish to present further information, we will be happy to entertain a further submission.

Sincerely,

Steven I. Pinter

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

F2

CODE AND DATE	[redacted]	REVIEWED	REVIEWED	REVIEWED	REVIEWED	REVIEWED	REVIEWED
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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 199 (11-16-73)

* U.S. GPO: 1983-417-769

E G

YELLOW COPY

SEP 6 1984

MAR 2-05 CO:R:E:E
726147 HL

[redacted]

Dear [redacted]

This is in reply to your letter of August 14, 1984, concerning the country of origin marking requirements applicable to lubricant dispensers from Taiwan. In one case, the dispenser will be imported empty and filled in the United States with lubricant of American origin. In the alternative, the American lubricant will be exported to Taiwan, placed in the Taiwanese dispensers, and will then be reimported into the United States. The instant dispensers are, upon examination, considered to be "disposable."

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, unless excepted, every article of foreign origin or its container must be legibly, permanently, and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. In the first instance described above, it is our position that your company which fills the imported dispensers with lubricant is the ultimate purchaser of the dispensers which, by virtue of the filling, lose their identity as separate articles of commerce. Therefore, the dispensers may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D), provided (1) the shipping containers in which the dispensers are imported are properly marked to indicate the country of origin of the dispensers contained therein; (2) the shipping containers reach your company unopened; and (3) your company will fill the imported dispensers as described and such dispensers will not be otherwise sold. The Customs officers at the port of entry must be satisfied that these requirements are met before approving the exception, and may require statements or affidavits concerning these requirements for each entry for which an exception is requested.

In the alternative situation, in which American lubricant is exported to Taiwan and filled into dispensers in Taiwan, and then reimported into the United States, it is our position that the lubricant itself is not transformed by the foreign repackaging into dispensers; therefore, the lubricant is exempt from marking pursuant to section 134.32(m), Customs Regulations (19 CFR 134.32(m)). The lubricant dispenser is also excepted from country of origin marking requirements because, pursuant to 19 U.S.C. 1304(b), it is a usual container in use as such at the time of importation.

Sincerely,

[redacted]

F3

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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726172

SEP 6 1984

MAR 2-05 CO:R:E:E
726172 HL

[redacted]

Dear [redacted]

This is in reply to your letter of August 17, 1984, requesting an exemption from individual country of origin marking requirements in the case of imported universal joints which are further processed in the United States.

In their condition on importation, the subject joints are in a solid hub configuration. In this unfinished condition, the universal joints cannot be utilized for their end purposes which involve attachment to rods or shafts. Therefore, further machining must be domestically performed. In most cases, a standard boring process will be performed in order for a rod or shaft to be inserted into the joint. You indicate that the standard bored joint requires that the inside diameter of the fork hubs be precision machined to a dimension equal to one-half of the outside diameter. For the "special" bored joint, additional machining such as broaching may be required, as well as boring. The boring operation is performed on a lathe.

Section 134.35, Customs Regulations (19 CFR 134.35), provides that a manufacturer or processor in the United States who substantially transforms an imported article into a new and different article will be considered the "ultimate purchaser" of the imported article under section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), and the imported article shall be excepted from marking. On the other hand, section 134.1(d)(2), Customs Regulations, states that if the manufacturing process is merely a minor one which leaves the identity of the imported article intact, then the consumer or user of the article who obtains the article after the processing will be regarded as the ultimate purchaser. There is no question that the instant domestic machining (boring) is essential to making the imported joints into functional articles. Complex machining may effect a substantial transformation. See Midwood Industries, Inc. v. United States, 64 Cust. Ct. 499, C.D. 4026 (1970). However, in the case you present, a substantial amount of machining and processing has already occurred prior to importation compared to the boring process performed in the United States. The imported joint is far along to becoming a finished article as imported, and its identity is not fundamentally changed in the United States.

CODE AND DATE	(1) CONTROLLER	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

* U.S. GPO: 1981-617-700

Furthermore, we are not persuaded by the fact that the imported articles could not be used in their condition as imported. Such fact is relevant, but not determinative. The court in Uniroyal, Inc. v. United States, 542 F.Supp. 1026 (C.I.T. 1982), denied a marking exemption in the case of footwear uppers notwithstanding that the uppers were not marketable at retail as completed shoes. In that case, the court required a comparison of the complexity and cost of the processing which created the initial article versus the complexity and cost of the processing allegedly transforming that article into a new and different article. Although you have not submitted cost information which would permit us to make a detailed comparison, the foreign processing appears to be more substantial than the domestic processing, at least where more boring occurs in the United States. Additional machining performed domestically such as broaching may tip the balance; however, more detailed information would be required.

Accordingly, it is our position that the domestic processing (boring) operation finishes the imported articles into functional joints, but does not effect a substantial transformation of the imported articles to the extent that would justify an exception to country of origin marking requirements. Therefore, an exception under 19 U.S.C. 1304 is denied. The subject universal joints should be individually marked with their country of origin in such a manner that the marking will not be obscured by domestic processing.

Sincerely,

[redacted]

Darrell D. Fast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

* U.S. GPO: 1983-417-796

726172

AUG 2 1984

MAR 2-05 CO:R:E:E
726196 HL

726196

[redacted]

Dear [redacted]

This is in reply to your letter of July 2, 1984, forwarded to us by the New York Seaport Area (file No. 810014), concerning the country of origin marking requirements applicable to leaf springs imported in bulk.

The leaf spring in question is of the kind chiefly used on trucks, trailers, automobiles and tractors. The springs will be imported from the People's Republic of China in wooden containers with approximately 200 springs in each container (light springs) or approximately 30 springs of the heavy duty kind banded to a skid. You question whether each leaf spring is required to be marked to indicate the country of origin in view of the fact that similar merchandise may be imported with mere container marking.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires in general that, unless excepted, every article of foreign origin or its container must be legibly, permanently, and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. Container marking will suffice only if it it virtually certain that the container will reach the ultimate purchaser in the United States unopened. If this requirement is met, only then may be contents be considered for an exception from individual country of origin marking requirements.

If automobile parts, i.e., leaf springs, were being imported for the use of an original equipment manufacturer for use in the manufacture of automobiles, then such manufacturer would probably be considered the ultimate purchaser of those parts. Such parts would not have to be individually marked if they reached the manufacturer in a properly marked container unopened and were guaranteed to be used in the production of his automobiles. Another result obtains, however, if the parts were being imported for sale to distributors whose chains of distribution varied. Container marking would not suffice in such case because the guarantees of the first situation could not be made by the importer. Such parts (leaf springs, for instance) would have to be individually marked. Please also note that if a distributor repackages marked articles imported in bulk, then the marking requirements of 19 CFR 134.35 may apply.

Sincerely,

Darrell D. Kast
Chief, Entry Processing and
Restricted Merchandise Branch

CODE AND DATE						
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Form 100 (11-15-73)

SEP 17 1984

MAR 2-05 CO:R:E:E
726298 HL

[redacted]

Dear [redacted]

This is in reply to your letter of August 31, 1984, requesting an exemption from individual country of origin marking requirements in the case of vinyl zippered blanket bags.

The bags in question are containers chiefly used for the packing, transporting, or marketing of blankets, comforters, bedspreads, and the like. The vinyl bags are not sold individually at retail, but rather to manufacturers or distributers of these home furnishings who pack and market the furnishings in the bags.

It is our position that, for the purposes of 19 U.S.C. 1304, the "ultimate purchaser" of the vinyl bags is not the purchaser of the blanket or comforter, but rather the blanket manufacturer or distributor who packs and markets his product in this bag. The vinyl bag loses its identity as a separate article of commerce when used in this manner.

Accordingly, the vinyl bags may be excepted from individual marking requirements under 19 U.S.C. 1304(a)(3)(D), provided the bags reach the party who packs or markets the home furnishing in these bags, in a container that is legibly, permanently, and conspicuously marked to indicate the country of origin of the vinyl bags therein; and that such container reach that party (the ultimate purchaser) unopened; and further that these bags will be used by the ultimate purchaser to pack or market the home furnishing (blanket or comforter) and not otherwise sold. Customs officers at the port of entry must be satisfied that these requirements are met and may require affidavits or statements to this effect.

Sincerely,

Darrell D. Kast
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

OCT 26 1984

MAR 2-05 CO:R:E:E
726303 HL

[redacted]

Dear [redacted]

This is in reply to your letter of August 30, 1984, concerning the country of origin of fabric woven in Japan, but subjected to hand screen printing and finishing in Brazil.

The subject fabric is described as 100 percent cotton broadcloth which is woven in Japan from yarn of Japanese origin. The fabric is then subjected to a process in Japan characterized as "lime sour and scouring." The fabric is then shipped to Brazil where it is subjected to hand screen printing and finishing. Importation into the United States follows.

In accordance with interim section 12.130, Customs Regulations, it is our position that the country of origin of the subject fabric is Japan. No substantial transformation is deemed to have occurred in Brazil; see, in particular, interim section 12.130(b)(1)(iv), Customs Regulations.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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58

CODE AND DATE							
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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

[redacted]

OCT 19 1984

MAR 2-05 CO:R:E:E
726695 HL

726695

[redacted]

Dear [redacted]

This is in reply to your letter of October 2, 1984, forwarded to us by [redacted] concerning the country of origin marking requirements applicable to Christmas ornaments designed by your company in Germany, but made in Taiwan.

According to your letter, the ornaments will be sold in individual poly bags closed by a header which indicates that the ornament is an original design by your company in West Germany, but that the ornament is "Made in Taiwan." Both header samples bear the country of origin marking in close proximity, and in a size comparable, to the reference to West Germany. Therefore, both headers are adequate for purposes of section 134.46, Customs Regulations.

Inasmuch as the ornaments will be sold to ultimate purchasers in the United States in individual poly bags sealed with a header, and the law requires that either an article or its container be marked to indicate the country of origin, we find the proposed marking to be adequate for country of origin marking purposes under 19 U.S.C. 1304.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

MAR 2-05 CO:R:E:E
726744 HL

[redacted]

OCT 30 1984

Dear [redacted]

This is in reply to your letter of October 22, 1984, concerning the country of origin marking requirements applicable to cologne bottles imported empty, but to be filled in the United States by firms which will fill the empty bottles with their own product. The bottles are disposable and will not be sold apart from the product they are intended to contain when filled.

The empty cologne bottles are exempt from individual country of origin marking requirements under 19 CFR 134.24(c)(1) on the theory that when disposable containers are imported by persons or firms who fill or package them with various products which they sell, these persons or firms are the ultimate purchasers of the containers (which may then be excepted from individual marking under 19 U.S.C. 1304(a)(3)(D)). When imported, only the outside wrappings or packages containing the empty cologne bottles need be marked to indicate the country of origin of the bottles.

You also indicate that the cologne bottles will be pre-printed with the name and address of the firm(s) that will fill these bottles with their product. The address may be a United States address or make reference to a foreign locale. We do not consider these to be misleading markings, i.e., the consumer of the filled product is not misled as to the origin of the empty cologne bottle with such marking. Customs has taken the view that the marking on the bottles will not be mistakenly viewed as relating to the origin of the bottles, since such containers will lose their identity as separate articles of commerce after they are filled. ORR Ruling 679-70.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

NOV 27 1984

MAR 2-05 CO:R:E:E
726905 HL

726905

The Honorable
Richard T. Schulze
House of Representatives
Washington, D.C. 20515

Dear Mr. Schulze:

Thank you for your letter of November 14, 1984, forwarding the comments of [redacted] concerning the new country of origin marking requirements applicable to textile and wool garments and the identification of such merchandise as foreign-made in mail order catalogs (Title III of Public Law 98-417).

[redacted] applauds Title III of Public Law 98-417, amending the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, insofar as the new law affects country of origin labeling of imported garments. He objects, however, to the country of origin information to be required by the new law in mail order promotional descriptions for textile and wool products sold in the United States.

[redacted] objects to that area of the new law entirely within the jurisdiction of the Federal Trade Commission (FTC) which has just published a notice of proposed rulemaking to conform FTC regulations to the new law. For your convenience, we are enclosing a copy of the FTC notice inviting comments which appeared in the Federal Register on November 13, 1984 (49 FR 44913). We trust that the enclosed materials will be helpful to you and your constituent.

If we can be of further assistance, please do not hesitate to contact us.

/S/ J Simpson
For

Sincerely,

[redacted]

Robert P Schuster
Assistant Commissioner
(Commercial Operations)

Enclosures

CODE AND DATE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

* U.S. GPO:1983-417-788

File Copy

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

DATE: ~~July 19, 1985~~ AUG

CONTROL NUMBER: 727226
YOUR REF: Internal Advice 44/85

727226

COUNTRY OF ORIGIN MARKING RULING
(SUBSTANTIAL TRANSFORMATION)

TO: District Director of Customs
Portland, Oregon 97209

IMPORTED ARTICLE: Unfinished steel forgings or "blanks" for chipper knives, measuring 1/2" by 4" by 22". The blank is bevelled on one edge.

FURTHER MANUFACTURING OR PROCESSING PERFORMED IN U.S:

Top and bottom surfaces of the blank are ground ('trued'). The forged bevel edge is ground to impart a cutting edge, then honed to remove the burr created by this grinding. In some cases bolt slots are ground into the blades.

APPLICABLE LAW AND CUSTOMS INTERPRETATION: Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), generally requires that every article of foreign origin or its container be marked legibly, permanently, and conspicuously to indicate the name of the country of origin to an ultimate purchaser in the United States. If an imported article will be used in manufacture in the United States, the U.S. manufacturer may be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation of the article. In such case, the imported article is exempt from marking. A substantial transformation occurs when the further manufacturing transforms the imported article into an article having a name, character, or use different from the imported article. If, however, the manufacturing process is merely a minor one which leaves the identity of the imported article intact, there is no substantial transformation and the imported article is not exempt from country of origin marking. See U.S. v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267, C.A.D. 98 (1940); Sections 134.1(d) and 134.35, Customs Regulations. Although each case must be decided on its own facts, the following examples are illustrative of Customs interpretation: No substantial transformation found where further processing in the United States included: combination without further manufacture of imported ax handles with ax heads of U.S. origin; encoding of admission information on the magnetic strip of imported printed admission tickets; attachment of porcelain socket and base to zinc lampholder casting; attachment of handle to screwdriver blade-ratchet assembly; purification and heating of imported raw honey and blending with domestic honey to produce processed honey; and, silk-screening applied to imported shirts. In each case, Customs determined that the further processing did not result in an article with a new name character, or use. Substantial transformation was found where further processing included: grinding and polishing of unfinished forgings to produce scissors; tooling and threading operations performed on imported nut blanks to produce free spinning, vibration resistant locknut; canning process involving processing for preservation and consumption; and, cutting, sewing, and finishing of piece goods to make finished goods. In each case, Customs determined that the further processing resulted in an article with a new name, character, or use.

DETERMINATION:

____ No Substantial Transformation: The process(es) described above do not result in a substantial transformation of the imported article. Therefore, the imported article must be legibly, permanently and conspicuously marked to indicate its foreign country of origin.

X Substantial Transformation: The process(es) described above results in a substantial transformation of the imported article. Therefore, the imported article is exempt from individual marking provided the container in which it is imported is legibly and conspicuously marked with the country of origin, and Customs officers at the port of entry are satisfied that the article will reach the ultimate purchaser (processor) in the original marked containers unopened, and that the article will be manufactured as described above and not otherwise sold.

Steven I. Pinter
Chief, Entry, Licensing and Restricted Merchandise Branch

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

DATE: MAY 13 1985

CONTROL NUMBER: 727843 TL
YOUR REF:

727843

COUNTRY OF ORIGIN-MARKING RULING
(USE OF ABBREVIATIONS)

TO: Mr. Jan C. Vandenberg
Traffic Manager
Interlek, Inc.
2367 Bering Drive
San Jose, CA 95131

MERCHANDISE: 8-lead cerdip integrated circuits

COUNTRY OF ORIGIN: Philippines

REQUESTED ABBREVIATION: PHIL

ADDITIONAL PERTINENT FACTS: International Standard Country Code for Philippines is PH.

APPLICABLE LAW AND CUSTOMS INTERPRETATION: Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin or its container be marked legibly, permanently, and conspicuously to indicate the English name of the country origin to an ultimate purchaser in the United States. Abbreviations which "unmistakably" indicate the name of a country are acceptable (19 CFR 134.45(b)). The instances in which the Customs Service has permitted the use of abbreviations instead of the entire name of the country or origin have been limited. For example, Customs has ruled that the following abbreviations are not acceptable: CAN or CANA for Canada, PHIL for Philippines, ZBW for Zimbabwe, RSA for Republic of South Africa; no acceptable abbreviations were found for Netherlands or Holland. Abbreviations found acceptable include Gt. Britain for Great Britain, U.K. for United Kingdom and S. Africa for South Africa.

DETERMINATION:

There is no acceptable abbreviation for Philippines. No waiver of marking requirement of full name can be granted for this product.

Steven I. Pinter
Chief, Entry, Licensing and Restricted Merchandise Branch

F13

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

NOV 1 1985

MAR-2 CO:R:E:E
727885 JLF

727885

Mr. David Mickelson
D. F. Mickelson & Company
401 Wilshire Boulevard
Santa Monica, California 90401

Dear Mr. Mickelson:

This is in response to your letter of February 1, 1985, concerning the country of origin marking requirements for labels which are imported in bulk for use in the United States. According to your letter, you wish to mark the cartons which contain the paper wrappers and the paper wrappers which contain the labels themselves, "Made in Hong Kong" or "Printed in Hong Kong" in lieu of marking the individual labels. After importation, the labels will be placed on containers of products such as juices.

We believe that the ultimate purchaser of your labels is the manufacturer who affixes the labels to the container. Thus, he is the one who must be apprised of the country of origin of the label. Title 19 U.S.C. 1304(a)(3)(D) permits the marking of a container in lieu of marking the individual articles themselves if this is a reasonable means of assuring that the ultimate purchaser is aware of the country of origin.

Marking the cartons and the paper wrappers is a reasonable means of indicating the country of origin under the above provision provided that the paper wrappers which contain the labels reach the manufacturer unopened.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

151

[redacted] Steven I. Pinter
Chief, Entry, Licensing, and
Restricted Merchandise Branch

[redacted]

CODE AND DATE	[redacted]						
SURNAME	[redacted]						
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

GPO: 1984-719-979

DATE: JUN 03 1985

FILE: ENT-1 CO:R:E:E
727967 JLF

TO: District Director of Customs
San Juan, Puerto Rico 00903

FROM: Chief, Entry, Licensing and Restricted Merchandise Branch

SUBJECT: Request for Internal Advice 46 U.S.C. 289, Section 4.80a C.R.

An issue has been raised as to whether or not purchases from gift shops on board passenger vessels traveling between ports in Puerto Rico and other ports in the United States qualify for personal exemptions as "articles acquired abroad".

According to C.I.E. 209/62, T.D. 53585(2), travel between United States ports without touching a foreign port does not constitute foreign travel or returning from abroad. Thus, purchased articles as described above are not "articles acquired abroad" and do not qualify as such for personal exemptions.

Steven I. Pinter

Steven I. Pinter

727967

This document may be released to the PUBLIC

[redacted]

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CODE AND DATE							
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SURNAME							

DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUN 14 1985

MAR-1 CO:R:E:E
728200 LR

728200

R.F. Cooke, Marketing Manager
Williams and Company, Inc.
901 Pennsylvania Avenue
Pittsburgh, Pa. 152233

Dear R. F. Cooke:

This is in response to your letter dated May 7, 1985, concerning country of origin marking on repackaged imported fasteners.

As distributors of stainless steel and nonferrous fasteners, you state that you presently repackage imported fasteners in properly marked boxes in accordance with 19 CFR 134.25. You would like to know whether at the request of an end-user you may discontinue this marking provided you inform him in writing that in some instances you will supply repackaged fasteners containing a mixture of domestic article and article from one or more foreign countries in descending order as follows: Canada, Japan, Taiwan, Korea, and China.

We believe that the above notification does not satisfy the requirements of 19 CFR 134.25. Basically, this provision requires that an importer certify to Customs that if he repacks he shall not obscure or conceal the country of origin marking appearing on on the article, or else mark the new container with the country of origin; if the importer transfers the merchandise to a repacker, he must notify the repacker of the requirements (that is to properly mark the repacked goods). The repacker cannot merely notify his transferee of the country of origin.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

62

JUL 3 1985

MAR-1 CO:R:E:E
728216 LR

[redacted]

Dear [redacted]

This is in response to your correspondence dated April 30 and June 6, 1985, concerning country of origin marking and fiber content labeling of certain foreign-made garments. You pose five questions indicated below. Please note that unless indicated otherwise, our responses pertain only to the marking requirements pursuant to 19 U.S.C. 1304 enforced by the Customs Service. There may be additional requirements under the Textile Fiber Products Identification Act administered by the Federal Trade Commission (FTC).

1) Is it still permissible to state made in United Kingdom as well as made in England?

For purposes of the country of origin marking statute enforced by Customs, United Kingdom is an acceptable alternative for England.

2) Is it permissible that the country of origin only be shown on the fiber content label sewn to the front facing of the ladies coat?

For purposes of country of origin marking statute enforced by Customs, the only requirements are that the marking is conspicuous, legible and permanent. Assuming the proposed marking satisfies these criteria, it is satisfactory.

3) Must each and every garment carry a country of origin label sewn to the center back neck?

The country of origin marking statute does not specify where the country of origin marking must be placed. So long as it is in a conspicuous location, it will be acceptable.

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728216

4) Is it so that either the manufacturer's name or the importer's name be included on a label?

There is no such Customs requirement although the Textile Fiber Products Identification Act enforced by the FTC does require this this information. The FTC should be contacted for the exact requirements in this regard.

5) What is "R.N." number and is it necessary that we have one?

"R.N." is a registered identification number issued by the FTC which may be used to satisfy the identification requirements of the Textile Fiber Products Identification Act. The FTC should be contacted for specific information in this regard.

Sincerely,

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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[redacted]							

AUG 2 1985

MAR-1 CO:R:E:E
728335 LR

[redacted]

Dea[redacted]

This is in response to your inquiry concerning the applicability of the country of origin marking requirements to brochures utilized for self-promotion. You state that the subject brochures are to be given away and are not for resale.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) generally provides that all articles of foreign origin (or their containers) imported into the United States are required to be legibly, conspicuously, and permanently marked to indicate the country of origin to an ultimate purchaser in the United States (emphasis added). The ultimate purchaser is generally the last person in the United States who will receive the article in the form in which it was imported. Section 134.1(d), Customs Regulations (19 CFR 134.1(d)). If the imported article is distributed as a gift the recipient is the ultimate purchaser. Section 134.1(d)(4), Customs Regulations (19 CFR 134.1(d)(4).

In this case, the recipient of your brochure would be the ultimate purchaser. As the above regulation makes clear, the fact that the brochure is given away as a gift is not determinative. Accordingly, the brochures must be individually marked with the country of origin. The words, "Printed in Hong Kong" would be an acceptable marking.

Sincerely,

S. Drandle

for Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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GS

AUG 7 1985

MAR-1 CO:R:E:E
728342 LR

Mr. Bob Maynard
Hallman Racing
315 W. Bradley Avenue
El Cajon, California 92020

Dear Mr. Maynard:

This is in response to your letter of June 5, 1985, concerning country of origin marking on certain sports apparel. The company's logo, "H USA" or "Hallman USA", appears on each of the garments.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) generally requires that every article of foreign origin (or their containers) imported into the United States are required to be legibly, conspicuously, and permanently marked to indicate the country of origin to an ultimate purchaser in the United states. If the word United States or some variation of it (e.g. U.S.A.) appears on the article further requirements are applicable. If it is part of a trademark or tradename, the country of origin of the article must be preceded by "Made in", "Product of" or other similar words. Section 134.47, Customs Regulations. If it is not part of a trade mark of trade name, the country of origin marking must also be placed in close proximity to and in letters in at least a comparable size to word United States or U.S.A. Section 134.46, Customs Regulations.

728342

In this case, it appears from the submitted brochure that U.S.A. is part of the company's trademark. Accordingly, so long as the country of origin marking is legible, conspicuous, permanent, and preceded by the words "Made in" or other similar words, it is acceptable. However, if there are additional references to U.S.A. on the garment the requirements of section 134.46 must also be satisfied.

You ask whether the following markings would be conspicuous: 1) a tag sewn in the cuff on gloves; 2) a tag sewn in the back by the size tag in racing pants; and 3) the marking molded into the rubber outer sole and stamped on the outside of leather at the top of a boot. Without samples of the merchandise in question we cannot provide a definitive ruling. However, it it is likely that the above markings would be found to be conspicuous.

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We note that the letters U.S.A. appear on two of the submitted labels and that such letters are not a part of the Ballman trademark. In one case, it is in connection with the size of the garment; in another case it is part of an address. In order to satisfy the requirements of section 134.36, Customs Regulations, the country of origin marking must appear in close proximity to and in letters of at least a comparable size to the U.S.A. reference. The red label does not comply with the latter requirement.

Sincerely,

S. Brandle

for Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

728342

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

JUL 9 1985

ENT-1 CO:R:B:E
728393 JL

Leonard L. Rosenberg, Esq.
Sandler & Travis, P.A.
444 Brickell Avenue
Miami, Florida 33131

Dear Mr. Rosenberg:

In your letter of May 2, 1985, you asked for a binding ruling on behalf of your client, Meldisco, Division of Melville Corporation, that countervailing duties paid voluntarily as the result of the findings of a review by the Department of Commerce are refundable with interest in the event of a later decision reducing or eliminating duties and that said deposit would stop the accrual of interest which could legally be assessed pursuant to 19 U.S.C. 1677(g).

You state that in Treasury Decision 80-13 Customs published a suspension of liquidation of all entries of certain Brazilian footwear and your client was required to make a deposit of countervailing duties in the amount of 1 percent as a result. You state that on April 19, 1985, the Department of Commerce published the results of its administrative reveiw conducted pursuant to 19 U.S.C. 1675 and found countervailable bounties or grants in the amount of 8.84 percent ad valorem for entries made during calendar year 1980 and ordered Customs to begin liquidations of those entries which had been suspended pursuant to Treasury Decision 80-13. You continue that the Customs Service has been enjoined from liquidating those entries by the United States Court of International Trade (Case No. 85-04-00579). Your client is offering to make the voluntary payments in order to stay the accrual of additional interest at the time of liquidation.

19 U.S.C. 1677g(a), was amended on October 10, 1984, by Public Law 98-573, and provides as follows:

> (a) General Rule.-Interest shall be payable on overpayments and underpayments on accounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after-
>
> > (1) the date of publication of a countervailing or antidumping duty order under this subtitle or section 1303 of this title, or

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(2) the date of a finding under the Antidumping Act, 1921.

This provision therefore provides for the payment of interest on the difference between the cash deposits of estimated countervailing or antidumping duties and the duties finally assessed on the entries. Where there is no difference between the two figures, then no interest would be collected.

You asked that if it is finally determined that if any part of the countervailing duties deposited voluntarily as well as any amount representing interest alleged to be due on the amount of the countervailing duties voluntarily deposited are not owed, that such duties would be returned to the importer with all applicable interest charges, in the same manner as countervailing duties deposited at the time of entry.

Customs is of the opinion that all monies voluntarily tendered and accepted on an entry before its liquidation are characterized as "estimated duties" and may be refunded pursuant to a liquidation or reliquidation, and may be the subject of a protest under 19 U.S.C. 1514.

Sincerely,

Steven I. Pinter

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

[redacted]

728393

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

OCT 15 1985

MAR-1 CO:R:E:E
729001 LR

Richard Hirschman
Vice President
Hudson Optical Corporation
842 Broadway
New York, N.Y. 10003

Dear Mr. Hirschman:

This is in response to your recent letter regarding the country of origin marking requirements that apply to spectacle frames and eyeglasses. Specifically, you wish to know the requirements that apply when parts of the frames come from different countries.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) generally provides that all articles of foreign origin (or their containers) imported into the United States are required to be legibly, conspicuously, and permanently marked to indicate the country of origin to an ultimate purchaser in the United States (emphasis added). The ultimate purchaser is generally the last person in the United States who will receive the article in the form in which it was imported. 19 CFR 134.1(d). If an imported article will be used in manufacture, the manufacturer may be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation of the article; however, if the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article after the processing, will be regarded as the "ultimate purchaser." 19 CFR 134.1(d)(1)&(2).

The questions you have raised are addressed in Customs Ruling No. 709266 (copy enclosed). In that ruling Customs found that the assembly of imported frames does not constitute a substantial transformation of the item sufficient to make the importer the ultimate purchaser and that in such case, country of origin marking would be required on the imported fronts and temples. Accordingly, in the first situation you present both the imported fronts and temples must be individually marked with their country of origin. If, however, the temples and fronts are produced in the same country and are imported together for assembly into a complete frame, we will permit the marking "Frame made in _____ or "Frame _____" on only one of the components. Where there is additional processing performed (i.e. more that mere assembly of the fronts and temples) Customs might find a substantial transformation, depending on the particular circumstances involved.

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729001

In the case where an importer/manufacturer assembles the imported fronts or temples with domestically produced fronts or temples, the above ruling states that the importer/manufacturer would be considered the ultimate purchaser. Therefore, in the second and third situations you present the imported articles would be excepted from marking pursuant to 19 U.S.C. 1304(a)(3)(D) provided Customs officers at the port of entry are satisfied that the importer will assemble the imported fronts or temples with domestically produced fronts or temples and will not sell them in their imported condition. In the event that this exception is applicable, the shipping containers would still have to marked with the country of origin.

Please be advised that Ruling No. 709266 is in effect unless revoked after appropriate prior notice.

Sincerely,

/S/

Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

Enclosure

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729001

[redacted]

24 DEC 1985

MAR 2-03 CO:R:R:E
729174 FBO

729174

Harold I. Loring, Esq.
Grunfeld, Desiderio, Lebowitz
& Silverman
Two World Trade Center
New York, New York 10048-0654

Dear Mr. Loring:

This is in response to your letter of November 19, 1985, concerning the country of origin marking of imported bicycles.

You state that your client marks both the individual carton and the bicycle itself in order to provide the ultimate purchaser with the country of origin. Some of the bicycles are sold unassembled in the cartons while others are assembled and sold, but in either case the country of origin is visible. The cartons are marked in large letters "MADE IN TAIWAN, R.O.C." on the flat side of the carton. The bicycles are marked with the same country designation on the head-tube just below the handlebars.

We find that the country of origin markings on the carton and on the bicycle itself meet the test of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) that every article of foreign origin or its container must be legibly, permanently and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States.

Sincerely,

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/S/ SA Orandle
Steven I. Pinter
Chief, Entry, Licensing and
Restricted Merchandise Branch

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

*U.S. GPO: 1984-719-979

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 10 1986

REFER TO
CLA-2-03:S:COM:N3-I:358
818685

Mr. Robert Follick
Follick & Bessich
299 Broadway, Suite 1309
New York, NY 10007

Dear Mr. Follick:

Your letter of May 9, 1986 on behalf of your client, Class Kid, Ltd., requested this office to rule upon the tariff classification of infant boys' apparel from Thailand. Your sample will be returned as requested.

The submitted sample, style no. 75-550, consists of a full front opening four button short sleeve shirt and matching shorts with partially elasticized rear waistband. The shorts have shoulder straps that are secured in place by fabric loops at the shirt shoulders. The shirt and shorts are made of identical 65% polyester, 35% cotton woven fabric. Both items are sized for male infants 4-7.

Style no. 75-550 is classifiable under the provision for other women's, girls', or infants' wearing apparel, not ornamented: of man-made fibers: not knit: other: other: playsuits ... and similar apparel, in item 384.9415, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 4 cents per pound plus 18.8 percent ad valorem.

Style no. 75-550 falls within textile category designation 637. As a product of Thailand, this merchandise is subject to a visa requirement based upon international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 18 1986

REFER TO

CLA-2-04:S:COM:N1:235-382
818692

Mr. D. S. Brown
Products Manager
Montedison USA Inc.
1114 Avenue of the Americas
New York, N.Y. 10036

Dear Mr. Brown:

In your letter dated May 12, 1986, you inquired about the dutiable status of Fomblin and Galden from Italy.

According to your letter you are of the belief that Fomblin and Galden products should not be classified in item 428.47, Tariff Schedules of the United States because they are perfluorinated polyethers produced from tetrafluroethylenes or hexafluoropropenes without alcohol functions. You also indicate that the products in question are not polyhydric alcohols nor are they substituted derivatives of alcohols.

It is our opinion that the deriviation from tetrafluoroethylene or hexafluoropropene is immaterial. We do agree however that there are no alcohol functions in all the Fomblin products you sent us except Fomblin Z-DOL. All the Fomblin products have ether (of polyhydric alcohol) functions however, including Fomblin Z-DOL.

Since it is our opinion that Fomblin Z-DOL, Y06/6, Y-04, Y-25 and Galden D-02 have ether of polyhydric alcohol functions and since compounds with those functional groups are classifiable in item 428.47, TSUS, we believe they are properly classified.

Therefore we affirm that Fomblin Z-DOL, Y06/6, Y-04, Y-25 and Galden D-02 are classifiable under the provision for ethers of polyhydric alcohols in item 428.47, Tariff Schedules of the United States, and dutiable at the rate of 12.3 pecent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the

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documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

818692

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 28 1986

REFER TO

CLA-2-06:S:COM:N1:118-633
818700

Mr. G. Van Zyl
Haggie Rand Limited
P.O. Box 40072
Cleveland, South Africa

Dear Mr. Zyl:

In your letter dated April 24, 1986, you inquired about the dutiable status of steel wire rope from South Africa.

Typical lengths of these ropes are between 200 and 700 feet and diameters may vary from 1 1/4 inches to 4 inches. They will be imported with becket loops welded on the ends for use in installing the ropes in excavating machines.

These steel wire ropes with becket loops attached are classifiable under the provision for wire ropes, fitted with fittings in item 642.2000, Tariff Schedules of the United States, and dutiable at the rate of 6.2 percent ad valorem.

You also inquired about importing this merchandise outside the Bilateral Trade Arrangements (Voluntary Restraint Agreement). There is currently no South African export visa requirement for merchandise classified in item 642.2000, TSUS, but visa requirements change from time to time so it is suggested that you check with the United States Department of Commerce in Washington D.C. or with your own government in order to keep informed of changes in the visa requirements as they occur.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

818700

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 02 1986

REFER TO

CLA-2-07:S:CON:N3D:227
818706

Mr. John C. Saunders
Seewine Australia
44 Edith Street
Beaumaris 3193, Victoria, Australia

Dear Mr. Saunders:

In your letter dated April 30, 1986 , you inquired about the dutiable status of plastic packaging from Australia. A sample and a brochure were submitted.

The submitted sample is an article of polyvinyl chloride with a reinforced carry handle formed to snugly hold two bottles and a glass for sale at retail to consumers. The packaging can be customized to hold bottles, glasses, cork pullers, and other promotional items. The products are packed in the plastic packaging before they are sold to retail stores. The consumer does not buy the packaging as a separate article, but purchases the merchandise which comes packaged in these containers.

The plastic packaging is classifiable under the provision for containers of plastic chiefly used for the packaging, transporting, or marketing of merchandise in item 772.20, Tariff Schedules of the United States, and dutiable at the rate of 3.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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REPLY TO AREA D... ...HS NEW YORK ... NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 27 1986

CLA-2-07:S:CON:N3D:223
818767

Mr. J. M. Abrahams
President
Phil Patterson, Corp.
Room 16
Airport Terminal Building
Des Moines, Iowa 50321

Dear Mr. Abrahams:

In your letter of May 12, 1986, you requested the tariff classification for 3 styles of gloves from Korea. Samples of each style were submitted with your request.

The shooter's mittens consist of a woven outer shell of 65 percent polyester and 35 percent cotton. The lining is made of dacron polyester and has a Gore-Tex insert. The applied, ribbed knit cuff is made of polyester. The palm has a flap opening that can be secured by a velcro closure. Sewn within this mitten is an insulated glove. The flap opening permits the user to keep his or her hand warm by being continuously in both the glove fingers and the mitten. By opening the flap, the user can extend his or her fingers through the flap while keeping them warm. This combination glove/mitten shows special design for use in the sport of hunting.

The glove you describe as an extended gauntlet ski glove has a woven outer shell of 65 percent polyester and 35 percent cotton including the fourchettes and extended gauntlet. Leather reinforcement covers the palm and thumb. The hand portion of this glove is lined with Dacron polyester and has a Gore-Tex insert. The wrist has a single row of elastic gathering across both the front and back. A hook and clasp is attached through a leather loop in the side seam. The uninsulated gauntlet is sewn onto the glove starting approximately 1 inch below the elastic gathering. The gauntlet extends for approximately 10 1/2 inches and has elastic in the hem. This length covers the entire forearm to the elbow. An inseam construction is used throughout. An embroidered applique ornaments the back of the hand.

Although you describe this glove as a ski glove, the unlined, extended, gathered gauntlet is neither of a type normally found on ski gloves nor of a type that is particularly suited and adapted for use by skiers. This glove cannot, therefore, be classified as ski equipment.

The last sample is described as a simulated leather dress glove. The shell is described as "Sofrina" polyester, which, for tariff pur-

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poses, is a plastic material, and the interlining is sponge, bonded to the tricot lining. A single row of elastic gathers is sewn into the center of the wrist on the front and back and extends for approximately 3/4's of the width. This glove is hemmed at the cuff. A half-pique construction is used on the palm side of the fingers and for the inset thumb. The balance of the glove has an inseam construction.

The first sample, the shooter's mitten, is classifiable under the provision for ...other gloves, not provided for in the foregoing provisions of this subpart, specially designed for use in sports, in item 735.0700, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 5.2 percent ad valorem.

The second sample, the extended gauntlet glove, is classifiable under the provision for gloves ... ornamented: of man-made fibers: in item 704.3210, TSUSA, and is dutiable at the rate of 21.7 percent ad valorem.

The extended gauntlet glove falls within textile category designation 631. As a product of Korea, this merchandise is subject to quota restaints and visa requirements based upon international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs officer prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The third sample, the simulated leather dress glove, is classifiable under the provision for gloves of rubber or plastics: with fourchettes, in item 705.8560, TSUSA, and is dutiable at the rate of 14.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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818767

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 07 1986

REFER TO
CLA-2-07:S:CON:N3:224
818796

Mr. Karl E. Lomberk
V.P. Sales Director
Windsor Toys Inc.
140 Grand Street
Carlstadt, NJ 07072

Dear Mr. Lomberk:

This is in reply to your letter of May 8, 1986, regarding the tariff status of a "Heart-to-Heart Bear," a product of Korea, presumably the Republic of Korea (South Korea).

The subject merchandise is a stuffed bear figure, approximately 14 inches in height, consisting of a shell or "skin" of plush textile material filled with polyester fibers, safety-lock black plastic eyes and nose and a toy textile nightshirt and hat.

The merchandise also contains a battery-powered (9 volt, included) audio unit which is activated by pressing the chest area of the toy figure. The sound device incorporates an integrated circuit with chip which electronically reproduces a simulated heart beat. Access to this component is by means of a velcro fastened compartment within the bear's plush exterior shell.

Headnote 2, Schedule 7, Part 5, Subpart E, Tariff Schedules of the United States (TSUS), provides that the term "toy" encompasses "any article chiefly used for the amusement of children or adults". Further, Headnote 1 of this Subpart requires that articles described therein, with certain exceptions not applicable in the instant situation, be so classified irrespective of whether provided for more specifically elsewhere in the tariff schedules.

Although the heart beat audio unit is a feature not normally associated with a toy animal figure, we do not see where its purpose is so functional or non-toy like that it would detract from the figures overall attraction as a plaything or source of amusement for children. In fact, the beating heart just serves as an amplification or enhancement of the concept of the toy bear, much like animation or a programmed voice supplement the attraction of other toy animal figures.

Accordingly, the subject "Heart-To-Heart Bear" figure with its incorporated sound device is considered on entirety classifiable under the provision for toy figures of animate objects(except dolls),

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A11

not having a spring mechanism, stuffed and valued over 10 cents per inch of height, in item 737.30, TSUS, and dutiable at the rate of 5.9 percent ad valorem.

The battery imported with the article is separately classified under the provision for primary cells and primary batteries in item 682.95, TSUS, dutiable at the rate of 5.7 percent ad valorem.

Articles classifiable under item 682.95, TSUS, which are the products of Korea are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1 (a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

961818

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 0 6 1996

REFER TO

CLA-2-01:S:COM:N1:229-403
818805

Mr. Philippe Caradec
Asst. to the Agricultural Attache
Ambassade de France aux Etats-Unis
4101 Reservoir Road, N.W.
Washington, D.C. 20007-2173

Dear Mr. Caradec:

In your letter of May 12, 1986, on behalf of Cacolac S.A. of Bordeau, France, you inquired about the dutiable status of a chocolate dairy beverage from France.

This chocolate dairy beverage consists by weight of sterilized skim milk (92.1 percent), sugar (6.6 percent), cocoa (1.2 percent), and carrageenan (0.1 percent) as a stabilizer. This beverage is ready to drink and will be packaged either in a snap-top retail tin holding 8.45 fluid ounces or in a retail bottle holding 6.76 fluid ounces.

This chocolate dairy beverage is classifiable under the provision for Chocolate milk drink in item 118.1500, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 2[illegible] percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A13

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 10 1986

REFER TO
CLA-2-04:S:CON:N1:240-402
818806

Mr. Walter Zimmer
J.J. Gavin & Co., Inc.
140 Cedar Street, Suite 2204
New York, NY 10006

Dear Mr. Zimmer:

Your letter of May 16, 1986 concerns the dutiable status of Dinitrosopentamethylenetetramine from Japan.

Dinitrosopentamethylenetetramine is classifiable under the provision for nitrogenous compounds: cyanuric chloride, melamine, and other compounds containing a triazine ring, other, in item 425.1050, Tariff Schedules of the United States. The rate of duty is 3.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

A14

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 02 1986

REFER TO

CLA-2-04:S:COM:N1:239-399
818827

Ms. Cheryl E. Di Josie
E. I. du Pont de Nemours & Company
Concord Plaza - Clayton Building
Wilmington, DE 19898

Dear Ms. Di Josie:

In your letter dated May 13, 1986, you inquired about the dutiable status of sodium styrene sulfonate from Japan.

Sodium styrene sulfonate, which is also known as ethenyl benzene sulfonic acid sodium salt, is used in the production of acrylic fiber.

Sodium styrene sulfonate is classifiable under the provision for other benzenoid hydrocarbon derivatives in item 403.1200, Tariff Schedules of the United States Annotated, and dutiable at the rate of 1.7 cents per pound plus 15.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B1

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 0 3 1986

REFER TO

CLA-2-07:S:COM:N3G:341
818841

Mr. Mike Babcock
1366 W. 700 South
Salt Lake City, Utah 84104

Dear Mr. Babcock:

In your letter dated May 14, 1986, you inquired about the dutiable status of a PVC picnic bag, the Sportsoft Cooler, from Korea.

Sample submitted is composed of PVC and measures approximately 12.5 inches by 21 inches. There is a nylon coil zipper closure running along the top front and side panels. Affixed to all sides are woven nylon adjustable straps for easy carrying. Imprinted on the top of the bag is the name "Sportsoft Cooler." Furthermore, it is described as being "constructed from a waterproof, super-resilient material," which is well-insulated and collapsible for convenient storage purposes.

You claim that your product is designed for food only and should not be considered a carrying bag for personal effects. It is to be noted that your advertisement shows both food and beverages within the bag.

One can ascertain Congressional intent through the Tariff Classification Study which reads: "The luggage and handbags covered here may be fitted with bottle, dining, drinking, manicure, sewing, traveling or similar sets of a type used for convenience while traveling..." Thus, in the case of Prepac Inc. v. United States, 78 Cust. Ct. 108, C.D. 4694 (1977), the court stated "it is clear that the intent in enacting this provision was to encompass such travel goods as are primarily used for travel which are utilized for food and beverages." Therefore, this office feels that the PVC picnic bag is primarily for the convenience of the traveler to carry food and beverages when traveling.

The Sportsoft Cooler is classifiable under the provision for luggage, of other materials, other, in item 706.6245, Tariff Schedules of the United States, and dutiable at the rate of 20 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

168818

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 10 1986

REFER TO

CLA-2-04:S:COM:N1:239-412
818870

Mr. David Duenwald
Ishihara Corporation (U.S.A.)
600 Montgomery Street
San Francisco, CA 94111

Dear Mr. Duenwald:

Your letter of May 14, 1986 concerns the dutiable status of 5-chloro-2-nitroaniline from Japan.

5-chloro-2-nitroaniline is classifiable under the provision for other benzenoid amines and their derivatives in item 404.9000, Tariff Schedules of the United States Annotated. The rate of duty is 13.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

BY

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 16 1986

REFER TO

CLA-2-04:S:COM:N1:240-141
818871

Mr. Andrew Knox
DSM, Sales Office Rubber
Post Office Box 43 6130 AA
Sittard, Netherlands

Dear Mr. Knox:

Although our letter of January 2, 1986 requested additional information and dumbell specimens regarding Kelrinal CM rubber, the data you sent with your letter of May 12, 1986 relates to a Kelrinal VP 17 from the Netherlands. Therefore, we cannot issue a tariff classification ruling covering the Kelrinal CM rubber until the information regarding this product is submitted.

However, the technical information and dumbell specimens covering Kelrinal VP 17 were forwarded to our laboratory. The analysis indicates that this product falls within the tariff definition of rubber, and is classifiable under the provision for synthetic rubber in item 446.1557, Tariff Schedules of the United States Annotated. The rate of duty is 0.4 percent ad valorem.

With respect to Kelrinal VP 17, this is a ruling letter issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

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B5

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 07 1986

REFER TO

CLA-2-07:S:COM:N3H:354
818895

Ms. Nadia M. Wechsler
InterMatrix Incorporated
44 Post Road West
Westport, CT 06880

Dear Ms. Wechsler:

Your letter of May 22, 1986 requested this office to rule upon the tariff classification of a glove from Thailand.

The submitted sample is a vinyl work glove which has a seamed cotton liner.

The procedure generally used in manufacturing this glove is by a dipping process in which the cotton liner is dipped into a polyvinyl chloride plastic solution resulting in a cotton interior and a plastic exterior.

Accordingly, the subject sample glove is classifiable under the provision for gloves of plastics, other (other than seamless) — in item 705.8600, TSUSA. The rate of duty is 16.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 27 1986

REFER TO

CLA-2-07:S:COM:N3G:341
818979

Mr. Raleigh C. Perry
Raleigh Perry and Associates, Inc.
3963 Magnolia Lane
Buford, GA 30518

Dear Mr. Perry:

In your letter dated May 27, 1986, you inquired about the dutiable status of electronic instrument cases, styles Ramm, Unicom, and Clydesdale from Canada.

You have submitted several pictures depicting various hard shell carrying and transporting cases for different types of merchandise including video cameras, video recorders, audio-visual products and other similar electronic equipment.

In general, the cases appear to be differentiated in terms of overall size and slight constructional and compositional features.

The light duty, style Ramm, to medium-light duty, style Unicom, carrying cases consist basically of the following specifications:

1) P.V.C. edge moulding fastened with split rivets;
2) plated steel surface mount handles;
3) plated steel corners and corner clamps;
4) A.B.S. Plastic laminated to 1/4" plywood;
5) serialized nameplates;
6) standard 1" polyester foam lining.

The medium to heavy duty carrying cases, style Clydesdale, consist basically of the following specifications:

1) positive locking aluminum "tongue and groove" valence;
2) custom extruded aluminum "double edge" corner moulding;
3) plated steel handles and catches;
4) zinc plated steel corners and corner clamps;
5) A.B.S. Plastic or natural finish, embossed aluminum to 1/4" plywood;
6) serialized nameplates;
7) standard 1" polyester foam lining.

You have stated that your merchandise should not be considered luggage since it is not sold for any personal end use but rather to commercial, industrial, educational and similar markets for the purposes of protection, storage and transportation of the above mentioned equipment.

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Schedule 7, Part 1, Subpart D, Headnote 2, TSUS, provides that "For the purposes of the tariff schedules (a) the term 'luggage' covers — (ii) brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', sample, etcetera), and like containers and cases designed to be carried with the person."

This office feels the instant merchandise is ejusdem generis with the items enumerated in subsection (ii). In essence, ejusdem generis means that when general words in a statute follow a specific enumeration of persons or things, the general words are not to be construed in their widest sense or meaning, but rather are to be limited, or held to apply, only to persons or things of the same kind or class as those specifically enumerated.

The term "luggage" was discussed in Adolco Trading Co. and Adolco Trading Corp. v. United States, 71 Cust. Ct. 149, C.D. 4487 (1973). With respect to the items listed in Headnote 2(a) (ii), the court observed as follows:

> The exemplars in subsection (ii) are containers or cases designed to hold specific items which give them their names: brief cases to hold papers, school bags to hold school articles, golf bags to hold golf equipment, gun cases to hold guns, camera cases to hold cameras, etcetera.

Upon reviewing the data submitted, it appears that the electronic instrument cases are of the same kind or class as those specifically enumerated articles preceding the words "like containers and cases." The electronic instrument cases are designed to hold items which gives the cases their names. Therefore, the electronic instrument cases are "like containers and cases" within the meaning of the headnote.

In addition, you have suggested the classification of item number 726.0500, TSUS, since these cases can be designed so as to protect musical instruments. The items shown do not appear to be dedicated for use with any specific instrument, but rather do appear to be carrying cases designed to protect the contents during travel.

The electronic instrument cases, style Ramm, Unicom, and Clydesdale are classifiable under the provision for luggage, of other material, other, in item 706.6245, Tariff Schedules of the United States, and dutiable at the rate of 20 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

818979

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If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

818979

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

57

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 23 1986

REFER TO

CLA-2-04:S:COM:N1:239-445
819007

Mr. Edmund J. Corboy
Austin Chemical Company Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631

Dear Mr. Corboy:

Your letter of May 27, 1986 concerns the dutiable status of (R,S)-6-fluorospiro(chroman-4,4'-imidazoline) 2',5' dione from Japan.

(R,S)-6-fluorospiro (chroman-4,4'-imidazoline) 2',5' dione, which you say is used as an intermediate to manufacture a drug, is classifiable under the provision for other benzenoid heterocyclic compounds in item 406.4200, Tariff Schedules of the United States Annotated. The rate of duty is 13.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B10

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

REFER TO

JUL 16 1986
CLA-2-04:S:COM:N1:240-439
819017

Ms. Joan M. Stiefel
Stiefel Laboratories, Inc.
2801 Ponce De Leon Boulevard
Coral Gables, FL 33134-6988

Dear Ms. Stiefel:

In your letter dated May 28, 1986, you inquired about the dutiable status of Tencab from the Cayman Islands. A sample was submitted to this office.

The analysis by our laboratory indicates that Tencab is a formulated product consisting essentially of a non-benzenoid surface active agent, fatty alcohols, water corn starch, paraffin oil and inorganic salts. The product is used as a surface active agent in the manufacture of a therapeutic cleansing bar.

Tencab is classifiable under the provision for surface active agents, anionic surface active agents, other, in item 465.9530, Tariff Schedules of the United States Annotated, dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Raish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 22 1986

REFER TO

CLA-2-07:S:CO:N3D:225
819018

Ms. Olga Padilla
R.L. Jones Tecate, Inc.
P.O. Box 970
Tecate, CA 92080

Dear Ms. Padilla:

In your letter of May 31, 1986, you requested the tariff classification of various products from Mexico on behalf of your client Design Models, Inc.

Your inquiry concerns the classification of topographic scale contour maps, architectural models of office buildings, apartment and condominium complexes and acrylic fabrication of articles. Pursuant to a telephone conversation with you on June 19, 1986 with NIS Stephanie Joseph, it was confirmed that you did not supply sufficient product information on the architectural models nor on the acrylic fabrication of articles, to give you a proper classification. It was confirmed that you will supply the needed information for proper tariff classification at a future date on another ruling request letter.

The topographic contour map is cut from rigid urethane foam which is machined into a three dimensional contoured surface. You contend that the article is properly classified under the provision for models of inventions and of other improvements in the arts, to be used exclusively as models, in item 737.05, TSUS. This provision is only applicable to models which are exclusively used as prototypes for the purpose of constructing the actual articles. Moreover, the prototype must feature a final design representing an invention or other improvement in the art of whatever the prototype represents. Topographic maps are not applicable under this model provision.

Topographic urethane foam geographical contour "map" is classifiable under the provision for expanded, foamed, or sponge rubber or plastics, and articles not specially provided for wholly or almost wholly of such rubber or plastics: not flexible in item 770.30, Tariff Schedules of the United States, and dutiable at the rate of 5.7 percent ad valorem.

Articles classifiable under item 770.30, TSUS, which are the products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

This ruling is being issued under the provisions of Sectl n 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Saish
Area Director
New York Seaport

810618

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

B13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 14 1986

REFER TO

CLA-2-04:S:COM:N1:240-438
819042

Mr. Paul Curry
Anthony Williams, Inc.
6466 City West Parkway
Eden Prairie, Minnesota 55344

Dear Mr. Curry:

Your letter of May 23, 1986 concerns the dutiable status of soap in the form of fishes, ducks, butterflies and other animals from Switzerland. Samples and a brochure were submitted for our review.

The soap in the form of animals is classifiable under the provision for toilet soap, valued over 20 cents per pound, in item 466.1500, Tariff Schedules of the United States Annotated. The rate of duty is 0.5 cent per pound plus 3.8 percent ad valorem. This rate of duty has been temporarily reduced to 0.4 cent per pound plus 2.9 percent ad valorem under item 947.26 (part 2, Appendix to the Tariff Schedules and general headnote 3(d)(ii)).

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 25 1986

REFER TO
CLA-2-04:S:COM:N1:240-453
819083

Mr. Ray Cahill
Concepts International, Inc.
425 N. Michigan Avenue
Suite 920
Chicago, IL. 60611

Dear Mr. Cahill:

Your letter of June 3, 1986 concerns the dutiable status of a compact containing cosmetics, a color pencil and applicators from Taiwan. A sample of the compact was submitted for our review.

The plastic compact, 4-1/4 inches by 3-1/2 inches and 1/2 inch deep, contains various shades of eye shadow, blush-on and lipstick, as well as a color pencil and two applicators for the eye shadow and lipstick. The compact comes with a "velvet" pouch.

The compact with its pouch and the cosmetics, including the color pencil, are classifiable under the provision for cosmetic and other toilet preparations, not containing alcohol, in item 461.4030, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 5.2 percent ad valorem.

One applicator, a brush, believed to be of natural hair and over 10¢ each, is classifiable under the provision for artists' brushes and hair pencils, in item 750.6000, TSUSA, with a rate of duty of 3.2 percent ad valorem. The second applicator is a combination toilet article which has a brush on one end and a plastic applicator on the other end. This item is classifiable under the provision for combination toilet articles which contain combs, brushes, or combs and brushes, as integral parts, in item 750.7500, TSUSA, with a rate of duty of 6.7 percent ad valorem.

Articles classifiable under items 461.4030, 750.6000, & 750.7500, TSUSA, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Cosmetics are subject to the regulations and requirements of the Food and Drug Administration (FDA), and any questions you may have should be addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443-3370.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

819083

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

C2

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 28 1986

REFER TO
CLA-2-04:S:COM:N1:236-454
819088

Mr. S. Richard Shostak
Stein, Shostak, Shostak, and O'Hara
3580 Wilshire Blvd. Suite 1240
Los Angeles, California 90010-2597

Dear Mr. Shostak:

In your letter of June 7, 1986, you inquired on behalf of your client, Formulabs, Inc. about the tariff classification of "Wire-Coding Ink" from Mexico.

The prospective import is used to print or mark on insulated wire and cable. This printing includes legends, numbers, longitudinal stripes, hashmarks, and simulated bandmarks. The printing process is caused by direct contact of the insulated wire or cable with an engraved printing wheel. This printing wheel, identified as an "Intaglio Engraved Marking Wheel" results in a gravure printing process utilizing special printing machines that support the wheel, extrudes the substrate (insulated wire) and holds the ink.

"Wire-Coding Inks" having a pigment (dye), binder, solvent, etcetera, utilizing printing wheels are classifiable under the provision for ink and ink powders, other, in item 474.2620, Tariff Schedules of the United States, and are dutiable at the rate of 1.8 percent ad valorem.

Articles classifiable under item 474.2620, TSUS, which are the products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 17 1986

REFER TO

CLA-2-07:S:COM:N3G:341
819105

Ms. Pat Johnson
P & J Associates, Inc.
1055 West Baseline #2020
Mesa, AZ 85202

Dear Ms. Johnson:

In your letter dated June 4, 1986, you inquired about the dutiable status of a PVC inflatable ice chest from Taiwan.

The sample that was previously submitted is stated to be an inflatable ice chest of 18 gauge PVC and measured approximately 12 inches by 12 inches by 18 inches. There was a textile coil zipper closure running along the top and removeable woven double handle straps. It was advertised as a lightweight, durable bag utilized for holding your favorite beverage and rugged enough to take anywhere.

You claim that the item's sole purpose is to keep the beverages cold and is in no way to be used as a picnic bag. Since you feel the luggage provision is not applicable, you suggest the merchandise in question be classified under the provision for pneumatic mattresses and other inflatable articles not specially provided for, in item 790.3900, TSUS.

Although you claim its sole purpose is for keeping the beverages cold, it is also stated to be sturdy enough for travel purposes. In addition, to be classified under 790.3900, TSUS, it cannot be specially provided for elsewhere in the tariff.

As previously noted, it was Congressional intent, through the Tariff Classification Study, that the luggage and handbags covered in the tariff "may be fitted with bottle, dining, drinking, manicure, sewing, traveling or similar sets of a type used for convenience while traveling..." In the case of Prepac Inc. v. United States, 78 Cust. CT.108,C.D. 4694 (1977), the court stated "it was clear that the intent in enacting this provision was to encompass such travel goods as are primarily used for travel which are utilized for food and beverages".

This office feels the instant merchandise is more comparable to the above ruled upon picnic bags. Its stated purpose is in fact subordinate to its primary function of conveniently carrying food and beverages when traveling.

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Since it is more specially provided for than other inflatable articles under 790.3900, TSUS, the PVC ice chest is classifiable under the provision for luggage, of other material, other, in item 706.6245, Tariff Schedules of the United States, and dutiable at the rate of 20 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Raish
Area Director
New York Seaport

501918

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 18 1986

REFER TO
CLA-2-04:S:COM:N1:239-457
819108

Ms. Dorthy Washenko
CIBA-GEIGY Corp
Ardsley, NY 10503

Dear Ms. Washenko:

In your letter dated June 5, 1986, you inquired about the dutiable status of Hardener HY 2959 from Switzerland.

Hardener HY 2959, a hardener for epoxy resins, is a mixture of Euredur 370, bisphenol-A and N-aminoethylpiperazine. Euredur 370 is a reaction product between a fatty ester and a polyalkylamine.

Hardener HY 2959 is classifiable under the provision for mixtures in whole or in part of any of the products provided for in Schedule, 4 part 1, Subpart B in item 407.1910, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. Based on the bisphenol-A, which is dutiable under item 403.4900, TSUSA, the rate of duty would be 1.7 cents per pound plus 13.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 02 1986

REFER TO
CLA-2-04:S:COM:N1:235-460
819116

Mr. R.N. Plooyer, President
American Nafta Corporation
721 Walnut Avenue
P.O. Box 1363
Barrington Il. 60001

Dear Mr. Plooyer:

In your letter dated June 5,1986, you inquired about the dutiable status of a butylene/butane mix from West Germany.

Accordng to your letter you believe that since all the components of the mixture are individually free of duty, that the mixture will also be free. Unfortunately we cannot agree.

Such a mixture is classifiable under the provision for mixtures of two or more organic compounds in whole or in part of hydrocarbons derived in whole or part from petroleum, shale oil or natural gas in item 430.10, Tariff Schedules of the United States, and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component compound. No compound has an higher rate.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 15 1986

REFER TO

CLA-2-04:S:COM:N1:235-473
819182

Mr. S. A. Mitha, Traffic Manager
Montedison USA Inc.
1114 Avenue of the Americas
New York, NY 10036

Dear Mr. Mitha:

In your letter dated May 29, 1986, you inquired about the dutiable status of various chemical mixtures from Italy.

According to information received from your office these products will be used in conjunction with plastics and rubbers.

Peroximon VR71 when produced from benzenoid sources is classifiable under the provision for compounds which can be benzenoid derived, in item 407.06, Tariff Schedules of the United States, and dutiable at the rate of 13.5 percent ad valorem.

Peroximon VR71 when produced from non benzenoid sources is classifiable under the provision for other organic compounds in item 429.95, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem.

Peroximon BP50 is classifiable under the provision for mixtures, not specially provided for in item 407.19, Tariff Schedules of the United States, and dutiable at the rate of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be benzoyl peroxide classifiable under item 403.65. Tariff Schedules of the United States, and dutiable at the rate of 20.7 percent ad valorem.

Peroxin DH is classifiable under the provision for benzenoid mixtures in item 407.19, Tariff Schedules of the United States, and dutiable at the rate of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be diisopropyl benzene hydroperoxide classifiable under item 403.65, Tariff Schedules of the United States, and dutiable at the rate of 20.7 percent ad valorem.

Retilox F and Peroximon CH are classifiable under the provision for other benzenoid peroxides of alcohols in item 403.65, Tariff Schedules of the United States, and dutiable at the rate 20.7 percent ad valorem.

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Peroximon K1, and K2 are classifiable under the provision for benzenoid mixtures in item 413.54, Tariff Schedules of the United States, and dutiable at the rate of 11.9 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be dimethyl phthalate classifiable under item 409.34, Tariff Schedules of the United States, and dutiable at the rate of 0.3 cents per pound plus 17.7 percent ad valorem.

Peroximon S163, peroximon S164 and Peroximon S165 are classifiable under the provision for benzenoid mixtures in item 413.54, Tariff Schedules of the United States, and dutiable at the rate of 11.9 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be a benzenoid plasticizer (ester of pthalic acid type) classifiable under item 409.34, Tariff Schedules of the United States, and dutiable at the rate of 0.3 cents per pound plus 17.7 percent ad valorem.

In order to classify peroximon K3 and K4, we require the complete chemical name or structure, using Chemical Abstract Service terminology, for the non-benzenoid alkyl ketones present in both products.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Bair
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

819182

C9

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 27 1986

REFER TO
CLA-2-04:S:COM:N1:240-472
819192

Mr. David Lavi
1034 17th Street, #103
Santa Monica, Ca. 90403

Dear Mr. Lavi:

Your letter of June 8, 1986 concerns the dutiable status of 33 brands of European perfumes, colognes and toilet water from Panama.

All of the 33 different perfumes, colognes and toilet waters you have listed in your letter bear trade-names or trademarks which have been registered with the U.S. Patent Office, many of which have also been recorded with the United States Customs Service. Accordingly, there may be some restrictions on the importation of some of these products. Since you have written to the Entry, Licensing and Restricted Merchandise Section, Customs Headquarters, Washington, D.C., that office will advise you regarding the matter of registered and recorded trademarks and trade-names as it relates to importations of cosmetic products from Panama and elsewhere.

Regarding your request for a tariff classification ruling covering perfumes, colognes and toilet waters, these type products are classifiable under the provision for perfumes, colognes, and toilet waters: not containing alcohol, in item 461.3000, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 5.3 percent ad valorem. When containing alcohol, these products are classifiable in item 461.3500, TSUSA, dutiable at the rate of 1 cent per pound, plus 5.3 percent ad valorem. In addition, perfumes containing alcohol are subject to a Federal Excise Tax (26 U.S.C. 5001) of $12.50 per wine gallon, and a proportionate tax at the like rate on all fractional parts of such wine gallon.

Since the perfumes, colognes and toilet water which you contemplate importing are not the products of Panama, they are not entitled to duty free treatment under the Generalized System of Preferences (GSP).

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 02 1986

REFER TO

CLA-2-04:S:COM:N1:238-480
819197

Ms. Kim Walton
Panalpina Airfreight Inc.
P.O. Box 61014
Dallas/Ft. Worth Airport, TX. 75261

Dear Ms. Walton:

In your letter dated June 11, 1986, on behalf of Boots Pharmaceutical, you inquired about the dutiable status of "Prothiaden" from England.

"Prothiaden" is a benzenoid derived antidepressant drug, and is classifiable under the provision for benzenoid antidepressant drugs, other, in item 412.3600, Tariff Schedules of the United States Annotated, and dutiable at the rate of 16.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

C12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
AUG 12 1986

REFER TO

CLA-2-01:S:COM:N1E:229-484
819241

Miss Reina Gil De Karam
Reira Import - Export of Canada Ltd.
5940 Boul. Des Grandes Prairies
St. Leonard, Quebec, Canada H2P 1A4

Dear Miss Gil De Karam:

In your letter dated June 11, 1986, you inquired about the dutiable status of two soft margarines from Canada.

Samples of these two soft margarines, labels LACTANTIA and LACTANTIA "Garlic flavor," were forwarded with your inquiry. LACTANTIA is comprised, by weight, of soya oil (about 80.2 percent) and moisture (about 16.4 percent), with the remaining ingredients consisting of non-fat milk solids, salt, monoglycerides, soya lecithin, potassium sorbate, lactic cultures, color, B.H.A.-B.H.T., Vitamin A Palmitate, and Vitamin D. LACTANTIA with Garlic flavor contains, as flavoring ingredients, white wine, garlic oil, dry garlic, parsley, and red pepper. The two samples were packaged in retail plastic tubs of 250 grams and 454 grams.

LACTANTIA and LACTANTIA with Garlic flavor are classifiable under the provision for oleomargarine and butter substitutes in item 116.3040, Tariff Schedules of the United States, and dutiable at the rate of 7 cents per pound.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C13

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 14 1986

REFER TO
CLA-2-1:S:COM:N1E:228-489
819262

Mr. Roger Bonazzi
Comobar Inc.
2301 Collins Avenue, Suite 300
Miami Beach, FL 33139

Dear Mr. Bonazzi:

In your letters dated June 13, 1986 and June 23, 1986, you inquired about the dutiable status of a sugarless cappuccino mix from France and Italy.

Ingredient breakdowns accompanied both letters. Two samples, submitted with your June 13 letter, were examined and disposed of. The mixture consists of instant skimmed milk powder (80 percent by weight), instant soluble coffee (16 percent), and "chocolate in powder" (4 percent). The cost figures you have submitted indicate the instant soluble coffee is the component material in chief value. The product may be imported in 25 kilogram bags, for repackaging in the United States, or in 10 gram, ready to use packages.

The cappuccino mixture in 25 kilogram bags is classifiable under the provision for edible preparations not specially provided for...other, in item 183.0040, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 10 percent ad valorem, and subject to quota restrictions in item 950.19, TSUS.

The cappuccino mixture in 10 gram, ready to use packets, is classifiable under the provision for edible preparations not specially provided for...other ...other, in item 183.0520, TSUSA, and dutiable at the rate of 10 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

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REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

Aug 15 1986

REFER TO

CLA-2-07:S:CON:N3:224
819285

Mr. Joel K. Simon
Serko, Simon & Abbey
Counsellors at Law
One World Trade Center, Suite 3371
New York, NY 10048

Dear Mr. Simon:

In your letter dated June 19, 1986, on behalf of your client, Russ Berrie and Company, you inquired about the dutiable status of a stuffed teddy bear in a metal can from China.

The sample submitted with your inquiry is a soft plush textile representation of a bear labelled item number 245 and measuring approximately 4 inches in height. The figure has a plastic nose and eyes attached to the face and a textile ribbon tied around the neck. The bear is fully stuffed with textile clippings. The figure will be imported inside a cylindrical metal canister labelled item number 4908 that will be manufactured in Hong Kong. The can is composed of tin coated iron sheets and measures approximately 3 3/4 inches high, including its lid, and 3 1/2 inches in diameter. The metal can is not considered a usual type of container ordinarily sold at retail with its contents; the bear and metal container are classified separately.

You state the can should be classified under tariff item 657.15, the provision for articles of tin plate not specially provided for. The canister has a utilitarian function; it is generally used to store various objects in one's household. The can is not classified under tariff item 657.15 because it is more specifically provided for elsewhere in the tariff schedules.

The teddy bear, item number 245, is a fully distended, amusing depiction of an animal. Accordingly, it is classifiable under the provision for toy figures of animate objects (except dolls), not having a spring mechanism, stuffed and valued not over 10 cents per inch of height, in item 737.2800, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 13.3 percent ad valorem. If the figure is valued over 10 cents per inch of height, the bear is classifiable under the provision for toy figures of animate objects (except dolls), not having a spring mechanism, stuffed and valued over 10 cents per inch of height, in item 737.3000, TSUSA, and dutiable at the rate of 5.9 percent ad valorem.

The metal can, item number 4908, is classifiable under the provision for articles not specially provided for of a type used for

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household, table or kitchen use, of tin plate, in item 653.9000, TSUSA, and dutiable at the rate of 3.2 percent ad valorem.

Articles classifiable under item 653.9000, TSUSA, which are the products of Hong Kong are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

819285

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 18 1986

REFER TO
CLA-2-04:S:CON:N1:236-496
819295

Mr. Michael J. Goldman
G.S. International, Inc.
70 Walnut Street
Wellesley, Maine 02181

Dear Mr. Goldman:

In your letter of June 20, 1986, you asked for information about the tariff status of "micro-nutrients" (metal chelating agents) from France.

You suggested that these micronutrients (chelates) be classified as fertilizer under item number 480.6560, Tariff Schedules of the United States, TSUS, since they will be used as micronutrient fertili[illegible]. Classification under item 480.65 requires that the importe[illegible]ticle be used chiefly for fertilizers, or chiefly as an ingredi[illegible] in the manufacture of fertilizers.

A tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined.

Chelating agents are used in the fields of analytical chemistry, plant and animal nutrition, medicinal chemistry, the separation of metals, purification of natural products, detergents, metal cleaning, scale removal, etcetera.

Your inquiry does not provide enough information for us to issue a tariff classification ruling. Requests for rulings must be submitted in accordance with Part 177, Customs Regulations. Your request for a classification ruling should include evidence of chief use.

If the subject chelating agents (FeEDTA), (ZnEDTA), (MnEDTA), (MgEDTA), and (CuEDTA) are Chiefly used as micronutrients in agriculture, they would probably be classified under the provision for nitrogenous fertilizers and fertilizer materials in item 480.6560, TSUS, and would be free of duty.

If chief use cannot be established, the above metal chelates would probably be classified under the provision for other nitrogenous compounds in item 425.5290, TSUS, with duty at the rate of 7.9 percent ad valorem.

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If you require further assistance regarding the requirements of Part 177, Customs Regulations, please contact National Import Specialist G. Brownchweig, telephone number (212) 466-5744.

This is an information letter, issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

Sincerely,

Peter J. Baish
Area Director
New York Seaport

819295

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JUL 30 1986

REFER TO

CLA-2-01:S:COM:N1E:232-507
819321

Mr. Roman E. Longoria, Jr.
International Consulting
1418 Beach, Suite 122
The Village by La Posada,
P.O. Box 578
McAllen, Texas 78502

Dear Mr. Longoria:

In your letter of June 18, 1986, you requested the tariff classification of two peanut confectionery products from Mexico.

The first product is "Palanqueta de Cacahuate" or peanut brittle bar. It is an individually wrapped 30 gram (1.06 ounce) bar measuring approximately four inches long by one and a half inches wide by three eighths of an inch thick. This product is essentially composed of roasted peanuts encased in a butterscotch flavored hard sugar candy.

The second product is sugared peanuts. These are individual roasted peanuts which have been given a thin coating of vanilla flavored caramelized sugar. The finished product will be imported in a vacuum packed transparent shrink plastic container which holds 125 grams (4.4 ounces) of this confection.

Both of these products are classifiable under the provision for candy and other confectionery, not specially provided for, in item 157.1005, Tariff Schedules of the United States, and dutiable at the rate of 7 percent ad valorem.

Articles classifiable under item 157.1005, TSUS, which are the products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. Such articles are not subject to any quota restrictions.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the

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documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Raish
Area Director
New York Seaport

819321

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D6

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 22 1986

REFER TO

CLA-2-07:S:COM:N3G:341
819343

Mr. Michael R. Toole
Arthur J. Fritz & Co.
40 Exchange Place
New York, NY 10005

Dear Mr. Toole:

In your letter dated June 25, 1986, on behalf of Atlantic Display Corporation, you inquired about the dutiable status of a rattan picnic basket from the People's Republic of China.

The sample submitted, composed of rattan, measures approximately 15 inches by 15 inches by 8 inches. It has a 31 inch double handle which is wrapped with rattan over a metal base covered with plastic. Its top and bottom interior are lined with textile covered with a clear see through plastic sheeting. Along its interior top portion, there are four open compartments and above them are priated "Bella Bella - Bell' agio."

One can ascertain Congressional intent through the Tariff Classification Study which reads: "The luggage and handbags covered here may be fitted with bottle, dining, drinking, manicure, sewing, traveling or similar sets of a type used for convenience while traveling ..." Thus, in the case of Prepac Inc. v. United States, 78 Cust. Ct. 108, C.D. 4694 (1977), the court stated "it is clear that the intent in enacting this provision was to encompass such travel goods as are primarily used for travel which are utilized for food and beverages." Therefore, this office feels that the PVC picnic bag is primarily for the convenience of the traveler to carry food and beverages when traveling.

The rattan picnic basket is classifiable under the provision for luggage, of unspun fibrous vegetable materials, of rattan or of palm leaf, other, in item 706.2100, Tariff Schedules of the United States, and dutiable at the rate of 18.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

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If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Raish
Area Director
New York Seaport

819343

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D8

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 12 1986

REFER TO
CLA-2-04:S:COM:NI:239-520
819392

Mr. Christopher M. Lord
World Commerce Forwarding Inc.
15935 Morales
Houston, Texas 77032

Dear Mr. Lord:

In your letter dated June 25, 1986, written on behalf of your client, Isotech, you inquired about the dutiable status of Tedimon 31 from Italy.

Tedimon 31 is polymethylene polyphenyl isocyanate. Your technical data indicates the product is used in the production of rigid polyurethane foams.

Tedimon 31 is classifiable under the provision for other benzenoid compounds with other nitrogen functions in item 405.8000, Tariff Schedules of the United States Annotated, and dutiable at the rate of 1.3 cents per pound plus 16.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

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REPLY TO AREA DIRECTOR OF CUSTOMS NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 18 1986

REFER TO
FILE: CLA 2-04:S:COM:N1:239-524
819398

Mr. William H. Chambless
Allco Chemical Corp.
P.O. Box 6200 B
Pittsburg, Kansas 66762

Dear Mr. Chambless:

In your letter of June 19, 1986, you inquired about the dutiable status of BTDA and PMDA from Japan.

BTDA is 3,3', 4,4' - benzophenonetetracarboxylic dianhydride. PMDA is benzene - 1,2,4,5 tetracarboxylic dianhydride. You state that these products are specialty chemicals that are used to make high temperature plastic and plastic composites.

BTDA is classified under the provision for other single or complex oxygen-function carboxylic acids and their anhydrides in item 404.4600, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 1.7 cents per pound plus 17.9 percent ad valorem.

PMDA is classified under the provision for other polycarboxlic acids and their anhydrides in item 404.3700, TSUSA. The rate of duty is 20.4 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D10

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

REFER TO

AUG 15 1986

CLA-2-04:S:COM:N1:238-535
819438

Mr. J.F. Bell
Le Thermogene
176 Rue del' Arbrisseau 5900 Lille

Dear Mr. Bell:

In your letter dated June 23, 1986, you inquired about the dutiable status of two pharmaceutical products from France. The samples as submitted are not marked in compliance with the marking regulations of the United States.

The sample marked "Le Thermogene" balm consists of a collapsible metal squeeze tube containing a formulated ointment. The ointment consists of capsicum extract, glycol salicylate (a benzenoid drug) and excipients. This product is used as a counterirritant and antirheumatic for muscular pain, upper respiratory conditions, arthritis, etc.

"Le Thermogene" balm is classifiable under the provision for benzenoid drugs, other in item 412.7000, Tariff Schedules of the United States, and dutiable at the rate of 6.9 percent ad valorem.

The sample marked "Le Thermogene" quate (cotton/wool) is a woven cotton bandage that is impregnated with the medicinal capsicum extract.

"Le Thermogene" quate is classifiable under the provision for bandages impregnated with a medicinal in item 495.0500, Tariff Schedules of the United States, and dutiable at the rate of 2.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

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These products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 443-3380.

As a foreign supplier of goods to the United States you may be interested in obtaining the following publication. Importing into the United States, for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The cost is $5.50.

Sincerely,

Area Director
New York Seaport

819438

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

D12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 13 1986

REFER TO
CLA-2-03:S:COM:N3G:345
819465

Mr. Harold Alden
President
Brentwood Originals
P.O. Box 6272
Carson, CA. 90749

Dear Mr. Alden:

In your letter dated June 27, 1986, you inquired about the dutiable status of an unstuffed acrylic pile animal face from either China or Taiwan.

The submitted sample is a round unstuffed animal face composed of an acrylic fabric of pile construction. It measures approximately 16-inches in diameter with the facial features of a cat distinguishable by different colored yarns and a felt tongue. It has a botton slit and a sewn-on pouch on its back, approximately 9-inches by 9-inches, for storage purposes. It will be imported in its unstuffed condition and then filled in the United States with man-made fibers and the bottom slit sewn shut.

You believe the unstuffed animal face is classifiable under the provision for toy figures of animate objects, not having a spring mechanism, not stuffed, other, in item 737.4000, Tariff Schedules of the United States Annotated (TSUSA), dutiable at 8.3 percent ad valorem. This item is precluded from such provision since it is not chiefly used for the amusement of children or adults.

Accordingly, the unstuffed acrylic pile animal face is classifiable under the provision for articles not specially provided for, of textile materials, of man-made fibers, pile or tufted construction, in item 389.5000, TSUSA, and dutiable at the rate of 2 cents per pound plus 13.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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D13

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

819465

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D14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 22 1986

REFER TO
CLA-2-07:S:COM:N1:111-871
819498

Mr. Lee T. Ptasnik
Mine and Process Service, Inc.
P.O. Box 484
Kewanee, IL 61443

Dear Mr. Ptasnik:

In your letter dated June 26, 1986, you inquired about the dutiable status of a gamma coal thickness indication system from England.

The system consists of a gamma probe, a coal thickness indicator unit, a remote indicator unit, a power supply, a survey unit, and a probe simulator. The system determines the distance to the roof or the floor of a coal seam by measuring the strength of the natural gamma radiation from the rock and shale above or below the seam. The indicator unit provides analog and digital outputs which can be used to indicate the thickness of the seam or to control a digging machine. However, none of the digging machine controls are included in the system.

The system is classifiable under the provision for instruments and apparatus for measuring or detecting gamma radiation, in item 712.1510, Tariff Schedules of the United States, and dutiable at the rate of 5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Saish
Area Director
New York Seaport

E1

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

SEP 2 1986

REFER TO

CLA-2-04:S:COM:N1:235-571
819626

Mr. R. N. Plooyer
American Nafta Corp.
721 Walnut Avenue
P.O. Box 1363
Barrington, IL 60010

Dear Mr. Plooyer:

In your letter dated July 7, 1986, you inquired about the dutiable status of a butylene/butane mixture from West Germany.

In our letter to you under number 819116 we indicated that in our opinion the product you requested a ruling on was classifiable as a mixture.

Your current letter indicates that it is your opinion that the product should not be classified as a mixture because of a statement in the headnote to schedule 4 of the Tariff Schedules of the United States. In part it reads that "the presence of impurities which occur naturally does not affect the classification of a compound." That citation was taken from Headnote 2(a)(iii) of the headnote to Schedule 4.

However in headnote 3 (a) the term "mixture" is explained as "substances consisting of two or more ingredients ... whether occuring in nature or whether artificially produced." We agree that minimum amounts of impurities do not affect the classification of a compound. In this instance however the quantity of impurities cannot be disregarded.

We therefore affirm our letter of July 2, 1986 that a butylene/butane mixture is classifiable under the provision for mixtures, not specifically provided for in item 430.10, Tariff Schedules of the United States, and dutiable at the rate of 5 percent ad valorem, but not less than the highest rate applicable to any component material. No component has a higher rate.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

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E2

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

819626

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E3

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 18 1986

REFER TO
CLA-2-04:S:COM:N1:235-574
819651

Mr. A. Nilsson, President
Energy Partner, Inc.
102 N. Cook Street, Suite 27
Barrington, Ill 60010

Dear Mr. Nilsson:

In your letter dated July 10, 1986, you inquired about the dutiable status of cool heat from Sweden.

According to your letter the product is used as a heat barrier in welding applications and is composed of inorganic compounds and water.

Cool heat is classifiable under the provision for mixtures of two or more inorganic chemicals in item 423.96, Tariff Schedules of the United States, and dutiable at the rate of 0.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a) (1) of the Customs Regulations [19 C.F.R 177.1 (a) (1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. if a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E4

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

SEP 2 1986

REFER TO

CLA-2-04:S:COM:N1:235-582
819681

Mr. George W. Cutting
CUMET Corporation
2624 Medford Place
Fullerton, CA 92635

Dear Mr. Cutting:

In your letter dated July 15, 1986, you inquired regarding the tariff classification of various chemicals and metal dusts produced in Italy. These products include zinc dust Zincoptima, zinc dust Zincoptima type G, zinc oxide gold seal, zinc oxide white seal, zinc oxide commercial seal, zinc carbonate, zinc sulfate monohydrate, copper sulfate, antimony trioxide Stibital and antimony trioxide commercial grade. You submitted data sheets on these products with your ruling request.

The data sheets describe zinc dust Zincoptima and zinc dust Zincoptima type G as zinc dust. Therefore, these products are classifiable under the provision for zinc powders and flakes: dust, in item 626.4000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 0.3 cent per pound.

The data sheets describe the zinc oxide gold seal, zinc oxide white seal, zinc oxide green seal and zinc oxide commercial seal as products which contain respectively 99.9 percent, 99.7 percent, 99.7 percent and 96 percent of zinc oxide. These products contain only trace amounts of other substances. The granulometry information submitted indicates that these products are suitable for use as pigments. Furthermore, the information submitted indicates that these products are dry zinc oxides. Therefore, the zinc oxides are classifiable under the provision for pigments: containing zinc: zinc oxide: dry, in item 473.7600, TSUSA, and dutiable at the rate of 0.2 percent ad valorem.

The zinc carbonate is classifiable under the provision for zinc compounds: other, in item 422.7800, TSUSA, and dutiable at the rate of 3.9 percent ad valorem.

The zinc sulfate monohydrate is classifiable under the provision for zinc compounds: sulfate, in item 422.7600, TSUSA, and dutiable at the rate of 1.6 percent ad valorem.

The granulometry figures supplied for the copper sulfate indicate that it is suitable for use as a pigment. The copper sulfate is classifiable under the provision for other pigments: not specially

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provided for: not containing lead, in item 473.8820, TSUSA, and dutiable at the rate of 3.2 percent ad valorem

The literature submitted on the antimony trioxide Stibital indicates that this product contains 99 percent antimony trioxide. The sieve residue information indicates that it is suitable for use as a pigment. Antimony trioxide Stibital is classifiable under the provision for other pigments: not specially provided for: not containing lead, in item 473.8820, TSUSA, and dutiable at the rate of 3.2 percent ad valorem.

With respect to the zinc dust products, the zinc oxides, the zinc carbonate, zinc sulfate monohydrate, copper sulfate and antimony trioxide Stibital, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Regarding the antimony trioxide commercial grade, your ruling request does not provide sufficient information to allow us to issue a tariff classification ruling. Requests for rulings must be submitted in accordance with Part 177, Customs Regulations.

The data sheet submitted on antimony trioxide commercial grade indicates that this product contains 75 percent antimony trioxide; however, none of the other ingredients are listed. Your ruling request should include a list of every ingredient in the antimony trioxide commercial grade and the percentage by weight of each ingredient. You should also submit a four ounce sample of the antimony trioxide commercial grade and information on the manner in which this product is used.

If you require further assistance regarding the requirements of Part 177, Customs Regulations, please contact National Import Specialist Joseph DiMaria, telephone number (212) 466-5769.

Sincerely,

Peter J. Raish
Area Director
New York Seaport

189618

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 05 1986

REPLY TO

CLA-2-01:S:COM:N1E:228-389
819739

Ms. Kathleen M. Jackson
Import Manager
Brokers West
P.O. Box 88336
Seattle, WA 98188

Dear Ms. Jackson:

In your letter dated May 9, 1986, on behalf of Atlantis International, Woodinville WA, you inquired about the dutiable status of food pastes from Italy.

Eight products are described in your letter: onion paste, garlic puree, olive paste, caper paste, red chili paste, mustard, pesto, and anchovy puree. The first seven will be imported in 80 or 90 gram tubes, anchovy puree is packed in a 60 gram tube. Samples of the retail cartons for all products except caper paste were submitted and retained by this office.

Onion paste (made from onions, oil, salt, and natural flavorings), garlic puree (natural garlic, soya-oil, salt, preseratives), and caper paste (capers, salt, preservative) are described as products that may be used in the preparation of food dishes requiring the use of the fresh item. Olive paste (olives with their own oil, salt, preservative, flavoring) is used as a spread on bread or crackers, on pizza, in salads, or as an ingredient in pasta sauce. Red chili paste (chillies, vegetable oil, wine, preservative) may be used as a spread on bread or on crackers, as a seasoning on food, or as an ingredient in food dishes calling for chillies. Pesto (garlic paste, olive oil, pine seeds, salt, sugar, thickening agents) is a pasta seasoning which, when mixed with oil or butter, is applied directly to pasta before serving. Mustard (vinegar, mustard seeds, salt, corn flour, sugar, spices) is applied directly on sandwiches, or used in salads or sauces. Anchovy puree (anchovies, salt, vegetable oil) is used in food dishes calling for anchovies.

Anchovy puree is classifiable under the provision for fish balls, cakes, puddings, pastes, and sauces (including any of such articles in airtight containers), in item 113.0100, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 0.5 percent ad valorem.

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Onion paste is classifiable under the provision for vegetables... otherwise prepared or preserved...onions...other, in item 141.5000, TSUSA, and dutiable at the rate of 7 percent ad valorem.

Garlic puree is classifiable under the provision for vegetables... otherwise prepared or preserved...other, in item 141.9840, TSUSA, and dutiable at the rate of 17.5 percent ad valorem.

Olive paste is classifiable under the provision for fruit pastes... other, in item 152.8840, TSUSA, and dutiable at the rate of 15 percent ad valorem.

Mustard is classifiable under the provision for mustard, ground or prepared...other, in item 161.6000, TSUSA, and dutiable at the rate of two cents per pound.

Caper paste, red chili paste, and pesto pasta seasoning are classifiable under the provision for edible preparations not specially provided for...other, in item 183.0520, TSUSA, and dutiable at the rate of 10 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

819739

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E8

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 13 1986

REFER TO

CLA-2-07:S:CON:N3G:341
819743

Mr. Robert Olsen
Topline Products Co., Inc.
135 Broad Avenue
Palisades Park, NJ 07650

Dear Mr. Olsen:

In your letter dated July 18, 1986, you inquired about the dutiable status of a cosmetic case, style A-1000, from Taiwan.

Submitted to this office is a hinged two-piece plastic cosmetic case measuring approximately 4.75 inches square. Within the interior lid is affixed a mirror while the bottom portion contains varied plastic configured inserts which upon importation will be filled with cosmetic material.

You claim that the instant merchandise is properly classifiable under the provision for containers of rubber or plastics, with or without their closures, chiefly used for the packing, transporting, or marketing of merchandise in item 772.20, TSUS.

Schedule 7, Part 1, Subpart D, Headnote 2(c), TSUS, provides that "For the purposes of the tariff schedules..(c) the term '<u>flat goods</u>' covers small flatwares designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change purses, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles."

It is noted that compacts and powder cases are among the exemplars covered by the term "flat goods" in the above provision. Furthermore, to be classified under item 772.20, TSUS, it must be shown that the cosmetic case is chiefly used in the packing, transporting, or marketing of merchandise. The chief use of an article is that use which exceeds all other uses combined.

This office feels it is more designed to be carried on the person as a "flat good." The term "designed to be carried on the person" has been defined as articles carried in the pocket, in the handbag, or on the person. Therefore, when used by the consumer, the instant merchandise will be used as a compact presumably carried in the purse or handbag.

E7

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Since the cosmetic case, style A-1000, is more designed to be carried on the person, it is classifiable under the provision for flat goods, of other material, in item 706.6100, Tariff Schedules of the United States, and dutiable at the rate of 20 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

Enclosure
Sample to be returned.

819743

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E10

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JUL 02 1986

REFER TO

CLA-2-04:S:COM:N1:235-393
818750

Ms. V. Ebel
Samincorp
110 East 59th Street
New York, NY 100223

Dear Ms. Ebel:

In your letter dated May 13, 1986, you inquired about the dutiable status of various chemicals from South Africa.

According to the information contained in your letter these products are to be used as frothers in complex ore treatment. Further by your telephone conversation we are assuming that 1, 3, 5 alkoxy substituted trioxane has only one functional group, and that the alkyl ammonium polymeric compound is not capable of being molded or shaped by flow at some stage during processing and that it is not derived from a fatty substance.

Based on these facts Senforth 38, 41G, 900 are classifiable under the provision for mixtures of two or more organic compounds in item 430.20, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem, but not less than the highest rate applicable to any component compound. The highest rate applicable is for triethoxy butane classifiable under the provision for ether of a polyhydric alcohol in item 428.47, Tariff Schedules of the United States, and dutiable at the rate of 12.3 percent ad valorem.

Senforth TEB is classifiable under the provision for triethoxy butane in item 428.47, Tariff Schedules of the United States, and dutiable at the rate of 12.3 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Hartuge

John J. Hartuge
Area Director
New York Seaport

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E11

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 12 1986

REFER TO

CLA-2-01:S:COM:N1E:228-598
819765

Ms. Myrna Arce Akerblom
United Industries Inc.
P.O. Box 8011
New York, NY 10150

Dear Ms. Akerblom:

In your letter dated July 23, 1986, you inquired about the dutiable status of toast bread and gingersnap cookies from Sweden.

Samples accompanied your letter, were examined, and disposed of. "Swedish Toast Bread" consists of toasted, oval-shaped slices of bread packed in a 200 gram bag. The stated ingredients are wheat flour, whole wheat flour, sugar, vegetable margarine, yeast, salt, and malt. "Pepparkakor" (Swedish gingersnap cookies) are flat, circular cookies made from wheat flour, sugar, margarine, syrup, milk powder, spices, and baking soda. The samples are packed in a 300 gram bag.

The gingersnap cookies are classifiable under the provision for biscuits, cake, cakes, wafers, and similar baked products, in item 182.2000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 0.4 percent ad valorem.

However, your inquiry does not provide enough information for us to give a classification ruling on the toast bread. Your request for a classification ruling should include a complete, step-by-step description of the manufacturing process.

Based upon the information you submitted, the toast bread would probably be classified under the provision for biscuits, cake, cakes, wafers, and similar baked products, in item 182.2000, TSUSA, with duty at the rate of 0.4 percent ad valorem.

With respect to the gingersnap cookies, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

E12

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK

If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

819765

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 12 1986

REFER TO

CLA-2-01:S:COM:N1E:228-600
819775

Ms. Monique Eldridge
Traffic Manager
Bowes Co. Ltd.
75 Vickers Road
Islington M9B 6B6 Canada

Dear Ms. Eldridge:

In your letter dated July 23, 1986, you inquired about the dutiable status of aseptic processed fruit from Canada.

A description of the aseptic process and an ingredients list accompanied your letter. Two samples of the strawberry product, submitted under separate cover, were examined and disposed of. The products are composed of sugar, fruit (strawberry, raspberry, blueberry, peach, apricot, orange, cherry, or "mixed fruit"), corn syrup, water, pectin, citric acid, and flavor. Examination of the sample reveals a product consisting of large, recognizable strawberry pieces in a thick, free-flowing syrup. In a telephone conversation with National Import Specialist Stanley M. Hopard on August 1, 1986, your firm's Mr. Williamson indicated all fruit varieties will contain large pieces of fruit in a similar solution. The products, imported in 55 pound packages, will be used in dairy products such as ice cream or yogurt.

These aseptic processed fruits are classifiable in the provisions for fruits, otherwise prepared or preserved, as follows:

PRODUCT	TSUSA	RATE OF DUTY
Apricot	146.2400	35 percent ad valorem
Blueberry	146.7900	3.5 percent ad valorem
Raspberry	146.8400	7 percent ad valorem
Strawberry	146.8500	14 percent ad valorem
Cherry	146.9900	7 cents per pound plus 10 percent ad valorem
Orange	147.3160	One cent per pound
Peach	148.7800	20 percent ad valorem

E14

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Mixed Fruit (not containing apricots, citrus fruits, peaches or pears)
150.0200 7 percent ad valorem

Mixed Fruit (containing any of the above noted fruits)
150.0500 17.5 percent ad valorem

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

Peter J. Raish
Area Director
New York Seaport

819775

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 03 1986

REFER TO

CLA-2-04:S:COM:N1:236-605
819792

Mr. Romulo Duenas
Rom's Distributing
P.O. Box 25651
Chicago, Illinois 60625

Dear Mr. Duenas:

In your letter of July 21, 1986, you requested the tariff classification of "Cochineal Carmine, 52% Carminis Acid Code C.I. 75470" from Peru.

The prospective import was tested by the United States Customs Labortatory and reported out as a fine red powder which is a cocineal color lake or pigment.

"Cochineal Carmine, 52% Carminis Acid, Code C.I. 75470" is classifiable under the provision for other pigments in item 473.8820, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 3.2 percent ad valorem.

Articles classifiable under item 473.8820, TSUS, which are the products of Peru are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Peter J. Walsh
Area Director
New York Seaport

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F2

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 1 8 1986

REFER TO

CLA-2-04:S:COM:N1:238-611
819813

Mr. Arthur Tessor
Hoffman LaRoche, Inc.
Nutley, NJ 07110

Dear Mr. Tessor:

In your letter dated July 23, 1986, on behalf of Medi-Physics, you inquired about the dutiable status of a Technetium TC 99 M-Albumin Aggregated kit from Canada.

The kit consists of reaction vials which contain the sterile, non-pyrogenic, non-radioactive ingredients necessary to produce Technetium TC 99M-Albumin for diagnostic lung imaging by intravenous injection. Each 10 ml reaction vial contains albumin aggregated, albumin human, stannous chloride and sodium chloride. The product is in its final dosage form when sterile isotonic sodium pertechnetate solution is added to each vile.

The Technetium TC 99 M Albumin Aggregated kit is classifiable under the provision for other, biological products in item 437.7600 Tariff Schedules of the United States, TSUSA, and is free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

Peter J. Walsh
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F3

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 19 1986

REFER TO
CLA-2-04:S:COM:N1:239-624
819859

Mr. H. G. Hartis
Al-Tex Dyes Co.
P.O. Box 2456
Charlotte, N.C. 28211

Dear Mr. Hartis:

In your letter of June 29, 1986, you requested the tariff classification of seven organic pigments from India.

The following organic pigments are classsified under the provision for other benzenoid toners in item 410.3200, Tariff Schedules of the United States Annotated, (TSUSA), and are dutiable at 21.4 percent ad valorem:

Pigment Red 49:1
Pigment Red 49:2
Pigment Blue 15:3
Pigment Green 7
Pigment Green 36

The other two products, Pigment Blue 15:1 and Pigment Blue 15:2 are classified under the provision for other benzenoid toners in item 410.3400, TSUSA, and are dutiable at 15 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F4

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
SEP 2 1986

REFER TO

CLA-2-04:S:CON:N1:238-621
819864

Mr. Sven-Eric Kroon
Ewos AB
Box 618
S-151 27 Sodertalje, Sweden

Dear Mr. Kroon:

In your letter dated July 23, 1986, you inquired about the dutiable status of "Clampdown" from Sweden.

"Clampdown", a ferment, is a biologically-acting silage additive for use on all green fodder crops. It is formulated as a dispersable powder containing a Unique culture of bacteria Pediococcus acidilacti and Lactobacillis planatarum.

"Clampdown" is classifiable under the provision for ferments, other in item 437.4900, Tariff Schedules of the United States, and dutiable at the rate of 5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

Peter J. Brick
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

FS

REPLY TO AREA DIRECTOR OF CUSTOMS NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 18 1986

REFER TO

CLA-2-04:S:COM:NI:240-626
819872

Mr. John Irwin Dugan
Attorney
Dugan and Rosen
295 Madison Avenue
New York, NY 10017

Dear Mr. Dugan:

In your letter dated July 23, 1986, you inquired, on behalf of Takeda Chemical Products USA, regarding the tariff classification of thiothiamine hydrochloride manufactured in Japan. This product is a thioamide used as an intermediate in the production of Vitamin B1.

Thiothiamine hydrochloride is classifiable under the provision for thiourea, thiourea dioxide, and other thioamides, in item 425.3640, Tariff Schedules of the United States Annotated, and is dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F6

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 18 1986

REFER TO

CLA-2-04:S:COM:N1:238-628
819876

Ms. Carol Ebanks
Kelly International
153-40 Rockaway Boulevard
Jamaica, NY 11434

Dear Ms. Ebanks:

In your letter dated July 22, 1986, on behalf of Pfizer International, Leeming - Pacquin Division, you inquired about the dutiable status of "Unisom Dual relief tablets" from Canada.

The product a sleeping aid is a formulated mixture in tablet form. It is composed of acetaminophen and diphenhydramine hydrochloride as the active ingredients, plus corn starch N.F., magnesium stearate, N.F. and colorants.

The "Unisom Dual relief tablets" are classifiable under the provision for benzenoid drugs, other in item 412.7000, Tariff Schedules of the United States Annotated, and dutiable at the rate of 6.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

Sincerely,

Peter J. Raish
Area Director
New York Seaport

F7

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 18 1986

REFER TO

CLA-2-04:S:COM:N1:239-629
819898

Mr. Herbert Schwarz
L. Bruggemann K-G
Salzstrasse 123/129
Postfach 1309
7100 Heilbronn Am Nekar, W. Germany

Dear Mr. Schwarz:

Your letter of June 15, 1986, concerns the classification of two products of West Germany called Blancolen K and Blancolen KU.

Blancolen K is a mixture of sodium dithionite, ethylenediaminetetraacetic acid (EDTA), sodium sulfate and sodium sulfite.

Blancolen KU is a mixture of the same components as those found in Blancolen K plus an optical brightener which you do not identify.

Blancolen K is classified under the provision for mixtures not specially provided for in item 432.28, Tariff Schedules of the United States (TSUS). The rate of duty is 3.9 percent ad valorem but not less than the highest rate applicable to any component material. Based on the EDTA sodium salt which is classified under the provision for other nitrogenous compounds in item 425.52, TSUS, the rate of duty is 7.9 percent ad valorem.

Your inquiry does not furnish enough information for us to issue a tariff classification ruling for Blancolen KU. Your request for a classification ruling on this product should include the identity of the optical brightener and a description of how the product is used.

Based on the information you submitted Blancolen KU would probably be classified under the provision for other benzenoid mixtures in item 413.54, TSUS. The rate of duty is 11.9 percent ad valorem but not less than the highest rate applicable to any component material.

With regard to the Blancolen K this is a ruling letter issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

With regard to the Blancolen KU this is an information letter issued under the provisions of Section 177.(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

F8

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Raish
Area Director
New York Seaport

868618

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29

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 25 1986

REFER TO
CLA-2-04:S:COM:N1:238-633
819922

Mr. Cyril J. Baker, Vice President
Albright and Wilson
P.O. Box 26229
Richmond, VA 23260-6229

Dear Mr. Baker:

In your letter dated July 29, 1986, you inquired about the dutiable status of "Nansa HS 80/S and 85/S" from England.

These products are used as biodegradable active matter in the formulation of heavy duty detergents and in hard surface cleaners for floor, wall cleaning and bottle washing. "NANSA HS 85/S" in flake form and "NANSA HS 80/S" in fine powder form are high active sodium dodecyl benzene sulphonate (benzenoid detergents) surfactants.

"NANSA HS 80/S and 85/S" are classifiable under the provision for benzenoid detergents in item 409.3020, Tariff Schedules of the United States, and dutiable at the rate of 8.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

This merchandise may be subject to the regulations of the Environmental Protection Agency. Office of Pesticides and Toxic Substances. You may contact them at 401 M Street, S.W., Washington, D.C., 20460, telephone number (800) 424.9086.

Sincerely,

Peter J. Walsh
Area Director
New York Seaport

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REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

SEP 2 1986

REFER TO

CLA-2-04:S:COM:N1:235-636
819939

Mr. E. J. Corboy
Austin Chemical Company, Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631

Dear Mr. Corboy:

In your letter dated August 4, 1986, you inquired about the dutiable status of ethyl oxalyl chloride from Canada.

Ethyl oxalyl chloride is classifiable under the provision for acyl halides in item 427.30, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

F11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

SEP 2 1986

REFER TO

CLA-2-04:S:COM:N1:240-637
819940

Mr. Edmund J. Corboy
Austin Chemical Company, Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631

Dear Mr. Corboy:

In your letter dated August 4, 1986, you inquired regarding the tariff classification of N, N^1 carbonyldimidazole produced in Canada. This chemical compound includes an imidazole (a di-nitrogen ring) structure.

N, N^1 carbonyldimidazole is classifiable under the provision for nitrogenous compounds: imides, in item 425.2400, Tariff Schedules of the United States Annotated, and is dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F12

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

SEP 2 1986

REFER TO
CLA-2-04:S:COM:N1:235-644
819941

Mr. E. J. Corboy
Austin Chemical Company Inc.
8410 West Bryn Mawr Ave.
Chicago, Ill. 60631

Dear Mr. Corboy:

In your letter dated August 4, 1986, you inquired about the dutiable status of 2 chloro allyl alcohol from Canada.

2 chloro allyl alcohol is classifiable under the provision for halohydrins in item 428.26, Tariff Schedules of the United States and dutiable at the rate of 5.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a) (1) of the Customs Regulations [19 C.R.F. 177.1 (a) (1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F13

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

SEP 03 1986

REFER TO

CLA-2-04:S:COM:N1:235-645
819942

Mr. E. J. Corboy
Austin Chemical Company Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631

Dear Mr. Corboy:

In your letter dated August 4, 1986, you inquired about the dutiable status of oxalyl chloride from Canada.

Oxalyl chloride is classifiable under the provision for acyl halides in item 427.30, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F14

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

SEP 2 1986

REFER TO
CLA-2-04:S:COM:N1:235-643
819944

Mr. E. J. Corboy
Austing Chemical Company Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631

Dear Mr. Corboy:

In your letter dated August 4, 1986, you inquired about the dutiable status of ethyl malonyl chloride from Canada.

Ethyl malonyl chloride is classifiable under the provision for acyl halide in item 427.30, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Walsh
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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REPLY TO AREA DIRECTOR OF CUSTOMS NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

SEP 2 1986

REFER TO
CLA-2-04:S:COM:N1:240-641
819945

Mr. Edmund J. Corboy
Austin Chemical Company
8410 West Bryn Mawr Avenue
Chicago, Illinois 60631

Dear Mr. Corboy:

In your letter dated August 4, 1986, you inquired regarding the tariff classification of formyl sarcosine manufactured in Canada. Based on its chemical structure, this product is an acyclic amide.

Formyl sarcosine is classifiable under the provision for ethylureas, methylolureas, octamethylpyrophosphoramide and other acyclic amides, in item 425.2245, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 3.9 percent ad valorem.

In your letter you suggested that this product be classified under the provision for nitrogenous compounds: other, in item 425.5290, TSUSA. However, the provision for acyclic amides in item 425.2245, TSUSA, is clearly more specific than the provision for nitrogenous compounds: other in item 425.5290. Therefore, item 425.5290 does not apply.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Walsh
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

G2

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

SEP 2 1986

REFER TO

CLA-2-04:S:COM:N1:235-639
819946

Mr. E. J. Corboy
Austin Chemical Company Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631

Dear Mr. Corboy:

In your letter dated August 4, 1986, you inquired about the dutiable status of 4 hydroxy 1 pentene from Canada.

4 hydroxy 1 pentene is classifiable under the provision for unsubstituted monohydric alcohols, other in item 428.12, Tariff Schedules of the United States, and dutiable at the rate of 3.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

G3

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 19 1986

REFER TO

CLA-2-04:S:COM:N1:239-640
819947

Mr. Edmund J. Corboy
Austin Chemical Company, Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631

Dear Mr. Corboy:

Your letter of August 4, 1986 concerns the dutiable status of 2,2' dipyridylthiocarbonate from Canada.

2,2' dipyridylthiocarbonate is classifiable under the provision for other organo-sulfur compounds in item 406.0000, Tariff Schedules of the United States Annotated. The rate of duty is 7.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter O. Baish
Area Director
New York Seaport

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REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

AUG 19 1986

REFER TO

CLA-2-04:S:COM:N1:239-638
819943

Mr. Edmund J. Corboy
Austin Chemical Company, Inc.
8410 West Bryn Mawr Avenue
Chicago, IL 60631

Dear Mr. Corboy:

Your letter of August 4, 1986 concerns the dutiable status of 1,2 phenylene phosphorochloridite from Canada.

1,2 phenylene phosphorochloridite is classifiable under the provision for other heterocyclic compounds in item 406.3900, Tariff Schedules of the United States Annotated. The rate of duty is 1.7 cents per pound plus 16.2 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 31 1986

REFER TO

CLA-2-07:S:COM:N3G:341
818995

Ms. Eileen T. Romito
Coordinator of Direct Import Tariff Classification
Sears Merchandise Group
Sears Tower, Dept. 733X BSC 19-45
Chicago, Illinois 60684

Dear Ms. Romito:

Your letter of May 27, 1986, requested this office to rule upon the tariff classification of a novelty animal style child's shoulder bag, stock no.33121, from Hong Kong.

The sample submitted is a novelty animal shoulder bag manufactured of man-made textile pile fabric and measures approximately 13 inches by 7.5 inches. The bag simulates a little dog, identified as the "Luv Mutt," having stuffed legs and flappy knitted ears. The head and torso are empty. The bag is secured on its posterior side via velcro fasteners. Adhered to its exterior front surface is a textile motif of a little bear. It is carried via a woven textile shoulder strap measuring approximately 26.75 inches. Sample is being returned herewith.

You claim that it is neither a toy since it is not chiefly used as an animate object for the amusement of children nor can it be considered a shoulder bag since its utilitarian feature for carrying is not its predominate characteristic. Asserting that it is both more than a toy and a shoulder bag, you feel the instant merchandise is more properly classifiable under the provision for articles of textile, not specially provided for, of man-made fibers, ornamented, in item 386.1343, TSUSA, at the rate of 12.5 percent ad valorem.

In order to qualify for the above provision, the article in question would have to possess two coequal or significant functions neither of which is subordinate to the other.

Schedule 7, Part 1, Subpart D, Headnote 2(b), TSUS, provides that "For the purposes of the tariff schedules—(b) the term '<u>handbags</u>' covers pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls..."

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

REPLY TO: 1301 BUSINESS OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

Although the item may have a dual usage as both a toy and a shoulder bag, this office feels that its amusement factor is only incidental and subordinate to its primary function as that of a shoulder bag. Therefore, the novelty animal shoulder bag, stock no. 33121, is classifiable under the provision for handbags, of other textile materials, other, in item 706.4140, Tariff Schedules of the United States. The rate of duty is 20 percent ad valorem.

Tariff item number 706.4140 falls within textile category designation 670. As a product of Hong Kong this merchandise is currently not subject to quota or export license restrictions based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

818995

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G7

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

JUN 25 1986

MAR 2-05 CO:R:E:E
729365 LR

TO : District Director of Customs
Laredo, Texas

FROM : Director, Entry Procedures
and Penalties Division

SUBJECT : Request for Internal Advice (Imported Broccoli)

This ruling concerns the country-of-origin marking requirements applicable to broccoli imported in bulk raw form and processed in the United States.

ISSUE:

Whether pursuant to Section 304 of the Tariff Act of 1930, as amended, and section 134.25, Customs Regulations (19 CFR 134.25), domestically repackaged foreign broccoli must be marked to indicate the country of origin where the imported broccoli has been processed in the United States by cutting to proper length, quartering or spearing, blanching, packaging, and freezing; whether such processing "substantially transforms" the imported product into a product of the United States, thereby exempting the repackaged product from country-of-origin marking requirements.

FACTS:

The broccoli in question is imported from Mexico in bulk form. After importation, the broccoli is graded, inspected, trimmed to proper length (four or five inches), cut in quarters or spears, steam blanched for six minutes, cooled, frozen solid and packaged. The size of the package varies depending on whether the broccoli is intended for retail or institutional use. By customer order, broccoli spears can also be made into 1 inch broccoli cuts or quarter inch chopped broccoli.

APPLICABLE LAW:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides in general that all articles of foreign origin imported into the United States, or their containers, shall be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States. Fresh vegetables and other natural products are exempt from individual marking, but the containers in which they reach the ultimate

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purchaser are required to be marked. 19 U.S.C. 1304(a)(3)(J) and 19 CFR 134.33. Pursuant to 19 CFR 134.25, various products which are exempt from individual marking when imported in bulk quantities (including vegetables) are required to be marked with the country of origin on the package when they are repackaged in the United States in retail containers.

The critical question in this case is whether the broccoli has been subjected to a substantial processing operation which has resulted in the creation of a new and different article of commerce with a new name, character, or use. If the broccoli has been so substantially transformed, then it must be treated as a product of the United States. The processing plant would be considered the "ultimate purchaser" of the imported product, within the meaning of 19 U.S.C. 1304(a) and the requirements of 19 CFR 135.25 are not applicable.

It is a well-settled principle of customs law that in order for a substantial transformation to be found, an article having a new name, character, and use must emerge from the processing. United States v. Gibson-Thomsen Co. Inc., 27 C.C.P.A. 267, C.A.D. 98 (1940). The issue before the Customs Court in that case was whether hairbrushes and toothbrushes manufactured in the United States by inserting bristles into wooden handles imported from Japan were required to be marked as products of Japan. After careful examination of the statute and its legislative history, the Customs Court concluded that Congress had not intended the marking requirement to continue to apply to an imported article which is used in the United States as a material in the manufacture of a new article having a new name, character, and use, and which consequently loses its separate identity in the finished product.

This decision was followed and quoted extensively in Grafton Spools, Ltd. v. United States, 45 Cust. Ct. 16, 23, C.D. 2190 (1960), in which empty metal spools imported from England and wrapped in the United States with inked ribbons to create typewriter ribbons and business machine ribbons were found to have lost their identity in the finished product. The court observed that what the ribbon manufacturers were selling were ribbons, which of course had to be wound on a spool, but it was the ribbon and not the spool which the manufacturer's customers were interested in purchasing.

One of the most significant recent court decisions on the issue of country of origin marking is Uniroyal Inc. v. United States, 3 C.I.T. 220, 542 F. Supp. 1026 (1982), aff'd, 702 F.2d 1022 (Fed Cir. 1983). In this case the merchandise before the Court of International Trade consisted of "footwear uppers consisting of complete shoes except for an outsole...",

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manufactured in Indonesia, and imported into the United States where a pre-shaped rubber outsole was affixed and the completed shoe was sold to retailers. The question was whether the addition of the outsoles substantially transformed the uppers so that the finished shoe could be marketed in the United States without having to be marked as a product of Indonesia.

After carefully examining both the imported upper and the finished shoe, the Court of International Trade concluded that the imported upper did not lose its distinct identity in the finished shoe, and to the contrary was the very essence of the completed shoe. This was so even though the imported upper could not be sold to or worn by consumers without the heavy rubber outsole being attached, and even though following attachment of the rubber outsole the shoe was called by a different name, a deck shoe, rather than an upper or a moccasin.

In the most recent country of origin marking case involving the issue of substantial transformation, National Juice Products Association v. United States, Slip Op. 86-113, (January 20, 1986) the Court of International Trade upheld Customs' determination that imported orange juice concentrate is not substantially transformed when it is processed into retail orange juice products. The court stated "the retail product in this case is essentially the juice concentrate derived in substantial part from foreign grown, harvested, and processed oranges. The addition of water, orange essences, and oils to the concentrate, while making it suitable for retail sale does not change the fundamental character of the product, it is still essentially the product of the juice of oranges." See also Uniroyal Inc. v. United States, supra.

ARGUMENTS PRESENTED

The importer maintains that the domestic processing substantially transforms the imported raw broccoli into a new article of commerce with a different name, character and use. Specifically, it is claimed that:

1) the broccoli undergoes a physical change from its imported state in that the shelf life is greatly extended from a few days to over a year;

2) the market for fresh broccoli and the market for frozen broccoli are distinct and well-established;

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3) the process is complex requiring a multi-million dollar investment in equipment and specialized buildings and trained personnel earning up to $11.00 an hour to operate it; over 300 employees are necessary for the process;

4) the machinery used for quick freezing and packaging the product use a high level of technology; and,

5) the domestic processing increases the cost of the broccoli from $.09 a pound (wholesale) to approximately $1.39 a pound (retail).

A detailed description of the processing steps, including the type of machinery used in each step and the number of employees necessary to operate them, has been submitted.

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ANALYSIS

A close examination of these processing operations is necessary to determine whether they substantially change the imported broccoli so that its fundamental character and identity are lost or subordinated in the finished product. If so, then a new and different article can be presumed to have been created.

The crucial operations performed on the imported bulk broccoli are trimming and cutting, and blanching and freezing. The trimming and cutting operations are fairly self-explanatory. As indicated above, after importation the imported bulk broccoli is trimmed to four or five inch lengths and then either chopped or cut into spears or quarters. The designation on the package is based on how the broccoli is cut. After cutting, the broccoli is blanched.

The blanching process prepares the broccoli for freezing. The process has been described as "subjecting vegetables either to hot water or steam to deactivate the enzymes before freezing. Unless deactivated the enzymes in fresh vegetables might, and probably would, result in loss of flavor and color during the period of frozen storage." Border Brokerage Co., Inc. v. United States, 284 F. Supp. 806, C.D. 3437 (1968) at p. 488. In Green Giant Co. v. United States, 495 F.2d 775, 61 C.C.P.A. 46 (1974), the blanching process was said to partially cook and retard any deterioration of the vegetable from within. In this case, the broccoli is steam blanched for six minutes at 210 degrees Farenheit.

After cooling and packaging, the broccoli is quick-frozen. Depending on the particular cut of the broccoli and whether it is intended for institutional or retail use, the freezing process takes from 30 minutes to 8 hours. As a result of the freezing

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process, the shelf life of the broccoli is prolonged from 2-3 weeks to 6-8 months, provided frozen storage conditions are maintained.

After having reviewed the material submitted to Customs, we are of the opinion that as a result of the processing described - the cutting, blanching and freezing operations - the imported broccoli does not lose its fundamental character and identity and is not substantially transformed into a new article of commerce with a different name, character, and use.

The name of the imported article remains the same after processing, although it may have different modifiers preceding it. The imported product may be known as "fresh" broccoli whereas the processed products may be described as "frozen" broccoli or "chopped" broccoli. This does not change the fact that the fundamental identity of the imported product (as broccoli) is maintained, and not lost or subordinated in the processed product. Although some consumers may distinguish between the imported product and the processed product, that is, some consumers prefer fresh broccoli when it is available; and although fresh broccoli has some uses for which processed broccoli is less satisfactory, nonetheless it appears that broccoli processed in the manner described here is interchangeable with fresh broccoli for many purposes.

It is significant that the processes described here, far from transforming the character of the broccoli, are preservative in nature and are intended to maintain to the extent possible the characteristics of the imported product. Certainly, the imported product cannot be said to have been used in a manufacturing process in which its identity is lost or subordinated as would be the case if, for example, it were used in the manufacture of canned soup or frozen quiches.

HOLDING:

In view of the absence of significant distinctions between the commercial consequences of processing in the Uniroyal and National Juice Products Association cases, and the consequences which result from the processing described in this case, it is our opinion that the imported broccoli is not substantially transformed into a new and different article, that it remains after processing a product of the country where the fresh product was produced, and that broccoli processed in this manner must be marked with the name of the country in which the fresh broccoli is produced.

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SCOPE OF RULING: Although this ruling was requested to clarify applicability of the country of origin marking statute to imported broccoli which is processed for freezing in the United States, this ruling is equally applicable to other imported produce which is processed in a manner substantially similar to the processing described above. Parties who desire to have the Customs Service clarify applicability of this ruling to particular situations should contact the Director, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, D.C. 20229

EFFECTIVE DATE:

In compliance with the direction of the Court of International Trade in the National Juice Products Association case, Customs has made a special effort to obtain information for the purpose of establishing an effective date for this ruling. As part of on-site visits to food processing plants along the Mexican border in Texas, Customs officials obtained information on inventories of packaging materials and usual schedules for ordering new packaging materials. It appears that packaging is ordered to accommodate processing of the produce of a particular growing season. Both processors and Customs officials along the border agreed that the current growing season and importation of produce for processing ends during November. Therefore, this ruling will be effective as to produce imported on or after December 15, 1986.

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Donald W. Lewis

Donald W. Lewis

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

JUL 10 1986

CPR-3 CO:R:E:E
729677 A

The following policy ruling on procedures for dealing with competing copyright registrations is published for general guidance of Customs and the public; any previous rulings to the contrary are not to be relied upon.

ISSUE:

What is the position of the Customs Service in protecting a registered and recorded copyright when a questioned article is itself covered by a certificate of registration issued by the Copyright Office?

FACTS:

Customs is experiencing an increasing number of claims from importers of seized or detained articles that those articles should be released merely because they, themselves, are covered by a Copyright Office certificate of registration. Some certificates have been obtained prior to importation and some only after Customs has seized or detained the goods. On the other side, copyright owners have complained that the law neither requires nor sanctions release under these circumstances, and to do so makes a mockery of effective enforcement against piratical copies.

LAW AND ANALYSIS:

Section 602 of the Copyright Act (17 U.S.C. 602) prohibits the importation of articles which are infringing copies of U.S. copyrights recorded with Customs. Section 410(c) of that Act provides that in any judicial proceedings a certificate of registration issued by the Copyright Office shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate; the evidentiary weight of the certificate shall be within the discretion of the court. The implementing procedures for obtaining Customs protection and processing violations of section 602 are found in Part 133 of the Customs Regulations (Title 19, Code of Federal Regulations Subparts D, E and F).

In the past, the defense of competing certificates of registration was infrequently raised but it was accepted in a number of cases on an ad hoc basis. In some instances, the certificate was acquired prior to importation, and in others, it

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appeared reasonably obtained by a reputable firm. Also, Customs was careful not to appear to encroach on the courts' functions of passing on a certificate's validity under section 410(c), since the registrant vouches for the independence and originality of a copyright when he signs the certificate.

Recent representations and occurrences strongly suggest that the competing registration defense is about to become widespread, if acceptable to Customs. An underlying problem is that it is extremely easy to register a claim to copyright since the Copyright Office is merely an office of record and will register documents if "fair on their face," similar to a registry of deeds.

Review establishes that a Copyright Office certificate of registration is significant mainly for shifting the burden of proof as to the facts stated in the certificate from the plaintiff to the defendant in a proceeding involving copyright infringement. Wihtol v. Wells, 231 F. 2d 550, 553 (7th Cir. 1956). In cases where Customs would otherwise have taken action against the imported goods, it does not seem legally required or desirable enforcement practice to release the goods on the sole basis that they are also the subject of a certificate evidencing copyright. A recent order in the case of New Bright Industrial Co., Ltd. and New Bright Industries, Inc. v. Cheng Ching Toy Co. Ltd., et al., 85 Civ. 3695, Bramwell, J. (U.S.D.C. E.D.N.Y. January 8, 1986), would seem to support this position as an administrative practice since the Judge in a copyright infringement suit (involving robot toys) directed that the Customs Service should enforce its regulations concerning the seizure and detention of suspected piratical copies " * * * as though (the defendant) did not possess a copyright registration."

A recently distributed internal Service communication advised all Customs officers that a competing certificate would not be accepted as conclusive proof of original authorship when obtained after the importation of goods suspected or determined to be infringing copyrights previously recorded with Customs. Although a copyright registration certificate acquired prior to importation is arguably somewhat more persuasive of originality than one obtained only after Customs has seized or detained imported goods, it is similarly subject to question and may be disregarded when other evidence indicates piratical copying.

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It is highly unlikely that Customs will detain legitimately copyrighted goods, but if that should occur, a detention procedure would promptly result in clearance because the Customs copyright recordant would confirm that the importation was not infringing.

HOLDING:

When evidence clearly indicates piratical copying or reason to suspect piratical copying of a copyright recorded with Customs, and the imported article itself is the subject of a copyright registration certificate (whether obtained before or after importation), Customs officers shall detain the merchandise and proceed under section 133.43 of the Customs Regulations (19 CFR 133.43).

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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TREASURY DEPARTMENT

BUREAU OF CUSTOMS

WASHINGTON

CIRCULAR: MAR-2-RM
DATE: APR 21 1969

Subject : MARKING: Country of Origin - Napkins, aprons, and similar articles imported for the rental linen supply trade.

References: 19 U.S.C. 1304

1. PURPOSE

To advise that marking the name of the country of origin on the containers only of imported aprons, napkins, and similar flatware shall be deemed to meet the requirements of 19 U.S.C. 1304 under certain circumstances.

2. BACKGROUND

The Bureau has recently reviewed the manner in which the country of origin marking requirements are being applied to various articles which are being imported for sale to the linen rental supply trade. The reports received by the Bureau have disclosed that articles such as napkins and aprons are usually imported in plastic packages containing approximately 25 items with a paper slip indicating the country of origin prominently displayed inside the package. The plastic packages are in turn packed in large bales which are also legibly and conspicuously marked to indicate the country of origin.

Information furnished to the Bureau indicates that when such rental supply items are imported by jobbers or wholesalers for resale to linen supply laundries, sales are made by the bale or in the original plastic packages. Such information also indicates that the rental supply laundries use these items only in their rental supply business and do not resell the articles until they have lost their usefulness and are sold as rags.

3. ACTION

The "ultimate purchaser" of the imported articles in question are considered to be the rental supply laundries, within the meaning of 19 U.S.C. 1304(a). Accordingly, when aprons, napkins, or similar flatware imported for sale to the rental supply trade are packaged in containers of approximately 25 items which are legibly and conspicuously marked to indicate the country of origin of the contents, and the jobber or wholesaler furnishes a statement

[redacted]

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REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20226

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to customs stating that the goods will be sold only in the marked containers to the linen supply trade, the items may be excepted from individual marking to indicate the country of origin pursuant to 19 U.S.C. 1304(a)(3)(D) and section 11.10(a) of the Customs Regulations.

Information received by the Bureau indicates that rental wearing apparel other than aprons, such as washable coveralls, shirts, and trousers, have been individually marked to indicate the country of origin, and such items shall continue to be marked whether or not destined for rental laundries.

File: RN 363.2 K

Commissioner of Customs

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[redacted]

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JAN 26 1971

MM 363.2 K

Mr. Michael Stramiello, Jr.
Regional Commissioner of Customs
New York, New York 10004

Attention: Mr. Irving Fishman
Director, Division of Imports Compliance

Dear Mr. Stramiello:

This is in reference to your letter of January 8, 1971, regarding exceptions from marking in the case of products used by the rental laundry trade, such as towels, aprons, napkins, etc.

You say that up until now these articles have been imported in uniform quantities in packages which bore the information required by 19 U.S.C. 1304 and the Textile Fiber Products Identification Act, but that you have now been requested to waive the marking of the packages in the case of the importation of such merchandise in bale lots. The importers apparently contend that these goods are sold to the rental laundries only in full bales rather than in packages.

At the time Bureau Circular MAR-2-RM, April 21, 1969, was issued, the information we had indicated that the articles in question were not always sold in full bale quantities by the importer or wholesaler, to rental supply laundries, but that they would not be sold in less than full package quantities in any case. Accordingly, as a general rule, we are of the opinion that the inner packages in the bales must be marked to indicate the country of origin.

However, if you have a situation where the rental laundry which will purchase and use the articles is known at the time of entry, and furnishes a statement that they will receive the goods in the particular shipment in the original marked bales in which imported, the marking of the outer bale to indicate the country of origin would meet the requirements of 19 U.S.C. 1304, in our opinion.

Sincerely yours,

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(Signed) R. E. TURNER
~~EARL E. McCAT~~

RAYMOND E. TURNER
Director, Division of
Entry Procedures and Penalties

799529

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 24 1983

REFER TO

CLA-2-06:S:C:D1:09-102
805240

[redacted]

Dear [redacted]

In a letter dated February 3, 1983, you inquired as to the dutiable status of a wrist watch television produced in Japan.

The unit is described as a tv-wrist watch and is to be imported with the following units:

1. A wrist watch with a bracelet which has a 1.2 inch liquid crystal display and digital time piece set in a case measuring 1.7 cm by 2.5 cm.
2. A headphone with connecting cord which acts as a speaker for the unit with an incorporated antenna.
3. A receiver unit with VHF and UHF channels together with an FM radio.
4. Belt clip for the receiver unit. This allows the receiver unit to be worn on the belt.
5. Carrying pouch for the receiver.
6. Connecting cord from receiver to watch.
7. AC adapter.
8. Packing box for the entire set.
9. Two AA batteries.

In addition to the units being imported together as a set, each unit in the set will be imported separately.

When imported as a set, the wrist watch with a bracelet, headphone with a connecting cord which acts as a speaker for the unit, the carrying pouch, belt clip, receiver, and connecting cord are classified as a single tariff entity under the tariff provision for combinations incorporating television receivers in item 685.50 TSUS at 6.2% ad valorem. The AC adapter is classified in item 682.60 at 5.3 percent ad valorem as rectifying apparatus. The AC batteries are classified as primary batteries and parts thereof in item 682.95 TSUS at 6.9 % ad valorem.

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The gift box is a container for the subject items and is considered packing. Packing is dutiable at the same rate of duty as the contents.

When imported separately, the units would be classified as follows:

1. Wrist watch with a bracelet which has a 1.2 inch liquid crystal display and a digital timepiece as television apparatus in item 685.19 TSUS at 4.4 percent ad valorem.
2. Receiver unit with VHF and UHF channels and FM radio capability as a combination unit in item 685.50 TSUS at 6.2 percent ad valorem.
3. Belt clip as articles not specially provided for, of plastic, in item 774.55, TSUS, dutiable at 6.9 percent ad valorem.
4. Headphone as headphones in item 684.70, TSUS dutiable at a rate of 6.2 percent.
5. Connecting cord from receiver to watch as insulated electrical conductors whether or not fitted with connectors: With fittings: Other...in item 688.15 TSUS at 5.9%.
6. AC adapter in item 682.60 TSUS at 5.3 percent ad valorem as rectifying apparatus.
7. Two AA batteries as primary batteries and parts thereof...item 682.95, TSUS at 6.9%

Regarding the carrying case, the information submitted is not sufficient in order to render a ruling decision. Request for rulings must be submitted in accordance with Part 177, Customs Regulations. Your request should include a sample of the finished product and explanatory literature as to use.

Based upon the information you submitted, the carrying case if imported without the contents would probably be classified under the provision for luggage in item 706.62, TSUS, with duty at the rate of 20 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

805240

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

Veg Paste

MAR 18 1983

REFER TO
CLA-2-01:S:C:D4:37:84
805296

[redacted]

Dear [redacted]

In a letter dated February 17, 1983, you inquired as to the dutiable status of garlic paste produced in Italy.

You indicate that the product is garlic in the form of a paste which is to be used for general purposes in substitution for fresh garlic cloves. The sample submitted with your inquiry was a 3¼ ounce (90 gram) tube of garlic paste (aglio in pasta) and the ingredients were listed as natural garlic, soya oil, salt, and sulphur dioxide (a preservative). The label indicates that a tube of garlic paste is equal to one kilogram of fresh garlic and that the paste can be used in all recipes which call for garlic.

Garlic paste is classifiable under the provision for other vegetables, prepared or preserved, in item 141.98, Tariff Schedules of the United States, and dutiable at the rate of 17.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 24 1983

REFER TO

FILE: CLA-2-06:S:C:DII:17-76
805334

[redacted]

Dear[redacted]

In a letter dated December 16, 1982, received in this office February 24, 1983 for reconsideration, you inquired as to the dutiable status of titanium diboride.

You describe the titanium boride as an inorganic chemical compound, composed of aggregates of two different phases. The analysis submitted with your inquiry shows the composition to be 30.5% boron, 0.14% carbon, 0.3% oxygen, 0.2% nitrogen, and the balance titanium.

Titanium diboride is classifiable under the provision for titanium unwrought in item 629.14, Tariff Schedules of the United States, and dutiable at the rate of 17 percent ad valorem.

This ruling holding titanium boride to be classifiable as titanium unwrought which includes metal alloys is based on Headnote 2, Part 2, Schedule 6, Tariff Schedules of the United States, which provides that alloys are metallic substances consisting of two or more metals or of one or more metals and one or more non-metals, intimately united.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1 (a)(1)].

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK N.Y.

JAN 30 1985

CLA-2-06:S:CON:N1:120-128
808757

808757

Mr. Y. Kobayashi
Mitsubishi International Corporation
520 Madison Avenue
New York, N.Y. 10022

Dear Mr. Kobayashi:

In your letter dated February 28, 1984, you inquired about the dutiable status of "susmic fibers" from Japan.

"Susmic fibers" consist of fibers shaved from stainless steel wire and mixed with plastic resin. The plastic resin functions to hold the fibers together for shipping and handling purposes. The major applications of this product are in the production of electrically conductive plastic for electronic housings and for use in the production of antistatic carpets. The fibers range from 5um to 50um in diameter and from 0.5 millimeters to several kilometers in length. The length and thickness is provided as ordered. The product is in chief value of steel.

"Susmic fibers" are classifiable under the provision for articles of iron or steel, not coated or plated with precious metal in item 657.2590, Tariff Schedules of the United States, and dutiable at the rate of 6.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Hartunge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 18 1985

812411

REPLY TO

CLA-2-06:S:CON:N1:120-199
812411

Ms. Debbie Zerda
James J. Boyle & Co.
529 Commercial Street
San Francisco, CA 94111

Dear Ms. Zerda:

In your letter dated February 4, 1985, on behalf of the Sumitomo Corp., you inquired about the dutiable status of chopped steel wool fiber from Japan.

The chopped steel fibers are produced in two grades. Grade One has an average fiber width of 0.00157 inch, an average length of 0.0945 inch and a maximum length of 0.157 inch. Grade Two has an average fiber width of 0.00197 inch, an average length of 0.0965 inch and a maximum fiber length of 0.197 inch. This product is generally produced by knife-shaving wire lengthwise and then chopping it to the appropriate length although a variety of other production processes are possible. Chopped steel fibers are becoming an important product used in the production of disc brake pads as well as for reinforcing plastic and concrete, sound absorption, shielding electronics and other uses.

This merchandise is classifiable under the provision for articles of iron or steel, not coated or plated with precious metal in item 657.2590, Tariff Schedules of the United States, and dutiable at the rate of 6.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Hartuge
Area Director
New York Seaport

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REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 09 [redacted]

CLA-2-07:S:[redacted]N2:234-676
813937

Mr. M.M. Halim
President
M.M. Halim Import/Export
8185 Snowfall Drive
Manassas, VA 22111

Dear Mr. Halim:

In your second letter dated May 24, 1985, you sent additional information to determine the dutiable status of various products from Egypt.

The "Papyrus" is a hand painting on paper made manually from the "Papyrus" plant. Each paper and painting is less than two years old. There are no stencilling, photochemical, or other mechanical processes used in the creation of the painting.

Noting that a certificate accompanies each painting, it appears that each "Papyrus" will be used as a painting and is classifiable as such in item 765.0300, Tariff Schedules of the United States Annotated, and is free of duty.

However, your inquiry does not provide enough information for us to give a classification ruling on the other products.

Items 2, 2A and 3, called Galabeiahs, are not described in your letter. We are unable to issue a classification ruling without samples of each garment and a statement giving the size range, gender of the intended wearer and the fiber content by percentage of weight of the generic fibers present in each garment.

Based on the photographs marked numbers 2 and 2A, the garment pictured would probably be classified under one of the following tariff provisions.

1) When in chief value of cotton: under the provision for women's, girls', or infants' wearing apparel, ornamented, of cotton, not knit, in item 383.0820, TSUSA, dutiable at 23 percent ad valorem. The textile category designation is 350.

2) When in chief value of wool: under the provision for women's, girls', or infants' wearing apparel, ornamented, of wool, not knit, in item 383.1605, TSUSA, dutiable at 31.2 percent ad valorem. The textile category designation is 459.

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REPLY TO: REGIONAL COMMISSIONER OF CUSTOMS, NEW YORK, NEW YORK 10048

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3) When in chief value of man-made fibers: under the provision for women's, girls', or infants' wearing apparel, ornamented, of man-made fibers, not knit, in item 383.2320, TSUSA, dutiable at 31.2 percent ad valorem. The textile category designation is 650.

As a product of Egypt this merchandise is not subject to a visa requirement or quota restraints at this time.

In the absence of a sample we are unable to issue a decision on the classification of scarves and shawls as requested.

With respect to the "Papyrus", this is a ruling letter issued under the provision of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1). For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations (19 C.F.R. 177.1(d)(2)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

for John J. Hartuge
Area Director
New York Seaport

813937

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38

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 08 1985

REFER TO

CLA-2-04:S:COM:N2:238-683
813941

Ms. Meiling Liu
Shye Shing Tea Company
141 Prince Edward Road
Flat K. 11th Floor
Kowloon, Hong Kong

Dear Ms. Liu:

In your letter of May 24, 1985, you requested the tariff classification of slimming crystal from Hong Kong.

Slimming crystal is described as a health food item that will "increase the secretion of gastric juice and bile, resolve fat, enlarge the coronary artery, improve blood circulation, prevent the absorption of cholesterol from foodstuff, increase the excrement of cholesterol and reduce capillary permeability."

It is composed of hunan tea leaves, radix salviae miltiorrizae, radix polygoni multiflori, fructus crataegi, etc., all of which are made of plants that are beneficial to human beings. The product does not have any laxative effect.

The slimming crystals will be imported in single dose aluminum foil packets. It is recommended that three of these packets be taken a day in lukewarm water.

Slimming crystal is classifiable under the provision for other, non-benzenoid drugs in dosage form in item 440.0000, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate provided for such product in this subpart, but not less than 4 percent ad valorem. In this case the rate is 4 percent.

This merchandise is subject to the regulations of the Food and Drug Administration and must meet their requirements in order to be imported. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20587, telephone number (202) 443-3380.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

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Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

813941

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B10

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 31 1985

REFER TO

CLA-2-07:S:COM:N2:233-861
814469

Mr. E. Gene Esopi
New Markets Group, Inc.
210 Division Street
Kingston, PA 18704

Dear Mr. Esopi:

In your letter dated July 3, 1985, you inquired about the dutiable status of a chest of drawers from Denmark.

The chest of drawers is composed of wood particle board which is laminated with a melamine coating. It is designed and constructed as a floor standing article of utility. The chest of drawers is to be used in the home for storage of clothing, linens or other household articles.

The chest of drawers is classifiable under the provision for furniture of wood in item 727.3555, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 3.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Mantuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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REPLY TO: REGIONAL COMMISSIONER OF CUSTOMS, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JUL 30 1985

REFER TO

CLA-2-07:S:COM:N3G:342-1150
814635

Mr. Bradford A. Miller
Pabra Corporation
154 Overlook Avenue
Suite 2D
Peekskill, New York 10566

Dear Mr. Miller:

In your letter dated July 17, 1985, you inquired about the dutiable status of bread dough Christmas tree ornaments from Ecuador. Two samples of the merchandise were provided with your request.

The merchandise is question consists of bread dough Christmas tree ornaments, approximately 2 inches in size. One sample is in the form of a five pointed star with a flower ornamenting its center and the other sample is in the figure of a Santa head. The ornaments cannot stand unsupported but have hangers for tree trimming.

There is no provision in the Tariff Schedules of the United States (TSUS) covering merchandise of this kind. Therefore, merchandise represented by the submitted samples is classifiable under the provision for any article, not specially provided for elsewhere in the tariff schedules, in item 798.0000, TSUS, and dutiable at the same rate as the enumerated article to which it most resembles as to use. This merchandise is therefore classifiable by similitude as a Christmas tree ornament in item 772.9500, TSUS, dutiable at the rate of 6.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

B12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

NOV 25 1985

REFER TO

CLA-2-01:S:CON:N2:229-1380
815827

Mr. Bruce L. Stuart
M. E. Franks, Inc.
150 Radnor-Chester Road, Suite C-210
St. Davids, PA 19087

Dear Mr. Stuart:

Your letter of October 17, 1985, concerns the dutiable status of a partially delactosed skim milk powder. Your inquiry does not identify the country of origin of this merchandise.

Fresh skim milk is processed by ultra filtration, evaporation and spray drying. The partially delactosed skim milk powder has excellent water binding capacity and swelling ability. It is used as an ingredient in bakery products and other food applications where less lactose is required. The typical composition of the partially delactosed skim milk powder is as follows:

Milk fat	1 - 2%
Protein	65 - 70%
Lactose	20 - 22%
Moisture	4 - 5%
Ash	5 - 6%

You believe your product should be considered a milk protein concentrate and as such you believe it should be classified in item 118.45 of the Tariff Schedule. We agree with your position.

The partially delactosed skim milk powder is classifiable under the provision for milk protein concentrate in item 118.4500, Tariff Schedules of the United States. The duty rate is determined by the country of origin. Products of most favored nations are dutiable at the rate of .2 cent per pound. Products of certain Communist controlled nations are dutiable at the rate of 5.5 cents per pound. Products of certain developing countries may be entitled to duty concessions. A complete listing of countries may be found in General Headnote 3, Tariff Schedules of the United States (19 U.S.C. 1202).

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Please be advised that a copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

815827

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

B14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 21 1986

REFER TO

CLA-2-01:S:COM:N1:229-21
816788

Mr. Sean Hokari
Vice President
Mitsui & Co. (U.S.A.), Inc.
200 Park Avenue
New York, NY 10166-0130

Dear Mr. Hokari:

In your letter dated January 9, 1986, you inquired about the dutiable status of a creamed whey cheese containing cow's milk from Norway.

This product, described as Natural Creamed Whey Cheese, is said to contain (within a tolerance range of two percent on either side) 40 percent fat in the total matter, 40 percent non-fat milk solids, and 20 percent moisture. The fat content in the dry matter is specified at a maximum of 51 percent. According to the information provided, this cheese is made from whey which is the by-product of a cheese making operation. After separation from the curd, the whey is mixed with milk or cream and then evaporated to a solids content of about 50 percent. A second, further evaporation under vacuum is made to concentrate the mixture to the solids/moisture level of the final product. The finished mixture is poured into cartons lined with inner polyethelene bags. After sufficient time for cooling has elapsed, the bags and cartons are sealed and are then ready for storage or shipping. Each carton holds about 35 pounds of product.

A sample carton, submitted with your inquiry, contained a soft yellow paste with a fat content, on analysis, of 39.5 percent in the total matter and 47.7 percent in the dry matter. The sample generally appeared to meet the physical specifications listed in your letter. The cheese had a bland, fatty taste, with a mildly perceptable sweetness and a slight grittiness. Although a whey cheese, this product lacks the typical brown or light tan color and carmelized flavor of traditional Gjetost cheese. Accordingly, classification of this cheese under the provisions for Gjetost cheese in items 117.3000 or 117.3500, Tariff Schedules of the United States, would be precluded.

Natural Creamed Whey Cheese is classifiable under the provision for other cheeses, and substitutes for cheese in Part 4C of Schedule 1, Tariff Schedules of the United States (TSUS). If valued not over 25 cents per pound, this cheese is classifiable in item 117.7555, TSUS, and dutiable at the rate of 5 cents per pound. If valued over 25 cents per pound, this cheese is classifiable in item 117.8855, TSUS, and dutiable at the rate of 10 percent ad valorem.

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Cheese classifiable in items 117.7555 or in item 117.8855, TSUS, is subject to quota restrictions listed in item 950.10D in Part 3, Appendix to the Tariff Schedules. Additionally, an import license, issued to the importer by the United States Department of Agriculture, would be required at the time of entry of such merchandise.

Questions regarding licensing procedures and applications for license to import cheese subject to quota should be addressed to:

Head, Dairy and Import Group
Dairy, Livestock and Poultry Division
Foreign Agriculture Service
United States Department of Agriculture
Washington, D.C. 20250

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

816788

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

C2

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 20 1986

REFER TO

CLA-2-07:S:CON:N3G:346
817389

Ms. Corky Merril
Bostrum Warren, Inc.
P.O. Box 24285
Seattle, WA 98124

Dear Ms. Merril:

In your letter of February 11, 1986, on behalf of Hanbae America, Inc., you requested the tariff classification of two plastic "snow joggers", style "Sierra", from Korea.

The sample that you submitted first is white, and its polyurethane "upper" continues down for 3/4 inch below where it meets the top edge of the vinyl "mudguard." If one removed the mudguard, the foot would not be exposed.

The sample that you submitted two weeks later is purple, and its polyurethane "upper" only continues down for 1/4 inch below where it meets the top edge of the vinyl "mudguard." If one removed the mudguard, there would be a 1/2 inch vertical gap where the side of the foot would be covered only by the lining of the upper.

Except for the color and the amount that the mudguard overlaps the upper, the two shoes are identical. Both are snow joggers, and they have studded rubber outsoles, EVA midsoles and wedges, fleece lining in the foot area, and a thick foam lining in both the foot and shaft areas.

The white boot is classifiable under the provision for footwear, which is over 50% by weight of rubber and plastics; in which leather covers less than 50% of the exterior surface area of the upper; which has a foxing-like band applied or molded at the sole and overlapping the upper; which has uppers of nonmolded construction formed by sewing the parts thereof together and having exposed on the outer surface a substantial portion of functional stitching; and which is protective against water, oil, grease or cold or inclement weather, in item 700.3700, TSUS, and dutiable at the rate of 37.5 percent ad valorem.

The purple boot is classifiable under the provision for footwear, which is over 50% by weight of rubber and plastics; in which leather covers less than 50% of the exterior suface area of the upper and rubber and plastic cover 90% or more; and which does <u>not</u> have a foxing-like band, in item 700.5646, Tariff Schedules of the United States, and dutiable at the rate of 6 percent ad valorem.

C3

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

MAR 20 1986

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Hartuge
Area Director
New York Seaport

C4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 25 1986

REFER TO

CLA-2-03:S:COM:N3G:341
817395

Mr. Claude Brosseau
A. N. Deringer, Inc.
30 West Service Road
Champlain, N.Y. 12919-9703

Dear Mr. Brosseau:

In your letter dated February 19, 1986, you inquired about the dutiable status of a vinyl pencil case from Taiwan. Your inquiry is on behalf of Sidmax Incorporated of Canada.

The submitted sample is a vinyl novelty pencil case. It measures approximately 13-1/2 inches long by 3 inches wide with a zippered closure and crimped ends to simulate a candy wrapper. It is noted the sample is marked with the country of origin not in the English language. In accordance with Section 304, Tariff Act of 1930, foreign merchandise must be marked in a conspicious place and a legible manner so as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article.

The vinyl pencil case is classifiable under the provision for Flat goods, of other materials, other, in item 706.6100, Tariff Schedules of the United States Annotated, and dutiable at the rate of 20 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

CS

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

MAR 13 1986

REFER TO
CLA-2-07:S:COM:N3h:354
817429

Mr. L. W. Bell, Jr.
MSA International
P.O. Box 426
Pittsburgh, PA 15230

Dear Mr. Bell:

In your letter dated February 21, 1986, you inquired about the dutiable status of gloves from China. Three pair of gloves were submitted with your request.

The samples, styles 6177-825, 6177-336, and 6177-843 are vinyl work gloves with seamed cotton liners.

The procedure generally used in manufacturing these gloves is by a dipping process in which the cotton liner is dipped into a polyvinyl chloride plastic solution resulting in a cotton interior and a plastic exterior.

The three sample pair of gloves are classifiable under the provision for gloves of rubber or plastics, other than seamless, in item 705.8600, Tariff Schedules of the United States Annotated, and dutiable at the rate of 16.6% ad valorem.

Gloves classifiable in item 705.8600 are not subject to quota restrictions or visa requirements from China.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAR 20 1986

REFER TO
CLA-2-04:S:CON:N1:239-190
817577

Ms. Ilse A. Morin
Raschig Corp.
P.O. Box 7656
Richmond, VA 23231

Dear Ms. Morin:

In your letter dated February 21, 1986, you inquired about the dutiable status of Ralox 02 from West Germany.

Ralox 02 is 4,4'-methylene-bis-(2,6-ditert. butyl-phenol). Your literature indicates the product is a high-efficient long-term stabilizer for use in industrial oils and also is used as a non-staining antioxidant for hot melts and hydrocarbon resins.

Ralox 02 is classifiable under the provision for other phenols and their derivatives in item 403.5100, Tariff Schedules of the United States Annotated, and dutiable at the rate of 8.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Hartuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAR 21 1986

REFER TO
CLA-2-04:S:COM:N1:239-194
817585

Mr. T. Yano
Toyomenka (America) Inc.
Nine Greenway Plaza
Houston, Texas 77046

Dear Mr. Yano:

Your letter of March 7, 1986, concerns the current tariff status of a product of Korea which you call C-9 Aromatics or Korean Solvent C-9.

Korean Solvent C-9 is a mixture composed of approximately 47 percent by weight of non-dutiable benzenoid compounds. Most of the balance is composed of dutiable alkylbenzene compounds, no one of which is over 25 percent by weight of the mixture.

Korean Solvent C-9 is classified under the provision for mixtures in whole or in part of any of the products provided for in Schedule 4, part 1, subpart B, Tariff Schedules of the United States Annotated (TSUSA), in item 407.1610. The rate of duty is 1.7 cents per pound plus 13.6 percent ad valorem but not less than the highest rate applicable to any component material. Depending on the value, a higher rate of duty could be 0.6 cent per pound plus 17.3 percent ad valorem from item 402.3600, TSUSA, based on the alkylbenzene content.

Articles classified under item 407.1610, TSUSA, which are the products of the Republic of Korea are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 27 1986

REFER TO

CLA-2-07:S:CON:N3G-346
817673

Ms. Catherine Tsai
Sunnix International, Inc.
P.O. Box 97
Monterey Park, CA 91754

Dear Ms. Tsai:

In your letter of March 5, 1986, you requested a tariff classification on 2 styles of patented athletic footwear with electronic counters which you are planning to import from Taiwan.

Inspection of the first sample submitted with your inquiry, Style NF-31016 "Datatrack", indicates that this is a woman's leather aerobic shoe, approximately 5 inches high, with a plastic padded collar, 6 eyelet U-throat with a leather/velcro tab covering the lacing arrangement and a separate leather/velcro strap with D-ring at the top. This shoe also has a terry/tricot lining, a terry/sponge insole, and the bottom consists of a cemented EVA wedge and a molded rubber/plastic outsole with integral toe and heel bumpers which overlap and are cemented to the upper.

On this aerobic shoe, the leather/velcro tab covering the lace on the right shoe contains a plastic receptacle with a removable solid state electronic counter/watch with a liquid crystal display in a plastic case. This counter/watch would be considered an auxiliary feature that is subsidiary to the shoe and would not be separately classifiable.

Therefore, Style NF31016 is classifiable under the provision for footwear in which leather covers more than 50% of the exterior surface area of the upper; which is in chief value of leather; which is worn by women or misses; and which is valued over $2..50 per pair, in item 700.4505, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 10 percent ad valorem.

The second sample submitted with your inquiry is Style NF21015 "Datapacer," a man's jogging shoe with a nylon mesh upper with smooth leather overlays consisting of the toecap, 7 eyelet U-throat, side sweep, 2 color leather heel counter, and a plastic heel tab. This shoe has a tricot lining, a removable fabric/molded plastic insole, and the bottom consists of a 2 color EVA wedge with a 2 color molded outsole that overlaps the upper slightly at the toe.

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REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

It is also noted that the top of the tongue on this shoe is extended and finished in the shape of a leather tab backed by velcro that closes over the top 3 eyelets. Here again, the shoe for the right foot contains a plastic receptacle with a removable solid state electronic counter/watch with an LCD display in a plastic case. As mentioned previously, this counter/watch would be considered an auxiliary feature of the shoe and would not be separately classifiable.

However, since we do not know whether the chief value on this shoe is the leather or the rubber and plastic components, we can only give you an advisory classification as follows"

If in chief value of leather, classification on this shoe for men and Boys would be under item 700.3522, TSUSA, dutiable at 8.5 percent ad valorem.

If in chief value of rubber and plastic (including the plastic components in the counter/watch), classification for men, youths, and boys would be under item 700.9515, TSUSA, dutiable at 12.5 percent ad valorem.

With respect to style DF31016 "Datatrack", this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For Style DF21015 "Datapasser", this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

817673

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 18 1986

REFER TO

CLA-2-01:S:CON:N1E:228-214
817713

Mr. G. E. Tonkin
Market Entry Section
USA Marketing Division
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Dear Mr. Tonkin:

In your letter dated March 7, 1986, you inquired about the dutiable status of Mexican dip, dill dip and French onion dip from Canada.

Three samples were examined and disposed of. The products are a Mexican dip, dill dip, and French onion dip. The dips are to be imported in a ready-to-use retail can and to be used as a snack in conjunction with crackers, potato chips, vegetables etc.

You have suggested in your letter that the dips be classified under TSUS number 182.46 as sauces: other. This TSUS number however would not apply as a sauce for tariff purposes is a finished food preparation eaten as an addition to and together with a dish of food. It does not apply to an article which is eaten above for its own sake. The dips in question would fall into this latter category.

The dips are classifiable under the provision for edible preparations not specially provided for ... other ... other ... other, in item 183.0520, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 10 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Mantuge

John J. Mantuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 28 1986

REFER TO
CLA-2-07:S:COM:N3G-346
817729

Mr. Laurence F. Mages
Morrie Mages Sports
620 N. LaSalle Street
Chicago, ILL 60610

Dear Mr. Mages:

In your letter of March 6, 1986, you requested a tariff classification on an after-ski boot, product of Italy.

Inspection of the sample submitted with your inquiry indicates that this is a foam backed, non-molded, all plastic boot, approximately 7 1/2 inches high, with a 5 eyelet laced tie at the front, a plastic heel counter, and a synthetic fleece lining throughout. We note that the plastic upper terminates at and is stitched to the top of a plastic strip which looks like a "mudguard" and extends down to the top of the outsole. The sidewalls of the unit molded rubber/plastic bottom overlap the plastic upper on this boot by more than 1/4 inch and this would be considered a foxing-like band for classification purposes.

Therefore, your sample boot is classifiable under the provision for footwear which is over 50% by weight of fiber, rubber, and plastic and over 10% by weight of rubber and plastic; which has a foxing-like band molded at the sole and overlapping the upper; and which is designed to be a protection against water, oil, or cold or inclement weather, in item 700.5700, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 37.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

C12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 28 1986

REFER TO
CLA-2-07:S:CON:N3G-346
817794

Ms. Diane Straub
5M International, Inc.
711 Old Ballas Road
St. Louis, Missouri 63141

Dear Ms. Straub:

In your letter of March 19, 1986, you requested a tariff classification on a man's boot which we understand you are planning to import from a Column I country.

Inspection of the unnumbered sample submitted with your inquiry indicates that this is an all molded plastic boot, approximately 10-1/2 inches high, with a synthetic fleece lining throughout the boot.

This boot is classifiable under the provision for footwear which is over 50% by weight of rubber and plastic; in which rubber and plastic cover more than 90% of the exterior surface area of the upper and the sole; which has an upper of molded construction not formed by sewing the parts thereof together and not having exposed on the outer surface a substantial portion of functional stitching; and which is designed to be a protection against water, oil, or cold or inclement weather, in item 700.5320, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 37.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JUN 0 3 1986
CLA-2-04:S:COM:N1:236-237 REFER TO
817861

Mr. Paul E. Linet
Sandler and Travis, P.A.
Rivergate Plaza
444 Brickell Avenue
Miami, FL 33131

Dear Mr. Linet:

In your letter dated March 19, 1986, you inquired on behalf of your client, Chesebrough - Pond, Inc., about the dutiable status of Nutritional Liquid Supplements from Holland.

The prospective import, indicated as Nutritional Liquid Supplements, will be marketed as Fortimel, Fortison PRE, Fortidrink, and Fortical. These Nutritional Liquid Supplements will be available in various flavors and will be imported ready for consumption by the ultimate user.

Component breakdowns indicate that Fortimel, Fortison PRE, and Fortidrink are Nutritional Liquid Supplements in chief value of caseinates. The Fortical supplement is in chief value malto-dextrin.

Fortimel, Fortison PRE, and Fortidrink are classifiable under the provision for other casein mixtures in chief value thereof, in item 493.1700, Tariff Schedules of the United States, and are dutiable at the rate of 0.2 cent (.002) per pound.

Fortical is classifiable under the provision for other beverages, not specially provided for, in item 166.4040, Tariff Schedules of the United States, and dutiable at the rate of 1 cent per gallon.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

C14

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JUN 05 1986

REFER TO

CLA-2-04:S:CON:N1:235-334
818394

Mr. Ishikawa, Vice President
Nichimen America Inc.
1185 Avenue of the Americas
New York, NY 10036

Dear Mr. Ishikawa:

In your letter dated April 23, 1986, you inquired about the dutiable status of aluminum hydroxide from Japan. According to your letter aluminum hydroxide is also known as alumina trihydrate.

Aluminum hydroxide is classifiable under the provision for aluminum compounds, in item 417.1220, Tariff Schedules of the United States Annotated, and free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Hartuge
Area Director
New York Seaport

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REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 06 1986

REFER TO

CLA-2-01:S:COM:N1E:228-244
817869

Ms. Jacqueline P.L.P. Giri
Director
Giri Associates, Inc.
P.O. Box 1734
Elk Grove, IL 60007

Dear Ms. Giri:

In your undated letter, received by this office on March 26, 1986, you inquired about the dutiable status of instant food mixes from India.

Nine products are identified in your letter: Instant Gulab Jamoon Mix, Instant Rasam Mix, Instant Bisibele Bhath Mix, Instant Dosai Mix, Rava Idly Mix, Instant Jilebi Mix, Instant Sambar Masala, Instant Vadai Mix, and Instant Idly Mix. Photocopies of the fronts and backs of the retail sales packages accompanied your letter. Unfortunately, the ingredients listing on Instant Bisibele Bhath Mix, Instant Jilebi Mix, Instant Vadai Mix, and Instant Idly Mix is either illegible or obscured. All products are dry mixes added to water to create either a ready to eat food, or a batter or dough ready for frying or steaming.

Gulab Jamoon mix contains flour, skimmed milk powder, hydrogenated fats, sodium bicarbonate, and tartaric acid. It is mixed with water to form a dough, rolled into balls, fried, and soaked in syrup. Instant Rasam Mix, consisting of turdhall, tamarind, salt, sugar and spices, is added to boiling water and cooked for several minutes. The resulting liquid may be eaten by itself or with rice. Instant Dosai Mix, composed of flour, lentil dal, fenugreek, salt, citric acid, calcium carbonate, and asafoetida, is mixed with water to form a batter and fried like a pancake. Rava Idly Mix contains wheat semolina, hydrogenated fat, salt, cashew nuts, bengal gram dhal, black gram dhal, sodium bicarbonate, mustard, curry leaves, and asafoetida. It is mixed with thick sour curds to form a batter, poured into molds and steamed. Instant Sambar Masala contains spices, salt, bengalgram, blackgram, and curry leaves. It is added to water and cooked for several minutes. The resulting soup-like product may be eaten by itself or used as a gravy over vegetables.

Instant Dosai Mix and Rava Idly Mix are classifiable under the provision for edible preparations not specially provided for ... pancake flour and other flour mixes, in item 183.0100, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 10 percent ad valorem.

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Instant Rasam Mix and Instant Sambar Masala are classifiable under the provision for edible preparations not specially provided for ... other, in item 183.0520, TSUSA, and dutiable at the rate of 10 percent ad valorem.

Articles classifiable under items 183.01 and 183.05, TSUS, which are the products of India are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Articles classifiable in items 183.01 and 183.05, TSUS, containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, are currently subject to quota restrictions in items 958.17 and 958.18, TSUS.

However, your inquiry does not provide enough information for us to give a classification ruling on Gulab Jamoon Mix, Instant Bisibele Bhath Mix, Instant Jilebi Mix, Instant Vadai Mix, and Instant Idly Mix. Your request for a classification ruling should include an ingredients breakdown, by weight and value, for each item.

Based upon the information you submitted, Gulab Jamoon Mix, Instant Vadai Mix, Instant Idly Mix, and Instant Jilebi Mix would probably be classified under the provision for pancake flour and other flour mixes, in item 183.0100, TSUSA, with duty at the rate of 10 percent ad valorem.

Instant Bisibele Bhath Mix would probably be classified under the provision for edible preparations not specially provided for ... other, in item 183.0520, TSUSA, dutiable at 10 percent ad valorem.

With respect to Instant Dosai Mix, Rava Idly Mix, Instant Rasam Mix, and Instant Sambar Masala, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)]. For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations [19 C.F.R. 177.1(d)(2)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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817869

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y. -

JUN 05 1986

REFER TO

CLA-2-07:S:COM:N3G:344
817870

Mr. Barry Smith
Irving Lang Inc.
7 West 45 Street
New York, N.Y. 10036

Dear Mr. Smith:

In your letter of March 22, 1986, you asked about the dutiable status of gold jewelry from Thailand.

You state that you wish to ship to Thailand raw 10-karat and 14-karat gold castings (ring mountings, pendants, bracelets, etc.) manufactured by you in the United States. In Thailand the raw castings will be filed, cleaned, set with precious stones, polished and returned to the United States for resale.

Ten carat and 14-karat gold jewelry set with precious stones, in chief value of gold, is classifiable under the provision for jewelry and other objects of personal adornment ... in item 740.1400, Tariff Schedules of the United States Annotated (TSUSA). The same 10-karat and 14-karat gold jewelry -- in chief value of the precious stones -- is classifiable in item 740.1500, TSUSA. The rate of duty in either event is 7.2 percent ad valorem.

Jewelry articles classifiable under item numbers 740.1400 or 740.1500, TSUSA, which are products of Thailand, are entitled to duty-free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

To qualify for duty-free treatment under GSP, the imported jewelry -- (1) must be directly shipped from Thailand to the United States, (2) a GSP Certificate of Origin Form A must be filed with the entry, and (3) at least 35% of the appraised value of each individual jewelry article must be attributable to the cost or value of materials produced in Thailand and/or the direct costs of processing operations performed in Thailand.

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Under the tariff laws all merchandise imported into the United States is subject to duty unless the specific provision within the Tariff Schedules of the United States permits duty-free or reduced-duty theron. In the event you imported gold jewelry does not qualify for duty-free treatment under GSP, several other special classification provisions warrant consideration.

Part 1 of schedule 8, TSUS, provides for duty-free or reduced-duty treatment on articles exported from the United States and returned. Subpart A thereof concerns articles exported and returned without having been advanced in value or improved in condition while abroad; since the raw castings exported from the United States in your case are advanced in value and improved in condition by virtue of the processing performed in Thailand, the provisions of subpart A do not apply to the jewelry to be imported by you.

Subpart B of part 1, schedule 8, TSUS, permits free entry or a reduction in the duty payable on certain merchandise exported and returned after having been advanced in value or improved in condition while abroad. Item 806.20 thereunder covers articles exported for repairs or alterations; since the processing in Thailand results in new and different articles (completed jewelry articles versus raw castings) and thus constitutes more than repairs or alterations, this provision would not apply in your case. Item 806.30, TSUS, which covers articles of metal (other than precious metal) produced or processed in the United States, exported for further processing, and returned for further processing, would also not apply.

The only provision within subpart B, part 1, schedule 8, TSUS, that might conceivably apply in the present circumstances is item 807.00, TSUS, which refers to articles assembled abroad in whole or in part of components produced in the United States. Although the rate of duty on the imported jewelry is that which applies under its specific classification, e.g., 7.2 percent under item 740.1400, TSUSA, for rings, pendants, and bracelets in chief value of gold, the amount of duty may be reduced by deducting from the appraised value of the imported article the cost or value of the components produced in the United States. Thus, duty is paid only on materials, assembly costs, and other elements reflected in the appraised value which are attributable to a foreign country.

In order to be accorded an allowance under item 807.00, TSUS, the U.S.-made components must be exported in condition ready for assembly and must be subjected only to assembly operations and operations incidental to assembly in the foreign country. Any processing of the U.S. components other than by assembly and operations incidental to assembly, such as further fabrication, prior to or after assembly in the foreign country will disqualify the U.S. components from any allowance under item 807.00. TSUS.

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817870

It is understood that the raw castings to be used in the production of the karat gold jewelry in Thailand are produced by you in the United States. However, the filing of those castings and the polishing before and after assembly, represent significant and extensive processing which goes beyond operations incidental to assembly within the meaning of item 807.00, TSUS, and the regulations issued thereunder. Accordingly, the raw castings would not be eligible for a duty exemption under item 807.00.

Of the materials that you may export to Thailand, only the diamonds or other precious or semiprecious stones assembled into the jewelry in Thailand could be subject to an allowance under item 807.00, TSUS. However, you would have to prove that those stones were actually produced in the United States, i.e., by mining and/or cutting from rough stones, rather than merely purchased in the United States.

Based on your letter and your telephone conversation with National Import Specialist Louis Piropato, it appears that the precious stones are of foreign origin, whether supplied by you from the United States, or whether purchased in Thailand. Item 807.00, TSUS, would therefore not apply to the stones in question with the result that the jewelry would be subject to duty on its full value (including the precious stones) upon importation from Thailand.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

817870

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

CLA-2-07:S:CON:N3G:344
817905

Mrs. Vivien Siegel
Promotrim International
P.O. Box 360
Tenafly, NJ 07670

Dear Mrs. Siegel:

In your letter of March 26, 1986, you asked about the dutiable status of certain rhinestones mounted on tape, from Switzerland.

You are inquiring about 12-point rhinestones mounted on positioning transfer tape ("B" tape) in various designs. The rhinestones have a heat-seal backing to enable the user to transfer and heat seal the stones from the tape on to a garment. After transfer to the garment the rhinestones maintain the design or pattern originally found on the positioning tape.

The rhinestones mounted on positioning transfer tape are classifiable under the provision for imitation gemstones (except imitation gemstone beads) in item 741.35, Tariff Schedules of the United States, and are dutiable at the rate of 2.9 percent ad valorem.

The sample has been returned to you.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
MAY 28 1986

CLA-2-01:S:COM:N1E:228-254 REFER TO
817929

Mrs. Perla Kuhn
Kuhn, Muller and Bazerman
1412 Broadway
New York, NY 10018

Dear Mrs. Kuhn:

In your letter of March 27, 1986, on behalf of Richardson-Vicks Inc., Reference PMK/JSL, you requested the tariff classification of a chocolate flavored beverage powder from Mexico.

An ingredients breakdown, photographs, and sample package labels accompanied your letter and have been retained by this office. The product is a chocolate flavored beverage powder, imported in 14 ounce cans and 25 gram envelopes, bearing the "Pancho Pantera" trademark. It consists of 75.3 percent sugar, 18 percent cocoa, five percent nonfat dry milk, and less than two percent of flavoring, color, and vitamin supplements. You have noted in your letter, and we agree with your conclusion, that the quantity of food ingredients in the product precludes classification as a flavored sugar, in item 155.75, Tariff Schedules of the United States (TSUS).

This merchandise is classifiable under the provision for edible preparations not specially provided for ... other, in item 183.0520, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 10 percent ad valorem. This product will also be subject to quota restrictions in item 958.18, TSUS.

Articles classifiable under item 183.0520, TSUSA, which are the products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 23 1986

REFER TO

CLA-2-06:S:CON:N1:115:521
818003

Ms. Nancy B. Irwin
The Kip Company
1925 Lakeview Avenue
Cleveland, OH 44116-2413

Dear Ms. Irwin:

In your letter dated April 2, 1986, you inquired about the dutiable status of a catalyst from the German Democratic Republic (East Germany).

The catalyst under discussion is referred to as a monometallic reforming catalyst. The catalyst will be produced in the form of a hollow extrusion ring. It consists of platinum on halogen containing aluminum oxide. The catalyst ring will be used in the reforming of naphtha fractions to produce highly knock-proof petrol components and for the recovery of BTX-aromatics.

The platinum is supplied by the customer and is provided in the form of used reforming catalysts, metallic platinum or hexachloroplatinic (IV) acid with a purity of not less than 99.9 percent, referred to platinum. The platinum is the component material in chief value.

The platinum reforming catalyst of East German origin is classifiable under the provision for articles of precious metal, of platinum, in item 656.0500, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 65 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1 (a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If a ruling letter is received after the filing of such documents, it should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 1 2 1986

REFER TO

CLA-2-06:S:COM:N1:115-459
818008

Mr. Paul L. Meyer
Nik & Associates
P.O. Box 90279
Los Angeles, CA 90009-0279

Dear Mr. Meyer:

In your letter dated April 2, 1986, you inquired about the dutiable status of a "Chair Pack" from Korea.

The "Chair Pack" is a frame backpack that opens into a chair with a backrest. The "Chair Pack" consists of an aluminum frame, foam and fabric backing. The inquiry indicates that the "Chair Pack" is used in camping, fishing, picnicking and other pursuits. In addition, the aluminum is indicated to be the component material in chief value.

"Chair Packs" are classifiable under the provision for articles of aluminum, not coated or plated with precious metal, in item 657.4080, Tariff Schedules of the United States, and dutiable at the rate of 6.2 percent ad valorem.

Articles classifiable under item 657.4080, Tariff Schedules of the United States, which are the products of Korea, are entitled to duty-free treatment under the Generalized System of Preferences (GSP), upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 10 1986

REFER TO

CLA-2-01:S:CON:N1E:232-274
818030

Mr. James W. Hewitt
Alberta Apiary Products Ltd.
P.O. Box 3296
Fort Saskatchewan, Alberta T8L 2T3 Canada

Dear Mr. Hewitt:

In your letter dated March 26, 1986, you inquired about the dutiable status of three products from Canada: pollen royal spread, propolis ointment, and propolis tincture.

The pollen royal spread is composed of 94.8 percent honey, 5 percent pollen, and 0.2 percent royal jelly. The sample which was provided is golden tan in color and flows at room temperature. This product is destined to be used as a table spread in a manner similar to a jam or jelly and is packaged in a wide mouth screw top jar holding 17.6 fluid ounces. Honey is provided for by name as a sugar or syrup under item 155.7000 of the Tariff Schedules of the United States. However, since this product has been adulterated through the addition of substantial non-honey ingredients it is not classifiable under the tariff provision for honey. While this product cannot be considered as honey, pollen royal spread does retain the identity of a sugar or syrup.

Accordingly, pollen royal spread is classifiable under the provision for sugars, syrups, and molasses, described in Schedule 1, Part 10A of the Tariff Schedules, flavored; and syrups, flavored or unflavored consisting of blends of any of the products described in that tariff subpart, other than high fructose syrup derived solely from starches, in item 155.7540, Tariff Schedules of the United States. This product is dutiable at the rate of 7.1 percent ad valorem. Currently, there are no quotas or restrictions on a product such as this since it contains no cane or beet sugar.

Unfortunately, we are not able to venture an opinion regarding the tariff classification of the propolis ointment or propolis tincture based solely on the samples that were provided. In order for a determination to be made on these products you should furnish information regarding the chemical composition of these products in terms of percentages by weight of the finished product and a statement regarding the method of production. Any information or literature regarding the intended end use of these products would also be helpful.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 18 1986

REFER TO
CLA-2-07:S:COM:N3G:346
818062

Ms. Ruth Mammone
Morse Shoe International
555 Turnpike Street
Canton, MA 02021

Dear Ms. Mammone:

In your letter of April 4, 1986, you requested a tariff classification on a child's plastic shoe which we understand you are planning to import from Korea or Taiwan.

Inspection of the sample submitted wth your inquiry, Style 64-13920-F50, indicates that this is a child's all plastic aerobic type shoe, oxford height, with a terry/tricot lining, and a terry/sponge insole. The bottom is an EVA wedge midsole with a unit molded outsole with integral toe and heel bumpers which extend onto and are cemented to the upper.

It is noted that the toe bumper on your sample overlaps the upper by more than 1/4 inch and is also stitched to the upper while the heel bumper appears to overlap the upper by approximately 1/8 inch. However, in a ruling published as C.S.D. 83-103, the Customs Service set forth the following criteria:

> "In measuring overlap, when the overlap is uniform, only one cut is to be made in the shoe, and that cut is to be made at the edge where the ball of the foot would normally rest. If the overlap is not uniform, the cut should be made at the point where the greatest amount of overlap occurs."

Since the toe bumper and heel bumper on your shoe take up 70% of the total circumference, we consider this as substantially encircling to qualify as a foxing-like band for classification purposes.

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Therefore, your sample, Style 64-13920-F50, is classifiable under the provision for footwear which is over 50% by weight of fiber, rubber, and plastic and over 10% of rubber and plastic; which is not designed to be a protection against water, oil, or cold or inclement weather; which has a foxing-like band almost wholly or rubber or plastic, applied or molded at the sole and overlapping the upper; and which is, we assume, valued for Customs purposes over $3.00 but not over $6.50 per pair, in item 700.6700, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at 37.5 percent ad valorem, plus 90 cents per pair.

In the event this shoe is valued for Customs purposes over $6.50 but not over $12.00 per pair, classification would be under item 700.6900, TSUSA, and dutiable at 20 percent ad valorem, plus 90 cents per pair.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

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290818

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 25 1986

REFER TO

CLA-2-04:S:COM:N1:240-343
818146

Mr. James J. Hart, Jr.
New England Graphics & Metals
P.O. Box 8033 - Bay Drive
New Fairfield, CT 06810

Dear Mr. Hart:

Your letter of April 7, 1986 concerns the dutiable status of a mixture of unvulcanized synthetic and natural rubber from Canada. A sample of the product to be imported was submitted for our review.

The test made by our laboratory indicates that the product you intend to import is composed of a mixture of crude synthetic and natural rubbers. The product is classifiable under the provisions for mixtures of natural and synthetic rubbers, in item 446.3000, Tariff Schedules of the United States Annotated. The rate of duty is 0.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 05 1986

REFER TO

CLA-2-01:S:COM:N1E:228-298
818148

Mrs. A. Bachofner
Export Sales
Agrano AG Basel
4009 Basel
Herrengrabenweg 56 Switzerland

Dear Mrs. Bachofner:

In your letters dated April 4, 1986 and May 15, 1986, you inquired about the dutiable status of dough improvers from Switzerland.

Ingredient breakdowns and descriptive literature accompanied your first letter. "Alevante," said to be an improver for puff pastry, is a mixture of corn starch (79.05 percent), mono diglyceride (20 percent), ascorbic acid (.5 percent), citric acid (.25 percent), and amino acid (.2 percent). "Garanta" powder is an improver for special breads, rolls and buns, affecting leavening, volume, structure, taste, and shelf life. It consists of dextrose (33.4 percent), corn starch (30.2 percent), esters of mono and di-glycerides (20 percent), malted barley flour (10 percent), soja flour (3.5 percent), lard, alpha-amylase (one percent each), ascorbic acid (.7 percent), and potassium bromate (.2 percent). "Tourit" powder is an additive for fold-in croissant and danish pastry dough, said to keep the doughs in healthy condition by limiting gluten decomposition, controlling enzymatic reaction and excluding overacidity. Tourit contains wheat starch (51.6 percent) wheat flour, malted barley flour (20 percent each), soja lecithin (6 percent), esters of mono and di-glycerides (1.8 percent), ascorbic acid (.5 percent), and potassium bromate (.1 percent). These three products may also be imported in a concentrated form, to which the carrier agents (dextrose or starch) would be added in the United States. Alevante concentrate differs from the complete product by the absence of mono diglyceride; Garanta concenetrate does not contain dextrose, mono and diglycerides, and lard; Tourit concentrate lacks wheat starch and wheat flour.

Alevante, Garanta Powder, and Tourit Powder, complete or concentrate, are classifiable under the provision for edible preparations not specially provided for ... other, in item 183.0520, Tariff Schedules of the United States Annotated, and dutiable at the rate of 10 percent ad valorem.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

John J. Martuge
Area Director
New York Seaport

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 18 1986

REFER TO

CLA-2-07:S:COM:N3G:346
818154

Mr. Zane Kouchavlis
San Shoe Trading Corp.
470 Park Avenue South
New York, N.Y. 10016

Dear Mr. Kouchavlis:

In your letter of April 8, 1986, you requested a tariff classification on a plastic athletic shoe you are planning to import from Taiwan.

Inspection of the sample submitted with your inquiry, your Pattern No. TA-386-228, indicates that this is a man's all plastic high top athletic shoe, 10 eyelet U-throat, with padded collar. This shoe also has a white EVA wedge midsole with a unit molded blue outsole with integral toe and heel bumpers which extend onto and are cemented to the upper.

It is noted that the toe bumper on your sample overlaps the upper by more than 1/4 inch and is also stitched to the upper while the heel bumper appears to overlap the upper by approximately 1/8 inch. However, in a ruling published as C.S.D. 83-103, the Customs Service set forth the following criteria:

> "In measuring overlap, when the overlap is uniform, only one cut is to be made in the shoe, and that cut is to be made at the edge where the ball of the foot would normally rest. If the overlap is not uniform, the cut should be made at the point where the greatest amount of overlap occurs."

Since the toe bumper and heel bumper on your shoe take up 66% of the total circumference, we consider this as substantially encircling to qualify as a foxing-like band for classification purposes.

Therefore, your sample, Pattern No. TA-386-228, is classifiable under the provision for footwear which is over 50% by weight of fiber, rubber, and plastic and over 10% rubber and plastic; which is not designed to be a protection against water, oil, or cold or inclement weather; which has a foxing-like band almost wholly of rubber or plastic, applied or molded at the sole and overlapping the upper; and which is, we assume, valued for Customs purposes over $3.00 but not over $6.50 per pair, in item 700.6700, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 37.5 percent ad valorem, plus 90 cents per pair.

E4

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

REPLY TO: REGIONAL [illegible]

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

751818

ES

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 0 3 1986

REFER TO
CLA-2-07:S:CON:N3D:223
818193

Mr. S. Kubo
Sanyei America Corporation
1881 Commerce Drive, Unit 114
Elk Grove Village, Illinois 60007

Dear Mr. Kubo:

Your letter of April 8, 1986 requested this office to rule upon the tariff classification of mittens from Taiwan.

The first sample, style 0772B, is described as a toddler ski mitten. This mitten has a woven shell of man-made fibers, a knit man-made fiber surface on the inside, vinyl reinforcement on the palm and thumb, additional padding across the back of the knuckles with internal vinyl reinforcement, an elasticized wrist, and a hook and clasp.

The second sample, style 4005, is described as an infant ski mitten. This mitten has a woven shell of man-made fibers with pile, man-made fibers on the inside and on the cuff. These mittens do not have thumbs. Each mitten of this pair is joined together by a knit, man-made cord approximately 30 inches long.

Cost breakdowns were submitted that indicated each of the styles is in chief value of man-made fibers.

In the case of Stonewall Trading Company v. United States, 64 Cust. Ct. 482, C. D. 4023 (1970), the Customs Court ruled that certain vinyl gloves are classifiable under the provision for other ski equipment, in item 734.97, TSUS (now item 735.06, TSUS). These gloves were found to have the following characteristics:

1. a hook and clasp to hold the gloves together;

2. an extra piece of vinyl stitched along the thumb portion to meet the stress caused by the flexing of the knuckles when the skier grasps the ski poles;

3. an extra piece of red colored vinyl with padding reinforcement and inside stitching, which is securely stitched across the middle of the glove where the knuckles bend and cause stress;

4. cuffs with an elastic gauntlet to hold the gloves firm around the wrist, so as to be waterproof, and keep it securely on the hand.

EG

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

Since the toddler ski mitten, style 0772B, possesses all of the features cited above, this mitten is classifiable under the provision for other ski equipment in item 735.0660, Tariff Schedules of the United States Annotated (TSUSA) and is dutiable at the rate of 5.9 percent ad valorem.

Articles classifiable under item 735.0660, TSUSA, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

With respect to the infants mitten, style 4005, however, not only does it lack the additional padding with vinyl reinforcement across the back of the knuckles and a hook and clasp, the absence of a thumb would preclude the infant from grasping a ski pole. The presence of a pile cuff to which snow would cling after a fall would negate any waterproof quality, presumed to be present, of this mitten. Furthermore, the knit cord joining the two mittens is a standard feature of infants and children's winter gloves for warmth. The presence of this feature is indicative of the fact that these mittens are not designed for use in the sport of skiing but are in fact designed as winter gloves for warmth. Finally, infants are physically incapable of engaging in the activity of skiing so mittens of this size can not be considered to be within the meaning of ski equipment. Accordingly, style 4005 is precluded from classification under the provision for other ski equipment in item 735.0660, TSUSA.

Accordingly, the infant's ski mitten, style 4005, is classifiable under the provision for gloves of man-made fibers, not knit — in item 704.9000, TSUSA. The rate of duty is 14 cents per pound plus 15.7 percent ad valorem.

The subject sample mitten falls within textile category designation 631W. As products of Taiwan this merchandise is subject to quota restrictions and visa requirements based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact you local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

818193

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For your information, style 4005 is not legally marked for the purposes of Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). One of each pair of gloves must be marked with a sewn in label showing the country of origin. Both style 0772B and 4005 are also subject to the marking requirements of the Textile Fiber Products Identification Act of 1958, as amended (15 U.S.C. 70).

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

818193

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E8

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 18 1986

REFER TO

CLA-2-01:S:CON:N1E:232-320
818264

Mr. Peter Nesbit
Burton Son & Sanders Ltd.
College Street
Ipswich IP4 1DE England

Dear Mr. Nesbit:

In your letter dated April 10, 1986, you inquired about the dutiable status of a cake decoration product from England.

This particular product is designated by your company as Diamond Dark Vermicelli HF 16 and commonly known as chocolate flavored sprinkles in the United States. The samples that you submitted are dark brown in color and are in the form of small rods approximately one-quarter inch long by one-sixteenth of an inch thick. The stated composition of this product is 69 percent by weight sugar, 16 percent by weight palm oil, 14 percent by weight cocoa powder, with the balance composed of lecithin and gum arabic. The finished product will actually contain 12 percent by weight non-fat solids of the cocoa bean nib.

Diamond dark vermicelli HF 16 are classifiable under the provision for confectioners' coatings and other products (except confectionery) containing by weight not less than 6.8 percent non-fat solids of the cocoa bean nib and not less than 15 percent of vegetable fats other than cocoa butter in item 156.4700, Tariff Schedules of the United States, and dutiable at the rate of 2.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

E9

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

MAY 28 1986

REFER TO
CLA-2-07:S:COM:N3D:223
818313

Mr. Ron Eckstam
Eckstam, Fitzsimmons & Associates, Inc.
14276 23rd Avenue North
Plymouth, MN 55441

Dear Mr. Eckstam:

In your letter of April 15, 1986, you requested the tariff classification of a Scoop-N-Rake Golf Retriever from Taiwan, Hong Kong, Japan, and Korea.

The submitted sample is 39 inches overall including a 33 inch handle. The working end is approximately 6 inches long and consists of a 5 closed, curved tine rake overlaid by a round metal, 2 1/4 inch diameter metal loop. Pulling this loop back toward the handle opens the tines of the rake. The handle has 3 inner tubes so it can telescope out to an overall length of 12 feet. This article is designed to be used by a golfer to retrieve a ball from an otherwise inaccessible area on a golf course during the course of play.

The Scoop-N-Rake Golf Retriever is classifiable under the provision for other golf equipment in item 734.7780, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 5.2 percent ad valorem.

Articles classifiable under item 734.7780, TSUSA, which are the products of Taiwan, Hong Kong, and Korea are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E10

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 0 6 1986

REFER TO

CLA-2-01:S:COM:NIE:228-327
818327

Ms. Gail Minogue-Edlund
Minogue & Associates
4715 Braesvalley
Houston, TX 77096

Dear Ms. Minogue-Edlund:

In your letter dated April 17, 1986, you inquired about the dutiable status of cereal from Ireland.

A sample accompanied your letter, was examined and disposed of. The product, called "Irish Farmhouse Muesli," is a mixture of whole toasted oat flakes, whole wheat flakes, whole barley flakes, raisins, chopped dates, sunflower seeds, roasted peanuts and hazelnuts. It will be marketed as a natural food cereal, free of salt, sugar, and additives, that may be served hot or cold.

This product is classifiable under the provision for cereal breakfast foods and similar cereal preparations, by whatever name known, processed further than milling, in item 182.3000, Tariff Schedules of the United States Annotated, and dutiable at the rate of 2.5 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E11

REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 0 3 1986

REFER TO

CLA-2-07:S:COM:N3G:341
818371

Mr. Fred Zamzow
Piedmont Products
Hwy. HH P.O. Box 86
Piedmont, MO 63957

Dear Mr. Zamzow:

Your letter of April 16, 1986 requested this office to rule upon the tariff classification of a lunch tote and a PVC storage bag from Saint Lucia.

The submitted lunch tote is of nylon and measures approximately 5.5 inches by 7.5 inches by 5.25 inches. There is a textile webbing handle strap measuring 8 inches in length and 1 inch in diameter. The articles for food and beverages are inserted into an insulated interior at a side opening which will be covered by overlapping side panels and then secured by overlapping top and bottom velcro flap closures.

One can ascertain Congressional intent through the Tariff Classification Study which reads: "The luggage and handbags covered here may be fitted with bottle, dining, drinking, manicure, sewing, traveling or similar sets of a type used for convenience, while traveling ..." Thus, in the case of Prepac Inc. v. United States, 78 Cust. Ct. 108, C.D. 4694 (1977), the court stated "I. is clear that the intent in enacting this provision was to encompass such travel goods as are primarily used for travel which are utilized for food and beverages." Therefore, this office feels that the lunch tote is primarily for the convenience of the traveler to transport food and beverages during travel.

The lunch tote is classifiable under the provision for luggage, of other textile materials, other, in item 706.4152, Tariff Schedules of the United States. The rate of duty is 20 percent ad valorem.

Tariff item number 706.4152 falls within textile category designation 670. As a product of Saint Lucia this merchandise is not currently subject to quota and visa restrictions based upon international textile trade agreements.

Due to the changeable nature of these agreements you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

E12

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The PVC bag presented measures 20 inches by 21 inches with a textile coil zipper running along the full width of the top front panel and its sides. The seams are reinforced with PVC edging and stitching. It appears this bag will be utilized for storing bedding items.

The PVC bag is classifiable under the provision for household articles not specially provided for, of rubber or plastics, in item 772.1500, Tariff Schedules of the United States. The rate of duty is 4 percent ad valorem.

Articles classifiable under item 772.1500, TSUS, which are the products of Saint Lucia are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

818371

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JAN 18 1986

REFER TO

CLA-2-04:S:COM:N1:240-331
818377

Mr. Joseph Eichberg
American Lecithin Company
P.O. Box 4056
Atlanta, GA 30302

Dear Mr. Eichberg:

Your letter of April 15, 1986 concerns the dutiable status of Soy Phosphatide NC 95 and Soy Phosphatide NC 95-H from West Germany. Samples of each product were submitted.

The Customs laboratory has analyzed the two products. The Soy Phosphatide NC 95 (Soybean Phosphatidylcholine) is a refined lecithin, while the Soy Phosphatide NC 95-H (Soybean phosphatidylcholine) is a refined hydrogenated lecithin. These products have diverse uses, including use in the preparation of liposomes for drug delivery and as a solubilizer. These phosphatides are also undergoing investigations with respect to their potential value of phosphatidylcholine in neurological disorders and in cardiovascular disease.

Since these products are not chiefly used as drugs, tariff classification is precluded under the provision for drugs.

Soy Phosphatides NC 95 and NC 95-H are classifiable under the provision for fatty substances of animal or vegetable origin; not sulfonated or sulfated, fatty-acid esters, ethers, and ether-esters of polyhydric alcohols, other, in item 465.1000, Tariff Schedules of the United States Annotated. The rate of duty is 1.1 cents a pound, plus 4.9 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

E14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 25 1986

REFER TO

CLA-2-01:S:COM:N1:232-352
818475

Mr. G.E. Tonkin
Market Entry Section
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Dear Mr. Tonkin:

In your letter dated April 17, 1986, on behalf of Agrinove of Ste. Claire, Quebec, you inquired about the dutiable status of fruit flavored drinks from Canada.

Samples of five different flavors of Jutel brand drinks in individual retail boxes of 200 milliliters were submitted. The flavors consist of apricot, orange, grape, strawberry and kiwi-mango. All have skim milk added. The ingredients in order of weight are water, skim milk, concentrated juice of the particular named fruit (ten percent or less), sugar, dextrose, stabilizers, preservatives, flavorings and colorings.

The component material in chief value is stated to be the sugar or dextrose for the apricot, orange and grape drinks. Strawberry juice is the component material in chief value of the strawberry drink. A breakdown by value is not available for the kiwi-mango drink.

The apricot, orange, grape and strawberry drinks are classifiable under the provision for beverages, not specially provided for, in item 166.4040, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of one cent per gallon.

However, your inquiry does not provide enough information for us to give a classification ruling on the kiwi-mango drink. Your request for a classification ruling should include a component material breakdown by value.

Assuming that the kiwi-mango drink is not in chief value of the skim milk, it would also probably be classified under the provision for beverages, not specially provided for, in item 166.4040, TSUSA, with duty at the rate of one cent per gallon.

Should the composition and value of these products change so that the milk is the component material in chief value, the products would be classified under the provision for articles, not specially provided for of milk or cream, in item 118.3000, TSUSA, with duty at the rate of 17.5 percent

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REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

ad valorem. In addition, they would then be subject to quota requirements.

With respect to the apricot, orange, grape and strawberry drinks, this is a ruling letter issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 C.F.R. 177.1(a)(1)). For the balance of the merchandise, this is an information letter issued under the provisions of Section 177.1(d)(2) of the Customs Regulations (19 C.F.R. 177.1(d)(2)).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

818475

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

F2

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 16 1986

REFER TO

CLA-2-01:S:COM:N1E:228-397
818498

Mr. Fidencio Paredez
Instituto Mexicano De Comercio Exterior
225 N. Michigan Avenue
Chicago, IL 60601

Dear Mr. Paredez:

In your letter dated April 23, 1986, you inquired about the dutiable status of loofa from Mexico.

A sample was examined and retained. The sample was a circular cross-section two inches in diameter taken from the dry loofa plant.

The loofa is classifiable under the provision for vegetable substances, crude, not specially provided for, in item 193.2560, Tariff Schedules of the United States Annotated, and is free of duty.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(i)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Hartuge

John J. Hartuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

F3

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 09 1986

REFER TO

CLA-2-04:S:COM:N1:235-346
818501

Mr. H. M. Shaikh, President
Pacifica Chemical Incorporated
132 W 132 Street
Los Angeles, CA 90061

Dear Mr. Shaikh:

In your letter dated April 24, 1986, you inquired about the dutiable status of various chemicals from the Peoples Republic of China, Korea and Japan.

The chemicals you requested classification for are listed below:

sodium hexametaphosphate containing by weight not over 45 percent of water of crystalization	421.16	1.4% ad valorem
over 45 percent	421.18	2.6% ad valorem
citric acid	425.74	6.7% ad valorem
sodium hydrosulfite	421.06	17.5% ad valorem
oxalic acid	425.86	3.9% ad valorem
hydrogen peroxide liquid or powder	423.00	3.9% ad valorem
acetic acid	425.70	1.8% ad valorem

Articles classifiable under item 421.16, 421.18, 425.74, 421.06, 425.86, 423.00 and 425.70, TSUS, which are the products of Korea are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

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REPLY TO: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

105818

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 22 1986

REFER TO

CLA-2-03:S:COM:N3C:345
818511

Mr. Andrew P. Vance
Barnes, Richardson & Colburn
475 Park Avenue South
New York, NY 10016

Dear Mr. Vance:

In your letter of April 30, 1986, you requested the tariff classification of a "Carry-Along Fashion Exercise Mat" from Taiwan. Your inquiry is on behalf of Multi-Toys Corporation, Fort Lee, New Jersey.

The submitted sample is a "Carry-Along Fashion Exercise Mat," style #1367, measuring approximately 34 inches long by 15 inches wide. The mat is in chief value of man-made fiber woven fabric and, when folded, is secured by a zipper closure with two carry straps. On the front of the folded mat is a pocket with the name "L.A. Gear" printed in its center. The mat is contained in a clear plastic carry bag with snap closures.

You believe that the "Carry-Along Fashion Exercise Mat" is classifiable under the provision for other game, sport, gymnastic, athletic, or playground equipment, not specially provided for, in item 735.2058, Tariff Schedules of the United States Annotated (TSUSA). You do not submit any evidence to support this claim, however, nor are any design features apparent in the sample supplied. Since exercise is an athletic activity, none of the other named activities need be considered.

Mats designed for use in exercise have two primary purposes. The first of these is to absorb shock to the bones and joints. Such shock occurs when the user is in an upright position and rapidly transferring weight from one leg to the other. The second purpose is to provide a non-slip surface to ensure the user's stability, whether prone, seated, or upright, that will also prevent skin burns.

Your submitted sample has only 1/2 inch of a very low density, open cell foam that compresses easily. As such, it shows no more than token shock absorbing capability. The woven fabric shell which covers this foam is slick and would not provide the stable surface. Accordingly, the "Carry-Along Fashion Exercise Mat" is not designed for the athletic activity of exercising and is therefore precluded from classification, as such, in item 735.2058, TSUSA.

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Accordingly, the "Carry-Along Fashion Exercise Mat," style #1367, is classifiable under the provision for Articles not specially provided for, of textile materials, of man-made fibers, other, in item, 389.6270, TSUSA, and dutiable at the rate of 4 cents per pound plus 10 percent valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Peter J Baish
Area Director
New York Seaport

818511

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

F7

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 10 1986

REFER TO

CLA-2-07:S:CON:N3H:354
818516

Mr. Andrew P. Vance
Barnes, Richardson & Colburn
475 Park Avenue South
New York, NY 10016

Dear Mr. Vance:

In your letter dated April 30, 1986, on behalf of Multi-Toys Corporation, you inquired about the dutiable status of gloves from Taiwan.

The submitted pair of sample gloves, referred to as "Work-Out Gloves", model 1372, are half finger gloves for a child. The gloves have half-pique construction on the tops of the fingers and thumbs while an inseam construction is used for the balance of the gloves. In the center of each palm are 4 air holes. The backs of the hands have cut-away sections closed by 1 1/2" velcro straps. Four round 1/2" diameter holes are also cut out over the knuckles. The gloves are composed of seamed vinyl material, with non-textile fourchettes.

You state that these gloves are designed for gymnastic activity and, therefore, believe that they are properly classifiable under the provision for other sports gloves in item 735.07, TSUS. We do not agree.

For most of the activities performed by gymnasts, no gloves are used; the gymnast merely applies chalk to the hands to prevent them from slipping on the apparatus being used. The sole exception to this procedure is when the gymnast is working on the parallel bars (as one high bar for man; as uneven parallel for women). Gloves designed for working with this apparatus have a rod attached by a strap linking the two center fingers to the wrist. Such articles are not usually gloves themselves since they cover neither the index finger nor the little finger. They do, however, constitute equipment because they greatly enhance the gymnast's grip which results in increased performance in training as well as in the maneuvers performed. Your gloves have no such special design.

While the submitted samples have a sport "look", resembling as they do certain adult gloves for driving automobiles, the tariff requires that gloves be "designed <u>for use</u>" (emphasis added) in sports. Mere imitation sport gloves worn for reasons dictated by fad, fashion, or fancy are not within the meaning of this provision. Accordingly, your claimed classification under the provision for other sport gloves in item 735.07, TSUS, is precluded.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

Model 1372 is classifiable under the provision for gloves of rubber or plastics, in item 705.8560, TSUS. The rate of duty is 14.1 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

818516

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 05 1986

REFER TO

CLA-2-07:S:CON:N3D:223
818538

Mr. Harold I. Loring
Grunfeld, Desiderio, Lebowitz & Silverman
2 World Trade Center, Suite 2238
New York, NY 10048-0654

Dear Mr. Loring:

In your letter of May 1, 1986, on behalf of Dynacraft Industries, Inc., you requested the tariff classification of scooter, model no. 8522-10, from Taiwan.

Although no sample was submitted, you enclosed a photograph and technical specifications for this scooter. The front is made from a standard BMX-type T handlebar and front fork. The wheels have 12 inch plastic, 5 arm rims with plastic hubs to which 12 1/2 x 2 1/4 inch tires are mounted. The rear wheel is joined to the stem of the front fork by 2 parallel 1 inch tubes mounted on either side of the rear hub. What appears to be a 12 inch long skateboard is attached to the tubes joining the front and rear wheel. This scooter comes equipped with a right hand lever for a caliper brake on the rear wheel, BMX pads on the handlebar and head stem, and mushroom grips. This scooter is propelled by a child placing one foot on the skateboard while the other foot pushes against the ground.

Accordingly, this scooter, model no. 8522-10 is classifiable under the provision for ... other wheeled goods ... designed to be ridden by children ... other than chain-driven in item 732.5200, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 4.3 percent ad valorem.

Articles classifiable under item 732.5200, TSUSA, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported.

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge
Area Director
New York Seaport

818538

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

113

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 1 2 1986

REFER TO

CLA-2-03:S:COM:N3H:349
818544

Mr. Oscar J. Breslow
R. A. Briggs and Company
650 North Church Street
Post Office Box 468
Lake Zurich, Illinois 60047-0468

Dear Mr. Breslow:

Your letter of April 30, 1986 requested this office to rule upon the tariff classification of four kitchen towels from Taiwan.

Two of the provided samples have a white background and measure 15-3/8 by 24-3/8 inches. The other two samples have a cream color background and measure 15-3/8 by 25-1/2 inches. The four towels have various printed Christmas motifs and on each end is the printed logo "Kitchen Towel." The towels are manufactured of 100% cotton terry material and will be imported in various size ranges from 15 by 25 inches to 16 by 27 inches.

The four towels are classifiable under the provision for other furnishings, not ornamented, towels, of cotton, pile or tufted construction, valued over 45 cents each, and valued over $1.45 per pound, in item 366.2420, Tariff Schedules of the United States Annotated (TSUSA). The rate of duty is 11.1 percent ad valorem.

The kitchen towels fall within category designation 369. As a product of Taiwan, this merchandise is presently subject to visa restraints based upon international textile trade agreements.

Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

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A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

John J. Martuga
Area Director
New York Seaport

818544

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

F13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUL 16 1986

REFER TO

CLA-2-07:S:COM:N3G:344
818555

Mr. David T. Masiello
Bemo Shipping Company
25 Hudson Street
New York, NY 10013

Dear Mr. Masiello:

In your letter of May 9, 1986, on behalf of Steve Nesksis, an importer in New York City, you asked about the tariff classification of a sterling silver bow tie from Mexico.

The sample submitted is a bow tie, Style No. 904, made of sterling silver. Two metal loops have been brazed to the rear midpoints of the bow to permit attachment of a choker with clasp. The bow tie will be worn as an article of personal adornment.

The sterling silver bow tie, valued at $24 each, is classifiable under the provision for jewelry and other objects of personal adornment, other, of precious metal, in item 740.14, Tariff Schedules of the United States, and is dutiable at the rate of 7.2 percent ad valorem.

Articles classifiable under item 740.14, TSUS, which are the products of Mexico are entitled to duty-free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

The sample is being returned to you.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

F14

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 18 1986

REFER TO
CLA-2-04:S:COM:N1:238-380
818557

Mr. Robert Reid
Alaska Pro-Chemicals
Box 4-2934
Anchorage, Alaska 99509

Dear Mr. Reid:

In your letter of May 2, 1986, you inquired about the dutiable status of chemically-treated "VAPE" insecticide refill mats from Japan.

The mats in the form of blue cotton fiber tablets (22mm x 35mm x 2.5mm in size) with fragrance are used in a household convector heater and when heated release a vapor that kills mosquitos. The mats are saturated with 5.9 percent of synthetically produced d-cis trans allethrin, 0.25 percent other isomers, and 94.36 percent other ingredients, including 1,4 dibutyl amino anthraquinone, butylated hydroxy toluene and butyl stearate or butyl octadecanoate or stearic acid butyl ester. Refill packages of 30 mats will be imported.

When the d-cis trans allethrin is produced from benzenoid derived acetone, the "Vape" insecticide refill mats would be classified under the provision for benzenoid pesticides, other in item 408.3800, Tariff Schedules of the United States (TSUSA), and dutiable at the rate of 0.8 cent per pound plus 9.7 percent ad valorem.

When the d-cis trans allethrin is produced from non-benzenoid derived acetone, the "Vape" insecticide refill mats are classified under the provision for benzenoid mixtures in item 407.1900, TSUSA, and dutiable at the rate of 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material. The component with the highest rate appears to be 1,4 dibutyl amino anthraquinone which is classified in item 405.0700, TSUSA, and dutiable at the rate of 1.7 cents per pound plus 15.6 percent ad valorem.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

G1

This merchandise may be subject to the regulations of the

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Environmental Protection Agency. You may contact them at 401 M Street, S.W., Washington, D.C. 20460, telephone number (202) 382-2090.

Sincerely,

John J. Martuge
Area Director
New York Seaport

818557

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

G2

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.

JUN 0 3 1986

REFER TO

CLA-2-07:S:COM:N3D:223
818564

Mr. David C. Frey
David Frey Inc.
P.O. Box 1401
Tustin, CA 92681

Dear Mr. Frey:

In your letter of April 23, 1986, you requested the tariff classification of a waterski glove, the "Clincher" from Taiwan.

The "Clincher" is a full-fingered glove of synthetic leather with air perforations on the back of the fingers and the front of the fingers and thumb. An inseam construction is used throughout. The back of the hand uses nylon spandex which extends from the hemmed cuff to the knuckle of the index finger on one side to only 2 inches from the hem on the other side. The nylon spandex forms a diagonal line with the synthetic leather across the back of the hand. A piece of synthetic leather reinforcement is placed over the seam extending from the first phalanx of the index finger to the first phalanx of the thumb.

This glove has a 2 inch wide, 1/4 inch thick band of rubber sewn on the front of the wrist. This band is not continuous, but is open at the back of the wrist. A 1 1/2 inch wide nylon web strap with a velcro closure secures both the glove and the rubber band tightly around the wrist. This glove also has another strap of nylon web, 1 7/8 inch wide that joins the two center fingers to the wrist strap. The lengthwise strap pulls the two fingers down into a preset curve. Just below the curved fingertips a piece of rubber rod, 7/16 inch in diameter, is glued into the width of this strap.

This construction is modelled after gymnasts' gloves (for parallel bar routines). Since the fingers are joined to the wrist strap, the waterskier's grasp of the tow bar is not limited by the strength of the fingers. The rod in the lengthwise strap helps secure the tow bar in the skier's hand. The rubber wrist band helps cushion and reinforce the wrist. This construction allows novice waterskiers to progress more rapidly in the sport while advanced skiers can perform more difficult maneuveurs. Accordingly, the cumulation of features of the "Clincher" show design for use in the sport of waterskiing.

The "Clincher" is classifiable under the provision for ... other gloves, not provided for in the foregoing provisions of this subpart, specially designed for use in sports, in item 735.0700, Tariff Schedules of the United States Annotated (TSUSA), and is dutiable at the rate of 5.2 percent ad valorem.

G3

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Articles classifiable under item 735.0700, TSUSA, which are the products of Taiwan are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

818564

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

G4

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 05 1986

REFER TO

CLA-2-04:S:COM:N1:239-362
818596

Ms. Trudy van Dinter
Shell Canada Limited
P.O. Box 2100
Oakville, Ontario, Canada L6J 5C7

Dear Ms. van Dinter:

In your letter dated April 17, 1986, you inquired about the dutiable status of 160 Solvent from Canada.

A sample of 160 Solvent, labeled Shellsol D160 was analyzed by the New York Customs Laboratory and found to meet the specification for kerosene.

160 Solvent is classifiable under the provision for kerosene derived from petroleum, shale oil or both (except motor fuel), in item 475.3000, Tariff Schedules of the United States Annotated, and dutiable at the rate of .25 cent per gallon.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

GS

REPLY TO AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 16 1986

REFER TO
CLA-2-07:S:COM:N3G:344
818613

Miss Marsha L. Holthus
Phoenix Group International, Ltd.
1250 South Grove Avenue
Barrington, IL 60010

Dear Miss Holthus:

In your letter of May 1, 1986, you asked about the tariff classification of wood bead seat covers from Taiwan.

A brochure submitted with your inquiry shows automobile seat covers made of wooden beads, 16 mm in diameter. The seat covers are illustrated in numerous solid colors and in designs of various colored beads. The seat covers are long enough to cover seat cushion, seat back and head rest.

The wood bead seat covers are classifiable under the provision for articles not specially provided for, of beads, in item 741.50, Tariff Schedules of the United States, and are dutiable at the rate of 7.3 percent ad valorem.

Articles classifiable under item 741.50, TSUS, which are the products of Taiwan are entitled to duty-free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

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GC

REPLY TO: AREA DIRECTOR, NEW YORK SEAPORT, U.S. CUSTOMHOUSE, NEW YORK, NEW YORK 10048

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NEW YORK, N.Y.
JUL 23 1986

REFER TO

CLA-2-07:S:COM:N3:224
818655

Mr. Herbert T. Posner
Posner and Stedina
630 Third Avenue
New York, NY 10017

Dear Mr. Posner:

In a letter dated May 6, 1986, on behalf of Dan-Dee Imports, Inc., you inquired as to the dutiable status of toy animal figures manufactured in Taiwan and China.

The toy animals, for which samples were provided for our examination, are identified as follows:

Item 5004 - "Picture Frame Bear". The sample represents a stuffed teddy bear made of man-made fibers measuring 4-3/4 inches in height. A circular plastic picture frame is attached to the figure's torso area.

Item 6603 - "Tootsie Footsie". The sample depicts a comical representation of a dog with ten legs. The figure is nine inches high and approximately 12 inches in length. The article is made of man-made fibers and is fully stuffed with polyester filler.

Item 733 - "Bubble Bunch". A comical depiction of a teddy bear, measuring nine inches in height and made of man-made fibers with polyester filler material.

Item 700 - "Busy Body Bear". The sample represents a toy teddy bear measuring 13 inches in height. The figure is made of man-made fibers and is fully stuffed with filler material. In addition to its toy appearance, "Busy Body Bear" contains a chime sound device, a heart shaped mirror, a dial and a twirling barrel attached to its torso.

Item 5002 - "Shaking Musical Dog". The sample depicts a 3-3/4 inch high toy article with a flat base. The shape of this object is imparted by a somewhat circular styrofoam shell covered with man-made fiber material.

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ADDRESS: AREA DIRECTOR OF CUSTOMS, NEW YORK SEAPORT, NEW YORK, NEW YORK 10048

The object has ears, facial features and flat felt strips glued onto the object apparently representing arms and legs.

The foregoing toy animals, with the exception of item 5002, are classifiable under the provision for toy figures of animate objects (except dolls), not having a spring mechanism, stuffed, valued not over 10 cents per inch of height, in item 737.28 Tariff Schedules of the United States (TSUS), with duty at the rate of 13.3 percent ad valorem, or, if valued over 10 cents per inch of height, in item 737.30, TSUS, with duty at the rate of 5.9 percent ad valorem

With particular reference to item 700, the "Busy Body Bear" figure with its integrated toy features does not, in our opinion, constitute something more than or other than an animate object for tariff classification purposes.

Item 5002 is classifiable under the provision for other toys, not specially provided for, in item 737.95, TSUS, dutiable at the rate of 8.3 percent ad valorem. We are unable to agree with your suggestion that the "Shaking Musical Dog" is classifiable under the provision for toy figures of animate objects (except dolls), not having a spring mechanism, not stuffed, wholly or almost wholly of metal.

In the case of Louis Marx & Co., Inc. V. United States, 66 Cust. Ct. 139, C.D 4183 (1971), the court stated that "'figures of animate objects' must be read to mean forms or representations of humans or animals". It is our view that a proper interpretation of the phrase "forms or representations" has reference to a reproduction of the appearance of an animate object as a clearly defined configuration in multi-dimensional form and as a full bodied representation of an animate object. Your item does not incorporate a full bodied character and is not configured and detailed to a reasonable degree to depict the overall features of the animal it seeks to represent. Accordingly, item 5002 cannot be considered an animate object for purposes of classification under item 737.35, TSUS.

This ruling is being issued under the provisions of Section 177.1 (a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate Customs officer handling the transaction.

Sincerely,

Peter J. Baish
Area Director
New York Seaport

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819655

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUL 18 1986

REFER TO

CLA-2-01:S:COM:N1E:228-381
818683

Mr. Luc C. Pamerleau
Market Entry Section
USA Marketing Division
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario Canada K1A 0G2

Dear Mr. Pamerleau:

In your letter dated May 5, 1986, on behalf of Robin Hood Multifoods Inc., Willowdale, Ontario, you inquired about the dutiable status of a gingerbread house kit from Canada.

Samples of a gingerbread mix and an icing mix accompanied your letter. The samples were examined and disposed of. The components of the imported kit will be the two mixes, mint patties, peppermint balls, candy coated milk chocolate, jelly candy, spearmint leaves candy, and roll candy. The gingerbread mix consists of flour, dextrose, vegetable shortening, sugar (9.95 percent by weight), spices, caramel color, and salt. It appears to be a complete mix, requiring only the addition of water or milk prior to mixing and baking. The icing mix is a dry mixture of dextrose and corn syrup solids. The candies are intended to be used as decorations for the gingerbread house.

The gingerbread mix is classifiable under the provision for edible preparations not specially provided for ... pancake flour and other flour mixes ..., in item 183.01, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 10 percent ad valorem.

The icing mix is classifiable under the provision for edible preparations not specially provided for ... other, in item 183.05, TSUS, and dutiable at the rate of 10 percent ad valorem.

The mint patties, peppermint balls, candy coated milk chocolate, jelly candy, spearmint leaves candy, and roll candy are classifiable under the provision for candy, and other confectionery, not specially provided for, in item 157.10, TSUS, and dutiable at the rate of 7 percent ad valorem.

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This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

Sincerely,

Peter J. Baish
Area Director
New York Seaport

818683

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
NEW YORK, N.Y.

JUN 05 1996

REFER TO

CLA-2-07:S:CON:N3D:223
818684

Mr. Young Chu
Imex Industries
3200 Wilshire Boulevard, Suite 601
Los Angeles, CA 90010

Dear Mr. Chu:

In your letter of May 8, 1986, you requested the tariff classification for 3 styles of gloves from Korea. Samples of each style were submitted with your request. You also requested clarification as to what features are required for tariff classification as a ski glove and as a snowmobile glove.

Style MG-0081 is a woven fabric glove of man-made fiber with a leather palm, thumb, fourchettes, and palm and thumb reinforcement. This glove has an interlining of foam rubber and a lining of a knit fabric. This glove also has an additional layer of foam rubber on the back of the hand to which is bonded a very thin layer (approximately 1/16" inch) of insulating material. This compound layer extends from the fingertips to the hem of the cuff. A single row of elastic gathering on the palm side of the wrist and a 1 inch wide, leather strap with a velcro closure that passes through a rectangular ring secures the glove on the back of the wrist. The embroidered letters on the strap are considered to be ornamentation. The fabric gauntlet is approximately 5 inches long measured from the seam at the base of the thumb. The gauntlet's hemmed cuff is elasticized so that it is only about 1/2 inch wider than the wrist of the glove. This glove also has a hook and clasp. An inseam construction is used throughout.

Style MG-0105 is a woven fabric glove, of man-made fiber including the thumb and fourchettes, with leather palm, thumb, and the palm side of the first 2 fingers. These leather areas do not constitute reinforcement because the woven shell is not complete underneath the leather. A piece of suede reinforcement is sewn into the side seam and extends from the top of the second phalanx of the index finger to within 1 1/4 inches above the wrist. This glove has an interlining of foam rubber and a lining of a knit fabric. This glove also has an additional layer of foam rubber on the back of the hand to which is bonded a paper thin layer of insulating material. This compound layer extends from the fingertips to the hem of the flared cuff. A single row of elastic gathering tightens this glove on the palm side of the wrist. The flared fabric gauntlet is approximately 5 inches long measured from the seam at the base of the thumb. A 1 inch wide, suede leather strap with a velcro closure passing through a rectangular ring is sewn into the side seams

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1 1/2 inches from the hem of the gauntlet and tightens this glove on the back of the hand. The applique on the wrist strap is considered to be ornamentation. An inseam construction is used throughout.

Style MG-9229A is a woven fabric glove, including the thumb and fourchettes, with leather palm, thumb, and the palm side of the first 2 fingers. The back of the first 2 fingers is of suede. These leather and suede areas do not constitute reinforcement because the woven shell is not complete underneath the leather. A piece of leather reinforcement is sewn over the side seam and extends from the top of the first phalanx of the index finger to the top of the first phalanx of the thumb. This glove has an interlining of foam rubber and a lining of a knit fabric. The interlining is enclosed within a thin plastic film-like layer which appears to be of the type which is waterproof while allowing sweat to pass through. This glove also has an additional layer of insulating material on the back of the hand which extends from the fingertips to the hem of the flared cuff. A double row of elastic gathering, approximately 3/4 inch apart, tightens this glove on the palm side of the wrist. A single row of elastic gathering tightens the glove on the back of the wrist. The flared fabric gauntlet is approximately 5 1/2 inches long measured from the seam at the base of the thumb. On the back of the gauntlet a closed, center vent is tightened by a 4 1/2 inch long zipper. An inseam construction is used throughout on this glove.

Although you describe your submitted samples as ski gloves and snowmobile gloves, none of the samples are identified as a ski glove nor do any of them appear to be designed for use in ski.

As to the gloves you describe as snowmobile gloves, the U.S. Customs Service recognizes snowmobile racing as a sporting activity equivalent to that of automobile, motorcycle (e.g. motorcross), or bicycle racing. The mere use of a snowmobile, however, is nothing more than a means of transportation. Snowmobiles in the United States have been used increasingly, in recent years, in those areas of the country which receive heavy, continuing snowfall, to replace transportation by special vehicles, skis, snowshoes, and even dog sleds. Gloves designed for use by snowmobilers traversing their own property, seeking local transportation, or even performing rescue work, are not within the meaning of sport gloves for tariff purposes. Only those gloves recognizable as being designed for use in snowmobile racing constitute sport gloves for tariff purposes.

Gloves designed for snowmobile racing have additional bulk for warmth and an extended flared gauntlet. "Additional bulk for warmth" is required due to the fact that snowmobile racing is performed in very cold temperatures, including frequent sub zero degree temperatures, and that cold is generated by the speed of the vehicle which propagates the wind chill factor. Therefore, "additional bulk for warmth" is to be judged in relation to this factor of the sport which

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should make "specially designed gloves" for snowmobile racing clearly distinguishable from winter gloves worn for warmth.

The extended, flared gauntlet is to ensure that the wind does not enter the rider's sleeve and to enhance aerodynamic performance. Originally, the gauntlets of snowmobile racing gloves extended to the elbow. The U.S. Customs Service also recognizes that gloves which extend half way up the forearm or beyond as having these same design qualities. Consequently, an "extended" gauntlet is determined not merely by its actual length, which will vary from size to size, but by its proportion related to the user.

Snowmobile racing gloves also normally have palm and thumb reinforcement to minimize the wear caused by the hand controls. A hook and clasp is also normally present because it enables the rider to secure the gloves to the jacket when not racing so wearing a less bulky pair of gloves is more practical.

With respect to your questions on specific features and their admissibility, the ruling program is not intended to reply to questions which are essentially hypothetical in nature. Should you have gloves that incorporate these specific features, you should request a ruling on that item.

Based on our examination of your samples, styles MG-0081 and MG-0105 do not have additional bulk for warmth. Futhermore, style MG-0081 does not have a flared gauntlet. In addition, neither style MG-0081 nor MG-0105 has an extended gauntlet in proportion to the user. Accordingly, they do not show design for use in the sport of snowmobile racing and are not, therefore, classifiable as sport gloves.

On the other hand, we consider the cumulation of features on style MG-9229A to show design for use in the sport of snowmobile racing. Style MG-9229A, then, is classifiable under the provision for ... other gloves, not provided for in the foregoing provisions of this subpart, specially designed for use in sports, in item 735.0700, Tariff Schedules of the United States Annotated (TSUSA) and is dutiable at the rate of 5.2 percent ad valorem.

Styles MG-0081 and MG-0105 are classifiable under the provision for ... other gloves, ornamented: of man-made fibers in item 704.3210, TSUSA, and are dutiable at the rate of 21.7 percent ad valorem.

Styles MG-0081 and MG-0105 fall within the textile category designation 631-W. As a product of Korea, this merchandise is subject to quota restraints and visa requirements based upon international textile agreements.

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Due to the changeable nature of these agreements, you are advised to contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations [19 C.F.R. 177.1(a)(1)].

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the entry documents have already been filed, this ruling should be brought to the attention of the appropriate customs officer handling the transaction.

Sincerely,

John J. Martuge

John J. Martuge
Area Director
New York Seaport

818684

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ——

RCS-LR020-01

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OFFICE OF REGULATIONS AND RULI

DATE 12/05/86

LEGAL RULINGS AND DECISIONS MICROFICHE INDEX

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039781	319F06	040126	408B01
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052672	273C02
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052675	60D13
052675	186C05
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052690	273C04
052701	164C10
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052709	467B13
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052747	17E01
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052755	299G04
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052761	1F09
052763	53B01
052764	164C12
052767	105F10
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052769	370B13
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052783	208B01
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052796	250E09

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052842	603C06
052844	370C03
052845	208B07
052848	164C13
052858	118G07
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052870	116A05
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052875	153F06
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052892	273C09
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052968	370C07
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052973	246A10

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052989	68E10	053129	299G09
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052994	164D05	053136	321A03
053002	228A03	053139	443D01
053004	443C03	053142	411C03
053005	370C09	053143	443D02
053006	208B10	053145	370C13
053008	164D07	053147	17E10
053011	299G07	053148	443D04
053012	443C05	053153	273C11
053013	208B11	053156	508B13
053019	273C10	053157	159C14
053027	186D01	053158	451B07
053030	250E13	053159	443D06
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053032	186D02	053161	1G04
053039	443C06	053162	186D08
053044	299G08	053163	443D07
053045	186D03	053164	1G06
053050	186D04	053165	1G08
053054	443C07	053165	69E07
053055	155C14	053166	1G10
053069	443C08	053167	2A03
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053094	208B13	053182	443D10
053095	186D06	053184	299G11
053096	208B14	053185	273C13
053098	320G14	053190	250F02
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053102	443C10	053195	443D14
053103	370C11	053199	250F03
053103	443C12	053203	443E01
053106	443C14	053207	443E03
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053110	17E08	053216	102B08

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053253	250F09
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053281	443E05
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053683	250G01
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053709	250G03
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053778	186E02
053781	221G01
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053852	18A06
053863	508D01
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053970	140G10
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053994	164F01
053994	164F02
053997	427B07
053998	186F08
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054004	370D14
054005	103F10
054006	411C13
054010	18B01
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054015	300B03
054016	228A07
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054026	444A03
054027	164F05
054027	186F09
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054076	122F08
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054088	2C11

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054109	18B02
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054127	228A12
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054137	116B09
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054140	53B04
054141	228A14
054148	300B09
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054164	228B01
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054179	34F11
054181	53E12
054182	250G07
054183	159D04
054185	545B05
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054189	57E03
054189	112B11
054196	138G09
054198	451C02
054199	370E03
054201	451C03
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054274	138G11
054275	186G01
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054279	186G02
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054285	451C06
054286	164G02
054287	45C11
054288	18B13
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054290	228B07
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054298	508D10
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054307	250G08
054315	60C11

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054324	227G02
054328	2D03
054329	577B14
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054332	186G05
054333	135F09
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054335	59E07
054336	427B10
054337	18C01
054339	208E01
054346	155C06
054347	411D03
054348	208E03
054352	411D05
054353	321C06
054355	250G09
054356	427B12
054357	370E05
054359	393C12
054373	586A12
054374	42E06
054384	138G12
054385	250G11
054386	18C03
054390	48G03
054390	48G05
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054396	151C03
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054417	300C03
054424	411D06

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054431	164G03
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054452	273E08
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054455	451C10
054456	186G12
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054463	393C13
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054489	57A08
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054494	173D12
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054521	283C13
054522	262A14
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054530	529A10
054534	496B02
054534	496B03
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054537	273E10
054540	262B02
054544	147D12
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054586	18C11
054587	18C14
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054589	164G07
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054592	411D09
054593	411D11
054595	273E12
054596/052571	104E08
054598	208E06
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054605	564A12
054606	451C13
054607	427C02
054608	496B04
054609	2E03
054610	2E04
054611	529A12
054612	2E07
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054615	393D01
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054617	18D03
054619	370E10
054623	262B03
054630	2E09
054630	159D09
054631	283D09
054633	246A14
054634	18D05
054635	273F01
054637	370E11
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054647	69G11
054654	250G14
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054658	130G14
054666	411D14
054669	370E14
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054672	18D12
054676	2E12
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054684	411E03
054686	159D12
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054705	411E05
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054729	2F02
054730	2F05
054731	151F09
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054734	251A03
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054737	18E01
054738	18F02
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054776	147D14
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054784	508E01
054786	586A13
054788	262B04
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054790	228B10
054792	158C02
054792	187A07
054793	36F01
054794	300C12
054796	208E10
054799	321C10
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054813	394A03
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054916	3A08
054917	3A10
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054920	19A06
054920	187A12
054926	3A13
054926	105D04
054930	3B01
054930	19A08
054931	49C04
054933	3B04
054941	3B06
054947	508E07
054948	3B08
054952	19A11
054952	187A14
054954	102C02
054954	151G02
054956	3B10
054958	164G11
054959	321D05
054960	3B11

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054988	19B07
054988	187B05
054989	3C05
054990	3C09
054991	19B10
054992	3C12
054993	3C14
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054995	3D02
055000	3D03
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055002	3D05
055003	411E10
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055027	19C05
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055050	151C13

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055055	130A11
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055056	321D06
055059	3F02
055063	273F02
055065	3F04
055065	187C02
055066	84C12
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055076	3F05
055078	3F08
055079	125B13
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055084	187C04
055088	411E13
055090	508E14
055092	19D08
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058955	56C10
058958	47B13
058959	529C04
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058962	80B06
058965	84D09
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058968	509C07
058970	321G13
058975	61D12
058976	300G12
058978	451G11
058984	48D04
058989	283F04
058992	188G08
058996	274B05
059001	371C02
059002	24C06
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059091	32F04
059099	451G14
059103	371C07
059108	32F06
059109	121F12
059114	394A10
059116	32F08
059117	300G13
059120	115C12
059121	24D13
059122	32E07
059123	32F10
059124	371C08
059125	32F12
059129	24E01
059130	32F14
059131	32G02
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059147	24E02
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059175	209C05	059278	228F03
059176	209C06	059280	209C07
059179	24E14	059281	33A14
059180	188G11	059282	33B02
059182	32G09	059283	33B04
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059184	86G02	059292	25A10
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059189	188A03	059302	33B07
059190	251E13	059307	25A11
059191	251F01	059309	33B09
059192	496C06	059311	25A12
059195	33A03	059312	209C09
059196	412D09	059319	33B11
059199	24F05	059323	44F01
059208	24F09	059324	25A13
059212	24F10	059325	33B13
059213	106D08	059326	228E14
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059222	165G02	059335	33C01
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059228	24G01	059345	251F05
059229	33A08	059346	33C05
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059236	33A10	059353	37F08
059240	188G12	059355	9E07
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059244	24G03	059364	33C10
059245	33A11	059365	25B04
059248	251F02	059367	301A03
059250	24G06	059370	25B05
059252	322A07	059371	37G02
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059490	9E09
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059492	26B03
059494	26B05
059495	37F01
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059500	26B06
059500	106G09
059501	26B07
059503	26B08
059504	9E10
059505	26B10
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059602	26G07
059603	74B04
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059647	137B13
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059650	27A13
059653	27A14
059656	27B01
059657	27B02
059665	27B03
059667	189A03
059668	40E09
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059672	27B06
059673	27B11
059678	27B13
059680	27B14
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059772	38B04	059867	28D07
059775	63G04	059870	51A11
059777	27G06	059871	40A03
059779	27G08	059872	251G03
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059781	38B06	059876	28D14
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059951	34A06	060046	189A12
059951	41F07	060052	274B08
059953	74F11	060054	63B07
059955	52F08	060054	63B08
059957	48B14	060063	74F09
059958	47B03	060065	110F07
059964	44G01	060068	79A10
059965	40A09	060085	90B08
059972	38D03	060102	50A14
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060381	75B06
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060448	79G08
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060583	88G05	060747	371E01
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060606	577C11	060761	109F11
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060634	577C12	060781	108A07
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060702	109G02	060836	125D07
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060920	101D06	061008	79G02
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060924	118G06	061011	86G08
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060927	100B10	061015	87E13
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060929	125A05	061017	153C07
060932	123F06	061019	135C04
060934	317E05	061021	51A03
060938	100C10	061023	83C01
060939	125B05	061026	64C04
060942	123E11	061027	79C11
060943	137F08	061028	126A08
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061066	63D05
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061077	322B01
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061205	252A13
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061212	166B08
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061223	564B08
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061272	74C01
061277	46F04
061280	166C03
061281	322B10
061284	322B12
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061289	78A05
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061322	108E14
061323	166C05
061327	83B07
061336	110G11
061337	89G08
061337	536A08
061338	107C14
061339	82A11
061342	132C03
061343	100D02
061344	133G08
061345	189F03
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065792	322G06
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065794	231C14
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065869	231E04
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065874	253E12
065877	253F02
065878	253F05
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067164	284D03	067330	613B03
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067184	413B05	067356	323A10
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067227	510C09	067383	413C13
067228	413C02	067387	395A05
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067231	372D14	067389	452F08
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067251	510C13	067402	394G14
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068690	284G07	068834	275C02
068691	246E13	068836	323E09
068699	264C07	068841	264E01
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607439	449D03	607581	449F11
607441	449D04	607592	201G13
607447	131F03	607595	221B03
607453	449D06	607596	239A14
607454	119D13	607596	449F13
607455	119D13	607597	239B01
607457	201G09	607598	492E12
607461	202A03	607602	449F14
607462	449D08	607606	449G02
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607472	122E05	607612	239B04
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607489	201G11	607626	449G08
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607498	449E03	607630	353E08
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607524	381E04	607643	202A05
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607891	239C02	608018	354B01
607892	450F08	608021	77G08
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607894	354A09	608022	354B03
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607908	354A11	608024	354B07
607912	122G06	608026	354B08
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607995	469A07	608093	354D10
607996	469A09	608094	354D12
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608823	77F12	609107	31D05
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608829	484E03	609116	239E11
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801263	279D09
801265	270C06
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801268	292D08
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801278	279D12
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801314	311B14	801381	280A05
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801319	279E12	801388	280A11
801320	292E06	801389	280A13
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DEPARTMENT OF THE TREASURY
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DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

OFFICE OF REGULATIONS AND RUI

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Follow-up Letter

Please Place in File

NOV 21 1972

MFG 431.51 WR
020121
Your ref: AP-0536

020121

[redacted]

Dear [redacted]

This is in reference to our letter MFG 431.51 WR of June 6, 1972, regarding the classification of a T-4000 TV fitting from Taiwan. The fitting appears to be a transformer which matches the apparent apposition in an electrical circuit to the flow of alternating current from the antenna to the television set. In our letter we advised you that the device would be classifiable under the provision for television apparatus and parts thereof, in item 685.20, Tariff Schedules of the United States (TSUS).

Subsequent to our letter, we learned that the Court of Customs and Patent Appeals in the recent case of United States v. Ampex Corp., Air Express International Corp., et al., C.A.D. 1054, reversed the holding of the Customs Court, and held that a television camera cable was properly classifiable as an insulated electrical conductor rather than as television apparatus despite the fact that the cable was limited to low power applications. Accordingly, in applying the principle of this case to this merchandise, it is our position that the transformer is properly classifiable under the provision for transformers rated at less than one kilovolt ampere, in item 682.05, TSUS, with duty at the rate of 12-1/2 percent ad valorem.

Sincerely yours,

(Sgd.) [illegible] S. [illegible]flin

[illegible] Director
Division of
Classification and Value

[redacted]

[redacted]

[redacted]						

JUL 10 1973
R:CV:MC
467.4 HK
027966

027966

[redacted]

Dear [redacted]

This is in reply to your letter of May 22, 1973, regarding the classification of scrap and filler tobacco.

You refer to an apparent difference in Customs' rulings regarding the classification of such tobacco. As you correctly note, in 1963 (Bureau letter 467.44 O, dated August 8, 1963) we ruled that stemmed half leaves of tobacco torn into smaller pieces so that the leaves become unusable for long filler are classifiable as scrap tobacco. In 1965 (Bureau letter 467.4 K, dated April 14, 1965) the Bureau of Customs ruled that small fragments of tobacco leaf of varying widths, not exceeding 4 inches in length, are classifiable as scrap tobacco, in item 170.60, TSUS.

We see no inconsistancy in these two rulings. Although the 1965 ruling was more specific in its description of the merchandise there was no intent to limit the classification of scrap to fragments of tobacco leaf under 4 inches in length. The Bureau of Customs has consistently ruled that in determining whether tobacco is classifiable as stemmed tobacco or as scrap, each shipment must be considered in the condition in which it is imported.

Accordingly, half leaves which are torn into two or three pieces which exceed 4 inches in length may be classified as scrap. However, half leaves which are torn into two or three pieces which exceed 4 inches in length and are usable as long filler are classifiable as stemmed filler in item 170.45, TSUS.

Sincerely yours,

[redacted]

(Signed) J.W. O'NEIL

(Signed) J.W. O'NEIL

for the Director
Classification and Value
Division

A4

[redacted]

033344

(T.D. 74-280)

OCT 21 1974

Tariff Classification

Micropaque

OCT 21 1974

DEPARTMENT OF THE TREASURY
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D. C.,

033344

A notice was published in the Federal Register of August 7, 1974 (39 F. R. 28448) that the United States Customs Service was reviewing the existing uniform and established practice of classifying Micropaque, a barium sulfate product used in obtaining roentgenograms, which contains a benzenoid sweetener, under the provision for other drugs, including synthetic drugs, in item 439.50, Tariff Schedules of the United States (TSUS).

On review of all the evidence submitted, and in the light of Headnote 1, Part 1C, Schedule 4, TSUS, defining benzenoid chemical products, the Customs Service is of the opinion that Micropaque is classifiable under the provision for mixtures in whole or in part of any of the (benzenoid) products provided for in this subpart (c), in item 409.00, TSUS.

Since this ruling will result in the assessment of duties at a rate higher than that previously assessed on Micropaque, the higher rate will be applied only to such merchandise as may be entered, or withdrawn from warehouse, for consumption after the expiration of 90 days after the date of the publication of this notice in the weekly Customs Bulletin.

(Signed) VERNON D. ACREE
Commissioner of Customs

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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRES[redacted] AND CLEARANCE Form 100 (11-8-73)

U.S. CUSTOMS SERVICE
CUSTOMS INFORMATION EXCHANGE

C.I.E. N-36/75

RE: Section 27.37 C.M. Re: I.A. # 159-75

SUBJECT: INTERNAL ADVICE: Advance copy of Headquarters Reply

DEC 22 1975

TO : Regional Commissioners and District Directors

DATE: SEP 09 1975
CLA-2:R:CV:MC
FILE: 041257 CM

DA1 257

TO : Mr. Donald L. Eide
District Director of Customs
Seattle, Washington 98104

FROM : Director, Classification and Value Division R:CV

SUBJECT This is in response to your request for internal advice as to the tariff status of a product which has been sweetened with honey and containing no sugar. IA 159/75

The request was initiated by [redacted] on behalf of its client, [redacted], in a letter dated April 14, 1975, and concerns merchandise entered at the Customs port of Blaine.

The issue is whether a product identified as "Sweet Munchy" containing carrot powder, peanut butter, wheat flakes, and sunflower and sesame seeds, and honey is considered a confectionery for the purpose of classifying it under the provision for confectionery, not specially provided for, in item 157.10, Tariff Schedules of the United States (TSUS).

Headnote 2, Subpart C, Part 10, Schedule 1, described the term "confectionery," as used in this subpart, as covering confections or sweetmeats ready for consumption.

There are many court cases dealing with the question of whether or not a product is a confectionery. The latest, Leaf Brands, Inc. v. United States (C.D. 4409) lists the various products held to be "confectionery" within the meaning of the tariff statutes. Included here an article which contained flour, treacle, glucose, gelatine and caramel; another contained millet seeds, sesame seeds, and sugar; rock candy was noted to be used by some persons as a home remedy. One administrative decision classified as a confectionery, a product which consisted of sesame seeds, sugar, glucose, cocoa butter and honey. The test according to C. D. 4409 "for classification of an article as confectionery is as its use as a confection..." It is not believed that because a particular product is marketed as a health food and sold in health food stores it can not

(OVER)

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be considered a confectionery. It is believed that many products containing ingredients similar to the one in issue are readily recognized as a confectionery or candy; furthermore it is not believed that much reliance can be placed on its description as a food supplement. It is quite common for candy bars to be described as sources of quick energy.

Accordingly, based on the criterion set forth in C. D. 4409, it is believed that the product under consideration is classifiable under the provision for candy, and other confectionery, not specially provided for, in item 157.10, TSUS.

A copy of this decision may be provided the inquirer.

James W. O'Neil

Salvatore E. Caramagno

041257

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

A7

060609

10 AUG 1979

CLA-2:R:CV:MC
060609 LCS

[redacted]

Dear [redacted]

This is in reply to your letter of May 4, 1979, in which you requested information concerning the tariff status of a laxative product, manufactured in France, to be imported through the port of Philadelphia.

Preliminary review of your inquiry reveals that information required by Section 177.2(b)(5), Customs Regulations, was not incorporated into your request for a binding ruling on merchandise which is the subject of a prospective ruling.

Section 177.2(b)(5), Customs Regulations requires that a request for a ruling on merchandise which is the subject of a prospective transaction include a statement that: 1) to your knowledge, the same or identical merchandise is not currently and has not been considered by any Customs office; 2) to your knowledge, the issues involved are not currently being and have not been considered by any court or court of appeal with Customs jurisdiction; and 3) if applicable, the subject transaction is not but one of a series of similar and related transactions.

Accordingly, we are precluded from substantive consideration of your request at this time and we are returning your letter for consideration of these factors and appropriate action.

If, after your review of this information and the facts of the particular transaction involved, you determine that the transaction is indeed prospective in nature and resubmit your inquiry, together with the required statement, we will provide you with a substantive ruling as expeditiously as is possible.

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45114

We would note, however, that, if the merchandise is due for arrival immediately or in a relatively short time, it may be to your benefit to avail yourself of the internal advice procedures rather than those applicable to prospective rulings.

Although, at this time, we are unable to provide you with the binding ruling which you request, the laxative, which you state is constituted of coated senna natural extract, syrupy extract of tamarinds, a flavoring of United States origin, prune and apple concentrates, citric acid, potassium sorbate, sucrose, and water, the final product being 66 percent dry extract, is probably classifiable under the provision for other nonbenzenoid drugs in item 439.50, Tariff Schedules of the United States (TSUS), dutiable as a product of France at the reduced column 1 rate of duty of 5 percent ad valorem.

We note that this constitutes an advisory ruling only and is not one which the Customs Service is bound to follow absent prior notice to you.

Sincerely,

(Signed) James W. O'Neil

Salvatore E. Caramagno
Director
Classification and Value Division

Enclosures

[redacted]

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CODE AND DATE	[redacted]				
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CODE AND DATE					
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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

4U74U

OCT 6 1979

060798

CLA-2:RRUCGC
060798 JH

[redacted]

Dear [redacted]

Your letter of September 3, 1979, requested that we issue a binding ruling concerning the tariff status of 'Seatone' from New Zealand, which was the subject of our letter of August 27, 1979. The product is described as a pure derivative of the green lipped mussel. It is packaged in capsule form. Each capsule is said to contain various minerals, amino acids and vitamins.

A product of this description is classifiable under the provision for other drugs in capsule form in item 440.00, TSUS. The rate of duty is 5 percent ad valorem.

Sincerely,

(Signed) S. P. SCHLEFLIN

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

A10

[redacted]

DEPARTMENT OF THE TREASURY

41155

12 DEC 1979

CLA-2:RRUCGC
064081 JH

064081

The decision involves the classification of a cerebral vasodilator from West Germany.

FACTS:

The product is described as isopropyl-2-methoxyethyl 1, 4-dihydro-2, 6-dimethyl-4-(3-nitrophenyl)-3, 5-pyridine dicarboxylate.

LAW AND ANALYSIS:

Item 439.50, Tariff Schedules of the United States (TSUS), covers other, including synthetic, nonbenzenoid drugs. Item 407.85, TSUS, covers other products suitable for medicinal use and drugs, which are obtained, derived, or manufactured in whole or in part from a benzenoid source. Since this product is in part benzenoid it would be classified in item 407.85, TSUS.

HOLDING:

Isopropyl-2-methoxyethyl 1, 4-dihydro-2, 6-dimethyl-4-(3-nitrophenyl)-3, 5-pyridine dicarboxylate is classifiable under the provision for other benzenoid drugs in item 407.85, TSUS, The rate of duty is 1.7 cents perppound plus 12.5 percent ad valorem.

(Signed) S. P. SCHIFFLIN

[redacted]

Salvatore E. Caramagno
Director
Classification and Value Division

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROV

JUN 26 1980

064725

CLA-2:RRUCGC
064725 JGH

[redacted]

Dear [redacted]

Your recent letter concerns the dutiable status Tiger Bone Tincture from People's Republic of China.

The product is a preparation of herbs and natural drugs. It is said to contain, among other things, Tiger Bone, Rhinoceros Horns, Chi Snake Meat, Musk, Ginseng Root, Antler, Scorpion, Silk Worms, etc.

It is said to be good for various types of rheumatism, headache, stomach ache, general anemia, boils, etc.

A product of this type is classifiable under the provision for non-benzenoid drugs in item 439.50, TSUS, dutiable at 3.7 percent ad valorem. If the product is imported in dosage form it is classifiable in item 440.00, TSUS, dutiable at 4.8 percent ad valorem.

However, it is noted that some of the ingredients listed are made from animals on the endangered species list and their presence may cause the tonic to be a prohibited importation. It is suggested that you submit a copy of the ingredients of Tiger Bone Tincture to -

Director, U. S. Fish and Wildlife Service
Department of the Interior
Washington, D.C. 20240

Also this product is subject to the regulations of the Food and Drug Administration. Therefore, it is suggested that you contact the Food and Drug Administration, 1521 W. Pico Blvd., Los Angeles, California 90015.

Sincerely,

[redacted]

A12

For Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

DEPARTMENT OF THE TREASURY

10 FEB 1981

CLA-2 CO:R:CV:G
065508 JH

065508

[redacted]

Dear [redacted]

In your letter of October 22, 1980, you question the classification of phenylpropanolamine HCL (PPA) under the provision for other autonomic drugs in item 412.02, TSUS.

You quote from Remington Pharmaceutical Sciences on PPA to the effect that it is indirectly sympathomimetic drug, but that its principal uses are as a nasal decongestant in hay fever and a bronchodilator and decongestant in asthma. You note that Oxymetazoline HCL, a widely used and specific nasal decongestant, is classified under the provision for other imidazoline derivatives in item 411.08, although it is listed by Remington as a sympathomimetic drug. You feel that PPA is listed only as a convenience in item 412.02 and should be classified to reflect its use and relationship to other drugs.

Remington states that autonomic drugs are classified according to the chemical mediator that they either mimic or block. The Pharmaceutical Basics of Therapeutics lists PPA under the heading for important sympathomimetic drugs.

Merchandise, under the tariff law, is classified under the most specific provision of the tariff which applies. PPA, as a sympathomimetic, is most specifically provided for under the provision for other autonomic drugs in item 412.02, TSUS. Similarly, oxymetazoline HCL as an imidazoline derivative is most specifically provided for under the provision for other imidazoline derivatives in item 411.08.

In your other letter of the same date, you inquire why the base and hydrochloride forms of diphenydramine are classified under two different item numbers - 411.52 and 411.56. Under the new benzenoid schedules, which went into effect in July 1980, certain chemicals classifiable in "basket" provisions were classifiable according to whether or not they were considered competitive

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065508

on a certain date: January 1, 1978, for imports and May 1, 1978, for those produced in the United States. The base is provided for eo nomine in item 411.52, but not the hydrochloride form. (You will note that an HCL form of another drug is classified in item 411.52 but not the base form). However, since the hydrochloride is provided for in the chemical appendix to the tariff it is correctly classifiable in item 411.56, TSUS.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief
General Classification Branch

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[redacted]

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CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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SURNAME							

DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

15 SEP 1980

066609

CLA-2:RRUCGC
066609 JH

[redacted]

Dear [redacted]

Your letter of August 15, 1980, concerns the dutiable status of Chenodeoxycholic Acid.

The product is said to be made from animal bile acid and it is used as a gallstone solubilizer. It is added that it will be offered in both bulk and capsule form.

In its bulk form the product is classifiable under the provision for other drugs, including synthetic drugs, in item 439.50, Tariff Schedules of the United States (TSUS). The rate of duty is 3.7 percent ad valorem. If packaged in capsule form it is classifiable in item 440.00, TSUS, for products imported in capsules, lozenges, or similar forms, dutiable at 4.8 percent ad valorem.

Sincerely,

(Signed Arthur P. Schifflin

Arthur P. Schifflin
Chief
General Classification Branch

[redacted]

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CODE AND DATE	[redacted]						
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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

066967

10 FEB 1981

CLA-2 CO:R:CV:G
066967 JH

[redacted]

Dear [redacted]

In your letter of September 30, 1980, you question the inclusion of phenylpropanolamine hydrochloride in the provision for other autonomic drugs in item 412.02, TSUS. You state that its major use is as an anorectic drug and that it has a large secondary use in cold and cough remedies. You believe that its autonomic use is rare. You note that at first you were advised that the drug was classified as one of the autonomic drugs in item 411.98, TSUS.

Imports are classifiable in the tariff schedules in the tariff provision which most specifically describes them. Since phenylpropanolamine hydrochloride is not one of the drugs listed in item 411.98 or as one of the hormones, synthetic substitutes, and antagonists listed in item 412.42, it can not be classifiable in either one of those provisions.

It is understood that phenylpropanolamine is listed in Remington Pharmaceutiscal Sciences as a sympathomimetic, and in the Pharmaceutical Basics of Therapeutics as an important sympathomimetic. Accordingly, for classification purposes it appears that the provision for autonomic drug is the most specific; furthermore, as it is listed in the chemical abstract series in the tariff index, it is most specifieally provided for in item 412.02, TSUS.

Sincerely,

(Signed) Arthur P. Schifflin

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Arthur P. Schifflin
Chief
General Classification Branch

[redacted]

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CODE AND DATE	[redacted]					
SURNAME						
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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-71)

JUN 1 2 1981

CLA-2:CO:R:CV:S
067330 KW

[redacted]

Dear [redacted]

In your letter of April 8, 1981, you request information regarding the possible application of the provisions of item 854.10, Tariff Schedules of the United States (TSUS), to a data processor system known as the "GE RT/Plan".

You describe this apparatus as a data processor which is employed with cobalt-60 radiation therapy equipment using a radioactive substance for cancer treatment. It assists in treatment planning which is an essential part of the therapy process. It accepts patient information and planned dosage and calculates the potential effect of the projected radiation.

As you are aware, the free entry provision in item 854.10, TSUS, only covers apparatus utilizing radioactive substances for certain purposes and parts or accessories therefor. On the basis of the information before us, it appears that the instant data processor is utilized with qualified apparatus but is not actually a part or accessory of such apparatus.

In view of the foregoing, we are of the opinion that the subject data processor is not entitled to the free entry treatment accorded under item 854.10, TSUS.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

067330

[redacted]

B3

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

JUL 28 1982

REFER TO
CLA-2:CO:R:CV:S
067888 EM

Dear [redacted]

In your letter of July 12, 1982, you inquire concerning the application of item 806.20, Tariff Schedules of the United States (TSUS), to certain stainless steel wire processed abroad.

You state that the merchandise consists of 42,000 pounds of stainless steel wire which was imported from Sweden for use in the manufacture of surgical needles. However, microscopic cracks were discovered so your client intends to return the spools of wire to the manufacturer. The wire when abroad will be unspooled, passed through an eddy current tester, and cracked portions will be removed before the lengths are respooled onto separate spools. The spools of remaining wire will be reimported into the United States.

We are of the opinion that the processing operations performed abroad on the subject wire constitute alterations which qualify it for tariff treatment under item 806.20, TSUS, upon compliance with the Customs Regulations.

Sincerely,

Russell Arnold
Chief, Special
Classification Branch

067888

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted] B4

REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

APR 30 1982

069704

CLA-2 CO:R:CV:G
069704 JH

Dear [redacted]

Your letter of February 4, 1982, concerns the classification of Ritrodrine HCL made in Holland.

You state that subsequent to July 1981, the chemical was classified first in item 412.68, Tariff Schedules of the United States (TSUS), the provision for other drugs, and then later it was classified in item 412.02, the provision for other autonomic drugs.

You suggest that it should be classified in item 411.98 the provision for autonomic drugs. You believe that the classification applies because of the (1) chemical similarity of Ritrodrine and the chemicals listed by name in that item number, and (2) the pharmacological similarity. As with one of the drugs listed there, Ritrodrine is said to be indicated for the treatment of premature labor. You request that it be added by name to those drugs listed in item 411.98, TSUS.

Only the drugs listed by name in item 411.98 may be classified in that provision. As an administrative agency, Customs has no authority to create new item numbers. It is suggested that you write to the Special Trade Representative, 1600 17th Street NW., Washington, D.C. 20506, for information on how a product may be listed by name in the tariff schedules.

However, until such time as Ritrodrine HCL is listed by name, it would be classified, as it is an autonomic drug with a chemical abstract service register number, in item 412.02, TSUS, since it is deemed to be competitive.

Sincerely,

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

[redacted]

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DEPARTMENT OF THE TREASURY · U. S. CUSTOMS SERVICE · CORRESPONDENCE APPROVAL AND CLEARANCE · Form 100 (11-15-73)

-4 FEB 1983

CLA-2 CO:R:CV:G
070857 TJB

070857

[redacted]

Dear [redacted]

This is in reference to your letter, undated, in which you make inquiry into the dutiable status of a sheepskin boot which you intend to import into the United States from Australia. A sample boot (right side) was submitted with your inquiry.

The merchandise is a mid-calf sheepskin boot with an ethylene vinyl acetate (EVA) sole. The exterior surface area of the sheepskin upper displays the tanned side out and would therefore, for purposes of tariff classification, be considered leather footwear.

If the boot is in chief value of the leather upper, it would be classifiable under the provision for footwear, of leather, in items 700.35, 700.43 or 700.45, Tariff Schedules of the United States (TSUS), copy enclosed. Column one duty rates apply to products of Australia. If the boot is in chief value of the rubber or plastic sole and heel, classification would be under the provision for other footwear in item 700.95, TSUS, with duty at the rate of 12.5 percent ad valorem.

Sincerely,

Arthur P. Schifflin
Chief
General Classification Branch

enclosure

THIS DOCUMENT MAY BE RELEASED TO THE [redacted]IC ____

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[redacted]							
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

FEB 08 1983

CLA-2:CO:R:CV:S
071072 EM

Dear

In your letter of November 23, 1982, on behalf of _____ you asked about the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to certain garment travel bags assembled in Mexico from components of United States origin.

Sample component parts making up the travel bags were submitted. A sample unfinished bag was also submitted, showing a wide aluminum strip at the top and a center narrow strip lined with fabric, both assembled to the bag. The components consist of wide (2-1/2 in.) aluminum strip exported in lengths of 60-1/2 inches and narrow (1-1/4 in.) strip exported in lengths of 48 inches. The narrow strip will eventually be assembled into the middle of the bag where the bag will be folded in half for carrying either by a handle or a shoulder strap connected to assembled "D" rings.

The foreign operations will consist of first cutting the wide strip to proper length with angular ends and punching a series of holes all in one operation, and bending the strip at both ends to a 90-degree angle for attachment to the bag. The holes serve to attach metal brackets for a carrying strap and a metal hook for hanging the bag in a closet or elsewhere. Both ends of the cut strip will be dipped in wax to conceal the rough metal ends and prevent tearing of the garment contents.

The narrow strip is similarly cut to length with a rounded oval shape formed on each end, and holes are punched along the cut length for attachment of the handle and "D" rings for the shoulder strap.

With respect to a foreign assembly, item 807.00, TSUS, provides for the assembly of an article from components that are exported in condition ready for assembly without further fabrication.

In support of the claim that the foreign operations on both aluminum strips are incidental to assembly of the garment bag under item 807.00, TSUS, you compare these operations with the buttonholing and pocket slitting operations performed in the Mast and Oxford Industries cases, Slip Op. 81-18 and 81-21, respectively. Although cutting the exported strip material to proper length and drilling accommodation holes therein may be considered necessary and incidental to assembly on the basis of previous adjudications, as in buttonholing and pocket slitting operations, the described forming and shaping operations, however, are extended operations

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[redacted] B7

that prepare the cut strips for assembly. In this respect, the described aluminum strips are exported in an unfinished state and, aside from cutting to length and drilling necessary holes, were at that point not capable of immediately entering into the assembly process without still further fabrications of cutting angular and oval ends and bending the wider strip to 90-degree turns. These further operations were needed in order to place the strips in condition ready for assembly. The bending and precise shaping of the exported strips created something new over and above the cutting and drilling, which then made the strips a complete, finished, and usable component.

From this point of view, we believe that the forming of the ends of both strips can appropriately be characterized as a finishing operation which must be performed before the strips can be considered a fabricated component and ready for assembly. The forming and shaping produce a new configuration that did not exist before and cannot be considered incidental to assembly.

Sincerely,

(Signed) R. X. ARNOLD

Russell Arnold
Chief, Special
Classification Branch

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PUBLIC _____

070173

BS

DEC 30 1983

CLA-2 CO:R:CV:VS
071206 SC

[redacted]

Dear [redacted]

We have your letter of February 25, 1983, on behalf of [redacted] in which you request a reconsideration of the tariff status of parts or accessories of a High Linear Energy Transfer [redacted] for the University of Washington, the subject of our letter dated April 4, 1980. You state that [redacted] is affiliated with [redacted] the manufacturer of the merchandise in question.

The Neutron Therapy System consists of several systems and subsystems as follows:

1. Cyclotron and power supplies.
2. Beam Transport System.
3. Isocentric therapy unit with treatment head and couch.
4. Fixed beam therapy with treatment head and couch.
5. Control System

Information before the U.S. Customs Service Headquarters indicates that the [redacted] is intended for use in a clinical Neutron Therapy Program in order to evaluate the efficiency of fast neutron and conventional x-ray radiotherapy in the control of malignant tumors.

You indicate that in its pristine state, before use of any kind, the Scanditronix apparatus does not contain any significant radioactive substances. During its use, however, and after the commencement of its first use to produce high energy neutrons, the apparatus indeed does always thereafter utilize radioactive substances of various types.

It is your view that the subject merchandise should be considered as an apparatus and parts or accessories of an apparatus to be utilized in medical diagnosis or therapeutic treatment by a nonprofit organization and accorded free entry under item 854.10, Tariff Schedules of the United States (TSUS).

071206

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[redacted]
39

In C.I.E. 1385/61 we concluded that a "scintigraph whole body scanner" was classifiable under paragraph 1825, Tariff Act of 1930, as amended, the predecessor of item 854.10, TSUS. There the scintigraph did not contain radioactive material, but it utilized radioactive isotopes which had been administered to the patient.

The nuclear collision which is created when the Scanditronix apparatus employs one of its "MC series cyclotrons" to accelerate positive ions (e.g., 48 Mc V protons) seems to enable the apparatus to utilize neutrons in the performance of its diagnostic and medical functions. As these positive ions are guided into a collision with the target material, which is made primarily with beryllium, they provide gamma radiation and high energy neutrons.

Accordingly, in the absence of additional information that the subject merchandise does not contain radioactive material within the apparatus, we are of the opinion that the merchandise described is of the type provided for in item 854.10, TSUS. However, to obtain free entry under item 854.10, TSUS, it must be established to the satisfaction of the district director of Customs that the article was imported on behalf of a nonprofit institution. That is, it must be established that the importer, or his agent, imports the apparatus on behalf of the nonprofit institution, and not independently or as agent of the foreign manufacturer or for a dealer who would find a qualifying purchaser after importation. Our letter of April 4, 1980, to Nucletronix involving this merchandise should be modified accordingly.

Sincerely,

(Signed) J. T. Roth
For Harvey B. Fox
Director, Classification
and Value Division

071206

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B10

AUG 1 1983

CLA-2 CO:R:CV:VS
071288 EM

071288

[redacted]

Dear [redacted]

In your letter of April 15, 1983, on behalf of [redacted] you asked for information about the tariff status of quartz cane (rod) and tubing that are exported to Mexico in long lengths and cut to shorter lengths.

A narrative description and accompanying photographs showing the cutting process were submitted. It is explained that quartz cane (solid glass rod) about 1/8 or 1/4 inch in diameter will be exported to Mexico in material lengths of 4 feet and cut to shorter pieces ranging from 1/2 to 12 inches long. The cut rod will be used in further assembly operations in Mexico and then returned to the United States in an assembled condition.

On the other hand, hollow quartz tubing will also be exported to Mexico in similar long lengths and cut to smaller lengths while in Mexico. However, instead of being further assembled in Mexico, the cut tubing will be returned for use in the manufacture of halogen lamps either in the United States or Puerto Rico. The photographs submitted show, in addition to the cutting processes involved, the final steps of cleaning, drying, and inspection and packing for return shipment.

With respect to the quartz solid cane or rod, item 807.00, Tariff Schedules of the United States (TSUS), applies to fabricated United States components that are designed to be fitted with other components in an assembly process with no further fabrications performed thereon except for the assembly and operations incidental thereto.

Cutting glass rods to length to facilitate the foreign assembly, as well as other operations of cleaning and drying, are all considered assembly steps or operations incidental thereto, within the meaning of item 807.00, TSUS. Duty is assessed on the value of the imported subassemblies, with allowances from the appraised value for the value of the exported quartz cane.

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]
311

071288

With respect to glass tubing that is exported for cutting to shorter lengths and returned, however, item 806.20, TSUS, mentioned in your letter as an appropriate classification, provides for an import duty to be assessed on the value of repairs or alterations made on articles exported for that purpose. However, repairs and alterations are made to completed articles and do not include intermediate or finish processing operations that are performed in the preparation or manufacture of finished articles. Or, as further established, when a foreign processing creates a new article of commerce, ready for its intended use, the processing is not considered an alteration. See Guardian Industries Corp. v. United States, Slip Op. 82-4 (1982), and cases cited therein.

Accordingly, in these circumstances, the foreign cutting to length of the quartz tubing cannot be considered to fall under the repair or alteration provision of item 806.20, TSUS.

With respect to classification, since an article is classifiable in that provision of the tariff schedules which most specifically describes it, the merchandise represented by the cut pieces of glass tubing shown in the photographs, is classifiable under the provision for glass tubes and tubing, not processed, according to the silica content; if over 95 percent silica by weight, item 540.41, TSUS; if not, item 540.43, TSUS.

Your question relating to country of origin marking will be the subject of a later letter from the Licensing and Restricted Merchandise Branch of the Customs Service.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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[redacted]

CODE AND DATE							B12
SURNAME							
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SURNAME							

[redacted]

CLA-2 CO:R:CV:G
072159 c
NY 804991

072159

[redacted]

JUL 11 1983

Dear [redacted]

Your letter dated December 16, 1982, requesting the dutiable status of certain footwear produced in China or Japan has been forwarded to us by our New York office for a direct reply to you.

The sample submitted designated as a "Reef Walker" is a felt soled shoe with a knit sock upper attached to the sole. It is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics.

It is your view that the appropriate classification for this type of footwear would be under items 700.51 and 700.52, Tariff Schedules of the United States (TSUS), as protective against water, or under item 700.32, TSUS, as slippers.

The physical characteristics of the sample footwear alone preclude its classification under the provisions of the tariff schedules suggested by you. Classification under item 700.32, TSUS, requires that the footwear be in chief value of leather. Classification under items 700.51 or 700.52, TSUS, requires that the footwear have soles and uppers of which over 90 percent of the exterior area is rubber or plastics.

Item 700.57, TSUS, provides for hunting boots, galoshes, rainwear and other footwear designed to be worn over or in lieu of other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. The applicable rate of duty is 37.5 percent ad valorem.

Classification of this footwear under item 700.57, TSUS, is precluded because it is not protective against water. Specifically, as used in shallow water at the shore, it will not keep your feet dry due to the unlined knit sock and upper. The felt sole feature of this footwear is to get better adhesion on wet rocks and the vulcanized construction keeps the shoe from falling apart due to continued immersion in salt water.

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

Item 700.59, TSUS, provides for footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fastners, the foregoing except footwear provided for in item 700.57 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper. The applicable column 1 rate of duty is 37.5 percent ad valorem.

The instant sample is precluded from classification under item 700.59, TSUS, because it has an obvious foxing or foxing-like band wholly or almost wholly of rubber or plastics applied at the sole which overlaps the upper. The presence of a foxing or foxing-like band also precludes its classification under items 700.61 through 700.63, TSUS. Consequently, the sample is dutiable according to value per pair under items 700.64 through 700.71, TSUS, copy attached. The column 1 rates of duty are applicable to products of China and Japan.

Sincerely,

(Signed) A. P. SCHIFFLIN

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

[redacted]

B14

CODE AND DATE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

072159

APR 13 1984

CLA-2 CO:R:CV:G
073591 c

073591

Dear [redacted]

In a letter dated June 16, 1983, you inquired as to the dutiable status of certain ladies boots manufactured in Taiwan. Samples were submitted for examination.

The samples submitted are closed toe, closed back, over-the-ankle, cold weather, slip-on fashion boots. The stitched nylon upper shafts and insoles, lined or partially lined with a man-made fleece, are injected or cemented to unit-molded rubber/plastic bottoms.

The sample boots, by virtue of their substantial fleece-type linings, are designed to be worn as a protection against cold weather. Accordingly, they are classifiable under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber of plastics and which is designed to be worn over, or in lieu of, other footwear as s protection against water, oil, grease, or chemicals or cold or inclement weather in item 700.57, TSUS, and dutiable at the rate of 37.5 percent ad valorem.

Sincerely,

(Signed) Arthur P. Schifflin

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Harvey B. Fox
Director, Classification
and Value Division

C1 [redacted]

CODE AND DATE		(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER
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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

U.S. GPO: 1983-417-799

FEB 29 1984

CIA-2 CO:R:CV:G
073767 DM

District Director of Customs
Boston, Massachusetts 02110

Dear Sir:

Re: Decision on Application for Further Review of Protest Nos. 0401-2-000345 and 0401-0-000255

These protests were filed against your decision in the liquidation of the following entries.

Entry Number	Entry Date	Liquidation Date
391345	6/11/80	2/5/82
391169	4/07/80	2/5/82
390978	4/09/80	2/5/82
203883	4/08/81	3/5/82
203992	4/17/81	3/5/82
204070	4/21/81	3/5/82
204270	5/06/81	3/5/82
204389	5/18/81	3/5/82

FACTS:

The merchandise subject to protest consists of seamless latex rubber shoe covers used by the nuclear power industry to protect workers from radioactive contamination. They were classified under the provision for hunting boots, galoshes, rainwear and other footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease, or chemicals or cold or inclement weather, all the foregoing having soles and uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear with uppers of non-molded construction formed by sewing the parts thereof together and having exposed on the outer surface a substantial portion of functional stitching) other, in item 700.53, Tariff Schedules of the United States (TSUS).

C2

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The protestant contends that the subject merchandise is classifiable under the provision for other footwear (except footwear having uppers of which over 50 percent of the exterior surface area is leather) having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper), other, in item 700.56, TSUS. In essence, the protestant argues that item 700.53, TSUS, is not applicable to the subject overboots because they are not ejusdem generis with the enumerated exemplars, and they are not designed as a protection against water, oil, grease, or chemicals or cold or inclement weather. In support of its position, the protestant has submitted samples, statements, and descriptive literature.

ISSUE:

Whether the subject merchandise was correctly classified in item 700.53, TSUS.

In Stylo Matchmakers International, Inc. v. United States, 73 Cust. Ct. 78, C.D. 4556 (1974), the court determined that golf shoes worn for protection against wet weather were classified in item 700.53, TSUS. Considering whether the merchandise at bar was ejusdem generis with the enumerated exemplars listed in item 700.53, TSUS, the court observed as follows:

> The common characteristic in the exemplars is that they are waterproof or water repellant and are worn in wet weather or wet areas, usually for protection against water.

The descriptive literature indicates that the subject merchandise is "slip resistant," and "ideal for anti-contamination use in potentially slippery areas where non-scuffing of walk surfaces is essential."

C3

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In a letter dated September 8, 1983, [redacted] the president of the importing company, stated that the shoe covers are designed as a protection against dust on the floors and equipment in nuclear power plants and facilities. It is further indicated that the purpose of the thick latex material is to reduce potential tears and consequent dust contamination. According to [redacted] the primary use of the shoe is in the maintenance of steam generators which must be drained of all liquid and ventilated for several days to ensure that no liquid exists.

Contrary to the protestant's assertion that the shoe covers are used primarily in the maintenance of steam generators, we have contacted a local nuclear power plant and discovered that these items are not used exclusively for steam generator repair work. They are multi-purpose items that are used when water and high contamination are involved. Furthermore, during steam generator repair work there may in fact be a thin film of water present. In addition to guarding against potential tears, the seamless construction is a protection against water penetration.

HOLDING:

The merchandise was classified correctly in item 700.53, TSUS. You should deny the protest. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

[redacted]

(Signed Arthur P. Schifflin
[redacted] Fox
Director, Classification
and Value Division

C4 [redacted]

CODE AND DATE	[redacted]						
SURNAME							
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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 9 1986

CLA-2 CO:R:CV:G
073784 c

073784

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-3-002588

This protest was filed against your decision in the liquidation on December 3, 1982, of entry No. 82-238396-3 dated January 22, 1982, covering a shipment of men's athletic footwear produced in Korea.

FACTS:

The footwear involved, men's nylon/suede leather jogging shoes (Model Nos. A702, A707 and A708) with rubber/plastics soles, was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for other footwear of leather for men, youths and boys in item 700.35, TSUS.

In support of its position that the footwear is in chief value of leather, the protestant has made the following statements:

(1) The rubber/plastics components are separate and distinct materials and may not aggregated for chief value purposes;

(2) the manufacturer has overstated the rubber/plastics costs including mold amortization which is not properly allocable in a chief value determination;

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(3) the cement and cementing labor, included in the sole part are not allocable to the rubber/plastics components; and

(4) with respect to Model Nos. A707 and A708, the cost of the leather plus one-half of the leather stitching charge exceeds the total cost of the rubber/plastics materials.

ISSUE:

1. In determining component material of chief value of footwear, should the individual values of the rubber and plastics components be broken out separately?

2. Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

It has been consistently our position that in determining component material of chief value that the plastics and rubber components should be combined.

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, in the matter was that data submitted by the importer need not be accepted if there is

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tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

The protestant has not submitted any evidence to substantiate his claim that the manufacturer has overstated the rubber/plastics costs. Also, mold amortization is correctly included in a component material determination because it is a direct cost of manufacture.

We agree that the cost of the cement is not allocable to the rubber/plastics components. However, the cementing labor is allocable to the rubber/plastics components.

The cost breakdowns showing the amount of leather purchased and contained in the shoes is excessive. This fact was substantiated by a laboratory analysis.

The protestant's allocation of leather costs for Model Nos. A707 and A708 is not in accord with CSD 81-239 which stated that the cost of stitching leather overlays onto fabric uppers should be allocated among the materials comprising the uppers in proportion to their relative weights.

In view of the foregoing, it is our position that classification of the instant footwear under item 700.95, TSUS, was appropriate.

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c1

HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffler

For Harvey B. Fox
Director, Classification
and Value Division

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097384

OCT 10 1984

CLA-2:CO:R:CV:G
073876 DFC

073876

[redacted]

Dear [redacted]

In a letter dated February 17, 1984, you requested reconsideration of Headquarters Ruling Letter No. 073697 dated February 7, 1984, relating to the tariff classification of certain footwear manufactured in Taiwan.

In the cited ruling, this office held that Voyager patt No. ZV-1010 and patt No. Z-1004 were excluded from classification under item 700.56, Tariff Schedules of the United States (TSUS), by virtue of the presence of a foxing, and consequently, were properly classifiable under item 700.67, TSUS.

Your basic argument is that the upper would separate from the sole if the vinyl mudguard were not present. This is correct because the mudguard (which is cemented and sewn to the upper) has a much larger contact area with the sole than a "non-mudguarded" upper. A larger contact area does increase the effective strength of the adhesive. Therefore, this does establish that this "mudguard" is analogous in function to a traditional foxing because it also decreases the chances that the upper will separate from the sole.

You also assert that you cannot distinguish the shoes in issue here from the one which was the subject of HRL 073663 dated February 9, 1984. In that case, if there had been no mudguard, one would see the lining, not the exterior upper, covering the lower part of the foot. Here, one sees an upper covering the entire foot. This is why the "mudguard" overlaps the "upper" in the instant situation but not in the previous case.

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PUBLIC _____

[redacted]
C9

For the stated reasons we believe the result reached in HRL No. 073697 was correct.

Sincerely,

[redacted] Arthur P. Schifflin

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC [redacted]

C10

CODE AND DATE	[redacted]						
SURNAME	[redacted]						
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MAY 17 1984

CLA-2 CO:R:CV:G
074193 c

074193

Dear Senator Packwood:

Thank you for your letter dated April 17, 1984, concerning the continuing controversy regarding determination of component material of chief value of [redacted] brand footwear produced in Korea.

You make reference to a memorandum dated March 12, 1984, from Headquarters to the New York Seaport relating to the [redacted] chief value inquiry which you state abrogates any agreements contained in our letter to you dated March 14, 1984. Specifically, you cite three paragraphs in that memorandum which you believe ignore the agreement reached between Customs and [redacted] The relevant portions of that memorandum are as follows:

> (3) We agree that due to the overstatements found for leather waste at Tong Yang and Samyang Tongsang, the leather waste maximums set forth in your memorandum of December 14, 1983, will apply to all leather waste figures derived from [redacted] test cuttings.
>
> (5) We will require the minimum waste figures for rubber/plastics set forth in your memorandum.
>
> (6) We will not allow [redacted] credit for recycled rubber and plastics. We will use raw material costs of other Korean makers of identical components.

In our letter to you dated March 14, 1984, we stated with respect to acceptance of cost or value of material as follows:

> We will accept [redacted] cost data for leather and rubber/plastics material, without regard to cost figures for those materials submitted by other manufacturers, unless there is tangible evidence that the data submitted are false.

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[redacted] C11

With respect to leather waste figures, Customs determined, as a result of the value investigation in Korea that the figures supplied by [redacted] for two shoe styles produced at three Korean factories were erroneous. Because of this finding, Customs asked [redacted] in a letter dated April 13, 1984, to provide the National Import Specialist at New York with information such as charge out sheets, printouts and financial statements which would substantiate all other leather waste claims above 47 percent, the actual amount of wastage found in the two shoe styles. Customs will allow [redacted] to prove leather waste figures beyond this amount. It should be noted that at a meeting held with [redacted] officials on April 11, 1984, they indicated a willingness to submit documentation supporting leather waste claims higher than 47 percent.

With respect to minimum waste figures for rubber/plastics, we note that the analysis of the foreign inquiry on [redacted] footwear states that "no Korean factory keeps any charge out sheets for the rubber and plastics materials used so there is absolutely no record of waste for any style." In view of the impossibility of verifying rubber/plastics waste, it is not feasible for us at this time to arrive at meaningful minimum waste figures for rubber/plastics. It is now our position that the rubber/plastics waste figures submitted by [redacted] should be accepted.

Credit for [redacted] recycled waste was disallowed for the following reasons:

(1) Cost of reclamation is quite high.

(2) [redacted] did not use any of its recycled waste in any [redacted] shoes.

(3) [redacted] never purchased any rubber/plastics waste from another maker.

(4) Any rubber/plastic waste not reclaimed was destroyed since there was no market for it.

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[redacted]
C12

074198

Upon reconsideration, we do not believe the reasons set out above for not allowing [redacted] credit for recycled waste can be sustained. Definitely, any recycled waste used in other footwear produced by [redacted] has the effect of lowering their rubber/plastics costs for footwear produced for [redacted] Inasmuch as [redacted] actual costs for recycled rubber/plastics waste do not exist according to a communication dated May 11, 1984, from [redacted] to [redacted] we will accept all of [redacted] cost figures for rubber/plastics materials.

I would be happy to meet with you on this matter at any time. However, a meeting was held on May 8, 1984, between [redacted] officials and Customs officials to resolve any residual problems on this matter.

If we can be of futher assistance in this matter, please do not hesitate to call on us.

Sincerely,

/s/ John M. Walker, Jr.

John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

The Honorable
Bob Packwood
United States Senate
Washington, D.C. 20510

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

[redacted]

C13 [redacted]

CODE AND DATE	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY - U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

31 JUL 1984

CLA-2:CO:R:CV:G
074511 c

074511

[redacted]

Dear [redacted]

In a letter dated July 3, 1984, you asked three questions with respect to a notice published in the Federal Register of March 12, 1984 (48 FR 9167) relating to the tariff classification of footwear known as "Rubber Duckies."

In response to your first question, the leather trim should be measured from the top line down toward the sole. That portion of the leather trim which faces the inside of the shoe should not be measured as exterior surface area of the upper.

With respect to your second question, we cannot advise you as to whether your bottoms consisting of rubber sheets, calendered soles and molded heels qualify as molded bottoms in the absence of samples.

Your third question relates to what portion of the tongue will be included as exterior surface area of the upper. The subject notice covered a "Rubber Ducky" having a flap or tongue which was not covered by any portion of the upper when tied. Its entire surface was visible and tactile. With this type of construction, the flap or tongue should be measured as exterior surface area of the upper. In those instances where the tongue is covered by eyelet stays, that portion of the tongue above the first eyelet is not to be included as exterior surface area of the upper.

Sincerely,

(Signed) Arthur P. Schifflin

Harvey B. Fox
Director, Classification
and Value Division

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[redacted] C14

[redacted]	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER
SURNAME					
CODE AND DATE [redacted]	(16) REVIEWER	(17) REVIEWER	(18) REVIEWER	(19) REVIEWER	(20) REVIEWER
SURNAME					

DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73) (Previous editions may be used)

* U.S. GPO: 1981-417-788

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

24 JAN 1985

REFER TO
CLA-2 CO:R:CV:G
075420 EMS
811051

075420

Mr. Marc S. Bluestein
Mercury International Trading Corp.
75 Forbes Boulevard
P.O. Box 430
Mansfield, Massachusetts 02048

Dear Mr. Bluestein:

Your letters dated October 5, 12 and 30, 1984, addressed to our New York office, inquiring as to the dutiable status of certain footwear to be imported from Taiwan, have been referred to our office for direct reply to you. You have submitted samples of a swatch of PVC coated material to be used in the manufacture of such footwear and a swatch of material before the PVC coating is applied and a sample of the footwear in question.

The PVC coated material will be used to form the exterior surface area of the uppers of the footwear subject to your inquiry. It is assumed for the purpose of this reply that the shoes will be over 50 percent by weight of plastics.

The issue presented by your request is whether the plastic coating on the fabric "visibly and significantly affects the surface" thereof within the meaning of Schedule 7, Part 1, Subpart A, Headnote 3, Tariff Schedules of the United States (TSUS). Specifically, Headnote 3 provides that:

> For the purposes of items 700.51 through 700.56, the rubber or plastics forming the exterior surface area specified, if supported by fabric or other material, must coat or fill the supporting material with a quantity of rubber or plastics sufficient to visibly and significantly affect the surface otherwise than by change in color, whether or not the color has been changed thereby.

In the context of Schedule 3 covering textile fibers and textile products, Customs issued a notice, 15 Cust. Bull. 562, T.D. 81-219 (1981), interpreting H. Rosenthal Co. v. United States, 81 Cust. Ct. 77, C.D. 4769 (1978), which held that the fabric from which certain coats were constructed fell within the definition of "coated or filled" in Headnote 2(a), Part 4, Subpart C, Schedule 3, TSUS. Similar to Schedule 7, Part 1, Subpart A, Headnote 3, that definition requires that for a fabric to be coated or filled for tariff purposes, the coating or filling must visibly and significantly affect its surface, other than by a change in color. Specifically, Customs stated that it would consider the surface of a fabric to be visibly affected by a coating or filling if the following criteria were met:

(1) the coating or filling material can be separately distinguished from the fabric by the naked eye;

[redacted] D1

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(2) the coating or filling material imparts a shine, luster or glossy appearance, or a dull appearance, that is noticeable by a casual examination; or

(3) the coating or filling material has caused the fabric to have a pronounced (obvious) appearance of stiffness. In regard to the appearance of stiffness, the fabric should appear significantly more rigid than that fabric would be if not coated or filled.

075420

15 Cust. Bull. at 563. In a Headquarters Ruling Letter concerning footwear with uppers constructed of woven fabric coated with plastic, file No. 069067 (1981), we held that the interpretation of the Rosenthal case set forth in T.D. 81-219 was applicable to footwear and concluded that the surface of the merchandise subject to inquiry was visibly and significantly affected by the plastic coating.

Applying the criteria set out in T.D. 81-219, it is our position that the plastic coating involved in this ruling request visibly and significantly affects the surface of the fabric within the meaning of Schedule 7, Part 1, Subpart A, Headnote 3, TSUS. The coating material in this case is visible. It also adds stiffness to the fabric and imparts a luster or shine to the fabric which is noticeable by casual examination. Moreover, a comparison of the weights of the coated and uncoated fabrics indicates that the coated swatch weighs approximately 19 grams per square foot while the uncoated swatch weighs roughly 8.1 grams per square foot. Although this factor was not considered in T.D. 81-219 and should not be considered determinative in a classification question, it provides a useful guide as to the quantity of coating involved in this particular ruling.

Therefore, the merchandise subject to your inquiry should be classified under the provision for other footwear which is over 50 percent by weight of fibers and rubber of plastics with at least 10 percent by weight being rubber or plastics and having uppers of which over 90 percent of the exterior surface is rubber or plastics in item 700.56, TSUS, and dutiable at the rate of 6 percent ad valorem.

Sincerely,

Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

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D2

25 MAR 1985

CLA-2 CO:R:CV:G
075732 EMS

Mr. Marc S. Bluestein
Vice President - Finance
Mercury International Trading Corp.
75 Forbes Boulevard
P.O. Box 430
Mansfield, Massachusetts 02048

Dear Mr. Bluestein:

Your letter dated December 19, 1984, addressed to our New York office concerning the dutiable status of an artificial suede boot for men produced in Taiwan, has been referred to this office for direct reply to you. A sample of the merchandise was submitted with your request.

You describe the sample submitted as a men's workboot made from an artificial suede material known as "Long Pen." This suede-like material is used on the collar, the eyelet stays, the mudguard, the heel and toe portions of the boot. Our examination of this artificial suede material reveals that it consists of a woven fabric backing with a middle layer of porous plastic material and then a top layer of plastic embedded with a mat of non-woven synthetic fibers, or flocking, which was sprayed or otherwise coated with a plastic material. Under 30-power magnification, it is apparent that some of the fibers are encapsulated but a great many individual fibers do not appear to be affected by the plastic spray or coating. The balance of the upper of the sample boot consists of a band of smooth vinyl in the ankle area. The vamp and side quarters are composed of an embossed plastic simulating a woven fabric. In addition, the sample boot has a 6 inch long toe bumper, which appears to be part of the molded outsole.

The first issue presented by the merchandise subject to your inquiry is whether the upper of this boot would be considered to have a plastic surface, classifiable in item 700.56, Tariff Schedules of the United States (TSUS), or a fiber surface, classifiable in item 700.61, 700.62, or 700.63, TSUS, depending on its value.

Item 700.56, TSUS, provides for other footwear which is over 50 percent by weight of rubber or plastic or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper).

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Schedule 7, Part 1, Subpart A, Headnote 3, TSUS, provides that:

> For the purposes of items 700.51 through 700.56, the rubber or plastics forming the exterior surface area specified, if supported by fabric or other material, must coat or fill the supporting material with a quantity of rubber or plastics sufficient to visibly and significantly affect the surface otherwise than by change in color, whether or not the color has been changed thereby.

While the plastic spray used on the suede-like material has had a visible and significant effect on some of the flocking, our examination of this material under 30-power magnification reveals that a great many individual fibers are not affected by the plastic spray or coating. The material is similar to a mink suede material utilized on a jogger involved in our Ruling Letter dated February 8, 1985, file No. 075422, which was considered not to be classifiable in item 700.56, TSUS. Thus, this merchandise is not classifiable in item 700.56, TSUS, because the plastic does not cover over 90 percent of the exterior surface of the upper.

The second issue presented is whether this boot possesses foxing or a foxing-like band which precludes its classification in item 700.61, 700.62, or 700.63, TSUS. Specifically, the question arises as to whether the 6 inch long toe bumper or the suede toecap and mudguard could be considered a foxing-like band.

First, we do not consider the toe bumper to constitute a foxing-like band since it does not substantially encircle the boot subject to your inquiry, see Customs Guidelines Relating to Characteristics of Foxing and Foxing-Like Band, T.D. 83-116 (1983). In addition, we do not believe that the configuration of the suede toecap and mudguard comes within the purview of the term "foxing" or "foxing-like" band. A configuration of a toecap similar to the one at issue here was considered not to be "foxing" or a "foxing-like" band in our recent Ruling Letter dated February 27, 1985, file No. 075348.

In view of the foregoing, this merchandise is classifiable depending on its value in item 700.61, TSUS, (if valued not over $6.50 per pair) dutiable at the rate of 37.5 percent ad valorem, 700.62, TSUS, (if valued over $6.50 but not over $12.00 per pair) dutiable at the rate of 90 cents per pair plus 20 percent ad valorem, or item 700.63, TSUS, (if valued over $12.00 per pair) dutiable at the rate of 20 percent ad valorem.

Sincerely,

[redacted]

(Signed) Arthur P. Schifflin

Arthur P. Schifflin
Chief, General
Classification Branch

[redacted]

AND						D4
SURNAME						
CODE AND DATE						
SURNAME						

DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

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075422

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

075867

1 APR 1986

REFER TO
CLA-2 CO:R:CV:G
075867 JLV

Chief, Customs Information Exchange
U.S. Customs Service
6 World Trade Center
New York, New York 10048

Re: Decision on Difference of Opinion Forwarded on Report From Detroit, Customs Form 6431, Dated December 3, 1984, Concerning Automatic Loaders for Machine Tools

Dear Ms. DeGaetano:

In your memorandum of March 13, 1985, you forwarded the difference of opinion for our decision on the classification of certain automatic loaders for machine tools. This ruling is our decision.

FACTS:

The difference of opinion concerns a device that has been designed to automatically load and unload the S-1255 series turning machine (lathe). The automatic loader is controlled by a system of positioning motors and hydraulic motors. In operation, cylindrical parts are presented to the loader by an automatic parts chute, loaded into the lathe, and then removed. Although not essential to the completion or operation of a lathe, it does enhance its speed and efficiency.

Automatic loaders for machine tools have been the subject of numerous rulings. However, in a ruling letter of July 23, 1984 (file 074289), a loader for a machine tool was classified under the provision for other lifting, handling, loading, or unloading machinery in item 664.10, Tariff

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Schedules of the United States (TSUS). Prior to this ruling, the competing provisions for machine tool loaders were the provisions for parts of machine tools and accessories (machines) used principally with machine tools in items 674.53 and 674.55, TSUS, respectively. The primary test applied in those cases was whether a loader was designed for use with a single type of machine tool (i.e., a lathe or a drill) or was suitable for use with more than one type of machine tool.

The often-cited judicial opinions concerning whether certain machines are parts or accessories of machine tools are also silent on the issue as to whether item 664.10, TSUS, is a relevant competing provision. See the decisions in United States v. C. F. Liebert, 59 CCPA 43, C.A.D. 1035 (1972), and T. D. Downing Co. et al. v. United States, 68 Cust. Ct. 71, C.D. 4338 (1972).

ISSUES:

Whether automatic machine tool loaders are within the class or kind of machinery contemplated in item 664.10, TSUS, and, if so, whether the provision in item 664.10 for other lifting, handling, loading or unloading machinery is more specific than the provisions for parts or accessories in items 674.52, 674.53, and 674.55, TSUS?

LAW AND ANALYSIS:

In our ruling of January 30, 1984 (file 073587), we held that document feeders for photocopying machines were

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classifiable as parts of such machines rather than as other lifting, handling, loading or unloading machinery. In that ruling we stated that the type of equipment intended by the provision in 664.10 was industrial equipment designed for handling or moving articles from place to place in and around industrial plants, airports, bus and rail terminals, warehouses, docks, garages, and post offices. In view of the principle that a tariff term does not include everthing literally within its scope, it was concluded that item 664.10 did not include office equipment. United States v. Andrew Fisher Cycle Co., 57 CCPA 102, C.A.D. 986 (1970).

Loading devices used with machine tools, however, are industrial equipment. Except for the unexplained absence of consideration in prior judicial and administrative rulings, no reason or evidence has been offered which would exclude them from the scope of the language in item 664.10, TSUS. Furthermore, the language in issue does not distinguish such industrial loading equipment by size of loader or workpiece.

Item 664.10, TSUS, provides for certain articles eo nomine and for other articles under a residual provision. The latter is at issue in this case. The terms "other lifting, handling, loading, or unloading machinery" are generic designations that describe classes of articles, and, in our opinion, cover each article within those classes as

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if provided by name. Robert Bosch Corporation et al. v. United States, 63 Cust. Ct. 187, C.D. 3895 (1969). Therefore, absent contrary legislative intent or other limitation, we conclude that the automatic loaders are described by the language in item 664.10, TSUS.

The applicable language in item 664.10 is a specific provision within the meaning of General Interpretative Rule 10(ij), TSUS. Tariff provisions which describe articles by name or specific function are specific provisions for this interpretative rule. Foster Wheeler Corp. v. United States, 61 Cust. Ct. 166, C.D. 3556 (1968); J. E. Bernard & Co. v. United States, 59 Cust. Ct. 31, C.D. 3060 (1967). Therefore, even if the automatic loader in issue were a part of a specific machine tool (lathe), it would be precluded from classification in item 674.53, TSUS, by operation of General Interpretative Rule 10(ij), TSUS.

The provisions for machine tool accessories in items 674.55 (machines) and 674.56 (other than machines) were intended to provide for those devices which, although not classifiable as parts of any particular machine, were principally used with machine tools. These devices would otherwise have been classified under one of several basket provisions. Tariff Classification Study, Schedule 6, pages 272 and 273 (November 15, 1960).

Although the provisions for accessories are not

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subject to General Interpretative Rule 10(ij), the term "accessory" for machine tools is less specific than the term "other lifting, handling, loading, or unloading machinery" for purposes of tariff classification. The accessory provisions address a broad range of devices which are auxiliary or subsidiary devices for machine tools, or are not specific to any one machine tool. The diversity of articles that could be considered as accessories presents a test that is easier to satisfy than a test based on a specific function of lifting or loading. Furthermore, it would appear anomalous that a loader, held to be a "part," is precluded from classification as a part of a machine tool while a loader, held to be an "accessory," is classified as an accessory.

HOLDING:

The automatic loaders in issue are classifiable under the provision for other handling, loading, or unloading machinery, in item 664.10, TSUS.

EFFECT ON OTHER RULINGS:

It is recognized that the classification of machine tool parts and accessories, previously considered in ruling letters, may be affected by the priniciples stated in this ruling. However, the principles of this ruling are to be applied, and, to the extent that a conclusion in a prior

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ruling is inconsistent with these principles, the prior ruling or rulings are modified.

If there is an ambiguous or unresolved substantive or procedural issue relating to a prior ruling, then that issue should be presented to the Customs Service for decision.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP - 4 1986

CLA-2 CO:R:CV:G
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076312

Mr. Harold I. Loring
Grunfeld, Desiderio, Lebowitz
and Silverman
Suite 2238
2 World Trade Center
New York, New York 10048-0654

Dear Mr. Loring:

This letter is in response to your request for a ruling in your letter and accompanying legal memorandum of September 12, 1985, in part on behalf of Mamiye Brothers, Inc., concerning several styles of children's two-piece playsuits. This letter incorporates a request for a ruling from Mr. Jerry Armani of Mamiye Brothers, Inc., dated April 10, 1985, concerning two styles of two-piece garments (Playsuit A and Playsuit B) and your request covering styles 1268, 1269, 1270, 1272, and 6206. Because this merchandise has characteristics in common with the merchandise that was the subject of our ruling to you dated March 11, 1986, Headquarters Ruling Letter (HRL) 075949, this ruling relies in part on the reasoning of that ruling.

All of the styles covered by this ruling have the following characteristics in common:

The bottoms, whether pants or shorts, have suspenders permanently attached to the waistband in back.

The waistband is elasticized in back, but the elastic portion is less than one-half of the circumference of the waistband.

The suspenders thread through loops or under straps permanently sewn to the shoulder area of the top, thereby keeping the suspenders on the shoulder during wear.

The two parts are imported together, are bought and sold as a unit, and are intended to be worn together.

The manner in which the two parts are joined by design makes the use of one piece not practicable without the other; although, with these samples the use of the bottom is more dependent on the top than the top dependent on the bottom.

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No feature ornaments the garments. Except for styles 1270 and 6206, where the component fiber in chief value is not indicated, all styles are classifiable in item 384.5233, Tariff Schedules of the United States Annotated (TSUSA).

Playsuit A consists of an all cotton twill blouse and all cotton twill printed shorts. The blouse pulls on over the head. On each shoulder are loops that accommodate suspenders attached to the shorts. The suspenders may be buttoned on themselves on one of two buttons to provide for varying sizes. At the front waistband the suspenders thread through loops sewn to the front of the waistband.

Playsuit A's top and bottom are coordinated as to fabric and the color of the top is coordinated with a color in the stripe in the bottom print. The shoulder loops keep the suspenders up. Playsuit A is classified in item 384.5233, TSUSA, the provision for "Other women's, girls', or infants' wearing apparel, not ornamented: Of cotton: Not knit: Other: Other: Other, (including coveralls, jumpsuits, and similar apparel); Coveralls, ...; other playsuits, washsuits, sunsuits and similar apparel: Other: Other: Infants'," dutiable at 9.4 percent ad valorem.

Playsuit B consists of an all cotton plainweave blouse and plainweave pants of all cotton. The blouse is a short sleeved, collared garment with full front button closure. The blouse has straps sewn into the seams on each shoulder to accommodate suspenders. The pants have a pleated front with a drop-V waistband in front. The pants have two pockets. The suspenders of the same fabric are designed to thread through the loops on the front of the waistband, buttoning on themselves on one of two buttons.

Playsuit B is classified in item 384.5233, TSUSA.

Style 1268 consists of an all cotton plainweave blouse and all cotton twill shorts with suspenders. The short-sleeved blouse has a collar and a full front opening that closes using three pairs of complementary Velcro-like patches of bright colors situated where buttons and buttonholes are usually found. The blouse has straps of the same material as the blouse permanently attached at the collar and at the seam where the sleeve begins.

The shorts have angled pockets in front that may be partially closed by a triangular tab of the same material sewn to the top of the pocket. The fasteners are another pair of

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brightly colored complementary Velcro-like patches about an inch square, one attached to the tab of each pocket and the other attached to the front of the shorts. All the pocket features appear to be functional and only incidentally decorative; thereby not qualifying as ornamentation. The suspenders thread under the straps on the shoulders and then thread through loops permanently attached to the front of the waistband. The suspender ends are attached to themselves by means of two complementary Velcro-like strips approximately 1 inch by 2 inches in size. These longer strips permit a variation of the suspender attachment according to the size of the wearer.

The garments are coordinated in style because of the various brightly colored Velcro-like patch closures on the blouse that correspond to the colors of the patch closures on the shorts. Following the rationale of HRL 075949, this sample is determined to be within the range of garments considered to be playsuits.

Style 1268 is classified in item 384.5233, TSUSA.

Style 1269 presented in size 6 is the same as style 1268, except that the bottom part is full-length pants instead of shorts. Following the rationale of HRL 075949, we conclude that this is also within the range of garments considered to be playsuits. It is classified in item 384.5233, TSUSA.

Style 1270 is a plainweave shorts and top combination. The short-sleeved blouse has a collar and full front opening with button closure. Straps about 3/4 inch in width run along the top of the shoulder and are permanently attached at either end. One attachment is at the seam where the sleeve begins and another is at the collar seam. The shorts with four pleats in front are held in place by the suspenders that thread through the shoulder loops. The suspenders button onto themselves in front after being threaded through loops that are permanently attached to the front waistband. The shorts have two side pockets.

Following the rationale of HRL 075949, noting that the parts are coordinated as to color and fabric, and noting that the shoulder loops are intended to hold the suspenders in place during wear so that the use of the shorts is not practicable without the blouse, we conclude that style 1270 falls into the range of garments considered to be playsuits. This playsuit, if in chief value of cotton, is classified in item 384.5233, TSUSA.

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Style 1272, a two-piece set with slacks and a blouse, is labeled as 100 percent cotton. The slacks have suspenders that thread through the permanent shoulder straps as in style 1270, above. Style 1272 has twill pants and a plainweave blouse. The turquoise color of the blouse is repeated in part of the multi-color print design on the pants. This feature constitutes color coordination of the two parts.

The suspenders, as with style 1270, thread through fabric loops that are permanently attached to the front waistband and button on themselves on one of two sets of buttons. The button attachment of the suspenders consists of two buttons next to each other. The use of an alternate set placed further down the suspender allows more room for a larger child. The two buttons together may be considered functional in that an active child may exert a substantial amount of stress on the suspender attachment and the extra button would help the suspender attachment to withstand this stress.

The pants in style 1272 have two front patch pockets that are secured on top with two buttons. As with the styles mentioned above and following the same rationale, Style 1270 falls into the range of garments considered to be playsuits. It is classified in item 384.5233, TSUSA.

Style 6206, also marked with a hang tag showing style 58297, consists of four parts. There are long pants with suspenders, a blouse, a tie with a separate textile ring to hold the parts of the tie around the neck, and a pair of sunglasses. The sunglasses and tie are each classified separately.

The blouse is a plainweave printed material with one front pocket, a full front button opening, collar, and short sleeves. Both pants and blouses are of unspecified fiber content. The blouse has shoulder straps similar to the other styles discussed above. The blouse also has a textile loop sewn into the seam of the front pocket at the side nearest to the opening. This loop of the same material as the blouse does not ornament the blouse because it has the function of holding the sunglasses.

The pants are distinguished from the other styles discussed above in that these have a front fly opening and a button closure above the fly on the waistband. They have two side pockets, one back patch pocket, and a four-pleat front. The front of the white pants has a decoration printed on it in black that is designed to look like embroidery. It does not constitute ornamentation. The suspenders are attached to the front of the waistband by means of a button on the front of the

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suspender fitting through a buttonhole in the waistband. Another button on the suspenders placed further up serves the function of accommodating a wearer of smaller size.

The straps on the shoulder of the blouse keep the suspenders from falling down during wear. We conclude that these two parts fall into the range of garments considered to be playsuits. If these two parts are in chief value of cotton, they are classified in item 384.5233, TSUSA.

The sunglasses do not form an entirety with the playsuit because, among other things, the identity of the sunglasses does not merge with the identity of the playsuit when the two things are imported and sold together in a polyethylene bag. The sunglasses are still sunglasses in the same way that, for example, a pocketwatch and chain when imported with a pair of pants with a watch pocket would not form an entirety with the pants. They may be used together, but their use and identity remain distinct. The sunglasses are therefore classified in item 708.4300, TSUSA, if valued not over $2.50 per dozen, or in item 708.4520, TSUSA, if valued over $2.50 per dozen.

The tie is separately classified because of the requirements of Headnote 3, Part 6, Schedule 3. A tie is considered a separate garment and is not included in the range of garments considered to be part of a playsuit. At least it is an accessory the use of which is completely optional in the wearing of the playsuit. The use of the blouse and pants together is completely practicable without the tie. This tie would be classified in item 384.5299, TSUSA, if in chief value of cotton.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

CLA-2 CO:R:CV:G
076355 JAS

30 SEP 1986

076355

Joseph S. Kaplan, Esq.
Ross & Hardies
575 Fifth Avenue
New York, New York 10017-2422

Dear Mr. Kaplan:

In submissions dated May 31, 1985, and June 30, 1986, you ask that we reconsider a ruling issued to your client by the Area Director of Customs, New York Seaport, concerning the classification of certain wood staves from Canada. A sample stave was submitted.

The ruling to which you refer, 809383, dated October 31, 1984, in part held wood staves of Douglas-fir, 5-1/2 inches wide by 3-1/2 inches thick and in random lengths, to be classifiable under the provision for articles not specially provided for, of wood, in item 207.00, Tariff Schedules of the United States (TSUS). These staves were described as pressure creosote treated, tongued on one edge and grooved on the other, and double tenoned at the ends. The subject staves are to be used in wood stave pipelines.

You state that the staves are manufactured from undressed lumber in a single pass through a molder which dresses the lumber, chamfers the edges, rounds and incises the top and bottom surfaces, and tongues and grooves the sides. The double tenon joint is then produced with a single saw cut. You maintain that the proper classification of these staves is under the provision for staves and hoops, in item 204.15, TSUS, or under the provision for softwood lumber and siding, drilled, or pressure treated with creosote, but not otherwise treated, in item 202.52, TSUS.

Your initial submission suggests this merchandise is material or stock from which staves are to be made. The submitted sample, however, is of a finished stave which, we presume, is ready for assembly at the time of importation. It conforms to the description of the merchandise in ruling 809383 and is 20-1/2 inches long. With respect to the proposed classification in item 204.15, various technical materials purport to show that the subject merchandise is commonly known

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in the trade and commerce of the United States as "staves," of a type used in the manufacture of tanks, vats, flumes, ducts, silos and pipes, among other things.

The superior heading to item 204.15 covers "Casks, barrels, hogsheads, other coopers' products, and parts thereof, all the foregoing of wood." The instant staves, in their imported condition, are said to be dedicated for use in a wood stave pipeline. The issue to be decided is whether a wood pipeline is a coopers' product within the contemplation of the superior heading to item 204.15, such that the subject staves would be of the kind encompassed by item 204.15. You would answer this question in the affirmative on the theory that the phrase "coopers' products" describes the specialized output of the particular class of artisans known as coopers; the instant pipeline staves are made of the same lumber, by the same persons using the same tools, techniques and skill as are staves used in tanks, vats, hogsheads, etc.

We respectfully disagree with this contention. Explanatory materials to Customs Cooperation Council Nomenclatlure (CCCN) Heading 44.22, the language of which substantially parallels that of the superior heading to item 204.15, restricts such heading to containers which are products of the coopers' trade, naming as examples, casks of various kinds (tuns, barrels, hogsheads, etc.) whether tight (for wet goods) or slack (for dry goods), as well as vats, tubs, buckets, cellar jugs, etc. These materials suggest a legislative intent to restrict the concerned TSUS heading to a class of articles which function primarily as containers, vessels, or receptacles. For these reasons, a wood stave pipeline, which by design functions primarily as a means of conveyance, is not believed to be a copper's product for tariff purposes, and its component staves, like the submitted sample, cannot be classifiable in item 204.15. You maintain that the original Brussels Tariff Nomenclature contained no provision for staves at the time the TSUS was promulgated, such that Heading 44.22 provides no guidance as to pipeline stave classification. We believe the more pertinent consideration is that Heading 84.22 and its Explanatory Notes do, in fact, clarify the scope of the term "coopers' products" for tariff purposes in the manner indicated.

With respect to the proposed item 202.52, TSUS, classification, ruling 809383 was predicated on I.A. 98/81 (068837), which interpreted the Schedule 2, Part 1, Subpart B, Headnote 2(a)(iii), TSUS, definition of worked lumber. That decision held the term "or," used in defining worked lumber that has been "matched" i.e., provided with a tongued-and-grooved joint at the edges or ends, is to be construed in the disjunctive, such that lumber which has both been tongued and grooved on the edges and double tenoned at the ends is considered manufactured beyond the condition of worked lumber and should be classified as an "article" of lumber.

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You contend that the term "or" in the cited headnote should be construed in the conjunctive as well, that is, "and/or," so as to preclude the anomalous results of classifying a product that otherwise conforms to the statutory definition of lumber as something else. We respond by stating that the express statutory language generally controls, that is, the drafters are presumed to mean exactly what they say, unless there is convincing evidence that Congress intended to convey a different meaning. Neither the Tariff Classification Study nor the Customs Cooperation Council Nomenclature gives clear insight into the scope of the various provisions for lumber. Consequently, even if we were to agree that the involved headnote is ambiguous, there is no demonstrated legislative history upon which to rely. The converse is true under the facts presented in C. B. Smith Co. v. United States, 64 Cust. Ct. 278, C.D. 3991 (1970), a case which you cite. There, the court construed the provision in item 202.53, for hardwood, edge-glued or end-glued, to include face-glued hardwood as well. The court found that there was a demonstrated ambiguity in the involved provision, owing to the fact that Congress was repeatedly informed that face-glued hardwood was not within proposed item 202.53, yet refused to change the provision to include it. The court concluded that "or" in the provision actually meant "and/or" because contrary decision would leave a class of glued-up lumber outside a provision obviously intended to include all glued-up lumber. Notwithstanding the facts in C. B. Smith could just as easily have supported a conclusion that Congressional inaction evidenced an intent to exclude face-glued hardwood from item 202.53, there is no demonstrated ambiguity in Headnote 2(a)(iii). Consequently, applying the word "or" in the cited Headnote strictly in the disjunctive, we conclude that the provision in item 202.53 is not applicable to the instant merchandise.

The court, in A. N. Deringer, Inc. v. United States, 61 Cust. Ct. 66, C.D. 3530 (1968), held certain wedge shaped articles of wood sawed lengthwise, crosscut and resawed longitudinally, to be within the provision for softwood lumber, in item 202.03, TSUS, rather than classifiable as articles of wood, in item 207.00, TSUS, despite the fact they were suitable only for one purpose. Decisions were noted which held similar articles to be lumber, rather than manufactures of wood, under both the Tariff Act of 1930 and the TSUS. However, the court stressed in very strong dictum that if the lumber had been processed to the extent that it itself became the article for which the material was intended, then it was dutiable as a manufacture of wood, and not as lumber. The court cited United States v. C. S. Emery & Co., 18 Ct. Cust. Appls. 208, T.D. 44399 (1930), in which a similar conclusion was reached under the Tariff Act of 1922. Note as well PRD 74-8, dated March 12, 1974, and a PRD dated May 13, 1982 (068984), in which these issues are discussed. Copies are enclosed.

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From these decisions it appears that lumber which has been tongued and grooved on the edges but not on the ends remains a material classifiable in Schedule 2, Part 1, Subpart B, TSUS, while such lumber double tenoned on the ends as well, is advanced beyond the material stage and is an article of wood for tariff purposes. Consequently, it is our opinion that the phrase "at the edges or ends" in the Schedule 2, Part 1, Subpart B, Headnote 2(a)(iii), TSUS, definition of worked lumber, is to be interpreted to read "either at the edges or ends but not both." If Congress had intended a result consistent with your interpretation, the concerned provision would have been so drafted. Note for clarification purposes the entire provision in item 202.52, TSUS, which includes lumber treated with creosote or other wood preservative, or both, but not otherwise treated.

New York ruling 809383, and the ruling of September 17, 1981 (068837), are affirmed.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

Enclosures

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UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

076417

DATE: 15 SEP 1986

FILE: CLA-2:CO:R:CV:G
076417 JLF

TO : Area Director of Customs
Newark, New Jersey 07114

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 74/85 Concerning Merchandise Identified by the Importer as "Halloween Costumes"

This is in response to your memorandum dated August 30, 1985, requesting Internal Advice on the tariff classification of merchandise identified by the importer as Halloween costumes. Your request was initiated by a letter dated July 3, 1985, from Surrey and Morse, Washington, D.C., on behalf of Traveler Trading Co., Inc.

FACTS:

The merchandise at issue is Halloween costumes and accessories used by adults. The particular costumes which are the subject of this internal advice include a vampire's cape, an adult vampire/witch dress which may be worn alone, an adult nun costume, which also may be worn alone, and an over-sized polka dot bow tie.

One view on the classification of this merchandise is that the provision for toys should apply. The other view is that the proper classification of this merchandise is as wearing apparel.

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ISSUE:

Whether the Halloween costumes are classifiable as wearing apparel under the appropriate provisions of Schedule 3, Tariff Schedules of the United States (TSUS), or as toys in item 737.95, TSUS.

LAW & ANALYSIS:

Presently, a diverse classification exists between children's and adults' costumes. Although, children's costumes have been consistently classified as toys in Schedule 7, TSUS, most adult costumes have been classified as wearing apparel in Schedule 3. One reason that adult costumes are differentiated is due to previous decisions classifying adult masks according to the component material of chief value and not as toys. See Rulings 801944, January 12, 1981, and 801908, January 29, 1982. The rationale for classification in this manner was that the masks had various uses and were not chiefly used for amusement as was intended in the toy provision.

Headnote 2, Schedule 7, Part 5, Subpart E, Tariff Schedules of the United States (TSUS), expanded the definition of toys to include "any article chiefly used for the amusement of children or adults." Chief use is defined as that use which exceeds all other uses (if any) combined.

We find the costumes which are the subject of this Internal Advice request to be articles chiefly used as garments in the context of adult social activities where costumes are required or appropriate.

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Adult party costumes must be viewed as a class or kind of merchandise, irrespective of their relative cost or quality of contruction. Unlike children's costumes, which as a class are likely to be amusing per se to children because of the wearer's identification with the theme or character of the costume, adult costumes are, like certain formal wear, specialized garments primarily used in social contexts in which the garments' potential for amusement is no more than a secondary factor.

HOLDING:

Accordingly, adult costumes of the type described above are of a class or kind of merchandise properly classified as wearing apparel under the appropriate provisions of Schedule 3, TSUS.

You should inform the inquirer of this ruling.

For Harvey B. Fox

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP 22 1986

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076477

Miss Penny S. Cronin
Cronin Investments
706 Park Crossing Way
Lilburn, Georgia 30247

Dear Miss Cronin:

You requested a ruling on the tariff classification of arthritis-splint gloves to be imported from the Far East or the Caribbean Basin Area.

We understand the glove to be of plastic, to be seamed by heatsealing, and to be used "to splint the hands of arthritis and stroke patients."

The gloves are classified in item 705.8560, Tariff Schedules of the United States Annotated (TSUSA), which takes a Column 1 rate of duty of 14.1 percent ad valorem.

We do not regard this glove as a splint or similar fracture appliance, nor as a prosthetic article which would be used to replace a missing part of the body. Moreover, it does not meet the standards for orthopedic appliance, because it would be generally available for sale to the public and would not be sold by a doctor's prescription for relief of a crippling arthritis condition. For these reasons, the gloves would not be eligible for classification in items 709.56 or 709.57, Tariff Schedules of the United States (TSUS).

The gloves would not be eligible for entry under the former item 960.15, TSUS, the provision for "articles specially designed for the use or benefit of...physically ...handicapped persons," because that provision is limited by the exclusion of therapeutic articles. We understand that the merchandise at issue is used by a person with arthritis in the hand or by a stroke patient to relieve stiffness and pain. This function would be considered therapeutic.

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The gloves would be eligible for duty-free treatment, if manufactured in a beneficiary country in the Caribbean Basin, inasmuch as they are not specifically excluded from that program by the headnotes to the relevant portion of the TSUS. The duty-free treatment must depend, of course, on compliance with regulations for the Caribbean Economic Recovery Act, §10.191 et seq. of the Customs Regulations, copy enclosed.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

SEP 18 1986

REFER TO
CLA-2 CO:R:CV:G
076636 jlj

076636

Port Director of Customs
526 Water Street, Room 301
Port Huron, Michigan 48060-5471

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3802-4-000175

This protest was filed against your decision in the liquidation on April 13, 1984, of entry No. 83126248 dated June 13, 1983, covering a shipment of steel electrical cabinets produced in Canada.

This ruling concerns the correct tariff classification of the electrical cabinets.

FACTS:

The merchandise at issue is wall-mounted electrical cabinets. The cabinets consist of steel boxes of various sizes, with doors, used in industries as housings for circuitry. The broker for the protestant argues that the cabinets are "custom built according to the customer's specifications" and that they meet the Schedule 7, Part 4, Subpart A, Tariff Schedules of the United States (TSUS) definition of "furniture." He claims that the cabinets should be classified under the provision for furniture, and parts thereof, not specially provided for, in item 727.70, TSUS (formerly item 727.55, TSUS). He cites Treasury Decision (T.D.) 66-72(13), T.D. 70-49(10), and Customs Decision (C.D.) 3128 in support of his claimed classification because they deal with "storage" or "display" articles and the instant cabinets are used to store electrical apparatus.

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The Port Huron import specialist classified the electrical cabinets under the provision for articles of iron or steel, not coated or plated with precious metal, other articles, other, in item 657.25, TSUS, because they act as a housing for electrical circuitry.

The Port Huron supervisory import specialist believes that the cabinets are classifiable under the provision for other electrical apparatus in item 685.90, TSUS. Alternatively, he thinks that they are classifiable under the provision for other articles of iron or steel in item 657.25, TSUS, if they are "home fuse boxes" with places in the cabinets for wires to be connected.

ISSUE:

Are these wall-mounted electrical cabinets classified as other articles of steel in item 657.25, TSUS, as other electrical equipment in item 685.90, TSUS, or as furniture not specially provided for in item 727.70, TSUS?

LAW AND ANALYSIS:

In a letter dated July 3, 1985, the protestant's broker states that all of the instant cabinets are wall-mounted. Headnote 1 of Schedule 7, Subpart 4A, TSUS, defines furniture, in part, as "movable articles of utility, designed to be placed on the floor or ground...." (Emphasis added). Inasmuch as all of the instant electrical cabinets are wall-mounted, they are not designed to be placed on the floor or ground, therefore they cannot be classified as furniture in item 727.70, TSUS. The three decisions cited by the broker are distinguishable for the same reason.

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According to the description material included in the file, some of the cabinets are of a general purpose type used for housing or storage and are not essential to the completion of a specific machine or apparatus. Consequently, they are properly classifiable as articles of iron or steel, other, in item 657.25, TSUS.

However, also at issue are articles which may be determined from their design (e.g., brackets for light fixtures or switches, interior connection terminals, pushbutton holes, etc.) to be dedicated to use chiefly with switches, switchgear, or other electrical apparatus. Such articles are classified under the provision for other electrical apparatus in item 685.90, TSUS.

HOLDING:

The cabinets which are of a general purpose type used for housing or storage are classified in item 657.25, TSUS. The cabinets which are dedicated for use chiefly with electrical apparatus are classified in item 685.90, TSUS. The protest should be denied. A copy of this letter should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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076636

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO

OCT 31 1986

CLA-2 CO:R:CV:G
076760 JCH

District Director of Customs
P.O. Box 6150
Dallas, Texas 75261

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 5501-3-000055

The above-captioned protest and application for further review were filed against the tariff classification of aircraft jet engine compressor blades which were the subject of entry No. 269318 dated November 4, 1981, and entry No. 271201 dated January 18, 1982, filed at the port of Dallas/Fort Worth. This merchandise is a product of West Germany. Our decision follows:

ISSUE:

The merchandise at issue was classified by Customs officers under the provision for compressor parts which was designated item 661.12, Tariff Schedules of the United States (TSUS), and required a column 1 rate of duty of 4.2 percent ad valorem in 1981. In 1982 it was redesignated item 661.10, TSUS, and required a column 1 rate of duty of 4.1 percent ad valorem. The correlative provision for an exemption from duty under the Agreement on Trade in Civil Aircraft, TIAS 9620, 31 UST part 1, p. 619 (1979), as implemented by item 661.14, TSUS, before amendments which were authorized by Proclamation 5292, 50 F.R. 223, and which due to typographical error were not incorporated into the TSUS until the 1986 edition, did not include compressor parts.

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It is claimed in the protest that the merchandise is still eligible for the exemption for civil aircraft and parts under item 660.73, TSUS, which implements the exemption as it applies to aircraft engine parts. It is also claimed that the merchandise was previously classified as parts of engines and that the present dutiability resulting from reclassification represents a change in an established and uniform practice not in compliance with section 315(d) of the Tariff Act of 1930, as amended.

FACTS:

The blades in question are used in the compressor system in a jet engine for aircraft. Blades in this type of application are typically radial or axial centrifugal devices which are used together with stators for staging to increase fuel and air mixture intake pressures far beyond the pressure which could be achieved by a single rotary device. There are different types of jet engines for aircraft, including turbofan engines. These also involve many different configurations mainly determined by the location of the fan in relation to the other components. However, in all jet engines, the rotary parts of the compressors and the stators serve the same function.

LAW AND ANALYSIS:

The enabling legislation for the Agreement on Trade in Civil Aircraft was Title VI of the Trade Agreements Act of 1979, 93 Stat. 144, 268. However, full implementation of that legislation in the initial TSUS breakouts made for civil

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aircraft was withheld pending certain reciprocity considerations involving our trading partners. Full implementation, including the free rate for parts of compressors authorized in the original legislation, has now been authorized by Proclamation 5292, supra, but the effective date of those changes postdates the entries involved in this protest. Therefore, while the substantive issues now raised in the protest have become moot, we must at this time consider the question of whether, in effect, the merchandise at issue is the type of merchandise for which the free rate was specifically delayed.

Pertinent to this question are two previous Customs precedents, our decision of June 30, 1978, file No. 056362, and our decision of July 7, 1983, IA 49/83, file No. 072289. Both of these decisions support the claims made in the protest to the extent each found that merchandise variously described as "stator vanes" and "stator blades" was classifiable as parts of engines rather than as parts of compressors. However, these decisions contained certain guidelines which appear to require distinguishing the instant rotary devices from the rotary devices previously ruled on and classifying them as parts of compressors. On this review of our previous decisions we adhere to the conclusions reached, but their rationale, in part, can no longer be regarded as representing the current views of the Customs Service.

The guidelines in question tend to promote for the merchandise and the distinctions drawn an actual use test for classification. That is, the Customs Service has looked, for

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the tariff classification of each rotary device, to certain design characteristics idiosyncratic to the particular make, model or type of aircraft jet engine in which the device is used as a part. However, parts provisions are use provisions other than actual use provisions. As such, they are governed by General Headnote 10(e)(i), TSUS. Under that rule the question is not how a part is actually used. Inquiry rather must be made as to the majority of uses, or the chief use, of the class or kind of article of which the part is an exemplar.

The purpose of this rule is to promote tariff classification uniformity of articles which although not identical share pertinent common denominators. That purpose, of course, is defeated the more narrowly class or kind is defined or if class differences are based on artificial distinctions. It is true that in certain circumstances class or kind may be as narrowly defined as one article. See, for example, Converse Rubber Company v. United States, 69 Cust. Ct. 55, C.D. 4374 (1972). Further, the use for which merchandise has been made to specification will generally be found to be the chief use of the class, particularly where other merchandise which is otherwise similar, but due to manufacture in accordance with different specifications, cannot be put to the same use. See our decision of October 27, 1981, IA 63/81, file No. 068689. But there is no justification for regarding aircraft jet engine compressor blades made to specification for use in only one model or make of engine as a separate class in

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itself or for otherwise narrowly construing the extent of the class. Unlike the merchandise in our October 27, 1981, decision, supra, jet compressor blades, even though made to different specifications, all have the same use.

The question, then, is whether jet engine compressor blades, as a class or kind of merchandise, are chiefly used in systems which, if imported as single entities, would be classifiable under the TSUS as compressors. Granted the Customs Service does not have information available to answer this question and it further poses an impractical if not an impossible burden of proof for an importer. But the solution to difficult chief use questions is not to solve them by splitting the class or kind in two, as has heretofore been done in this matter, thereby separating those exemplars in the class which are actually used in accordance with the use described in the pertinent TSUS provision from those which are not. Nor can that result be justified on the basis of the rule that a part is a part of the article it is most immediately a part of rather than a part of the larger article. C.F. Liebert v. United States, 60 Cust. Ct. 677, C.D. 3499 (1968).

The Liebert rule is for determining relative specificity between two competing parts provisions of otherwise equal specificity. It is not a rule for determining the extent of class or kind, but rather is applied after class or kind is first identified. Further, that rule cannot be automatically applied since it has its exceptions. See, for example, Amersham Corporation v. United States, 5 CIT 49 (1983). Our

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previous decisions identify another exception which we have only applied to part of the class or kind involved and which is based on mechanical distinctions between the different types of jet engines in which compressor blades are used. These distinctions have been set forth in detail in our previous decisions, but put another way, those decisions stand for the proposition that the Liebert rule is not for application if the smaller article, subpart, subsystem, etc., of which an imported part is most immediately a part cannot exist, or never exists, in a configuration whereby, if imported, it would be classifiable under the TSUS provision covering the smaller article.

But having recognized this exception to the Liebert rule for part of the class, it is now our view that an exception should have been made for the entire class. In accordance with the considerations discussed above, one reason for this conclusion is that the facts in the instant matter are distinguishable from the typical situation in which the courts have applied the Liebert rule. In each decision that we are aware of in the line of precedents involved, application of the rule presupposed 100 percent coverage by the provision for the smaller article of the parts involved as a class of merchandise. Where the coverage of the provision for the larger part was not coextensive, it was of less than 100 percent of the parts as a class. Here the situation is just the opposite. It is only the pertinent provision for the larger article which covers the class 100 percent.

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Accordingly, the various rationales given for the Liebert method of determining relative specificity are not shown to be necessarily pertinent here.

But the major reason for not applying the Liebert rule is that that rule, or any other rule, is not for application if the results are not a reasonable extrapolation of legislative intent. See Procter & Gamble Manufacturing Co. v. United States, 19 CCPA 415, 419, T.D. 45578 (1932), concerning the so-called "master rule" of statutory construction. We find that it is not reasonable to conclude that in the original implementation of Title VI of the Trade Agreements Act of 1979, which clearly authorized an exemption from duty for civil aircraft compressor parts, it was intended to withhold the benefits of that exemption for the compressor blades used in one make, model or type of jet engine while allowing the exemption for another. Nor do we believe that realistically any intention can be attributed to those with responsibility for implementing the enabling legislation to create a wide disparity in the tariff treatment of parts which for all practical purposes are the same based on the technicalities by which one jet engine is differentiated from another and on which the protested classification was predicated.

HOLDING:

For the foregoing reasons, we find that the jet aircraft engine compressor blades in question are eligible for the exemption from duty provided for in item 660.73, TSUS. Accordingly, if the record shows that the other conditions for

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entitlement, which have since become 19 CFR 10.183, have been complied with, the protest should be allowed in full. If those prerequisites have not been satisfied, the protestant should be given written notice, subject to a 60-day time limitation, of the opportunity to supply missing documents, and final action as appropriate should be taken in accordance with the response, or lack thereof, to that opportunity.

Our decision of June 30, 1978, file No. 056362, and our decision of July 7, 1983, IA 49/83, file No. 072289, are modified to the extent they may be inconsistent with the views expressed above. This decision makes a response as to the practice issue raised in this protest unnecessary. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 31 1986

FILE: CLA-2 CO:R:VC:G
076861 JAS

TO : District Director of Customs
Pembina, North Dakota 58271

FROM : Director, Classification and Value Division

SUBJECT: NOMEX 410 Paper; Internal Advice 40/85

Your memorandum, dated April 11, 1985 (CIA-1-01-CV/LJ:CW), initiated this request for internal advice. Counsel's February 19, 1985, brief has been supplemented by a meeting at Headquarters on June 24, 1986, and a followup brief, dated July 9, 1986. At issue is the tariff classification of the subject paper as well as the applicability of item 806.20, TSUS.

FACTS:

Essentially, NOMEX 410 is produced in the United States from a synthetic aramid polymer in the form of short fibers called flock, and microscopic fibrous binder particles called fibrids. These are combined into a sheet by normal papermaking methods, and wound onto rolls two millimeters thick and 24 inches wide. It is further stated that this product is sent to Canada in mill rolls and there cut to length and width, according to customer specifications, rewound onto smaller rolls, and returned to the United States.

You have proposed to classify this product under the provision for nonwoven fabrics, and articles not specially provided for thereof, of man-made fibers, in item 355.25, Tariff Schedules of the United States (TSUS). Counsel maintains that NOMEX 410 is properly classifiable under the

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provision for other paper and paperboard, cut to size or shape, not specially provided for, in item 256.30, TSUS, and that the operations in Canada constitute alterations for the purposes of item 806.20, TSUS.

Two classification arguments are presented. First, citing three lexicographic sources defining "paper" as sheets of vegetable, mineral, or synthetic fibers formed as a water suspension and allowed to dry on a fine wire screen, counsel concludes that NOMEX 410 is commonly and commercially known as paper and, therefore, is within the eo nomine provision in item 256.30, TSUS. Dupont's promotional literature consistently refers to the product as "paper." They make both textile and paper products. Further, insofar as use is sometimes a criteria in determining whether a product is within an eo nomine provision, counsel states that NOMEX 410 is primarily used in applications typical of paper, among which is as electrical insulation material because of its high temperature resistance, mechanical toughness, and flexibility. Second, counsel argues that NOMEX 410 is not a nonwoven fabric, because the term "man-made fibers," as defined in Schedule 3, Part 1, Subpart E, Headnote 2(a), TSUS, embraces filaments, among others, covered in that Subpart. Counsel maintains that while flock is arguably a filament, the fibrids are not, because their shape is irregular and filaments must have fairly uniform cross sections throughout their entire length. He then concludes that inasmuch as NOMEX 410 is made in part of particles which are not considered textile fibers for tariff purposes, the product is not a nonwoven fabric, as defined in Schedule 3, Part 4, Subpart C, Headnote 2(b), TSUS, because it is not made entirely of textile fibers.

ISSUE:

(1) Is NOMEX 410 a paper for tariff purposes or is it a nonwoven fabric; (2) Are the provisions of item 806.20 available in these circumstances?

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LAW AND ANALYSIS:

With respect to the first issue, a sample of NOMEX 410 was examined by the Customs laboratory on June 11, 1985, and found to consist essentially of nylon fibers impregnated with a plastic material. Ninety percent of the fibers were longer than 4 millimeters with 55 percent being longer than 6 millimeters. The Dictionary of Paper, Fourth Edition (1980), at p. 285, defines "Nonwoven fabric" as "A clothlike material made of fibers longer than those normally used in papermaking which, instead of being woven on a loom, is formed by felting on a fine mesh screen from an air or water suspension with or without binders." Customs has traditionally followed the norm that standard papermaking fibers are normally from 1 to 4 millimeters long whereas nonwoven fabric are generally from 6 to 12 millimeters long. Counsel has cited the Fairchild's Dictionary of Textiles (1970), definition of "non-woven fabrics," at p. 398, which states that normally crimped fibers are used which range in length from 3/4 to 4-1/2 inches in length. This suggests a certain overlap in fiber length with the standard Customs recognizes. Customs recognizes that industry standards change with evolving technology. However, we will continue to follow our standard until a more current industry standard is shown to exist.

The 5th supplemental report to the Tariff Classification Study, dated May 16, 1963, Vol. 2, at p. 859, states, in part, with respect to nonwoven fabrics:

> ***These fabrics often closely resemble paper or paperboard but are distinguishable therefrom by the fact that the textile fibers are not digested in the process of manufacture. Some papers *** do contain textile materials in the form of textile fibers *** which are included to impart a desired characteristic but without destroying the essential character of the product as a paper. *** Such papers will, of course, be classified in Schedule 2.

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The Customs laboratory analyst confirmed by telephone that the fibers in the analyzed sample were all of nylon and nylon, of course, does not digest in the normal paper sulfating process. In view of these findings, NOMEX 410 is not classifiable as a paper, in item 256.30, TSUS.

Counsel next contends that NOMEX 410 is not within the Schedule 3, Part 4, Subpart C, Headnote 2(b), TSUS, definition for "nonwoven fabrics" because it is not made of textile fibers. While the term "fibers" includes filaments, among others (Schedule 3, Part 1, Subpart E, Headnote 2(a), TSUS), and flock is arguably a filament, the fibrids are binders and not filaments. Counsel concludes NOMEX 410 is not a nonwoven fabric because it is not made exclusively or entirely of textile fibers. We agree that the pre-existing materials doctrine is not at issue in defining "nonwoven fabrics." The term "made of" for Headnote 2(b) purposes can just as easily be read "made from" or "comprising." NOMEX 410 is therefore a nonwoven fabric for tariff purposes. Because there is no issue presented as to the component material in chief value, we agree that the provision for nonwoven fabrics, and articles not specially provided for, of man-made fibers, in item 355.25, TSUS, represents the proper classification of NOMEX 410.

With respect to the second issue, counsel's argument concerning the applicability of item 806.20, TSUS, is essentially that the slitting of the rolls in Canada constitutes an alteration. Counsel states, however, that there are no administrative or judicial decisions on point, and analogizes to operations considered incidental to an assembly process under item 807.00, TSUS. He contends that the denial of the 806.20 claim in our ruling of June 13, 1984, was not correct. In that case it was held that NOMEX paper cut to width as well as length according to specifications could not

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be considered as merely "altered" under the statute. We pointed out that alterations can be made only on finished articles and that the cutting of a material to meet specifications was precluded from such tariff treatment. The cutting amounted to the final step in a manufacturing process required to produce the imported material in a specific width.

In this case, man-made Nomex material is exported to Canada in 24 inch wide master mill rolls for slitting into widths ranging from 1/2 inch to about 3 inches, and rewound by a special traverse winding process on cores which can accommodate up to 200,000 feet in continuous lengths without splicing, depending on tape width and gauge. For example, three millimeter gauge tape material is slit to one-inch widths and wound on a core to a length of about 6,000 feet. Core tapes are supplied to cable manufacturers for wrapping communication cables by high speed dispensing in ever increasing amounts of tape dispensed from a single package.

The foreign winding process is described as a combination of spiral and traverse turns that interlock the spiral turns to provide solid ends for high speed dispensing. The foreign operation is handled on a multi-head digitally controlled combination slitter and winder capable of simultaneously slitting and winding up to 120 tape packages in one operation from a master roll, in either traverse or step configuration, in single, double, or triple tape packages.

Tapes can be wound single-ply or three-ply in total footage per roll and is limited only by the dimensions of the customer users' equipment. In one illustration, 21 individual tape pads were combined into a single continuous tape.

Item 806.20, TSUS, provides for duty to be assessed upon the cost or value of repairs or alterations made on articles that are exported for that purpose. The application of this tariff provision is precluded where the

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foreign operations result in new physical or chemical forms too extensive to be considered a repair or alteration, where the operations result in new or commercially different articles, or where the foreign operations constitute a part of a manufacture that had begun in the United States.

The brochures submitted illustrate how ample stocks of required raw materials are maintained by the foreign processor to ensure prompt completion and delivery of all customer orders. The manufacture of finished goods from raw materials in accordance with customer specifications is not within the contemplation of item 806.20, TSUS. In the described circumstances, the foreign processing of mill rolls of raw materials into finished cable core tapes, ready for end use upon importation, is too extensive a process to be considered an alteration under item 806.20, TSUS.

HOLDING:

NOMEX 410 is classifiable in item 355.25, TSUS, and the provisions of item 806.20, TSUS, do not apply. The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action.

Harvey B. Fox

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26 SEP 1986

CLA-2:CO:R:CV:G
076882 JAS

Bernard J. Babb, Esq.
Freeman, Wasserman & Schneider
90 John Street
New York, New York 10038

Dear Mr. Babb:

In your July 24, 1985, letter, you inquire as to the tariff classification of certain steel products from Sweden. A related issue as to the applicability of item 806.30, Tariff Schedules of the United States (TSUS), has been addressed in a separate letter.

You indicate that certain U.S. scrap turnings and solids of nickel based alloy and stainless steel are exported to Sweden and processed into products you refer to as blooms and slabs. Additional materials concerning the tariff status of merchandise you refer to as sheet bars and billets were presented by letter dated April 17, 1986. We will address the tariff status of these products in a separate letter.

You maintain that the blooms and slabs conform to the Schedule 6, Part 2, Subpart B, Headnote 3(b) and 3(c), TSUS, definitions for ingots, blooms, billets, slabs, and sheet bars, all the foregoing of alloy iron or steel, classifiable in item 606.69, TSUS.

The blooms are produced from scrap by the continuous cast method, conditioned by grinding to remove surface defects, and imported into the United States in this condition. After importation they are reheated and rolled into billets, surface ground, annealed, descaled, straightened, cut, and pickled. Slabs produced by the continuous cast method are surface conditioned by grinding and imported in this condition. After importation, these products are cut to corresponding sheet bar weight, reheated and rolled, then annealed, descaled, roller flattened, sheared, stretched, and pickled.

Under the authority of United States v. The Kanthal Corp., C.D. 4644, C.A.D. 118 (1977), you maintain that the described articles are considered "semifinished" products classifiable in item 606.69, TSUS. You state that only after the described post-importation processing operations are completed are these articles capable of being sold and used as plates and bars. Kanthal essentially held that wire rod, a semifinished product, becomes wire, a finished product, by virtue of having been drawn once.

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It is important to note, we believe, that the Kanthal court stated the tariff schedules do not distinguish between products drawn once and those subjected to multiple drawing operations, and that Congress intended such distinction be made on the basis of existing trade practices (citing the Tariff Classification Study, C.I.E. 1/64, Schedule 6, at p. 90).

The Schedule 6, Part 2, Subpart B, headnote 3 definitions for blooms, billets, slabs, and sheet bars refer only to "semifinished" products, without defining the term. Resort to trade practice is therefore extremely relevant. In accordance with The Making, Shaping and Treating of Steel, 10th ed., (1985), published by the Association of Iron and Steel Engineers, at pages 701 and 702, blooms and slabs produced by the continuous casting method may develop a variety of surface defects. These are referred to as semifinished steel mill products. After removal of surface defects by scarfing and grinding (conditioning), these products are converted into finished steel mill products by reheating and further hot working by rolling or forging, coupled in some instances, with cold-working operations that follow the secondary hot working.

Applying these principles to the instant merchandise, it is our opinion that the described blooms and slabs are regarded for tariff purposes as "semifinished" if, after importation, they must be subjected to secondary hot working to achieve the dimensional tolerances, surface condition, or the other usual qualities of finished steel mill products; if they meet the Schedule 6, Part 2, Subpart B, headnote 3(b) and 3(c), TSUS, definitions, they will be classifiable under the provision for ingots, blooms, billets, slabs, and sheet bars, of alloy iron or steel, in item 606.69, TSUS, dutiable at the rate of 5.6 percent ad valorem, plus additional duties on the alloy content. However, if these products, after importation, are to be subjected to secondary hot working to produce a specific final shape or a fabricated end product, they will be regarded for tariff purposes as "finished" and classifiable in Schedule 6, Part 2, Subpart B, TSUS, or in other tariff provisions as appropriate.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 18 1987

REFER TO
CLA-2 CO:R:CV:G
076947 jlj

076947

District Director of Customs
2039 Federal Office Building
909 First Avenue
Seattle, Washington, 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3004-5-000161

This protest was filed against your decision in the liquidation of various Blaine entries covering shipments of Electrabrite 12 and Electrabrite 18 paper produced in Canada.

This ruling concerns the correct tariff classification of the Electrabrite 12 and Electrabrite 18 paper manufactured by MacMillan Bloedel in Canada.

FACTS:

Counsel for the protestant claims that the instant paper is either classifiable as standard newsprint in item 252.65, Tariff Schedules of the United States (TSUS), or as printing paper in item 252.67, TSUS, by virtue of both its characteristics and its chief use. Regarding the use of the instant paper, counsel for the protestant states that both Electrabrite 12 and Electrabrite 18 are used almost exclusively as computer printout paper. Counsel states that, in almost all cases, after importation the paper is sold in rolls to commercial printers or to forms manufacturers, who prepare the paper for use as computer printout paper by punching holes on both sides. Frequently the forms manufacturers print lines or columns on the paper, as required by the end user.

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The merchandise was liquidated under the provision for writing paper weighing over 18 pounds per ream in item 252.75, TSUS. The Blaine import specialist states that the instant papers do not meet the specifications for standard newsprint because of their basis weight. He asserts that both Electrabrite 12 and Electrabrite 18 are writing paper because they are chiefly used for business forms paper.

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ISSUE:

Are Electrabrite 12 and Electrabrite 18 classifiable as writing paper in item 252.75, TSUS, as standard newsprint in item 252.65, TSUS, or as printing paper in item 252.67, TSUS?

LAW AND ANALYSIS:

Writing paper is defined, in part, in Headnote 2(d) of Part 4, Schedule 2, TSUS, as follows:

> the term " writing paper" includes, but is not limited to, paper such as ledger, letter, manifold, mimeograph, note, onionskin, tablet, and typewriting papers.

As Headnote 2(d), supra, says, it is not an all-inclusive definition.

Counsel compares certain physical and performance characteristics of the two types of Electrabrite paper with bond paper. He attempts to show by this comparison that neither of the Electrabrite papers is a writing paper because their characteristics are not those of bond paper. While bond paper is one type of writing paper, it is not synonymous with writing paper, as Headnote 2(d), supra, indicates, therefore the fact that bond paper and the two Electrabrite papers have different characteristics does not mean that the Electrabrite papers are not writing paper.

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Counsel for the protestant also argues that Electrabrite 12 and Electrabrite 18 are printing papers by virtue of their end use as computer printout paper. As far back as Treasury Decision 72-207, 6 Cust. Bul. 379 (1972) (T.D. 72-207), however, paper intended for use as forms paper or as computer paper has been held by the Customs Service to be chiefly used as writing paper. In T.D. 72-207, we found that the paper at issue there was a "writing paper for conversion into computer output forms and business forms" and that it was "commercially designated as writing paper by the paper industry within the United States." The paper in T.D. 72-207 was classified as a writing paper in item 252.75, TSUS. We note that the end use in T.D. 72-207 is the same as the end use of the instant Electrabrite 12 and 18.

In Customs Headquarters Ruling Letter (HRL) 065371, dated October 30, 1980, we considered the classification of a paper chiefly used for "making computer printout forms for recording data by pen, pencil, typewriter, or similar device. The only printing done on the paper is lines, space column headings, and incidental text." We found that, although the composition of the paper's stock differed from that in T.D. 72-207, the end use was the same (i.e., writing paper), therefore the paper was held to be classified as writing paper in item 252.75, TSUS. Once again, we note that the chief use of the paper at issue in HRL 065371 and the instant paper are one and the same.

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In HRL 074564 of November 26, 1984, we considered the classification of a paper which was chiefly used for business forms paper. We held that such paper was classified as writing paper in item 252.75, TSUS.

Finally, in HRL 074560, dated October 9, 1984, we considered the tariff classification of both Electrabrite 15 (not at issue in the instant protest) and Electrabrite 18 (one of the two papers at issue here). While we found that Electrabrite 15 was part of the class or kind of paper chiefly used in the United States as standard newsprint, as specified in Treasury Decision 68-265(20), 2 Cust. Bul. 598 (1968) (T.D. 68-265(20)), we found that Electrabrite 18 did not meet the requirements for standard newsprint because of its basis weight. Inasmuch as Electrabrite 18 was found to be chiefly used as business forms paper, we found that Electrabrite 18 was classified as writing paper in item 252.75, TSUS.

Inasmuch as Customs has ruled previously that paper chiefly used as computer printout paper or as business forms paper is writing paper, we find that the chief use of both Electrabrite 12 and Electrabrite 18 is as writing paper, not printing paper.

Counsel for the protestant has also claimed that the two Electrabrite papers at issue are classifiable as standard newsprint in item 252.65, TSUS. The specifications for standard newsprint are set forth in Treasury Decision 56349,

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100 Treas. Dec. 33 (1965) (T.D. 56349) and in T.D. 68-265(20). As we noted in HRL 074560, Electrabrite 18 does not meet the specifications for standard newsprint because of its basis weight, 65 grams per square meter, which equals 39.9 pounds per Customs ream (i.e., 500 sheets, 24 inches by 36 inches). T.D. 68-265(20) specifies that the basis weight for standard newsprint is not less than 28-1/2 pounds nor more than 35 pounds per Customs ream.

The basis weight for Electrabrite 12 is 42 grams per square meter, or 25.8 pounds per Customs ream. This means that the basis weight of Electrabrite 12 is too light for standard newsprint, therefore neither Electrabrite 12 nor Electrabrite 18 can qualify as standard newsprint because of their basis weights.

Inasmuch as Electrabrite 12 and Electrabrite 18 cannot qualify as standard newsprint because of their basis weights and inasmuch as both papers are chiefly used as computer printout paper, which is a writing paper use, we find that both Electrabrite 12 and Electrabrite 18 are classified as writing paper, in item 252.75, TSUS.

HOLDING:

Electrabrite 12 and Electrabrite 18 are classified as writing paper in item 252.75, TSUS. The protest should be denied in full.

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You should send a copy of this letter to the protestant along with the CF 19 Notice of Action.

Sincerely,

William P. Schoffler
for Harvey B. Fox
Director, Classification
and Value Division

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076947

67

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 23 1986

REFER TO

CLA-2 CO:R:CV:G
077076 JLV
813869 NY

Arthur T. Morgan
Spencer Clark Metal Industries, Inc.
17066A South Park Avenue
South Holland, Illinois 60473

Dear Mr. Morgan:

In your letter of May 21, 1985, you requested a ruling on the classification of certain steel products. In a ruling letter of September 26, 1985 (file 813869), the issue concerning "semifinished" was reserved for further consideration by this office. This letter responds to that question.

Attached is a copy of a ruling letter dated September 26, 1986 (file 076882), which provides guidance on what steel products will be considered "semifinished" for purposes of tariff classification. The products in that case were continuous cast alloy steel products that had been surface conditioned. These products, after importation, had to be further hot worked into basic steel mill products.

You describe the material to be imported as "semifinished" products in widths of approximately 18 inches to 36 inches, with lengths of 36 inches to 123 inches and thicknesses of approximately 1/16 inch to 1-1/2 inches. These products are hot rolled or hot rolled and annealed.

The imported products will be processed by cutting to specific lengths and widths, surface grinding of top and bottom to a thickness tolerance of $\pm$ .001 inch and edge grinding to a width tolerance of + .005 inch to - .000 inch. This operation removes the surface defects as well as the decarburization layer. The ground product is then coated with a corrosion inhibitor and is distributed as precision ground flat stock for use in constructing dies, jigs, fixtures, cutting instruments, and numerous other precision articles.

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Absent evidence to the contrary, the product as imported by you would not require further hot working to form a finished steel mill product. Therefore, we classify the stainless steel products under the provision for plates and sheets of iron or steel, not cut, not pressed, and not stamped to nonrectangular shape, not coated or plated with metal and not clad, not pickled and not cold rolled, stainless steel, in item 607.76, Tariff Schedules of the United States.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1986

REFER TO

CLA-2 CO:R:CV:G
077077 JLV
814395 NY

Mr. Jochen Mueller
Salzgitter International, Inc.
5780 Peachtree-Dunwoody Road, NE, Suite 230
Atlanta, Georgia 30342

Dear Mr. Mueller:

Your letter of June 28, 1985, was forwarded to us by our New York office for our response.

Enclosed is a copy of a ruling dated September 26, 1986 (file 076882), concerning whether or not certain continuous cast steel products were "semifinished" for purposes of classification as blooms, billets, slabs, or sheet bars. This ruling is instructive with regard to the H-13 steel products for which you request a classification ruling.

The merchandise is described by you as H-13 tool steel rounds, 7 to 24 inches in diameter, rough forged to size, heat treated, and which are specified for applications involving subsequent cold forming by turning or hot forming by forging.

From this description, we conclude that the H-13 tool steel rounds have been forged to a specific dimension and do not require further hot working to reduce in dimension or to form a finished basic steel mill product. Therefore, absent evidence to the contrary, these tool steel rounds are classified as other bars of tool steel in item 606.95, Tariff Schedules of the United States.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1986

REFER TO

CLA-2 CO:R:CV:G
077078 JLV
813900 NY

Mr. Rowland Maddison
Sammisa (America) Corporation
15881 Chemical Lane
Huntington Beach, California 92649

Dear Mr. Maddison:

Your letter of May 21, 1985, was forwarded to us by our New York office for our response.

Enclosed is a copy of a ruling dated September 26, 1986 (file 076882), concerning whether or not certain continuous cast steel products were "semifinished" for purposes of classification as blooms, billets, slabs, or sheet bars. This ruling is instructive with regard to the various grades of tool steel for which you request a classification ruling.

The merchandise is described by you as specialty steel AISI H-13, A-2, D-2, 01, and 57, in either "as forged" or "as rolled" condition. The "as forged" has a circular cross section with diameters from approximately 5.5 inches to 16 inches, and in lengths of 72 inches to 160 inches. The "as rolled" is rectangular, having a width of 16 inches, a thickness from 1 to 4 inches, and a length of over 80 inches.

According our New York office, the "as forged" rounds are forged from ingots and do not require a secondary hot working for the purpose of reducing them in dimension or to form a finished basic steel mill product. These rounds are either forged into specific components or are cut and machined into articles. The "as rolled" products are the product of a secondary hot working and do not require any further hot working.

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Therefore, absent evidence to the contrary, the tool steel products described by you are classified as follows: the forged rounds as other bars of tool steel in item 606.95, Tariff Schedules of the United States (TSUS), and the rolled shapes as other plates of tool steel in item 607.72, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1986

REFER TO

CLA-2 CO:R:CV:G
077080 JLV
813258 NY

Mr. Y. Kobayashi
Nissho Iwai America Corporation
1211 Avenue of the Americas
New York, New York 10036

Dear Mr. Kobayashi:

Your letter of April 10, 1985, was forwarded to us by our New York office for our response.

Enclosed is a copy of a ruling dated September 26, 1986 (file 076882), concerning whether or not certain continuous cast steel products were "semifinished" for purposes of classification as blooms, billets, slabs, or sheet bars. This ruling is instructive with regard to the H-13 steel products for which you request a classification ruling.

The merchandise is described by you as AISI H-13 tool steel rounds, 8 to 25 inches in diameter, rough forged to size, and saw-cut or flame-cut to lengths of 6 to 12 feet. You state that the products, after importation, will be either ground or turned to specific dimension, and then sliced into discs for the manufacture of dies, molds, and tooling.

From this description, we conclude that the H-13 tool steel rounds have been forged to a dimension and do not require further hot working to reduce in dimension or to form a finished basic steel mill product. Therefore, absent evidence to the contrary, these tool steel rounds are classified as other bars of tool steel in item 606.95, Tariff Schedules of the United States.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

G13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1986

REFER TO

CLA-2 CO:R:CV:G
077079 JLV
813554 NY

Mr. Y. Kobayashi
Nissho Iwai America Corporation
1211 Avenue of the Americas
New York, New York 10036

Dear Mr. Kobayashi:

Your letter of May 2, 1985, was forwarded to us by our New York office for our response.

Enclosed is a copy of a ruling dated September 26, 1986 (file 076882), concerning whether or not certain continuous cast steel products were "semifinished" for purposes of classification as blooms, billets, slabs, or sheet bars. This ruling is instructive with regard to the various grades of tool steel for which you request a classification ruling.

The merchandise is described by you as alloy steel in grades similar to AISI 4340 and 4330 (low alloy steel) and AISI SI5500 (stainless steel). They will be forged products with a circular cross section. Prior to importation they will have been heat treated and rough turned to required dimensions. These products will be used in the manufacture (forging) of components for aircraft landing gear. Processing after importation will involve cutting to length, heating, hot forging to configuration, heat treatment, and machining to final dimension.

Rough turning to specific dimension is a cold forming operation. See enclosed copy of a ruling dated March 12, 1980 (file 061709), in which we held that the tariff term "cold forming" included rough turning. The rough turning performed on your alloy steel rounds is a cold forming operation for U.S. tariff purposes.

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Therefore, absent evidence to the contrary, the alloy steel and stainless steel products described by you are classified as follows: the alloy steel rounds as other bars of alloy steel, cold formed, in item 606.99, Tariff Schedules of theUnited States (TSUS), and the stainless steel rounds as bars of stainless steel in item 606.90, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosures

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

NOV 3 1986

CLA-2:CO:R:CV:G
077093 jlj

Mr. Dan Moore
Vice President of Operations
Indel-Davis, Inc.
P.O. Box 9697
Tulsa, Oklahoma 74107

Dear Mr. Moore:

In New York letter 804344 of November 15, 1982, our New York office stated that certain paper was electrostatic copy paper and that it was classifiable under the provision for papers, impregnated, coated, surface colored, embossed, ruled, lined, printed, decorated, or any combination thereof, other, not specifically provided for, not lithographically printed, impregnated, coated or both, other, in item 254.80, Tariff Schedules of the United States (TSUS).

We hereby revoke New York letter 804344 because it no longer reflects the current position of the United States Customs Service as set forth in Customs Headquarters Ruling Letter (HRL) 077833. A copy of HRL 077833 is enclosed for your information.

If the paper which was the subject of New York letter 804344 weighs over 18 pounds per ream, and is not lithographically printed, it is properly classified under the provision for writing paper weighing over 18 pounds per ream, not lithographically printed, in item 254.56, TSUS, dutiable at the 1986 Column 1 rate of 4.7 percent ad valorem. This letter is effective as of its date.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 15 1986

CLA-2:CO:R:CV:G
077127 JCH

District Director of Customs
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 38015001456

The above-captioned protest and application for further review were filed against your classification of merchandise which was the subject of entries filed at the port of Detroit in 1984. This merchandise is a product of Canada. Our decision follows:

FACTS:

The merchandise consists of electrical items variously classified by Customs officers under the provision for rectifying apparatus and inductors in item 682.60, Tariff Schedules of the United States (TSUS), and the provision for transformers rated at less than 1 kva in item 682.05, TSUS. The column 1 rates of duty required under these provisions in 1984 were 4.7 and 8.8 percent ad valorem respectively. It is contended the merchandise is classifiable under the provision for transformers rated at 1 kva or more in item 682.07, TSUS, which required a column 1 rate of duty in 1984 of 3.8 percent ad valorem. As will be shown infra, this provision has been interpreted by the court to also cover so-called unrated transformers.

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ISSUE:

The merchandise consists of Part No. 125350 variously referred to as a neutral grounding reactor and tingle voltage filter, Part No. 123276 referred to as a rectifier transformer, and Part Nos. 113340 and 124604 referred to as constant voltage transformers. The tingle voltage filter is used in farm building electrical service applications to isolate the incoming and building neutral from the building ground to filter out stray currents from various sources or causes which may give a shock to farm animals touching equipment which is otherwise grounded.

The remaining equipment is used on computer main frames to step down the main power supply to given tap requirements.

LAW AND ANALYSIS:

While the tingle voltage filter is described as a static magnetic device similar to a transformer, its primary purpose is to oppose stray currents through reactance induction. Accordingly, it is not a transformer, but rather constitutes a reactance inductor.

With respect to the rectifying transformers, it is well established that electrical devices which incorporate rectifying apparatus are classifiable in accordance with that feature even though the voltage of the input AC or DC current is different from that of the output AC or DC current.

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It has also been our position that transformers may not be regarded as unrated if they are of a class or kind which are rated or are for uses in power circuits where the capacities of the transformers must be known even if they are not included on any lables. For example, in many computer applications of the type described it is typical for the secondary circuit to be rated at 5 volts and the primary circuit to be rated at 120 volts. It is not shown that the power requirements of the transformers at issue would vary significantly from these types of requirements. In our opinion, transformers in power applications represent a different class of merchandise than the baluns used in television antenna applications which were the subject of United States v. RMS Electronics, Inc., 67 CCPA 79, C.A.D. 1249 (1980), and which were held to be "unrated" transformers classifiable under item 682.07.

HOLDING:

For the foregoing reasons we find that the tingle voltage filters and the rectifying transformers were properly classifiable under the provision for inductors and rectifying apparatus in item 682.60, TSUS, and that the constant voltage transformers were properly classifiable under the provision

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for transformers rated at less than 1 kva in item 682.05, TSUS. Therefore, the protest should be denied in full and a copy of this decision attached to the Form 19 Notice of Action.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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A9

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP 10 1986

CLA-2 CO:R:CV:G
077139 JNB

077139

District Director of Customs
Portland, Oregon 97209

Re: Decision on Protest and Application for Further Review
No. 2904-5-000189, Dated May 24, 1985

Dear Sir:

The above protest and application for further review were timely filed by Highcity International of San Anselmo, California, against your action in classifying a yacht suit and its tote bag container as an entirety under item 376.56, Tariff Schedules of the United States (TSUS), as garments designed for rainwear, hunting, fishing or similar uses, wholly or almost wholly of fabrics which are coated or filled, or laminated, with rubber or plastics, which (after applying Headnote 5 of Schedule 3) are regarded as textile materials: other. The merchandise, which is made of PVC-coated nylon material, was entered under Consumption Entry No. 85-419580-2, dated October 2, 1984.

FACTS:

The articles in question are a tote bag and a yacht suit comprised of a pair of pants and a jacket. The tote bag is made from a PVC-coated nylon woven fabric. The pants and jacket are made from a coated knit nylon fabric. All exterior surfaces consist of a plastic coating that has been calendered to create a weave effect. The fabric is approximately 30 percent nylon and 70 percent plastic. The yacht suit is packed inside the tote bag and all three articles (bag, pants, and jacket) are sold as a single unit.

The tote bag has a zippered opening and two carry handles comprised of the same coated fabric. The jacket is hooded and zippered. A weatherproof strip of nylon covers the zipper and is secured with a Velcro-type closure. The jacket has fold-over pockets, also with Velcro-type closures. Coated or filled reflective stripes appear on the pockets. The pants are of a chest-high bib style with a waterproofed fly front. They have plastic suspender holders. The suspenders are of a webbed fabric and have plastic buckles. The pants have a fold-over pocket with a Velcro-type closure. A coated emblem appears on the pocket.

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NO

The protestant entered the tote bag, jacket and pants as an entirety, classifiable as wearing apparel (including rainwear), not specially provided for, of rubber or plastics, under item 772.30 (now item 772.31), TSUS, dutiable at the then applicable rate of 8.8 percent ad valorem.

On January 22, 1985, Customs issued a CF-29 Notice of Action to the protestant, indicating a rate advance and reclassifying the yacht suit under item 376.56, TSUS, as garments designed for rainwear, hunting, fishing or similar uses, wholly or almost wholly of fabrics which are coated or filled, or laminated, with rubber or plastics, which (after applying Headnote 5 of Schedule 3) are regarded as textile materials: other, dutiable at the then effective rate of 12.1 percent ad valorem. The Notice stated that the tote bag was considered to be an ordinary container and not separately classifiable. It also noted that the yacht suits had fabric strips on the outside pocket flaps and therefore were classified as rainwear of man-made fabric.

In a letter of February 5, 1985, the protestant responded to the Notice of Action, dwelling on the issue of the fabric strips. Customs informed the protestant that he could request resolution of the classification issue under Internal Advice procedures or wait until liquidation and file a protest. The entry was liquidated at the higher rate on April 19, 1985. The protest was then timely filed.

ISSUES:

Are the yacht suit, comprised of the jacket and pants, and its tote bag container classifiable as an entirety?

Is the yacht suit classifiable as wearing apparel of rubber or plastics under item 772.30, TSUS, or as garments designed for rainwear, wholly or almost wholly of fabrics which are coated or filled, or laminated, with rubber or plastics, under item 376.56, TSUS?

LAW AND ANALYSIS:

General Headnote 6(b)(iii), TSUS, provides that "all other containers or holders are subject to the same treatment as specified in (ii) above for usual or ordinary types of shipping or transportation containers designed for or capable of, reuse." Headnote 6(b) states that these containers which are capable of reuse are subject to treatment as "imported articles separate and distinct from their contents."

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The subject tote bag is clearly a reusable container. It is very similar to other tote bags which are sold over the counter without contents. There are no distinguishing features about this tote bag which would lead one to conclude that it is usually sold at retail with its contents. Accordingly, we find that the tote bag and yacht suit are separate and distinct articles which must be classified separately.

Headnote 5, Schedule 3, of the 1984 TSUS, (now Headnote 5(a)), provided that for purposes of certain parts of the tariff schedules:

> [I]n determining the classification of any article which is wholly or in part of a fabric coated or filled, or laminated, with nontransparent rubber or plastics (which fabric is provided for in Part 4C of this schedule), the fabric shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that (as used in the article) the nontransparent rubber or plastics forms either the outer surface of such article or the only exposed surface of such fabric.

Pursuant to this language, the surface character of the fabric governs its tariff classification. See Customs Ruling Letters of August 15, 1984 (Control No. 074686) and June 3, 1985 (Control No. 076069).

In its Report on the Tariff Schedules Technical Amendment Act of 1965, the House Ways and Means Committee distinguished between: (1) products in which the "textile" surface of the fabric formed the outer surface of the article, thereby lending to the articles the essential characteristic of a woven or knit fabric, and (2) those products where the textile surface is hidden or buried so that it is only the rubber- or plastic-coated surface which gives character to such finished products. The definition of "textile materials" was meant to exclude those products where nontransparent rubber or plastics forms either the outer surface or the only exposed surface of the fabric. H.R. 342, 89th Cong., 1st Sess. 12 (1965). Fabric will be considered nontransparent if the coating obscures the textile fibers or yarns so that they cannot be seen and eliminates the textile surface character of the fabric. C.S.D. 79-82.

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In the subject articles, the underlying yarns cannot be seen because they are obscured by the PVC coating. The coating, therefore, can be considered nontransparent for classification purposes. Textile surface characteristics are eliminated by the coating. In accordance with the language of Headnote 5, Schedule 3, and the legislative history of the provision, the subject yacht suit and tote bag are classifiable as articles of rubber or plastic.

Customs Ruling of August 15, 1984, supra, has been cited as support for the proposition that the passing of light through a plastic-coated fabric renders that coating transparent for classification purposes. The fact that vague figures can be discerned when something is placed against the opposite surface of a fabric does not affect a determination that a plastic coating is nontransparent. See C.S.D. 79-82, supra. Concomitantly, the mere passage of light through a plastic-coated fabric cannot dictate, per se, that the coating be considered transparent if the underlying fibers cannot be seen.

Customs Ruling of August 15, 1984, supra, involved classification of a nylon rainsuit covered with a plastic coating through which underlying fibers could be seen when light was applied thereto. The ruling found that the coating was, per se, transparent This portion of the ruling is an erroneous interpretation of C.S.D. 79-82.

HOLDING:

We find that the yacht suit, including pants and jacket, is properly classifiable under item 772.30, TSUS, as wearing apparel (including rainwear), not specially provided for, of rubber or plastics, dutiable at the 1984 rate of 8.8 percent ad valorem.

The tote bag is most properly classifiable as luggage, of other material: other, under item 706.62, TSUS, dutiable at the rate of [illegible] percent ad valorem.

The classification of the tote bags is not the claimed provision or the assessed provision. Because the rate of duty under the correct classification is more than the rate under either the claimed provision (item 772.30) or the assessed provision (item 376.56), the protest as to the tote bags should be denied. The protest as to the yacht suits should be granted.

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Customs Ruling of August 15, 1984 (Control No. 074686), is overruled insofar as it holds that a plastic coating is transparent merely because light passes through the plastic-coated fabric.

A copy of this letter should be provided to the protestant when notice of action is given on Customs Form 19.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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A14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP - 8 1986

CLA-2:CO:R:CV:G
077142 JLV

077142

District Director of Customs
909 First Avenue
Seattle, Washington 98174

Re: Decision on Protest and Application for Further Review of Protest No. 3001-5-000022, dated January 7, 1985

Dear Sir:

The above protest and application for further review of protest were timely filed against your action in classifying an electrical article as a flashlight in item 683.70, Tariff Schedules of the United States (TSUS), and, consequently, assessing duty on a set, of which the article is one item, at the rate for the flashlight. The merchandise was entered at Seattle on Entry No. 84-204954-6, dated June 27, 1984, and liquidated on November 9, 1984. This ruling is our decision.

FACTS:

The article in issue is described as a combination continuity tester and flashlight, and is one of 40 items in a kit. It is a tubular article, of metal, approximately 5-3/4 inches long and 5/8 inch in diameter, having an angled tip. It operates on two AA batteries as a flashlight (with a lens-end bulb) for illuminating small areas, and has a pocket clip so that it can be conveniently carried when not in use. The flashlight is designed with a receptacle for a banana plug so that it can be joined to a wire and used to check various electrical circuits for shorts or continuity. A spring-like metal clip, extending from the metal contact in the plug receptacle, operates to turn on the flashlight when pressed down to contact the external casing.

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When connected with a wire, the tip of the flashlight casing and the unattached end of the wire become the two ends of the circuit tester. When the casing and the wire are touched at different locations on a circuit, the flashlight bulb will glow if a circuit is completed. The kit includes two wires, each of which has a banana plug on one end and an alligator clip on the other.

ISSUE:

Is the flashlight "more than" a flashlight because it has a circuit continuity test function?

LAW AND ANALYSIS:

The relative simplicity, apparent insignificance, or infrequent use of one function does not necessarily lead to the conclusion that the function is subsidiary, subordinate, and incidental to another more common and recognizable function. In The Ashflash Corporation v. United States, 76 Cust. Ct. 112, C.D. 4643 (1976), the court held that a portable electric lantern with an illumination function and a signal-warning red flasher was a multifunction article and, therefore, more than a portable electric lamp. In that case the court noted that the signal-warning function was a separate and identifiable function.

This article, as designed, is a flashlight which can be easily adapted as a circuit tester. It only requires the attachment of an accessory electrical wire to provide a movable test point. Any wire, such as either of the wires

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included in the kit, will permit use of the flashlight as a circuit tester.

However, without an accessory wire, the article is merely a flashlight which has been designed so that the external casing and the spring-like clip or "switch" form parts of the flashlight circuitry. This is not unusual for such a simple design. The presence of the plug receptacle merely facilitates adaptation of the flashlight as a circuit tester.

The wire and the flashlight cannot be considered entireties which form a new article, i.e., a combination flashlight and tester, because they retain their separate identities. Silvine Importer, Inc. v. United States, 57 Cust. Ct. 362, C.D. 2821 (1966).

HOLDING:

The electrical article is designed as a flashlight and its principle function is as a flashlight. The design permits use as a circuit tester, but this is a secondary and subordinate function that is adapted from its principle function as a flashlight. It is classifiable as a flashlight in item 683.70, TSUS. The protest should be denied in full. A copy of this decision should be given to the protestant when notice of action is given on Customs Form 19.

Sincerely,

Arthur V Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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07142

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP 18 1986

CLA-2:CO:R:CV:G
077209 JCH

077209

District Director of Customs
610 South Canal Street
Chicago, Illinois 60607

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 39015000887

The above-captioned protest and application for further review were filed against the tariff classification of a fiber optic and electrical conductor combination (referred to by the manufacturer as a fibral earth conductor) which was the subject of entry No. 85-710228-7 filed at the port of Chicago in 1984. This merchandise was a product of the United Kingdom. Our decision follows:

ISSUE:

The merchandise was classified under the provision for mounted optical elements in former item 708.29, Tariff Schedules of the United States (TSUS). The 1984 column 1 rate of duty required under that provision was 13.1 percent ad valorem. The protestant contends the merchandise is properly classifiable under the provision for electrical conductors with fittings in item 688.15, TSUS. The 1984 column 1 rate of duty required under that provision was 5.8 percent ad valorem.

FACTS:

The merchandise consists of several separately sheathed fiber optic conductors forming a cable within an aluminum alloy tube. The tube serves as the core for a galvanized steel strand conductor which may consist of one or more plies

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depending on the required electrical characteristics. The particular version of the product in question is typically used in long-distance power transmission systems. It allows the ground conductor normally used to be replaced by the instant merchandise to add a fiber optic transmission capability to a preexisting power transmission system without altering its electrical, aerodynamic, etc., characteristics.

LAW AND ANALYSIS:

Our previous classification of fiber optic cables as optical elements is not open to question at this time in view of the ratification of that position by the creation of the new specific breakout for fiber optic cables in item 707.90, TSUS, with the same rate of duty they would have if they remained classifiable under the applicable optical elements provisions. Nor can any consideration be given to the argument that item 688.15, when describing merchandise also described by item 707.90 and its predecessors, must prevail. Headnote 1(vi), Part 5, Schedule 6, TSUS, where item 688.15 appears, excludes electrical apparatus provided for in Schedule 7, TSUS, where item 707.90 appears.

Therefore, the only question for consideration here is whether the instant merchandise is actually excluded from the optical elements provisions because it is "more than" optical elements. However, the "more than" rule is not for applica-

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tion, even if the value of the components giving merchandise an additional function are significant in relation to the value of other materials, when the added feature actually does nothing more than amplify or enhance the function of the feature otherwise controlling classification. See, for example, Robert Bosch Corp. v. United States, 63 Cust. Ct. 96, C.D. 3881 (1969). The wire strand material within which the instant fiber optic conductors are encased provides a necessary lightning and other hazard protection and strengthening function without which the fiber optic conductors could not be used in long-distance overhead power transmission applications. While it is true the ground conductor feature also provides ground fault protection for the entire system in which it is used, submissions with the protest show that the electrical capacity of the conductor when used in the instant type of application is no different than the capacity of any metal conductor otherwise used to support an overhead fiber optic line.

Therefore, it is our opinion that the configuration of the instant combination cable which allows for more efficient use of the ground conductor feature does not make the merchandise more than a metal conductor and fiber optic combination line in a configuration where the metal conductor only provides protection for the fiber optic cable itself.

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HOLDING:

For the foregoing reasons, we find that fiber optic conductors when combined with a wire strand ground conductor for strengthening and ground fault protection remain classifiable as optical elements, and that the provision for mounted optical elements in former item 708.29, TSUS, was the correct classification for the instant merchandise. Therefore, the protest should be denied in full. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant. The Form 19 is returned herewith.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 9 1986

CLA-2:CO:R:CV:G
077267 JAS

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 28226-2568

Dear Sir:

This is our decision on Application for Further Review of Protest No. 3801-5-001821, dated April 30, 1985, filed on behalf of Westinghouse Canada, Inc. It covers 9 entries, dated November 26 and 30, December 6, 10, 12, 21, and 27, 1984, and February 4 and December 19, 1985. The entries were liquidated February 1, 8 and 22, and March 1, 1985.

FACTS:

The merchandise at issue is the W1642 Westinghouse Microprocessor-based CRT Terminal. The first major component is the terminal's modular display unit which consists of a small microprocessor board, 12 in. CRT, and a power supply chassis. The other major component is the programmable keyboard which permits data to be entered, deleted, or otherwise edited, either by the standard alphanumeric keys or by pressing certain special function keys. Transmission of a message is initiated by pressing the transmit key. A related printer is not part of the protested entries. The W1642 is advertised for use in reservation systems, load control, check-in, baggage tracing and ticketing operations, and cargo handling. The instant units, the subject of this protest, are sold primarily to airlines for use in reservation and ticket processing applications.

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You have liquidated the concerned entries under the provision for accounting, computing, and other data-processing machines, in item 676.15, Tariff Schedules of the United States (TSUS), because they are essentially machines which process data and incorporate a calculating mechanism as required by the superior heading to items 676.15 through and including 676.25.

Protestant maintains that the subject machines come equipped with erasable, programmable, read-only memory (Eprom), which is not a calculating "mechanism" for tariff purposes because of its solid state circuitry. Additionally, protestant maintains the calculating function is subsidiary to the overall data-processing function of the W1642. Classification in item 676.30, TSUS, as office machines not specially provided for, is proposed because there is no requirement that item 676.30 merchandise incorporate a calculating mechanism.

ISSUE:

Does the W1642 incorporate a calculating mechanism for tariff purposes, and must it be the primary feature of the machine?

LAW AND ANALYSIS:

With respect to the first issue, Schedule 6, Part 4, Subpart G, Headnote 2(c), TSUS, which governs entries under item 676.15, defines "calculating mechanism" as one designed

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to perform one or more of the four arithmetical calculations, but does not define the scope of the word "mechanism". The record indicates that the Eproms in the W1642 series permit calculations to be performed off-line. There is nothing in the common meaning of the word "mechanism" which would definitively require mechanical capability, as protestant appears to contend. Moreover, the issue of whether Eproms are calculating mechanisms for item 676.15 purposes is currently in litigation before the United States Court of International Trade. We are informed that no decision has yet been rendered in this case. Consequently, we will adhere to Customs longstanding position that machines which calculate electronically incorporate a calculating mechanism for tariff purposes.

With respect to the second issue, protestant maintains that the overall commercial function of the W1642 is not markedly enhanced by the presence of a calculating "mechanism" because the W1642 is considered a slave terminal, up to 48 of which can be controlled by a master terminal. Presumably, only the calculating capability of the master terminal would be considered commercially significant.

There is no requirement that the machines classifiable in item 676.15 be used principally as calculating machines, only that they incorporate a calculating mechanism. Notwithstanding evidence in the contract of sale that the buyer specifically requested the calculating feature be included in

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the W1642 (which would be an indication of commercial significance), and the W1642's limited programmability, the processing of information appears to be the principal use to which this unit is put.

HOLDING:

The W1642 is provided for under the provision for computing and other data-processing machines, in item 676.15, TSUS.

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Slaughter
For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OCT 21 1986

CLA-2 CO:R:CV:G
077294 jlj

Area Director of Customs
JFK Airport, Building 178
Jamaica, New York 11430

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-5-008905

This protest was filed against your decision in the liquidation on April 12, 1985, of entry No. 85-336026 dated March 1, 1985, covering a shipment of ladies' 100 percent cotton woven high waisted jeans with belts manufactured in Hong Kong.

This ruling concerns whether or not these jeans are ornamented for tariff purposes.

FACTS:

The merchandise at issue is ladies' 100 percent cotton woven high waisted jeans with belts, style No. 1124 HS. The belts have appliques on them. The "high waisted" aspect of the jeans is caused by the insertion of a strip of fabric, approximately 1-1/2 to 1-3/4 inches in width, into the open seam of the waistband just above the belt loops. The extra strip of fabric continues the jeans above the belt loops and around the waistline.

The protestant claims that the high waisted jeans with belts are classified under the provision for other women's wearing apparel, not ornamented, of cotton, not knit, other, other, trousers and slacks, in item 383.47, Tariff Schedules of the United States (TSUS).

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The JFK import specialist liquidated the entry under the provision for other women's wearing apparel, ornamented, of cotton, other, not knit, trousers and slacks, denim, in item 383.06, TSUS.

ISSUE:

Does the insertion of an extra strip of material in the waistband make these high-waisted jeans ornamented for tariff purposes?

LAW AND ANALYSIS:

Counsel for the protestant argues that the high waist on the jeans is not ornamental, citing Brittania Sportswear v. States, 5 CIT 212 (1983), and United States v. Endicott Johnson Corp., 67 CCPA 47, C.A.D. 1242 (1980) in support of his position. He claims that the high waist is not decorative because it is from the same material and is the same color as the trousers.

He argues that the high waist is functional in that it is an integral part of the trousers and finishes the high waisted garment. He claims that the jeans are designed especially for high waisted individuals and are intended to provide a particular type of fit. He cites Blairmoor Knitwear Corp. v. United States, 60 Cust. Ct. 388, C.D. 3396 (1968) and Paramount Bead Corp. v. United States, 19 CCPA 385, T.D. 45522 (1932) in support of his contention that the high waist is functional.

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He asserts that the high waist is not piping. (We note at this point that the national import specialist says that she made an analogy and compared the extra strip of fabric in the high waist to piping. It is not Customs' position that the extra strip of fabric in the high waist actually is piping.) He cites C.S.D. 79-214, the Summaries of Trade and Tariff Information, volume 6, page 48 (1984) and Rifkin Textiles Corp. v. United States, 55 Cust. Ct. 341, C.D. 2600 (1965) in support of this point.

In a supplemental petition dated April 18, 1986, counsel makes other arguments. Once again he argues that the high waist is intended for high waisted individuals who are trying to avoid the hip hugger look. We note that illustrations submitted with the protest show (and counsel admits) that the height of the high waisted jeans is the same as the height of regular jeans.

He argues that the high waisted feature must be made from a second piece of fabric in order to avoid the folding which would result if the high waistband was of one piece.

Counsel cites Customs Headquarters Ruling Letter (HRL) 052878 of September 1, 1978, and New York letter 801287 of September 10, 1981, in support of his proposition that when a functional feature, such as a pocket, is constructed of two or more pieces, it is non-ornamental. Both HRL 052878 and New York letter 801287 dealt with pockets which were made of several pieces and which were found to be not ornamented. Both

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letters are distinguishable, however, because the pockets would not have been complete without all of their pieces. The instant jeans would be complete garments even without the extra strip of material added at the waist.

He claims that the split in the rear of the high waistband is necessary in order to impart "give" to the high waist and that the high waist would be uncomfortable if it went continuously around the waist.

Counsel cites Britannia Sportswear, supra, and Endicott Johnson, supra, in support of his contention that the extra strip does not constitute ornamentation. Britannia Sportswear concerned a small, inconspicuous and unobtrusive loop, while Endicott Johnson concerned a non-contrasting stitching which was not readily visible. Neither case is relevant here. As counsel notes, the strip in question is 1-1/2 to 1-3/4 inches in width. It encircles the entire waistband, meeting in the center front and rear in a mandarin collar effect. The strip (or the two strips, since there are mandarin-collar type splits in front and back) is readily visible, conspicuous, and -- unlike the features in the cited cases -- creates a highly decorative effect.

Counsel cites Blairmoor and contends that the strip is primarily functional because it is an integral part of the jeans and finishes them. The removal of the strip in no way affects the integrity of the garment, however, because the waistband is finished without the strip. If the strip is removed, what is left is an ordinary finished faced waistband without the decorative effect imparted by the strip.

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Counsel argues that the strip creates a high waist which is designed to provide a certain sort of fit (i.e., for high waisted women). Fit is not determined by a strip of fabric inserted in the edge of the waistband, however, but by the depth of the rise relative to the waist. As we noted above, counsel admits and illustrations submitted with the protest show that the height of the high waisted jeans is the same as the height of regular jeans.

A belt with an applique on it is imported along with the jeans. Counsel contends that inasmuch as the belt may be worn with other items, the ornamented belt should not cause the jeans (which are imported and sold with the belts) to be classified as ornamented. This line of reasoning is not valid, however. If that line of reasoning was followed, a tucked suit jacket, an embroidered pajama top or a karate top with a decorative textile label imported as parts of suits, pajamas or martial arts uniforms respectively would never be classified as ornamented because their components could be worn with other items or alone.

While the belt is functional and holds up the pants, the applique on the belt ornaments both the belt and the jeans of which the belt is a part.

To summarize, the strip of fabric inserted in the finished waistband of the jeans creates a decorative appearance, serves no structural function on the jeans, and constitutes ornamentation within the meaning of Headnote 3(a)(iii) of Schedule 3, TSUS. The oval applique on the belt constitutes C2

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ornamentation whether the belt is imported alone or as part of the pants. The high waisted jeans are properly classified under the provision for other women's wearing apparel, ornamented, of cotton, trousers and slacks, denim, in item 383.06, TSUS.

HOLDING:

The high waisted jeans are ornamented and are classified in item 383.06, TSUS. The protest should be denied in full. A copy of this letter should be sent to the protestant along with the Customs Form 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 21 1986

REFER TO

CLA-2 CO:R:CV:G
077313 JAS

District Director of Customs
6th Floor, Plaza Nine Bldg.
55 Erieview Plaza
Cleveland, Ohio 44114

Dear Sir:

This is our decision in Application for Further Review of Protest No. 4104-5-000018, dated July 25, 1985, concerning entry 435447, dated June 14, 1984, liquidated April 26, 1985. The merchandise at issue is a belt grill from Sweden.

FACTS:

The article in question is the SQUARE Belt Grill which is a stainless steel industrial type imported by Stouffer Foods Corporation. Four models of this grill, the 34, 48, 60, and 80, are described in submitted literature as weighing from 2 tons to 3.5 tons with the capacity to cook from 1,300 to 2,600 lbs. of meat per hr. Flat meat moves from an extruder through the grill's aluminum nickle coated top and bottom cooking sections by means of two teflon coated fiberglass belts. The cooking sections can be either electrical or thermo oil heating elements.

The concerned entry was liquidated under the provision for industrial machinery whether or not electrically heated for the treatment of materials by a process involving a change of temperature such as heating or cooking, in item 661.68, Tariff Schedules of the United States (TSUS). Protestant maintains the subject grill is classifiable either under the provision for

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other cooking stoves and ranges, and parts thereof, which are electro-thermic kitchen and household appliances, in item 684.28, TSUS, or as industrial machinery for preparing and manufacturing food or drink, in item 666.25, TSUS. However, no factual or legal arguments are presented to support either classification.

ISSUE:

Are either of protestant's proposed classifications more specific than item 661.68, TSUS?

LAW AND ANALYSIS:

Initially, classification in item 684.28 is precluded because the subject grill is of industrial design and quality, and not of a type used in the kitchen or household. Item 666.25 would prevail over an item 661.68 classification, absent other relevant considerations, under the rule of relative specificity. However, Schedule 6, Part 4, Subpart A, Headnote 1, TSUS, which governs entries under item 661.68, requires that a machine or appliance which is described in Subpart A and also is described elsewhere in Part 4 is classifiable in Subpart A. Item 666.25 appears in Schedule 6, Part 4, Subpart C, while item 684.28 appears in Schedule 6, Part 5, but has otherwise been found not to apply. The cited headnote would therefore require classification of the subject grill in item 661.68, TSUS.

We have interpreted the phrase "described in," in Part 4, Subpart A, Headnote 1, to mean that a tariff provision is sufficient to cover the named article, but that actual

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classification depends on other factors, such as relative specificity, exclusionary headnotes, and other relevant principles of tariff classification. Therefore, an article may be "described in" two or more provisions, as is the case here with respect to items 666.25 and 661.68, but, because of the cited invasionary headnote, classification in item 661.68 is required.

HOLDING:

Schedule 6, Part 4, Subpart A, Headnote 1, TSUS, requires that the subject SQUARE Belt Grill be classified in item 661.68. The protest should be denied. A copy of this decision should be attached to the Form 19, Notice of Action, to be sent to the protestant.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
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077370

Mark S. Zolno, Esq.
Burditt, Bowles & Radzins, Ltd.
333 West Wacker Drive
Suite 1900
Chicago, Illinois 60606-1218

Dear Mr. Zolno:

This is in reply to your letter dated July 5, 1985, submitted on behalf of your client, Beatrice Companies, Inc., regarding the classification of a frozen dessert product imported from Belgium. Your request was forwarded to Headquarters for reply.

In your letter, you point out that this product will be sold primarily at the retail level in speciality food stores, supermarkets and candy shops as well as in restaurants and hotels. The product is intended for sale as a frozen dessert product to the retail consumer. This product (of which there are two types), is similar in appearance to chocolate covered cherries with liquid centers. It is also similar in use to a popular domestic frozen dessert known as Bon Bons. However, in this instance this product differs in that the center is neither a liquid nor ice cream but rather a frozen hazelnut or frozen cherry fruit filling.

The ingredients for the frozen hazelnut dessert product are: water, chocolate (chocolate liquor, sugar, butter oil, lecithin), sugar, hazelnuts, butter oil, corn syrup, skim milk powder, whey powder, cocoa powder, stabilizer (sodium alginate, car geenan, carob bean gum, guar gum), mono and diglycerides.

The ingredients for the frozen cherry dessert product are: water, chocolate (chocolate liquor, sugar, butter oil, lecithin), cherries, skim milk powder, sugar, butter oil, corn syrup, stabilizer (mono and diglycerides, sodium alginate, carrageenan, carob bean gum, guar gum), natural flavor and color.

The exhibits submitted with your letter indicate that neither type of dessert product is in chief value of milk or cream and each type is packaged for sale on the retail level as a frozen dessert product. In a letter dated June 3, 1986, you presented the following description of how the imported product was manufactured.

1) Mix Preparation - Ingredients for the center filling are blended together. Only milk solids heat treated in a manner prescribed by the USDA would be used.

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2) Homogenization - Blended ingredients are homogenized to prevent fat separation.

3) Pasteurizaton - The entire mix is pasteurized to maintain the high quality of the product.

4) Cooling - The mix is cooled to 4°C after pasteurization.

5) Storage - The mix is stored at +2°C for 6-18 hours. This aging improves the quality of the finished product.

6) Freezing - The mix is passed through a continuous freezer to reduce the temperature to -3°C.

7) Filling - The mix is pumped into individual molds and hard frozen.

8) Hardening - Mix is kept in molds until hard frozen.

9) Chocolate Coating - The filling is removed from the molds and dipped into warm chocolate.

10) Packaging - The finished product is packed into molded plastic trays and finally into individual packages.

11) Storage - The packages are stored at -28°C until sold.

In your submission, you argue that item 157.10, Tariff Schedules of the United States (TSUS), represents the proper classification of the imported product. Item 157.10, TSUS, covers the classification of candy, and other confectionery, not specially provided for.

The applicable headnote (Headnote 2, Subpart C, Part 10, Schedule 1, TSUS) pertaining to confectionery provides:

> 2. The term "confectionery", as used in this subpart, covers confections or sweetmeats ready for consumption.

The 1960 Tariff Classification Study pointed out:

> The term "confectionery" is a rather elusive one, difficult to define. There seems to be agreement, however, that the term embraces confections or sweetmeats that are ready for consumption. Therefore, this concept has been incorporated in Headnote 2.

This comment is in part a reflection of the fact that item 157.10, TSUS, can be traced back to the Tariff Act of August 10, 1790, when "sugar candy" was dutiable. The provision was changed in paragraph of the 212 Tariff Act of 1897 to include "sugar candy and all confectionery not specially provided for."

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The overlap in terms is not unique to the tariff schedules. See for instance, volume 6 of the Encyclopedia Britannica, 1963 Edition, which states:

> Confectionery Manufacture. For centuries man has devoted time and effort to perfecting the skills of confectionery manufacture, the art of properly blending various agricultural products into an attractive, palatable food known as candy.

It also should be noted that the Food and Drug Administration Regulations, 21 CFR 118.3(b), begins, "Confectionery" means candy and other food products made with sweeteners..."

Further, Webster's New World Dictionary, 2nd Edition, 1972, defines confection as "any kind of candy or other sweet preparation..." Thus, candy is a type of confection.

Your submission places great emphasis on the case of Westco Products, L.A. v. United States, 58 Cust. Ct. 306, C.D. 2974 (1967), where the court stated that "to become candy, whether using sugar or other sweetener, the prepared ingredients are molded or worked into various shapes or forms of a solid or semi-solid consistency." While it is clear that the imported product is molded, more is necessary to make it a candy. The definition you cited in your submission stresses that the food product is made principally from sugar. From the list of ingredients furnished, we do not believe the product is made principally from sugar. Consequently, the product can not be said to be a candy.

The court case of Leaf Brands, Inc. v. United States, 70 Cust. Ct. 66, C.D. 4409 (1973), is often cited as the authority for determining what is a confectionery. There, the court held a product known as "ZING", a powder composed of approximately 95 percent dextrose, plus citric acid, flavoring and coloring, which is contained in a simulated soft drink bottle and sipped by the user through a straw was classified as confectionery under item 157.10, TSUS. In so doing, the court stressed that the important point in determining the applicability of item 157.10, TSUS, was whether the particular item to be classified was used as a confectionery. Specifically, the court pointed out:

> Although various articles unquestionably are "confectionery", the exact scope of that term cannot be stated with certitude. Thus, the Tariff Commission observed in the Tariff Classification Study (1960) Schedule 1, page 164, that "[t]he term 'confectionery' is a rather elusive one, difficult to define," but added that there "seems to be agreement * * * that the term embraces confections or sweetmeats that are ready for consumption."

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The term [confectionery] is defined in Webster's Third New International Dictionary (1961) as -

> confectionery n.1: sweet edibles (as candy, cake, pastry, candied fruits, ice cream): things prepared and sold by a confectioner * * *

And it is defined in Funk & Wagnalls New Standard Dictionary (1942) as -

> confectionery 1. the sweetmeats collectively that a confectioner makes or sells, as candy or other articles made of sugar, sirup, honey or the like. * * *

The court went on to say:

> From what has been said, it follows that a criterion for classification of an article as confectionery is its use (which may be evidenced by its manner of sale) as a confection, rather than its shape and texture, as defendant claims. Therefore, while a sweet edible product in powder form is not precluded, on that ground alone, from classification under item 157.10, it must be shown that it is chiefly used as confectionery.

While the court noted broad lexicographic definitions for "confectionery," that term, according to other authorities may be even broader. For example, in the Woman's Day Encyclopedia of Cooking, Vol. 3, p. 466 (3rd ed. 1966), it is stated with respect to the term "confection':

The word comes from the Latin word confectus, "prepared." Strictly speaking, it can mean any prepared dish * * * .

Therefore, this is an example of a situation where the tariff term should not to be considered as including everything literally within its scope. See, for example, United States v. Andrew Fisher Cycle Co., 57 CCPA 102, C.A.D. 986 (1970), and cases cited therein.

While the lexicographic, historical and decisional references thus far discussed show indecisiveness as to what constitutes a confection, other secondary authorities presuppose a more definite and limited meaning. For example, standard recipe books consistently include "confections" and "frozen desserts" as separate headings or chapters. See, for example, Rombauer and Becker, Joy of Cooking (1963 ed.), the Gourmet Cookbook (1950 ed.), Betty Crocker's Picture Cookbook (1st ed. 1950), etc. A fair inference from these and other authorities we have consulted is that the sine qua non of confectionery involves the heating and working or other processing of sugar to alter its crystalline structure to achieve special textural and visual effects. When other methods or ingredients are used, they are used to imitate these effects.

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In our opinion, this concept of confectionery is consistent with the tariff language and headnote definition as well as the discussion in the Westco Products decision, supra. While it does not take into account the use concept in the Leaf Brands decision, the merchandise in that matter was a preparation which could be used as a soft drink mix and which otherwise was not similar in any respect to the instant merchandise. Further, we do not believe the court's consideration of use factors was intended to preclude consideration of method of manufacture factors when otherwise pertinent or controlling. With respect to these, the salient feature in the production of the instant product is a freezing process, not a process involving the alteration of the crystalline structure of sugar or imitation thereof. It should be further noted that while it may be argued that Headnote 2 nevertheless presupposes a broad definition for "confectionery" by its acknowledgment of the need to limit the term by exceptions, those exceptions do not include frozen desserts. The lack of such an exception is an indication that the drafters of the TSUS did not consider frozen foods as included within the meaning of "confectionery" in any circumstances.

Therefore, it is our conclusion that for tariff purposes, the use of sugar merely as a sweetener as in frozen desserts does not make them confectionery. Nor would we regard the addition of a candy coating to a product which otherwise is not a confection as converting it to a confection.

The legislative and historical information discussed supra shows that the term "confectionery" as used in the TSUS has its genesis in the earliest tariff laws enacted before the commercial development of ice cream and other frozen desserts. Therefore, the main question here is whether the instant merchandise must be regarded as confectionery under the principle that a tariff term includes all forms of the article including improvements or new versions created subsequent to enactment of the tariff schedules. But one of the criteria for applying that rule is that the new product be known by the tariff term. Polaroid Corp. v. United States, 66 Cust. Ct. 116, C.D. 4179 (1971).

There is nothing on the packaging of the product to indicate that it is commercially or commonly designated or otherwise referred to as a candy, sweetmeat or confection. Rather, the designation translates to "frozen patties." Cassell's French Dictionary (1962 ed.). But even if the term "bouchees" used to designated the merchandise were equivalent in English to "confections," it is also well established that a tariff term does not apply to merchandise when it can only be applied to the merchandise using a modifier. See, for example, United States v. Sandoz Chemical Works, Inc., 115, C.A.D. 711 (1959). Under the rule, we would regard the term "glacee" or "frozen" as a type of necessary modifier which would preclude the classification of the merchandise as a confection even if it were designated as such.

Finally, the argument is made that the merchandise must be regarded as a confection because it is not used as a dessert. However, we regard any semantic distinctions underlying any such view as another extension of the

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use rationale of the Leaf Brands court to an unintended extreme. Therefore, we adhere to our view that frozen food products do not constitute confectionery for the purposes of classifications under item 157.10 for the several reasons enumerated above including our determination that the all-forms-of-the-article doctrine is not for application here.

It is our conclusion that the merchandise is properly classifiable under the provision for edible preparations, in item 183.05, TSUS.

Sincerely,

Arthur F. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

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SEP - 3 1986

CLA-2 CO:R:CV:G
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815944

Mr. Gary Mooney
Blaiklock Inc.
666 Burrard Street, Suite 200
Vancouver, British Columbia V6C 3C5

Dear Mr. Mooney:

This is in response to your letter of October 17, 1985, which has been referred from our New York office. Your letter concerns the appropriate tariff classification of various soft sculptures from Canada and Taiwan. Samples accompanied your request.

The articles that are the subject of this request represent a variety of stuffed figures. They have coverings composed of knit and woven man-made fiber fabrics over a polyester filling. These articles have attachments composed of plastic, metal and wood materials. You state that the articles are in chief value of man-made fibers.

Item 1 represents a head of a baker who is wearing a bowtie. The baker's head has been glued to a wooden spoon that measures approximately 12 inches and has a metal loop for hanging.

Item 2 described as "Naughty Nana" consists of a head and torso attached to a wood spoon. The figure is wearing wire glasses and a hat and dress trimmed with lace. A loop for hanging is attached to the head. The article is considered to be ornamented for tariff purposes.

Item 3 consists of a figure who is sitting on the moon, and is wearing a night hat and a nightshirt. There is a loop for hanging the article.

Item 4 consists of the heads of a man and a woman who are wearing wire glasses and bowties. Both are wearing hats. The women's hat has lace trim, and the man's hat has braid. The heads are glued to a round straw mat that has a border of fabric approximately 1 inch wide that is woven through the straw and is tied in a bow at the top of the mat. We regard the article as ornamented for tariff purposes.

Item 5 is a wood spoon rack attached to a head of a baker like that described in Item 1. The rack includes three wood spoons of varying lengths.

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Item 6 is a refrigerator magnet representing a bare bottom.

The issue here is whether these articles are classifiable as furnishings. Headnote 1, Subpart C, Part 5, Schedule 3, TSUS, defines the term "furnishings" as follows:

Subpart C Headnote

> 1. For the purposes of this subpart, the term "furnishings" means curtains and drapes, including panels and valances; towels, napkins, tablecloths, mats, scarves, runners, doilies, centerpieces, antimacassars, and furniture slipcovers; and like furnishings; all the foregoing, of textile materials, and not specially provided for.

The Customs Service has ruled on previous occasions that textile wallhangings are like furnishings. See Headquarters Ruling Letters 045156 dated August 3, 1976, and 030030 dated January 23, 1974. More recently in a ruling dated December 31, 1985, file 077105, we considered a small decorative pillow with a loop for hanging to be a wallhanging. Thus, it was classified under the provision for furnishings.

Turning to the merchandise at hand, it is our view that items 1, 2, 3, and 4 are wallhangings. We consider them to be "like" furnishings for tariff purposes. Thus, items 1 and 3 are classifiable under the provision for other furnishings, not ornamented, of man-made fibers in item 367.6325, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4 cents per pound plus 9.9 percent ad valorem.

Item 2 and item 4 are classifiable under the provision for other furnishings ornamented, of man-made fibers in item 365.8940, TSUSA, with a duty rate of 14.2 percent ad valorem.

Neither item 5, the spoon rack, nor item 6 is among the articles listed in the headnote defining furnishings. Nor, do we consider them to be furnishings "like" those listed in the headnote. Thus, they are classifiable under the provision for other articles not ornamented, of man-made fibers, other, in item 389.6270, TSUSA, with duty at the rate of 4 cents per pound plus 10 percent ad valorem.

The spoons in Item 5 are classifiable as forks and spoons, of wood, other, in item 206.4700, TSUSA, dutiable at the rate of 5.3 percent ad valorem. Articles classifiable under this provision which are products of Taiwan are entitled to duty-free treatment under the Generalized System of Preferences GSP) upon compliance with all regulations.

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Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

077460

16 SEP 1986

CLA-2 CO:R:CV:G
077460 JNB

Area Director of Customs
Airport International Plaza
Room 2104
Newark, New Jersey 07114

Re: Decision on Protest and Application for Further Review
Number 1001-5-007691

Dear Sir:

The above noted protest and application for further review were filed by counsel for protestant Cardinal Glove Co., Inc., of Clifton, New Jersey. At issue is the classification of vinyl-coated cotton gloves which are the products of Korea. Seven different styles of gloves are involved.

Customs claims that the gloves are properly classifiable as either gloves ... : of vegetable fibers: made from a pre-existing machine-knit or -woven fabric, or any combination of such fabrics: woven, under the provisions of item 704.40, Tariff Schedules of the United States (TSUS), dutiable at the rate of 25 percent ad valorem, or not woven, under the provisions of item 704.45, TSUS, also dutiable at the rate of 25 percent ad valorem. Importations of gloves which are the products of Korea under either of these item numbers are subject to the restrictions of quota category 331, in that visas from the country of origin must be obtained in order to permit their entry into the United States.

Protestant claims that the gloves are properly classifiable as gloves of rubber or plastics: other, under the provisions of item 705.86, TSUS, dutiable at the rate of 19.3 percent ad valorem. Gloves classifiable under this item number are not subject to quota restrictions.

FACTS:

Commencing January 7, 1985, at Newark, New Jersey, protestant Cardinal Glove Co., Inc., imported seven styles of vinyl coated cotton gloves under the following entry numbers: 85-713416, 713184, 713347, 713344, and 718207. Style numbers 213, 214, 658, 709 and 718 are composed of vinyl-coated knit cotton fabric. Style numbers 877 and 877L are composed of vinyl-coated woven cotton fabric.

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Redelivery of all gloves was requested because Customs found protestant's claimed classification to be incorrect. Protestant entered all the gloves under the classification as other gloves of plastic under the provisions of item 705.86, TSUS. Customs determined that these gloves were more properly classifiable as gloves of vegetable fibers under items 704.40, or 704.45, TSUS. Additionally, classification of the gloves under the textile provision imposed visa requirements on their entry into the United States. Inasmuch as no visas had been obtained and the goods had been released, redelivery was requested. Protestant did not redeliver, but filed this protest in response to the denial of entry. The protest and application for further review were timely filed and are properly the subject of this administrative ruling.

Counsel for protestant describes the gloves as having an outer surface composed of plastic and an inner lining of cotton. The outer surface is claimed to have a plastic, as distinguished from a textile, surface. It is suggested that in some styles the grainy outer surface results from the nature of the plastic coating.

ISSUE:

Are the gloves properly classifiable as gloves of rubber or plastics under item 705.86, TSUS, or as gloves of vegetable fibers, under items 704.40 or 704.45, TSUS, and thereby subject to visa requirements pursuant to textile quota category 331?

ANALYSIS:

Counsel claims that Customs requests for redelivery have been issued improperly because a uniform and established practice exists to classify each style of glove as a glove of rubber or plastic. The practice claim is based on administrative precedent and uniform liquidations.

Cardinal styles 877 and 877L are composed of base fabric of plain woven cotton. Both sides of the base fabric have been heavily napped. The exterior of the base fabric is heavily coated with plastic. Textile fibers from the nap penetrate through the coating. Tactilely both samples are furry or fuzzy. The weave construction is barely visible through the plastic.

Customs Ruling Letter of December 19, 1973, (Control No. 029939) found that a glove similar to styles 877 and 877L was classifiable as a glove of rubber or plastic under item 705.85, TSUS. The ruling stated that there is a uniform practice of

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classifying similar merchandise under the plastic glove provision. Additionally, the following rulings are cited as holding similar or identical plastic-coated gloves to be classifiable under item 705.85 or 705.86, TSUS: Customs Ruling Letter dated February 19, 1973, (Control No. 024625); Customs Ruling Letter dated September 5, 1973, (Control No. 028625); and Customs Ruling Letter dated June 28, 1979, (Control No. 062277).

A sample of the glove which was the subject of Customs Ruling Letter dated September 5, 1973, supra, has been submitted. An affidavit from the president of the company that received the ruling attests to the identity of the sample. A visual examination confirms its similarity to style 877.

Pursuant to the provisions of section 315(d) of the Tariff Act of 1930 (19 U.S.C. 1315(d)), the Secretary of the Treasury must make a finding of the existence of a uniform and established practice. A letter written by the Acting Commissioner of Customs acknowledging the existence of "an established and uniform" practice is sufficient evidence to prove that the Secretary of the Treasury had made a finding that such a practice existed. Asiatic Petroleum v. United States, 59 CCPA 20, C.A.D. 1029 (1971). Accordingly, we find that the decision of December 19, 1973, supra, signed by the Commissioner's delegee, enunciates the existence of a uniform and established practice regarding the classification of certain plastic gloves similar in style to Cardinal styles 877 and 877L. The other cited rulings substantiate this finding. As a matter of law, Cardinal styles 877 and 877L are classifiable as gloves of rubber or plastic.

Cardinal styles 213, 214, 709 and 718 are composed of a base fabric of knit cotton, heavily napped on both sides. The exterior of the base fabric is heavily coated with plastic. Textile fibers from the nap penetrate through the coating, but these fibers can only be seen microscopically. The samples have a rough grainy feel that does not resemble a textile.

Gloves similar to the above-noted styles have been held classifiable as gloves of rubber or plastic. See Customs Ruling Letter dated November 8, 1974, (Control No. 036364); and Customs Ruling Letter of March 18, 1974, (Control No. 032814). Additionally, counsel cites New York Ruling Letter of September 8, 1982, (Control No. 803728), as precedent for classifying these styles of gloves as gloves of rubber or plastic; however, a question arises with regard to the identity of the glove which was the subject that ruling letter.

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Counsel presents a sample alleged to be the subject of the New York Ruling Letter. The sample is composed of a cotton liner that has a coating of plastic. The coating is brown and imparts a grainy feel to the exterior of the glove. The sample does not comport to the description of the glove made in the letter of inquiry filed by the importer. That letter indicated that the glove was similar to the one which was the subject of Customs Ruling Letter dated February 13, 1973, supra. The sample in the latter ruling is described by counsel as a glove made of a yellow non-stretch vinyl material, which is more akin to styles 877 and 877L. As such, the New York Ruling letter is not of precedential value.

As previously noted, 19 U.S.C. 1315(d) requires that the Secretary make a finding of the existence of a uniform and established practice. None of the administrative decisions cited announce such a finding with regard to the classification of these styles of glove. Two rulings are insufficient basis upon which a finding of a practice can be made. Accordingly, a uniform and established practice does not exist with regard to glove styles 213, 214, 709 and 718 through a finding of the Secretary.

An established and uniform practice can be shown by actual uniform liquidations, even though the Secretary of the Treasury has made no 'finding' that such a practice existed. Heraeus-Amersil, Inc. v. United States, ___ CIT ___, 617 F. Supp. 89 (1985), aff'd Fed. Cir. Appeals No. 86-602/650, decided July 8, 1986. The Court can make the determination on a case-by-case basis according to certain guiding principles. Factors to be considered are the number of entries resulting in the alleged uniform classifications, the number of ports at which the merchandise was entered, the period of time at which the alleged uniform classifications took place, and whether there had been any uncertainty regarding the classification over its history. Heraeus-Amersil, supra. See also I.A. 73/85.

Counsel states that uniform liquidations of these styles of gloves at eight different districts in four different regions over a period of years substantiates a finding that a uniform and established practice as to their classification exists. Counsel avers that that uniform liquidations of these gloves as gloves of rubber or plastic occurred at Newark, JFK Airport, Seattle, Chicago, Baltimore, Cincinnati, Portland and New York Seaport.

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Counsel submits a list of entries made by Cardinal Glove at Newark in calendar years 1983 and 1984. The following number of entries of each style were liquidated as gloves of rubber or plastic during that time: (1) Style 213 - 4 entries; (2) Style 214 - 5 entries; (3) Style 709 - 4 entries; and (4) Style 718 - 2 entries. Further evidence indicates that another glove importer made 13 entries of similar style gloves at Cincinnati between September 1982 and January 1985. This second importer also had one entry of these gloves at Baltimore.

Counsel provides lists that indicate hundreds of entries of gloves occurred at Chicago, Seattle, Portland (Ore.), and New York Seaport. Numerous styles of gloves were involved. Not all of these entries were of gloves similar to styles 213, 214, 709 and 718. Affidavits presented do not confirm that all entries liquidated at these other ports were of styles similar to Cardinal styles 213, 214, 709 and 718; however, a poll of all districts reveals that import specialists involved with importation of plastic-coated work gloves, in near unanimity, agree that a uniform and established practice exists to classify these styles of glove as gloves of rubber and plastic. This fact supports the evidence presented by counsel as to the existence of a practice based on uniform liquidations.

We are of the view, therefore, that a uniform and established practice exists to classify styles 213, 214, 709 and 718 as gloves of rubber or plastic. The numbers of entries involved, the number of ports where such entries of similar gloves occurred plus the opinions of the pertinent import specialists are sufficient to support this finding.

Glove style 658 is composed of a knit cotton liner which is covered on one side by a heavy vinyl coating. The coating is opaque and no fibers can be seen through a visual examination. The coating imparts a smooth feel to the exterior of the product.

Counsel cites Customs Ruling Letter of July 11, 1980, (Control No. 064805), as supporting the proposition that a uniform and established practice exists for classifying this style of glove as a glove of rubber or plastic. The ruling states, in pertinent part, "Merchandise like the sample glove has previously been held to be classifiable under the provisions for gloves of rubber or plastic."

A sample of the glove which was the subject of that ruling has been submitted. An affidavit from the president of the company that received the ruling attests to the authenticity of the sample. The sample is identical to style 658 except for color.

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While we concede that the ruling is on point, it is insufficient, standing alone, to support a finding of a practice. The quoted language indicates that other rulings may support the classification decision reached in the subject ruling, but it is not suggested that the other rulings announce a uniform and established practice to classify this style of glove as gloves of rubber or plastic.

However, as with the previously described styles, style 658 also has been confirmed by polled import specialists to be the subject of a uniform and established practice. Numerous entries of this style glove at Newark in 1983 and 1984 were liquidated as gloves of rubber or plastic. Such style has been uniformly classified as gloves of rubber or plastic. As such, we find that a practice exists to classify style 658 as gloves of rubber or plastic.

Inasmuch as we have found that a uniform and established practice exists to classify these gloves as gloves of rubber or plastic under item 705.86, TSUS, it is unnecessary to review the classification of these products on the merits.

HOLDING:

We find that all styles of the gloves are properly classifiable as gloves of rubber or plastics: other, under the provisions of item 705.86, TSUS, dutiable at the rate of 19.3 percent ad valorem, pursuant to a uniform and established practice. Gloves classifiable under this item number are not subject to quota restrictions.

Accordingly, the protest should be allowed. A copy of this decision should be given to the protestant when notice of action is given on Customs Form 19.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

AUG - 4 1986

REFER TO

CLA-2 CO:R:CV:G
077461 JGH

077461

Ms. Joan M. Stiefel
Stiefel Laboratories Inc.
2801 Ponce De Leon Blvd.
Coral Gables, Florida 33134-6988

Dear Ms. Stiefel:

This is in reference to your inquiry concerning the tariff classification of "Policy," a product of Cayman Islands.

"Policy" is said to be a mixture of USP coal tar solution, a benzenoid surface active agent, a triglyceride and alcohol. It is used as an ingredient in therapeutic soap.

The product is a benzenoid dermatological agent, classifiable in item 412.14, TSUS. The rate of duty is 8.2 percent ad valorem.

Sincerely,

Arthur R. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 13 1986

REFER TO

CLA-2 CO:R:CV:G
077465 JGH

Mr. Alvin L. Hearst
Hearst Advertising, Inc.
350 W. Green Tree Road
Milwaukee, Wisconsin 53217

Dear Mr. Hearst:

This is in reference to your inquiry concerning the tariff classification of certain printed catalogs from Canada.

A sample catalog was submitted which depicted fur coats which it is presumed are products of the United States. The catalog, it is understood, will be distributed with price lists, which were not imported with the catalogs.

Printed catalogs without prices or printed price lists are classified under the provision for books not specially provided for in item 270.25, TSUS, and are free of duty.

Sincerely,

Arthur J. Schaffler
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP 22 1986

CLA-2:CO:R:CV:G
077471 JGH

077471

Edward J. Doyle, Esq.
Barnes, Richardson & Colburn
Attorney & Counsellors at Law
1819 H Street, N.W.
Washington, D.C. 20006

Dear Mr. Doyle:

This is in reference to your letter of December 13, 1985, concerning what you believe is a conflict between two rulings on the classification of iodine.

In a ruling (023903 dated August 2, 1973) it was pointed out that an iodine which meets U.S. standards and has a 99.8 percent purity and has not been resublimed would be considered crude in item 415.25, TSUS, since crude iodine was normally considered to be 99.0 to 99.8 percent pure.

In a subsequent ruling (073941 dated September 6, 1984) an iodine of 99.95 percent purity which had not been resublimed was considered. It was noted that resublimed iodine was 99.9 percent pure or better, and it was concluded that an iodine which had been processed to a purity greater than resublimed and was used for the same purposes as resublimed would no longer be considerd crude for tariff purposes. Rather, it was classified under the similitude provision in item 798.00, as most resembling resublimed iodine in item 415.27, TSUS. It is now contended that the same process was used to produce the iodine considered in both the 1973 and 1984 decisions and therefore the 1973 ruling is binding. It is argued that the fact that an iodine may be 99.9 percent pure does not take it out of the crude category, since that product's increased purity is not the result of resublimation but improved technology which has increased the purity of a crude iodine. Therefore, since the product is not resublimed it has to be considered crude.

We take the position that the 1973 ruling is not controlling on the classification of an iodine of 99.9 percent purity. The earlier decision considered the classification of an iodine of 99.8 percent purity. It was noted in the 1973 decision that crude iodine is normally 99.0 to 99.8 percent pure.

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In the 1984 decision, it was noted that resublimed iodine was 99.9 percent pure, and the conclusion was that an iodine processed to a degree of purity greater than 99.9 percent was classified by virtue of the simulitude provision as resublimed iodine.

We see nothing inconsistent in those decisions. The 1973 decision covered a product, the purity of which was within the crude range. The 1984 decision dealt with iodine acknowledged to be similar to resublimed.

Historically, the tariff has viewed the resublimed product as improved over the crude product. The 1948 Summaries of Trade and Tariff Information noted that resublimed iodine is obtained by condensing the vapor from heated crude iodine. The resublimed is used principally in medicines. The traditional view was that the iodine had to be resublimed before it could be commercially acceptable.

The 1973 decision dealt solely with the classification of an iodine which was of a purity within the range of that of crude iodine. Essentially the only issue was whether the fact that it met U.S.P. standards removed it from the crude state. The decision did not set up a standard for any iodine processed without resublimation to the highest degree of purity. As has been shown, traditionally the tariff has regarded "crude" as a product which is not advanced and remains in a relatively unfinished condition. The fact that the purity of iodine has been improved without resublimation does not mean that the product would remain "crude." An iodine which has been purified without resublimation to a purity equal to or better than that of resublimed iodine can certainly not be considered "crude," especially if its purity approached 100.0 percent. It is interesting to note that those who use iodine of a purity in the resublimed range but which has not, in fact, been resublimed, admit that the iodine is of resublimed quality.

Thus we see no contradiction in the decisions and remain of the opinion that an iodine which is in the purity range associated with crude iodine would be classified as crude, and one in the resublimed range, if it was not resublimed, would be classified as resublimed iodine by virtue of the similitude provision.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

AUG 27 1986

REFER TO

CLA-2:CO:R:CV:G
077490 PR

077490

Gail T. Cumins, Esq.
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, New York 10004

Dear Ms. Cumins:

In your letters of December 13, 1985, and January 23, 1986, on behalf of W. L. Gore & Associates, Inc., you requested a ruling on the tariff status of two jackets. Our decision on the matter is enclosed.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 27 1986

REFER TO
CLA-2:CO:R:CV:G
077490 PR

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This ruling concerns the tariff status of two men's jackets.

ISSUE:

The issue presented by the subject merchandise is whether garments can be classified under the provision for garments designed for rainwear, hunting, fishing, and similar uses, wholly or almost wholly of fabrics which are coated or filled, or laminated, with rubber or plastics material, of man-made fibers, in item 376.56, Tariff Schedules of the United States (TSUS), if the coated, filled, or laminated, fabrics which provide protection from moisture or dampness are not the outershell fabrics.

FACTS:

Two sample garments were submitted. Both are men's jackets that extend downward to the hip area and have long sleeves with a full front zippered opening that extends to the tip of the collar. One is a lighweight garment with a woven man-made fiber outershell and a knit man-made fiber lining. The lining has a plastics material laminated on its nonexposed surface. This plastics material is stated to make the garment waterproof as well as windproof. The other garment is a man's

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ski-type jacket with an elasticized waist, a self hood contained in a compartment located at the back of the collar, a placket which covers the front zippered opening, knit sleeve cuffs, and four exterior pockets that are secured with zipper closures. The outershell fabric on this garment is made from a woven man-made fiber fabric, as is the lining. Between the lining and the outershell is a thick man-made fiber batting or insulating layer. Attached to the exterior side of this insulating layer is a man-made fiber fabric that has been laminated with the same plastics material as used in the first garment. On both garments the inside seams have been sealed with what appears to be a plastic tape in order to prevent water or moisture penetration.

Sufficient advertising literature has been submitted to convince Customs that these garments are sold as waterproof and windproof garments.

LAW AND ANALYSIS:

Both sample garments are the type of garments that may be classified in item 376.56, TSUS. See Izod Outerwear v. United States, United States Court of International Trade, Slip Op. 85-72 (decided July 23, 1985), which concerned men's light-weight woven jackets, and A. N. Deringer Inc. v. United States, 66 Cust. Ct. 378, C.D. 4218 (1971), which held that waterproof snowsuits were classifiable in item 376.56 because the water resistance feature of those garments distinguishes them from other such garments.

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By the express wording of the superior heading to item 376.56, in order for garments to be classifiable under that tariff provision, those garments must be "wholly or almost wholly of fabrics which are coated or filled, or laminated, with rubber or plastics." In the case of the two samples, neither sample is wholly of fabrics that are coated or filled, or laminated with rubber or plastics. Accordingly, in order to be classifiable under item 376.56, the garments must be determined to be "almost wholly of" such fabrics. The term "almost wholly of" is defined in General Headnote 10(f)(iii), TSUS, as meaning that the essential character of the article is imparted by the named material, notwithstanding the fact that significant quantities of some other material or materials may be present. In Deringer, supra, the court determined that although the garment before it was designed to provide warmth to the wearer, the essential character of that garment was imparted by the plastics coated or laminated fabric which made the garment waterproof.

However, the garments which the courts have previously ruled upon in this area have all had the coated or filled, or laminated fabric which provided the necessary water resistant feature to those garments on their exteriors or outershells. Customs is now urged to take the position that since the language of the predecessor provisions to item 376.56 required the outershell fabric to be the fabric in the garment with

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a plastics coating, and that the legislative history of the statute changing those provisions did not indicate an intention by Congress to change that requirement, the subject garments should not be classified in item 376.56.

The original language of items 376.50-376.58, TSUS, which are the predecessor provisions to the present rainwear provisions, only included within their coverage garments which had their outershell coated or covered with rubber or plastics material.

In reviewing all the material and arguments presented to Customs concerning the intended coverage of the changes created by the Tariff Schedules Technical Amendments Act of 1965, which enacted the present rainwear provisions, we are unable to find any clear expression of legislative intent that the new rainwear provisions were intended to cover only that merchandise previously classifiable as rainwear. In fact, in looking at the specific wording of the superior heading to the present rainwear provisions, there are two clear indications that Congress did not, in fact, intend the coverage of the new rainwear provisions to be limited only to those garments previously classified in the predecessor provisions. First, the prior provisions were applicable only to rainwear. The present provisions are applicable to garments designed for rainwear, hunting, fishing, and similar uses. The present provisions clearly expand the coverage over what was includable under the predecessor provisions. Secondly, and

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perhaps most importantly, the superior heading to the present rainwear provisions imposes a criterion for classification under those provisions not previously required. This is the "almost wholly of" test which requires Customs to look at which portion of a garment provides that garment with its essential character.

In view of the significant changes which Congress made when enacting the present rainwear provisions, we find no clear evidence that those provisions were intended to be limited only to that merchandise previously classifiable as rainwear.

HOLDING:

There is no requirement that in order to be classifiable in item 376.56, the outershell fabric of a garment must be the fabric providing the essential character to that garment. Accordingly, both sample garments, described above, are classifiable under the provision for garments designed for rainwear, hunting, fishing, and similar uses, wholly or almost wholly of fabrics which are coated or filled, or laminated, with rubber or plastics, of man-made fibers, in item 376.56, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

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SEP 22 1986

Mr. Leonard Pasternak
President
Components Corporation
400 Salisbury Road
Wyncote, Pennsylvania 19095

Dear Mr. Pasternak:

That portion of your letter dated November 8, 1985, addressed to our New York office concerning the dutiable status of an insole produced in Taiwan, has been referred to this office for a direct reply to you. A sample was submitted for examination.

The sample is a molded, full insole of foamed plastic with a non-woven fabric sock lining.

The issue to be decided is whether the insole is almost wholly of foamed plastic. General Headnote 9(f)(iii), Tariff Schedules of the United States (TSUS), defines the term "almost wholly of" to mean "that the essential character of the article is imparted by the named material, notwithstanding the fact that significant quantities of some other materials may be present."

It is our view that the insole is almost wholly of foamed plastic. It is thicker in the heel and arch area than at the ball and has been molded to "cup" the wearer's heel. It is our opinion that both of these features which are imparted by the foamed plastic are present to provide substantial shock absorption and to increase the foot's stability by preventing one's heels from sliding within the shoe. These two characteristics are intended to reduce the chance of injury while jogging and constitute the essential character of the merchandise. It should be noted that the plastic is the only material which contributes to this "essential character."

In view of the foregoing, it is our position that the sample insole is classifiable under the provision for expanded, foamed, or sponge rubber or plastics, and articles not specially provided for wholly or almost wholly of such rubber or plastics in item 770.80, TSUS, and dutiable at the rate of 7.3 percent ad valorem.

Sincerely,

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for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 31 1986

CLA-2 CO:R:CV:G
077588 c

Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

Re: Decision on Application for Further Review of Protest Nos. 1001-2-008652 and 1001-2-008653

These protests were filed against your decisions in the liquidations of various entries covering shipments of athletic footwear produced in Korea.

This ruling concerns the validity of American selling price appraisements of certain athletic footwear.

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FACTS:

The athletic footwear involved invoiced as "Pony Slam Dunk", "Pony Court" and "Pony Junior Court" was classified in liquidation under the provision for other footwear which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics in item 700.60, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 percent ad valorem.

Schedule 7, Part 1, Subpart A, Headnote 3(b), TSUS, provides that "Subject to the provisions of section 336 of this Act, the merchandise in item 700.60 shall be subject to duty upon the basis of the American selling price as defined in section 402 or 402a of this Act, of like or similar articles manufactured or produced in the United States."

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Pursuant to the above-cited headnote style No. 6520 "Slam Dunk" was found to be legally similar to the domestically produced Converse All Star Pro Canvas (Pro) while style Nos. 5424 (No. 1 Tracy) and style No. 5544 (No. 1 Tennis) were found to be legally similar to the domestically produced Keds Whirlwind (Whirlwind) and the Keds Tornado (Tornado) respectively. The American selling price of the "Pro" varied from $13.20 less 2 percent to $17.40 less 2 percent depending upon the date of exportation. The American selling price of the "Whirlwind" was $22.50 less 2 percent. The American selling price of the "Tornado" was $22.50 less 2 percent.

The protestant maintains that the imported styles should be appraised at invoice values or alternatively at lower ASP values.

ISSUE:

1. Were the domestically produced prototypes freely offered within the purview of section 402a(g), Tariff Act of 1930, as amended?

2. Are the imported shoes legally similar to the domestic prototypes for ASP purposes?

LAW AND ANALYSIS:

For the purposes of determining similarity in American selling price cases, four tests have been used as guides: (1) similarity of material; (2) commercial interchangeability; (3) adaptability to the same use; and (4) competitive character.

In 1966 certain guidelines to be used in appraising footwear were issued by the Commissioner of Customs. Those guidelines provide in part that "In carrying out that function such officers shall use all reasonable ways and means to select the product manufactured in the United States

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which in their opinion is like or most similar to the import in physical characteristics, such as appearance, durability, quality construction, workmanship and finish."

Protest No. 1001-2-008652
Protestant's Position

The American selling price basis of valuation is not proper because at the time of exportation of the imported footwear the domestically produced "Pro" was not freely offered for sale and there was no price an American manufacturer, producer or owner "would have received or was willing to receive for such merchandise."

It is asserted that the claim that the "Pro" was not freely offered is substantiated by the fact that before August 1980, the "Pro" had a vulcanized construction while after that date it was changed to a stitched construction. Delivery of the stitched construction footwear did not take place until approximately October or November of 1980 which means that the "Pro" could not have been freely offered to all purchasers at said time.

In support of its position that the "Pro" was not freely offered the protestant maintains that Converse's lack of massive distribution of the "Pro" shows that there was no price at which such shoes were freely offered for sale to all purchasers.

Customs' Position

We disagree with protestant's claim that the "Pro" was not freely offered and that there was no price an American manufacturer, producer or owner "would have received or was willing to receive for such merchandise." Our reasons for this position are as follows:

(1) The Converse catalog was widely distributed by mail and at trade shows.

(2) The "Pro" was in the Converse catalog for at least 3 years. It is unlikely that a reputable company would make bad faith offers of a shoe over a period of years.

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(3) The President of Converse has submitted an affidavit stating that all cataloged American made shoes are freely offered.

(4) There is no merit to the claim that the approximately 25 percent price increase of the "Pro" in August of 1980 shows that the offer was in bad faith. The period of 1979-1980 was one of record high inflation. It is more surprising that Converse did not substantially increase the price of the Pro in early 1980 than that it increased the price of the Pro 25 percent in August of 1980.

(5) There is no merit to the statement that the "Pro" was not freely offered because it did not have massive distribution. The protestant has not presented any evidence to support that statement and the courts have never held that an American prototype had to have "massive distribution" in order for the offer to be bona fide.

The protestant claims that the "Pro" was changed from a vulcanized construction to a stitched construction in August of 1980. We know that this statement is not accurate because:

(1) The Converse catalog of 1979 describes the shoe as having a "single unit outsole (shell molded bottom) and the stitching of the unit outsole to the upper is clear in the picture. The Converse catalogs of 1980 and 1981 show the same.

(2) The sample received from Converse in August of 1979 was just like the picture. It was not vulcanized, but had a stitched, shell molded bottom.

(3) Converse used the same stock numbers for 5 of the shoes of this style from 1979 through 1981. Our experience was that Converse would usually change the stock number if they just changed the color or the size run. However, they would always change the stock number and usually change the style name, if the method of construction were changed.

Protestant's Position

In the alternative, if the American selling price is found to apply, the protestant claims that the proper domestic prototype on which to base a appraisement is the Converse Poly 500 (Poly 500).

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The imported footwear and the "Poly 500" are similar with respect to their commercial character as determined by the tests of Zerkowitz, and thus are similar with respect to American selling price. This is established by a comparison of the footwear used for appraisement purposes, "Pro" with the claimed footwear "Poly 500," which shows that the "Poly 500" is closer in price to the imported footwear than the "Pro."

The imported footwear and the "Poly 500" footwear are similar with respect to their process of manufacture, materials, quality and construction, and thus, are similar for American selling price purposes. The manufacturing process of the "Poly 500" and the imported footwear are basically the same, i.e., both are vulcanized and unstitched. In contrast, the manufacturing process of the "Pro" utilizes a cold process which is dissimilar from the vulcanized, stitched construction of both the "Poly 500" and the imported footwear.

The construction of the "Poly 500" and the imported footwear are closest to each other than to any of the other footwear which are claimed to be alternative prototypes. Both are of similar weight canvas, both are tricot lined and both are padded. In constrast, the "Pro" uses a heavier duck canvas and is unlined.

The imported footwear and the "Poly 500" meet the criteria of "commercially interchangeable" and "adaptable for the same use" as determined under Zerkowitz, and thus, are "similar" for American selling price purposes. Both the "Poly 500" and the imported footwear are "commercially interchangeable" and "adaptable for the same use." Both footwear perform the same general athletic purpose and may be chosen as substitute for each other by prospective consumers. In contrast, the "Pro"

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and the imported footwear do not meet these criteria, as evidenced by the "Pro's" superiority of construction and commercial appeal to professional basketball players rather than to the general public.

The imported footwear and the "Poly 500" meet the criteria of "competitive character" as determined under Zerkowitz and thus, are similar for American selling price purposes. The higher quality, professional "Pro" footwear does not compete directly with the lower quality, general purpose imported footwear. In addition, the Customs Service compared the imported footwear to the "Poly 500" up to 1979. As both styles of footwear have not substantially changed since 1979, the Customs Service should maintain its position with respect to its comparison of these two footwear styles.

In the alternative, if the "Poly 500" is determined not to be the proper domestic prototype, the protestant claims that the Converse All Star II (Star II) is the proper domestic prototype on which to base appraisement.

The imported footwear and the "Star II" are similar with respect to their "commercial character" as determined under the tests of Zerkowitz, and thus, are "similar" with respect to American selling price. This is established by the fact that a comparison of the domestically produced "Pro" with the "Star II" shows that the "Star II" is closer in price to the imported footwear than the Pro.

The imported footwear and the "Star II" are similar with respect to the process of manufacture, materials, quality and construction and thus are "similar" for American selling price purposes. The manufacturing process and construction of both footwear are basically the same. The construction is "similar" in that they both have a padded collar and similar weight canvas. The protestant's contention that the "Poly 500" is

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the preferred prototype rather than the "Pro", "Star II" and the Pro Keds Royal #1 (Royal #1), is supported by evidence that both the imported footwear and the "Poly 500" are the only footwear that have a tricot lining.

The imported footwear and the "Star II" meet the criteria of "commercial interchangeability" and "adaptability for the same use" and "competitive character" as determined under the tests of Zerkowitz, and thus, are "similar" for American selling price purposes.

In the alternative, if neither the "Poly 500" nor the "Star II" is determined to be the proper domestic prototype, the protestant claims that the "Royal #1" is the proper domestic prototype on which to base appraisement.

The "Royal #1" is "similar" to the imported footwear for American selling price purposes because it meets the established tests and guidelines for determining similarity. This is established by the fact that the imported footwear and the "Royal #1" are similar with respect to their "commercial character," "competitive character," process of manufacture, materials, quality, construction, "commercial interchangeability" and "adaptability for the same use."

The imported footwear and the "Royal #1" are "similar" with respect to their "commercial character" as determined under the tests of Zerkowitz, and thus, are "similar" with respect to American selling price. This is established by the fact that a comparison of the footwear used for appraisement purposes namely, the "Pro" and the "Royal #1" shows that the "Royal #1" is closer in price to the imported footwear than the "Pro."

The imported footwear and the "Royal #1" footwear are similar with respect to process of manufacture, materials, quality and construction, and thus are "similar" for American selling price purposes. The manufacturing E11

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process and construction of both footwear are basically the same. The protestant's contention that the "Poly 500" is the preferred prototype in comparison to the "Pro," "Star II" and "Royal #1" is supported by evidence that both the imported footwear and the "Poly 500" are the only footwear that have a tricot lining.

The imported footwear and the "Royal #1" meet the criteria of "commercial interchangeability" and "adaptability for the same use" and "competitive character" as determined under the tests of Zerkowitz, and thus, are "similar" for American selling price purposes. The imported footwear and the "Royal #1" would be accepted as substitutes by an American consumer.

Customs' Position

We agree with the protestant that the "Poly 500," "Star II" and the "Royal #1" are similar to the imported footwear. The protestant appears to concede that our prototype, the "Pro," is also similar to the import. The protestant's assertion that we should use the "Poly 500" as the proper prototype based on the premises that it is similar to the import and is "lower in price" is misplaced. The Treasury Guidelines of 1966 quoted by the protestant direct Customs officers" to select the product... which, in their opinion, is like or most similar to the import." The Guidelines therefore use price as a criteria only when several prototypes are found to be approximately equal in similarity. It is our opinion that the "Pro" is the most similar of the similar domestically produced shoes by a significant margin so the price comparison between the import's FOB and the ASP's of the similar American prototype is not a factor.

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It is our opinion that the "Pro" is the most similar domestically produced prototype because its method of construction is more similar to the import than the alternative shoes. The import has a shell molded bottom, i.e., the sidewalls and the outsole are one molded piece. However, instead of stitching the shell molded bottom to the upper, a rubber foxing tape was vulcanized to the upper and to the shell bottom. Since the molded shell bottom is on the outside of the shoe and most of the foxing tape is hidden under the shell and since the shell construction provides the strength to the critical joint between the outsole and sidewall, we consider this import to have primarily a shell molded construction. This is not only our opinion. All Pony catalogs submitted by the protestant describe the "Slam Dunk" as having a "shell mold." It is never described as vulcanized, presumably because that is less significant.

We accept the affidavit of Ricardo Cohn describing the construction of the "Slam Dunk" as having no false statements of fact. However, it is obviously incomplete because it fails to describe the many steps necessary to produce the shell molded bottom before it was vulcanized to the upper. We do not accept his conclusion that "the total operation of the Pony Slam Dunk, Converse Poly 500 and Converse All Star II is 95 percent the same," because these two Converse shoes do not require a shell molded bottom to be made first. We also note that the statement that "the cost of the cold construction is 60 percent to 70 percent higher than the vulcanized construction" is probably accurate, but is irrelevant. The cold process used in the "Pro" is more expensive than the vulcanized construction of the "Converse Poly 500 and All Star II footwear." However, this does not imply the same for the import, the Pony "Slam Dunk," because it required both a vulcanized process and the molding of the shell molded bottom.

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We do not agree with the importer's assertion that the "Pro" is higher quality professional footwear while the import is "lower quality, general purpose" footwear. The protestant has not submitted evidence to support this assertion, and our perception is that the two shoes are about equal. It should be noted that even Mr. Cohn states in his affidavit that the construction of the "Slam Dunk" is a "much cleaner and neater operation" than that in the vulcanized shoes which protestant claims are more similar. The protestant also states that the "Pro" had "a substantial volume of returns due to the sole and the canvas breaking apart from each other." This is hardly indicative of "higher quality professional" footwear.

We disagree with the protestant's unsubstantiated statements that the "Pro" and the imported footwear were not commercially interchangeable and were sold through different channels of trade. The protestant has not stated what different channel of trade he believes each shoe was in. The only argument made for the lack of commercial interchangeability is the relative pricing. Assuming retailers took the same 60 percent mark-up on all styles, the retail price in February of 1980 of the high top of each style cited is: the "Pro" at $22.40 ($14 plus 60 percent), the imported Pony "Slam Dunk" at $20.80 ($13 plus 60 percent), the Converse "All Star II" at $20.16 ($12.60 plus 60 percent), the Converse "Poly 500" at $17.60 ($11 plus 60 percent) and the Uniroyal Pro Keds "Royal #1" at $23.20 ($14.50 plus 60 percent). Since the "Pro" the "Star II" and the "Royal #1" are all within 10 percent of the "Pony Slam Dunk," we believe the pricing would have negligible effect on the consumer. The one possible inference that could be drawn is that a consumer who saw the American made "Poly 500" in the store window might be reluctant to purchase the import, the

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"Slam Dunk," due to the 15 percent higher cost of the import. Also because of the far higher unit labor costs in the United States, the ASP law seems to assume that any truly similar import will be lower priced at retail, not higher priced, than the American made shoe.

It is our opinion that the upper of our prototype, the "Pro" is as similar to the upper of the import as the upper of the protestant's prime claimed prototype, the "Poly 500." The "Pro" does have a heavier cotton canvas material than the import and does not have a tricot lining, unlike the import. This is a noticeable difference. However, the "Poly 500" has a polyester upper, (hence the name "Poly 500"), not a cotton canvas upper like the import. This is an equally noticable difference in our opinion.

The uppers of both the "Star II" and the "Royal #1" have loose lined uppers unlike the import. The footwear trade has always considered loose-lined sneakers to be substantially different in their wear and comfort characteristics and their production requirements from non-loose lined sneakers. We agree and thus consider these uppers to be substantially different from the import's uppers.

The protestant states that "Customs compared the imported merchandise to the 'Converse Poly 500' up to 1979." This appears to be true. At this time, we cannot say with any certainty why we did not use the "Pro" as the prototype earlier. Our best guess is that it was not believed to be freely offered prior to 1979. These shipments were in 1980 or 1981. Also, even if it was an error on our part, we do not believe it is grounds for excluding use of the "Pro" for later exports. American selling price is a value issue rather than a classification issue. In the case of Hensel, Bruckmann & Lorbacher, Inc. for Verona Dyestuffs v. United States, 49 CCPA 15, C.A.D. 787 (1962), the court found that a change in appraisement from

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non-ASP to ASP, not just a change from one ASP to another, was not a change of practice even though the product had been previously listed for two years as non-ASP on a "list prepared for public distribution."

With respect to protest No. 1001-2-008652, we conclude that the "Slam Dunk" was properly appraised on the American selling price of the domestically produced "Pro."

Protest No. 1001-2-008653
Protestant's Position

The domestic prototype was not freely offered for sale at the time of exportation of the imported footwear, thus negating the American selling price statutory requirement of a freely offered price.

Alternatively, if the American selling price is found to apply, the protestant claims that the proper domestic prototype on which to base appraisement is the Keds Court Ace Mesh (Ace Mesh).

An examination of the imported footwear and a comparison with the footwear used for appraisement purposes (Whirlwind) and with the claimed footwear (Ace Mesh) shows that the "Ace Mesh" is closer to the imported footwear on the basis of construction, quality, materials, price and appearance.

There is a fundamental difference in the method of construction between the imported footwear and the "Whirlwind" footwear. The imported footwear is made by a process of vulcanization as is the footwear which is claimed to be the proper prototype for the purposes of appraisement, namely the "Ace Mesh." On the other hand, the "Whirlwind" footwear is an injected polyurethane shoe. On the basis of the substantial differences in construction the prototype domestic shoe is legally dissimilar to the imported footwear.

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Customs' Position

With respect to the claim that the domestic prototype was not freely offered, it is to be noted that pursuant to section 152.24(c)(1), Customs Regulations, the domestic manufacturer has certified that it freely offers its shoes to all purchasers in compliance with section 402 and 402a, Tariff Act of 1930, as amended.

The protestant appears to believe that the "No. 1 Tracy" and "No. 1 Tennis" are shoes for females. The protestant has proposed a single alternate prototype for both styles. That alternate prototype, the "Ace Mesh," is available only in women's and misses sizes as shown on the catalog page submitted by the protestant. However, the "No. 1 Tennis" is actually a men's shoe. This is clear from the invoices included in the protested entries.

The protestant describes both Pony styles as "made by a process of vulcanization." This is a misleading description. Both Pony styles have two color cup or shell molded soles, i.e., the outsole and the sidewalls are molded into one piece. The "two color" effect is achieved by dividing the molding process into two steps, first using the blue and then the white rubbery material. Instead of stitching the shell molded sole to the upper, which is usual, Pony vulcanized a rubber foxing tape to the inside of the shell molded sole and to the fabric of the upper. The construction is much more like the standard molded construction. This is also apparently the opinion of Pony personnel because the Pony Pricelist dated March 1, 1982, described both styles as "Shell Mold" and says nothing about vulcanization.

We find substantial merit in protestant's claim that the "Ace Mesh" is the proper domestic prototype. The comparison of features may be seen in the following columnar format:

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	"No. 1 Tracy"	"Whirlwind"	"Ace Mesh"
1. Two Color Bottom? -	Yes	Yes	No
2. Material Bottom? -	Rubberlike	Polyurethane	Rubberlike
3. Double Density Bottom? -	No	Yes	No
4. Simultaneous Injection Construction?	No	Yes	Yes
5. Material of Inside Collar?	Terrycloth	Plastic	Terrycloth

When the original appraisement was made, we considered it very important that the "Whirlwind" had a two color bottom as did the "No. 1 Tracy." This is something very apparent to the potential purchaser. However, the fact that the bottom of the "Whirlwind" is made up of two different densities of polyurethane, not just two different colors of the same material, is also quite significant. Double density bottoms are intrinsically superior to single density bottoms because they can use the heavier density material in the outsole, where it is needed, and they are substantially more expensive because of the complications arising from the different melting temperatures and pressures needed. Therefore, it is our opinion that the "Ace Mesh" is approximately as similar to the "No. 1 Tracy" as the "Whirlwind." We note that the "Ace Mesh" is "closer in price" to the "No. 1 Tracy" than the "Whirlwind" is, as that term is used in the 1966 guidelines dealing with American selling price appaisements.

On this basis, the protestant's claim for appraisement at invoice value should be rejected but the alternate claim of an American selling price at $13 less than 2 percent using the "Ace Mesh" should be accepted. It should be noted that the price of the "Ace Mesh" increased from $12.50 less 2 percent to $13 less 2 percent effective January 1, 1981.

The "No. 1 Tennis" is the same as the "No. 1 Tracy" except that the "No. 1 Tennis" is a men's not a women's shoe. We found the "No. 1 Tennis" to be "most similar" to the "Tornado" at $22.50 less 2 percent. The "Tornado" was made in the same manner as the "Whirlwind"

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except that it has a lace-to-toe upper configuration, not a Tretorn/ Bal upper, and it is a men's, not a women's shoe. On reconsideration, we are reluctant to use the "Tornado" as the ASP prototype of the "No. 1 Tennis" because of the difference noted with respect to the "No. 1 Tracy" and because of the large visual difference between a lace-to-toe and a Tretorn/Bal upper. We cannot accept the protestant's alternative, the "Ace Mesh," because it is a women's shoe. We note that the Keds Surfer XL (Surfer XL) is another possible domestically produced prototype.

The principle characteristics of the shoes involved are shown in columnar format as follows:

	No. 1 Tennis	Tornado	Surfer XL
1. Two Color Bottom?	Yes	Yes	No
2. Upper Configuration?	Treton/Bal	Lace-to-toe	Bal
3. Upper Material?	Mesh with fabric trim	Mesh with fabric trim	Woven fabric
4. Outsole Material	Rubberlike	Polyurethane	Rubberlike
5. Construction	Shell molded and partly vulcanized	Double Density simultaneous injection	Vulcanized

We find the differences between the "Tornado" and the "No. 1 Tennis" to be approximately as important as the differences between the "Surfer XL" and the "No. 1 Tennis." We note that the "Surfer XL" is closer in price to the "No. 1 Tennis" than the "Tornado."

In view of the foregoing, the proper American selling price is $11 less 2 percent using the "Surfer XL" as the domestic prototype for exports as of January 1, 1981.

HOLDING:

Protest No. 1001-2-008652 should be denied.

Protest No. 1001-2-008653 should be allowed to the extent that the "No. 1 Tracy" should be appraised on the American selling price of the domestically produced "Ace Mesh."

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Protest No. 1001-2-008653 should be allowed to the extent that the "No. 1 Tennis" should be appraised on the American selling price of the Surfer XL provided the protestant amends its protest accordingly.

A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 12 1986

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Mr. Nathan Wein
HAV International Freight Corp.
45 John Street
Suite 1200
New York, New York 10038

Dear Mr. Wein:

You requested a tariff classification ruling for a lamb's wool sequin sweater on behalf of your client Fairfield-Noble Corporation. You submitted a sample of the sweater along with your letter.

The sample submitted has a shell of lamb's wool fabric that is fully covered with sequins and beads. The rows of sequins and beads do not overlap, consequently some textile is visible. This small area of visible textile is considered an insignificant amount of visible textile, therefore the garment is not ornamented for tariff purposes. Headnote 3(b) of Schedule 3, Tariff Schedules of the United States (TSUS), is noted.

If the sweater is in chief value of the sequins and beads, it is classified under the provision for articles not specially provided for, of beads, of bugles, of spangles, of imitation gemstones, or of any combination thereof, in item 741.5040, TSUS, dutiable at the Column 1 rate of 7.3 percent ad valorem. If the sweater is in chief value of lamb's wool, it is classified under the provision for other women's wearing apparel, not ornamented, of wool, knit, other, valued over $5 per pound, other, in item 384.6360, TSUS, dutiable at the Column 1 rate of 6 cents pound plus 17.5 percent ad valorem. In order to determine the component material in chief value of an article, the value of each component must be ascertained at the time when they have reached such condition that nothing remains to be done to them except put them together. See United States v. Jovita Perez et al., 44 CCPA 35, C.A.D. 633 (1957).

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Your question regarding the marking of this article is being referred to our Entry, Licensing and Restricted Merchandise Branch for a separate reply to you.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1986

REFER TO

CLA-2:CO:R:CV:G
077607 JAS

Bernard Mandel, Esq.
Attorney at Law
27040 Cedar Road
Beachwood, Ohio 44122

Dear Mr. Mandel:

In a letter dated December 11, 1985, on behalf of your client, HOSE MASTER, INC, you request a ruling on the tariff status of certain corrugated flexible metal hose from Italy. Brochures and other materials were submitted.

You describe this hose as being made from carbon steel strip which is formed and welded to make a tube. The tube is then forced into a turning die to form continuous convolutions of varying pitch that are annular or parallel to each other. This manner of construction is said to result in lesser strain than corrugated hose with helical or continuous spiral convolutions, thus increasing the flexing life of the hose. A sheath of tubular metal braid, woven in basketweave fashion, is designed to fit snugly over a type of this metal hose which is to be subjected to high internal pressure. This braid flexes with the hose and prevents elognation under pressure.

You differentiate corrugated hose, both spiral and annular, from interlocked hose which you state is made from a metal strip that is spirally wound, the edge of the strip being folded to make an interlocking joint. Flexibility is achieved by allowing one interlocking joint to slide within the other. So-called square locked, "S" locked and "M" locked configurations are examples of this type hose. Corrugated hose is suitable for all liquids and gasses, interlocked hose is satisfactory for steam and those thicker liquids where absolute tightness is not essential. Brochures describing the "family" of flexible hose consistently include both interlocked and corrugated types providing evidence, in your opinion, that the commercial meaning of "flexible hose" includes both the interlocked and corrugated types.

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Consequently, you maintain that the provision for flexible metal hose or tubing, whether covered with wire or other material, and with or without fittings, in item 652.09, Tariff Schedules of the United States (TSUS), represents the proper classification of this merchandise. You note that both interlocked and corrugated types appear to be covered by Heading 83.08, Brussels Tariff Nomenclature "FLEXIBLE TUBING AND PIPING, OF BASE METAL, which sufficiently parallels the language of item 652.09, TSUS, so as to be evidence of the legislative history to the provision.

There is some doubt that the cited CCCN language is even applicable. In addition to covering flexible metal tubing and piping -- whereas the concerned TSUS provision relates to hose or tubing -- explanatory notes thereunder covering corrugated flexible tubing and piping, describe a product obtained by stamping or rolling a smooth surfaced pipe. The annular corrugated product about which you inquire is welded to make a tube.

Notwithstanding this, ascertaining the intent of Congress, as you know, is primary in the interpretation of any statutory provision, particularly where such intent is shown to restrict the otherwise more inclusive common meaning of a tariff term. In our opinion, the case of J. E. Bernard & Co., Inc. v. United States, 64 Cust. Ct. 525, C.D. 4029 (1970), confirms Congressional intent to limit the scope of item 652.09, TSUS. In confirming classification of copper tubing, hard covered with tinned copper braid, under the provision for seamless copper pipes and tubes and blanks therefor, in item 613.02, TSUS, the court dismisses an alternative claim under item 652.09 as follows:

> The tariff description "flexible metal hose or tubing", TSUS item 652.09, was legislated from and is substantially the same as the tariff description in paragraph 328 of the Tariff Act of 1930. (Tariff Classification Study, Schedule 6, page 200). Summaries of Tariff Information are a recognized source of resolving questions relating to the meaning and scope of terms which appear in various tariff acts, and in determining the intent of Congress. In the Summary of Tariff Information 1929, Schedule 3, compiled by United States Tariff Commission for the use of the House Committee on Ways and Means, at page 702, there appears the following pertinent heading and discussion:

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FLEXIBLE METAL TUBING OR HOSE

> Description and uses. - Flexible metal tubing is made from a continuous metal strip spirally wound and formed in a single or double groove. The edges of the strip are turned in so as to make an interlocked joint...

It therefore appears that the provision in item 652.09 was intended to encompass only flexible metal hose or tubing of interlocked construction.

For these reasons, and noting the Schedule 6, Part 2, Headnote 3(e), TSUS, definition for "pipes and tubes and blanks therefor", which includes tubular products of any cross-sectional configuration, whether seamless, brazed or welded, the subject annular corrugated stainless steel flexible hose is classifiable under the provision for pipes and tubes and blanks therefor, of iron or steel, not suitable for use in the manufacture of ball or rolling bearings, in item 610.52, TSUS, dutiable in 1985 at the rate of 9.3 (now 8.4) percent ad valorem, plus additional duties depending on alloy content.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

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07607

T11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 21 1986

CLA-2:CO:R:CV:G
077610 JCH
816241

Ms. Annal M. Frenz
Sales Manager
Al Frenz Associates, Inc.
11434 S.W. 33rd Avenue
Portland, Oregon 97219

Dear Ms. Frenz:

This is in further reference to your letter of November 15, 1985, concerning the tariff classification of anti-theft apparatus for automobiles which the New York region has forwarded to us for reply.

The anti-theft systems in question come in two versions, the B-1 Black Box and the C-1 Black Box. These systems include a computerized alarm component which is installed inside a car. This component is wired to the car with its own back-up battery system, and in addition to providing an alarm through motion, sound or electrical circuit interrupt detectors, it prevents the car from being started with a key or hot wiring. The B-1 differs from the C-1 in that it has an anti-hijack feature. This feature will automatically cut off the engine within a programmed distance if, while the car is running, the driver's door is opened. The B-1 is intended primarily for commercial vehicles.

The C-1, which is primarily for consumers, has two additional units, a remote control unit and a pager. The remote control unit allows the system to be activated outside of the car or placed in a mode which allows the alarm to sound on the pager worn by the car owner and not at the car itself while a theft is attempted.

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The C-1 Black Box together with the remote control unit and pager, but exclusive of the batteries, would be regarded as an entirety classifiable under a single tariff item. This system and the B-1 Black Box are classifiable under the provision for electrical articles, not specially provided for, in item 688.42, Tariff Schedules of the United States (TSUS). This is not a Generalized System of Preferences (GSP)-eligible item for products of Taiwan and the current applicable column 1 rate of duty is 4.1 percent ad valorem. Batteries are separately classifiable under the provision for primary batteries in item 682.95, TSUS, which is a GSP-eligible item for products of all beneficiary developing countries and which otherwise currently requires a column 1 rate of duty of 5.7 percent ad valorem.

Sincerely,

Arthur J. Shaffer

cc: Harvey B. Fox
Director, Classification
and Value Division

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077610

F13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT - 2 1986

CLA-2 CO:R:CV:G
077637 JNB

District Director of Customs
909 First Avenue
Seattle, Washington 98174

Re: Decision on Protest and Application for Further Review
Number 3001-5-000422

Dear Sir:

The above noted protest and application for further review was filed by counsel for protestant Latex Glove Co., Inc., of Northbrook, Illinois. At issue is the classification of a plastic-coated cotton glove which is imported from Hong Kong.

Customs claims that the glove is properly classifiable as gloves ... : of vegetable fibers: made from a pre-existing machine-knit or -woven fabric, or any combination of such fabrics: woven, under the provisions of item 704.40, Tariff Schedules of the United States (TSUS), dutiable at the rate of 25 percent ad valorem. Importation under this tariff provision of a glove which is the product of Hong Kong is subject to the restrictions of quota category 331, in that a visa from the country of origin must be obtained in order to permit its entry into the United States.

Protestant claims that the glove is properly classifiable as gloves of rubber or plastics: other, under the provisions of item 705.86, TSUS, dutiable at the 1985 rate of 19.3 percent ad valorem. Any glove classifiable under this tariff provision is not subject to quota restrictions.

FACTS:

On May 21, 1985, protestant Latex Glove filed entry number 85-432126, covering a shipment of subject glove style 122/4244M. On August 7, 1985, redelivery of the shipment was requested because Customs found protestant's claimed classification to be incorrect. Protestant entered the gloves under the classification of other gloves of plastic under the provisions of item 705.86, TSUS. Customs determined that these gloves were more properly classifiable as gloves of vegetable fibers under item 704.40, TSUS. Additionally, classification of the gloves under the textile provision imposed visa requirements on their entry into the United States. Inasmuch as no visas had been obtained, redelivery was requested. This protest and application for further review was timely filed in response to the denial of entry.

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ISSUE:

Is the glove properly classifiable as gloves of rubber or plastics under item 705.86, TSUS, or as gloves of vegetable fibers, under item 704.40, TSUS, and thereby subject to visa requirements pursuant to textile quota category 331?

ANALYSIS:

Style Number 122/4244M is composed of a base fabric of plain woven cotton. Both sides of the base fabric have been napped. The exterior of the base fabric is coated with yellow plastic, with the exception of the back of the three middle fingers which is coated with an orange plastic. Textile fibers from the nap penetrate through the coating. Tactilely the sample is furry or fuzzy. The weave construction is barely visible through the plastic.

A uniform and established practice exists to classify this style of glove as gloves of rubber or plastic. See Customs Ruling Letters of December 19, 1973 (Control No. 029939) and September 16, 1986 (Control No. 077460).

HOLDING:

Pursuant to a uniform and established practice, glove style 122/4244M is classifiable as gloves of rubber or plastics: other, under the provisions of item 705.86, TSUS, dutiable at the 1985 rate of 19.3 percent ad valorem. Gloves classifiable under this tariff provision are not subject to quota restrictions.

Accordingly, the protest is allowed. A copy of this decision should be given to the protestant when notice of action is given on Customs Form 19.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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077637

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

REFER TO
CLA-2 CO:R:CV:G
077682 JCH

077682

28 AUG 1986

Mr. Guy F. Ippolito
American Lamprecht Transport Inc.
148-36 Guy R. Brewer Boulevard
Jamaica, New York 11434

Dear Mr. Ippolito:

This is in further response to your letters of March 1, 1985, June 7, 1985, and January 14, 1986, concerning various entries filed at the JFK International Airport Area which became the subject of liquidations and pending protests.

Requests for tariff classifications involving pending transactions normally should be submitted through the local district or area having jurisdiction for referral to us under the internal advice procedures. The area director of Customs having jurisdiction over the instant matter will furnish you a copy of our decision at the earliest practicable date.

Sincerely,

John T Tech

For Harvey B. Fox
Director, Classification
and Value Division

See G03

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 28 AUG 1986

FILE: CLA-2 CO:R:CV:G
077682 JCH

077682

TO : Area Director of Customs
JFK International Airport
Jamaica, New York 11430

FROM : Director, Classification and Value Division

SUBJECT: Tariff Classification of Loepfe Electronic Yarn Clearers, FR-60 and FR-600, Made In Switzerland, Imported By American Lamprecht Transport Inc., In Entry Nos. 84-396423, 84-947092, and Others Which Have Become The Subject Of Several Pending Protests

This merchandise was the subject of a rate advancement notice dated September 17, 1984, issued by Team II, in which you proposed to classify the merchandise as an entirety under the provision for optical electrical measuring or checking instruments and apparatus, in item 712.05, Tariff Schedules of the United States (TSUS). The merchandise consists of a control unit, electronics and wiring units and optical sensing heads. These control cutting apparatus for removing snags from yarn before it is wound.

In view of the decision in EAC Engineering v. United States, 623 F. Supp. 1255 (1985), this type of merchandise can no longer be regarded as optical because it fails to meet the so-called fourth Engis criterion which requires a picture or image in order for merchandise to qualify as optical goods. Therefore, the merchandise should continue to be classified as a part under item 670.74, TSUS, with duty assessed at the rate for textile reeling machines, etc., in item 670.12, TSUS.

Please furnish a copy of this decision to the protestant by attaching a copy to the Form 19 Notice of Action for the lead protest.

John T. Rath

Harvey B. Fox

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

05 SEP 1986

REFER TO
CLA-2:CO:R:CV:G
077689 SM

077689

Louis S. Schoichet, Esq.
Siegel, Mandell & Davidson, P.C.
One Whitehall Street
New York, New York 10004

Dear Mr. Schoichet:

On behalf of Avon Products, Inc., you have requested reconsideration of ruling 075466 of January 13, 1986, which determined that certain disposable plastic boxes known as Rolykits are properly classifiable as flat goods under item 706.61, Tariff Schedules of the United States (TSUS). The term flat goods is defined as follows in Headnote 2(c) of Subpart 1D, Schedule 7:

> (c) the term 'flat goods' covers small flatwares designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change purses, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles.

It is your position that these boxes are properly classifiable under item 772.20, TSUS, as containers; or, alternatively, under item 772.15, TSUS, as household articles or item 774.55, TSUS, as articles of rubber or plastics. A ruling on the classification of these articles was originally given in file 810275 of October 5, 1984 (revoked in file 075466), to Rolykit, Inc., Division of Hagemeyer of Canada and the Netherlands. At this point, entry has already been made.

It is our understanding that the name Rolykit is applied to certain boxes custom manufactured by Hagemeyer in the Netherlands and protected by international patent. They are made in various sizes and shapes to accommodate different types of articles. All are designed to be folded up and to interlock in such a way that their contents will remain in separate compartments.

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You have made a number of submissions in this matter, both oral and written, on behalf of Avon Products, the importer of record. You have stated that the Rolykit boxes were to be imported empty to be filled with Avon cosmetics, and you submitted a filled sample as well as an empty one. The box, which is marked "Made in Holland," is hinged, of rigid plastic, measuring 4-1/2 by 2-3/4 by 1-3/4 inches when closed. When the box is opened, the hinges allow its five separate sections to lie out flat in a row; the unit then measures about ten inches in length. To close the box, one rolls the sections over one on top of another. Whether it is rolled up or opened out flat, its construction assures that the contents of each section will remain in place. When opened out flat, the filled Rolykit contains, in the first section, two shades of powder blush and a brush; in the next, an eyeliner pencil; in the next, eight shades or powder eye shadow; in the next, two eye shadow applicators; and in the last, a stand-up mirror and a mascara. The filled Rolykits were to be marketed by Avon as the "Ultra Wear Colors-to-Go Makeup Kit" in two versions, the "On-the-Town Collection" and the "In-the-Country Collection," each having a different set of colors contained in the removable blush and eye shadow inserts. You stated that they were offered as a sales premium to provide the opportunity for Avon customers to get a broad sampling of products at an attractive price; the submitted Christmas 1985 Avon catalog advertises the Makeup Kits on pp. 2-3 for $7.99 with a $15 purchase. The boxes appear to be of a light, inexpensive plastic; you stated that they cannot be refilled, are not designed to be reusable, and were offered for sale for a limited time only. Avon does not manufacture or market replacement cosmetics for the boxes, which were expected to be discarded once the contents were exhausted.

In your most recent letter, of January 30, 1986, you object to the ruling in file 075466 on the grounds that the Rolykits were there "considered to be compacts." In fact, what was stated in the ruling was that the Rolykits are more similar to the compacts referred to in Headnote 2(c), above, than to the travel goods contemplated by Headnote 2(a). We note once again the Avon Marketing Profile 33868P of July 6, 1984, revised November 21, 1984, in which the Rolykit box was in fact referred to as a "custom compact," a "compact case," a "hinged compact," the "Rolykit custom compact," and a "compact kit." The range of articles classifiable as flat goods is not limited to those listed eo nomine in Headnote 2(c) as the list concludes with the words "and similar articles."

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You further state that you believe the Rolykits are analogous to the powder boxes previously held classifiable under item 772.20, TSUS. We cannot agree, as those articles were not folding, hinged boxes and were in no sense portable.

The classification of the Rolykit boxes in question here as flat goods in file 075466 was correct, and we hereby reaffirm it.

Sincerely,

John T Rath

For Harvey B. Fox
Director, Classification
and Value Division

075466

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 10 1986

REFER TO

CLA-2 CO:R:CV:G
077725 JNB

Mr. Robert C. Lightbourne, O.J.
Textiles of Jamaica Ltd.
35 Lady Musgrave Road
Kingston 5
Jamaica, West Indies

Dear Mr. Lightbourne:

This is in response to your letters of January 30 and March 24, 1986, in which you request a ruling on the country of origin, for tariff purposes, of certain finished fabric.

Your submission elaborates on information provided in your letter of December 9, 1985. The fabric received in your factory is greige woven filament which you process into a georgette material suitable for use in dresses. All processing functions are performed in Jamaica. The raw fabric is not a product of Jamaica.

You describe the processes applied to the raw fabric beginning with a scrubbing operation to remove oil, grease and dirt. After the water is removed, the fabric undergoes a steaming to enhance softening. The steaming promotes full relaxation and shrinkage of the material.

The product is then transferred to chambers where it is dried and heated to prepare for a weight reduction process. Weight reduction involves heating with chemicals followed by curing to ensure even weight distribution in the product.

Subsequent to weight reduction, the fabric is washed and jet dyed. There is no indication in your description that printing of the fabric occurs in addition to the dyeing. Scrutiny of the samples confirms that fact. After dyeing, the material is again heated and washed. The water is extracted and the fabric is treated with an anti-static additive. The finished product is then inspected, rolled and packed.

You contend that a substantial transformation occurs through the finishing operations applied to the raw fabric in Jamaica.

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Section 12.130(e)(1) of the Customs Regulations (19 CFR 12.130(e)(1)) provides that "material will be a product of a particular foreign ... country ... when it has undergone prior to importation into the United States in that foreign ... country ... the following: (i) Dyeing of fabric and printing (emphasis added) when accompanied by 2 or more of the following finishing operations : bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing or moireing."

The process you describe does not include both dyeing and printing. The subject georgette material undergoes dyeing only. As such, it is precluded by regulation from being a product of the country where the finishing operations are performed. Because dyeing and printing operations are not performed on the fabric, it is unnecessary to consider whether two other finishing operations also occur. The georgette material is considered, for tariff purposes, to be a product of the country where the raw greige material was made.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OCT 30 1986

REFER TO
CLA-2:CO:R:CV:G
077730 c

District Director of Customs
610 South Canal Street
Chicago, Illinois 60607

Re: Decision on Application for Further Review of Protest No. 3901-5-001143

Dear Sir:

This protest was filed against your decision in the liquidation on May 5, 1985, of entry No. 85-513859-6 dated April 2, 1985, and in the liquidation on May 24, 1985, of entry No. 85-513921-0 dated April 3, 1985, covering a shipment of cowhide leather cases manufactured in Taiwan.

FACTS:

The merchandise involved is a leather case for a portable pocket-size radar detection device. It is imported empty and measures 6-1/2 inches by 5-1/2 inches by 3/8 inch lying flat. It was classified in liquidation under the provision for other luggage of leather in item 706.13, Tariff Schedules of the United States (TSUS).

The protestant claims that the leather case is properly classifiable under the provision for bags, baskets, boxes and cases, all the foregoing, not specially provided for, of leather in item 791.65, TSUS.

ISSUE:

Does the leather case fall within the purview of Schedule 7, Part 1, Subpart D, Headnote 2(a)(ii), TSUS?

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LAW AND ANALYSIS:

Schedule 7, Part 1, Subpart D, Headnote 2(a)(ii), TSUS, provides that for the purposes of the tariff schedules -- (a) the term 'luggage' covers -- (ii) brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians; sample, etc.), and like containers and cases designed to be carried with the person, except handbags as defined herein;"

Protestant's Position

The case is not similar to any of the exemplars listed in the headnotes to the luggage provisions of the schedules. It is designed either for the storage of the radar kit or the containment of the kit within luggage such as brief case. The case has no strap, handle or other device for use in carrying and the use of the case to carry the kit by hand is a fugitive use contrary to the actual use of the case. Clearly, the item is not designed to be carried with the person but rather is a "case" more properly provided for under item 791.65, TSUS.

The leather case in issue is similar in design and function to the tire gauge case which was held to be classifiable under item 791.65, TSUS, rather than as luggage in Headquarters Ruling Letter (HRL) 072664 dated August 6, 1983. The tire gauge case is analogous to the leather case in issue because while both were designed to contain items that

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could be carried on the person, the cases themselves were not designed to be carried on or with the person but rather either stored in a glove compartment or in a briefcase.

Unlike the exemplars set forth in Schedule 7, Part 1, Subpart D, Headnote 2(a)(ii), TSUS, supra, the leather cases do not have handles or straps for carrying as do all of the other articles.

The leather cases are not "handbags" because they are not customarily carried by women or girls' and are not ejusden generis with the exemplars of handbags set out in Schedule 7, Part 1, Subpart D, Headnote 2(b). Also, the term "handbag" has been construed to cover all types of bags carried on the hand or on the arm. United States v. J. E. Mamiye & Sons Inc., 69 CCPA 17, 665 F.2d 336 (1981). The leather cases are not carried in the hand or on the arm as are the exemplars specified in Headnote 2(b), but rather are cases designed to hold the components of the kit when not in use.

The leather cases are not ejusdem generis with the exemplars for luggage set out in Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), TSUS. They cannot be locked or securely fastened and can never be checked as baggage on trains, buses or planes as would the listed exemplars. The leather cases are not suitable for carrying personal effects during travel because they have no handle or lock. See Adolco Trading Co. v. United States, 71 Cust. 145, C.D. 4487 (1973).

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In HRL No. 062224 of June 22, 1979, Customs classified leather tool cases and owners manual cases under item 791.65, TSUS. These cases were also for use in automobiles and no attempt was made by customs to classify these cases as luggage.

In HRL No. 056371 of May 17, 1978, Customs ruled that leather tool kits measuring 23 inches by 19 inches with two 6-3/4 inch flaps were classifiable under item 791.65, TSUS. Also, in this ruling a leather case stored in the tool kit measuring 9-3/4 inches by 6 inches designed for holding small light bulbs and fuses was classified under item 791.65, TSUS. Additionally, a leather case for an automobile owner's manual, vehicle registration and other purposes measuring 12-3/4 inches by 9 inches with two compartments that folded in half to close was classified under item 791.65, TSUS. The description of this case is very similar to the merchandise in issue. It should be noted that in all these instances there was no discussion as to the possibility of classifying these items as luggage.

Customs' Position

It is our view that the leather case is primarily designed to be carried with the person with a secondary function as a storage case. It is constructed to contain a radar detection system which is unique because of its portability. The protestant's description and the sales literature submitted indicate that the radar detector is

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intended to be carried with the user. Without the case, it would be cumbersome to transport the pieces constituting the radar detection kit. That is why the fitted leather case is designed to carry the kit. This intended design as a carrying case is supported by the sales literature which refers to the leather case as a "travel case". Indeed, the owner's manual advises that it is preferable to take the device when you leave the car.

In response to protestant's assertion that all the exemplars listed in Schedule 7, Part 1, Subpart D, Headnote 2(a)(ii), TSUS, have handles or straps for carrying, we note that portfolios often do not have handles.

We do not see a close similarity in function between the instant leather case and the tire gauge case ruled in HRL 072664. There it was determined that the tire gauge case was intended primarily to be stored in the glove compartment and was not commonly carried on the person like a flat good. The radar detector case is carried with the person to supply the required portability to the radar detection kit. Storage in a glove compartment is not analogous to transportation in a brief case.

The protestant's citations of the Adolco and Mamiye cases, supra, are not relevant because we do not propose to classify the leather case as a handbag. Also, we are not comparing the leather case to the exemplars in Headnote 2(a)(i). It should be noted that in Adolco, supra, the court went on to describe the exemplars in Headnote 2(a)(i) as containers or cases which are designed to hold specific items

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which give them their names and which are designed to be carried with the person. The radar detector case appears to meet that definition even though it does not have a handle or carrying strap.

HRL No. 062224 of June 22, 1979, and HRL 056371 of May 17, 1978, involved the classification of leather tool cases and owner's manual cases for use in automobiles. Classification as luggage was never considered because the articles were not designed for the transportation of their contents. Unlike the subject case which gives the required portability to its contents, the leather tool cases and owner's manual cases supplied a place to conveniently organize and store their contents.

HOLDING:

The leather case is like the exemplars listed in Headnote 2(a)(ii), TSUS, and therefore classification under item 706.13, TSUS, was appropriate.

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

11 SEP 1986

CLA-2:CO:R:CV:G
077733 SM

077733

Harold I. Loring, Esq.
Grunfeld, Desiderio, Lebowitz & Silverman
Two World Trade Center
Suite 2238
New York, New York 10048-0654

Dear Mr. Loring:

On behalf of Ruby International, you have requested a tariff classification ruling for several articles of men's apparel to be imported from Colombia and other countries. You have made written and oral presentations on behalf of your client.

All the garments in question are of 100 percent cotton fabric of knit construction, either plain interlock, 1 x 1 rib, 2 x 2 rib, or net. You have submitted samples in various colors of the following styles:

Label	Style No.	Description
Playboy VIP	3200	Athletic shirt
Playboy VIP	3397	Net athletic shirt
Playboy VIP	3399	Net crew neck shirt
Playboy VIP	3400	Net briefs (low-rise fly front)
Spalding	8497	Athletic shirt
Spalding	8498	Muscle shirt
Spalding	8499	Crew neck T-shirt
Spalding	8500	Briefs (low-rise fly front)

A3

It is your position that all these garments should be classified as underwear for customs purposes. You have stated that Ruby International deals exclusively in underwear; that the garments are packaged, advertised, and sold as underwear; and that the construction and design of the garments indicate that they are intended to be worn as underwear. You have submitted advertising materials showing models wearing the briefs alone and the briefs and shirts together.

In determining what constitutes underwear, Customs has taken the position that the term refers to garments ordinarily worn under other garments and not exposed to view when the wearer is conventionally dressed for appearance in public, indoors or out of doors. Whether or not a garment is worn next to the body of the wearer is not determinative; swimwear and diapers are so worn, but are not classified as underwear. This position is consonant with the holding of Children's Hose, Inc. v. United States, 55 Cust. Ct. 6, C.D. 2547 (1965), that articles at least partially exposed during normal wear were not classifiable as underwear.

We agree with your position with regard to styles 3400 and 8500, briefs. These garments are classifiable as underwear, as their design would preclude their being worn alone. Style 3400, constructed from net fabric, is classifiable under item 378.0540, Tariff Schedules of the United States Annotated (TSUSA), quota category 352, as men's or boys' cotton net underwear. Style 8500, constructed from 1 x 1 rib knit fabric, is classifiable under item 378.1030 or item 378.1510, TSUSA, both quota category 352, according to whether it is valued over $4 per pound, as other men's and boys' cotton knit underwear, not ornamented.

We do not agree, however, with your views with regard to the classification of the shirts that are the subject of this ruling. As indicated above, Customs has taken the position that garments exposed to view during ordinary wear are not classifiable as underwear. While these athletic shirts, T-shirts, pullover shirts, and muscle shirts are purchased and worn as underwear, they are purchased and worn as outer garments as well. Interviews with retailers and manufacturers,

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newspaper and magazine advertising, and experience all indicate that shirts like those in question here have multiple uses. Shirts in vivid colors are in fact less broadly useful as underwear than are white ones; they cannot, for instance, be worn under white or other light colored dress shirts without showing through.

Reliance on Mast Industries, Inc. v. United States, --CIT--, Slip Op. 85-114 (October 28, 1985), is misplaced here. In that case the court found, "[h]aving examined all of the exhibits, and having heard all the testimony and judged the credibility of the witnesses," that a women's garment was "designed, manufactured, marketed and used as nightwear," and was so classifiable. A unique garment, adapted from a European-designed nightwear garment, made of a special fabric, and sold exclusively in a particular intimate apparel store, was in question there. The shirts the subject of this ruling are types very common in the United States. We cannot say that basically the same garment is sometimes classifiable one way, sometimes another, merely because it is advertised or packaged or worn sometimes one way, sometimes another. The court has stated repeatedly that the manner in which an article is merchandised is a factor to be considered in its classification, but is not determinative.

Style 8499, a crew neck T-shirt constructed from plain interlock fabric, having short, set-in, hemmed sleeves, a hemmed waist, and rib knitting at the neckline, is classifiable under item 381.4010, TSUSA, quota category 338, as other men's wearing apparel, not ornamented, cotton knit T-shirts.

Style 3399, a pullover crew neck shirt, of fabric of net construction, with short set-in, hemmed sleeves, a hemmed waist, and rib knitting at the neckline, is not considered a T-shirt for tariff purposes because of the net fabric. It is classifiable under item 381.0240, TSUSA, quota category 338, as men's net wearing apparel, of cotton, knit, other shirts.

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Style 8498, a sleeveless crew neck pullover shirt, sometimes called a muscle shirt, constructed from plain interlock knit fabric, has rib knitting at the neckline and armholes, and a hemmed waist, and is classifiable under item 381.4130, TSUSA, quota category 338, as other men's wearing apparel, not ornamented, cotton, knit, other shirts, other. Styles 3200 and 8497, athletic shirts, are sleeveless pullover garments with oversized armholes, a scoop or U-shaped front neckline, a back neckline just below the nape of the neck, and shoulder straps in widths ranging from one to two inches. Both are constructed from 2 x 2 rib knit fabric with hemmed waists and neckline, and armhole openings capped with plain knit material. They are classified in the same provision as the muscle shirts.

The traditional white athletic shirt, not the subject of this ruling, has virtually no use as an outer garment, and is classifiable as underwear.

Style 3397 is an athletic shirt like those described above, except that it is made of fabric of net construction and is finished at the waist with a simple overlock stitch rather than with a hem. It is classifiable under the same item as the pullover net crew neck shirt.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

NOV 13 1986

CLA-2:CO:R:CV:G
077751 JLF

TO : Area Director of Customs
JFK Airport, New York 11430

FROM : Director, Classification and Value Division

SUBJECT : Internal Advice Request 87/85 Concerning the Classification of "Barbie Sticker Album" and Sticker Packet Inserts.

This is in response to your request, dated December 6, 1985, requesting Internal Advice on the tariff classification of merchandise identified by the importer as a "Barbie Album" and sticker packet inserts. This request was initiated by a letter dated October 11, 1985, from Baker & McKenzie, attorneys for the importer, Panini, U.S.A.

We are in agreement that the album and stickers should not be classified as an entirety and that the stickers are separately classifiable under the provision for other flat shapes and forms, which are pressure-sensitive, in item 790.55, Tariff Schedules of the United States (TSUS).

We are also in agreement with your position that the albums and insert packets do not satisfy the criteria necessary for classification as toy books or other toys.

In light of Arthur Kessler & Co., Arthur J. Fritz & Co v. United States, C.D. 3944, in which a scrapbook is defined as "a blank book" in which miscellaneous items (such as newspaper clippings or pictures) may be pasted or inserted, the "Barbie" sticker albums are inappropriately classifiable under the provision for other scrap albums, in item 256.60, TSUS. The "Barbie" albums of this case are dedicated to receiving certain pre-determined printed stickers and are not available for the insertion of miscellaneous items.

On the other hand, in using the definition of blank book as described by the Kessler decision, the albums in this case could appropriately be considered a blank book. There is no

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reference to "writing" in the court's unrestricted description of a blank book. Although the use for blank books has been considered to be for writing and record keeping purposes (see Summaries of Trade & Tariff Information, T.C. Publication 294, 1969), the term "blank" can be considered merely as surface space not utilized.

In view of the foregoing, the "Barbie" album with blank space for the insertion of particular stickers is appropriately classifiable as a blank book in item 256.58, TSUS. The pressure-sensitive stickers are separately classifiable in item 790.55, TSUS.

You should inform the inquirer of this ruling.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 27 1986

CLA-2:CO:R:CV:G
077788 SM

District Director of Customs
Plaza Nine Bldg., 6th Floor
55 Erieview Plaza
Cleveland, Ohio 44114

Re: Request for Further Review of Protest No. 4101-4-000025, dated September 19, 1984

Dear Sir:

This protest concerns the tariff classification of nine aluminum pastes composed of aluminum and solvent that are used in various products such as metallic paint for automobiles. All are products of West Germany.

These articles were at first classified under item 473.88, Tariff Schedules of the United States (TSUS), as other pigments not containing lead, but were reclassified under then item 407.16, TSUS, as benzenoid mixtures, with the rate of duty taken from item 402.36, TSUS, based on the alkylbenzene content. The importer protests this reclassification, claiming that the products contain only aluminum and natural distillate solvent without dutiable benzenoids, or that any amounts of dutiable benzenoids present are only de minimis. After the request for further review of the protest was received in this office, counsel for the importer, Obron Corporation, added another claim, submitting that there existed for at least four years prior to 1983 a uniform practice of classifying the involved merchandise as pigments under item 473.88, TSUS, and that Obron is entitled to notice of the change in classification under 19 CFR 177.10(c) before any entries can be liquidated under the higher rate of duty for benzenoid mixtures.

Part 9 of Schedule 4, TSUS, covers pigments. Headnote 1 of this part provides:

> Any product described in this part and also in Part 1 of this schedule is classifiable under said part 1 . . . .

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Thus if any pigments the subject of this protest are described in Part 1, Benzenoid Chemicals and Products, of Schedule 4, they must be classified there rather than in Part 9. Headnote 1 of Part 1 makes the same provision:

> . . . all products described in this part shall be classified hereunder even if more specifically described elsewhere in this schedule.

These two headnotes indicate a clear legislative intent to give preference in classification to the provisions of Part 1 of Schedule 4 where they apply.

Headnote 3 of Part 1, Schedule 4, provides:

> With the exception of the natural products provided for in Subpart C, this part does not cover cyclic organic chemical products . . . having a benzenoid, quinoid, or modified benzenoid structure, which are produced from animal or vegetable products in which such structure occurs naturally, unless such cyclic organic chemical products were obtained, derived, or manufactured in part from any product provided for in Subpart A, B, or C of this part.

Headnote 1 of Schedule 4, Part 1, Subpart B, Industrial Organic Chemicals, provides:

> The provisions of items 402.00 to 406.63, inclusive, in this subpart shall apply not only to the products described therein when obtained, derived, or manufactured in whole or in part from products described in Subpart A of this part, but shall also apply to products of like chemical composition having a benzenoid, quinoid, or modified benzenoid structure artificially produced by synthesis . . . .

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Thus, according to Headnote 3, above, those aluminum pastes containing a natural distillate solvent are not provided for in Part 1, Schedule 4, and are properly classifiable under Part 9, Subpart B, Pigments and Pigment-Like Materials. Customs laboratory analysis shows that the pigments known as Stapa 3, Stapa 3000/47 Super Silver, and Stapa Offset 3000 Super Silver contain only aluminum and a natural distillate solvent with no benzenoid structure; they are thus provided for under item 473.88, TSUS.

Following Headnote 1, above, those aluminum pastes containing synthetic benzenoid solvents are provided for in Part 1, Subpart B. Item 407.16, TSUS, covers "mixtures in whole or in part of any of the products provided for" in Subpart B; the aluminum pastes known as Stapa R-167, Stapa R-277, Stapa R-476, Stapa R-607, Stapa 33313/G, and Stapa MRVP 41180/G have all been shown by laboratory analysis to contain synthetic solvent, and are properly classified under that item.

The importer also claims that the amount of synthetic benzenoids in the pastes should be considered de minimis. General Headnote 9(f)(iv), TSUS, provides that an article "in part of" a material contains a significant quantity of the named material, and that the de minimis rule applies. However, analysis shows that those aluminum pastes that have been reclassified under item 407.16, TSUS, contain between 19.4 percent and 33.4 percent dutiable benzenoid by weight. We do not consider these amounts to de minimis for customs purposes. The importer claims that the only function of the synthetic benzenoids in the aluminum pastes is to make them safe to handle. However, aluminum flake in dry form does exist; further, the solvent aids in the processing of the paste.

In support of Obron's claim that Customs has had a uniform practice of classifying these aluminum pastes under item 473.88, TSUS, counsel has presented a list of approximately 100 entries made from 1979 to 1983 at the ports of New York, Chicago, Detroit, and Newark, covering at least three of the products involved in this protest, R-167, R-277, R-607, all liquidated under that item. Counsel also finds support in the determination by the Court of Appeals Nos. 86-602/650, decided July 8, 1986, affirming Heraeus-Amersil, Inc. v. United States, 617 F. Supp. 89, --CIT-- (1985), that a

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uniform and established practice in favor of the plaintiff existed after over 300 liquidations at two ports over a period of at least ten years.

Neither Obron's list of liquidated entries, nor the court's determination in Heraeus-Amersil, nor any other factors persuade us that there had existed a uniform and established practice of classifying these aluminum pastes, containing dutiable benzenoids, as pigments.

Heraeus-Amersil is distinguishable on its facts. It concerned approximately 300 liquidations over ten years, as opposed to 100 over four years in this case. There is no magic formula of numbers that will automatically produce an actual uniform and established classification practice, and when other factors than period of time and number of entries are considered in the context of this protest, they also weigh against the protestant. The lower court in Heraeus-Amersil found, at 617 F. Supp. 89, 92, that there was no evidence of any imports of the glass at ports other than the two in question, Newark and JFK; that not only plaintiff's merchandise but all merchandise similar to plaintiff's had been classified under the same two TSUS item numbers before the change; and that there was no evidence that that product, entered by the plaintiff or anyone else, had ever been classified under the "new" provision previously.

The situation with regard to the classification of aluminum pastes is quite different. There are other suppliers than Eckart-Werke and other importers than Obron, and Customs has for some time been classifying these products according to the nature of the solvents they contain. C.I.E. 1271/59 determined that aluminum paste containing pure mineral spirits was classifiable under a provision for pigments, paragraph 66, of the Tariff Act of 1930. C.I.E. 7/64 determined that aluminum pastes in mineral spirits were classifiable under item 473.88, TSUS. Customs laboratory reports in 1971 and 1972 on samples of aluminum pastes indicated the presence of dutiable benzenoid components in the solvents. A form 6431 inquiry from Cleveland in 1977 resulted in the classification of aluminum pastes under item 473.88, TSUS, when laboratory results indicated the solvent to be natural mineral spirits. The reply to a 1980 Form 6431 inquiry indicated that the grade of aluminum paste in question had not been tested and that

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item 473.88, TSUS would be appropriate if the solvent were a natural mineral spirit. Similar reports from 1980, 1981, and 1983 indicated that spec sheets supplied by importers might not be sufficient to determine whether the pastes contained dutiable benzenoids, and that laboratory testing would be necessary to answer the question. In a decision on an application for further review of a protest filed in 1982 on 1981 entries, file 072623 determined that entries of aluminum paste having a solvent containing dutiable benzenoids had been properly liquidated under item 407.16, TSUS, as benzenoid mixtures.

Thus Obron's claim that its history of liquidated entries under item 473.88, TSUS, points up the existence of a uniform and established classification practice on the part of Customs is not substantiated. What is shown is rather that Customs liquidated a number of entries of a few aluminum pastes as entered. We note that section 141.87 of the Customs Regulations, 19 CFR 141.87, requires that whenever the classification of merchandise depends on component materials, the invoice must give a breakdown of each component in sufficient detail to determine the correct duties. As indicated above, Headnote 1 of Part 9, Schedule 4, requires classification in Part 1, and not Part 9, of products described in both parts. Whether a product is described in Part 1 will depend on its composition. Copies of entry documents filed by the importer do not show that any such information was provided; the only descriptions given are the name of the product, such as Aluminum Paste Stapa Metallux R 227. Given that Customs had already, for some time, been classifying aluminum pastes according to the nature of their solvents, a different classification would have resulted if the true nature of the solvent had been stated as required by the regulations, or if Obron had come forward with full information and sought a ruling.

Thus, this protest does not involve a ruling effecting a change in practice within the meaning of 177.10(c), requiring advance notice, as the importer claims. There is no new interpretation of law here; rather, this decision concerns a determination of fact: exactly what was the nature of the solvent in the aluminum pastes imported by Obron? The answer

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to this question had to be found through Customs laboratory analysis. Counsel for Obron states that the firm has imported "the same merchandise" since 1978. When Customs subjected that merchandise to laboratory analysis, it was found to contain dutiable benzenoids in the solvent. Thereafter, the merchandise was classified according to the pre-existing rules.

Therefore, you should deny the protest, except to the extent that reclassification of Stapa 3, Stapa 3000/47 Super Silver, and Stapa Offset 3000 Super Silver under item 473.88, TSUS, results in a partial allowance. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

26 SEP 1986

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816908

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Mr. Luc C. Pamerleau
USA Marketing Division
USA Trade and Investment Development Bureau
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario KIA 0G2
Canada

Dear Mr. Pamerleau:

This is in further response to your letter of January 7, 1986, on behalf of A&L Phototypesetting Ltd. which the New York Region has referred to us for a reply. You requested information concerning the dutiable status of an educational article called the Arithmos.

The Arithmos is an abacus-like plastic frame with plastic numbered blocks which slide along plastic cross members. The instructions state that the article incorporates three teaching devices, the hundred bead abacus, the numbered hundred board and the multiplication matrix chart. The article is further described as a self-teaching aid for comprehension of basic mathematic concepts for students in various age brackets.

This merchandise is classifiable under the provision for nonmetal calculating instruments in item 710.60, Tariff Schedules of the United States (TSUS). The column 1 rate of duty required under that provision and applicable to products of Canada is 4.7 percent ad valorem.

A duty exemption may be available under item 851.15, TSUS, for certain educational articles imported for the use of public or nonprofit institutions. However, such articles must be fabricated to specification, as well as designed for the classroom instruction of children. The materials submitted

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concerning the Arithmos indicate that it is of general purpose and function, rather than fabricated to specification. Further, it is for self-instruction, and not necessarily for classroom instruction.

Finally, pursuant to Headnote 1, Part 4, Schedule 8, TSUS, such articles cannot be entered under item 851.15, TSUS, when imported for general commercial sale. Rather, they must be ordered by and entered for a particular institution.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

CLA-2:CO:R:CV:G
077798 JLF

11 JUN 1986

Siegel, Mandel & Davidson, P.C.
655 15th Street, N.W.
Suite 300
Washington, D.C. 20005

Gentlemen:

This is in response to your ruling request of February 18, 1986, concerning the tariff classification of a man's boxer-style garment, made on behalf of your client, Sigallo, Ltd.

The sample submitted has a woven shell of 60 percent cotton and 40 percent polyester. It has a nylon-knit support liner, a front fly opening with a zipper closure, an elasticized waistband with a snap closure, a drawstring at the waist, two side seam pockets, and one left rear pocket insert with a zipper closure.

You claim classification of this article is appropriate under item 381.6585, Tariff Schedules of the United States Annotated (TSUSA), subject to quota category 359. You have been advised that the article must be classified under item 381.6210, TSUSA, subject to quota category 347.

Ruling 073387, February 17, 1984 (copy enclosed), addresses the issue presented by your case and states principles to be followed in this case. The resolution of whether the subject garments are shorts and therefore classifiable in item 381.6210, TSUS, with a textile and apparel category of 347, or whether the garments are swimwear, classifiable in item 381.6585, TSUS, with a textile and apparel category designation of 359, is the issue under consideration.

Criteria previously stated by the Customs Service for making the distinction between swimwear and shorts are discussed in Ruling 073387. Features such as heavier fabrics, pockets, cotton liners, and fly fronts are pointed out as being characteristic of multipurpose shorts and not swimwear. Ruling 073387 also states that although the fabric of the garment in question may be determinative by itself, none of the other criteria will be the sole determining factor of whether an article is classifiable as shorts or swimwear. The article of apparel should be considered as a whole, using the stated criteria for assistance in making the determination.

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In applying the principles set out in Ruling 073387 to the instant case, we find that the sample submitted is classifiable as multipurpose shorts. This classification is appropriate when considering the overall design of the shorts, especially the fly front opening with zipper closure and the three pockets.

The sample garment which is the subject of your ruling request is properly classifiable under the provision for other men's or boys' cotton shorts, not ornamented and not knit, in item 381.6210, TSUSA, with a textile and apparel category designation of 347, dutiable at 16.5 percent ad valorem.

Sincerely,

John T. Wirth

For Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

CLA-2:CO:R:CV:G
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District Director of Customs
100 Summer Street
Boston, Massachusetts 02110

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0401-4-001039

This protest was filed against your decision in the liquidation on September 28, 1984, of Boston entry No. 296525, dated May 3, 1984, covering electrostatic copying paper produced in Belgium.

This ruling concerns the correct tariff classification of the electrostatic copying paper.

FACTS:

The merchandise at issue is electrostatic copying paper in rolls. The base paper is conductivized bleached kraft paper consisting of pulp, filler, sizing, and other chemicals slurried, beaten, and formed on a paper machine. The base paper is aqueous coated on both sides to impregnate the conductivizing agent to increase electrical conductivity and to improve solvent holdout. The base paper is then coated with a photo-conductive zinc oxide pigment, calcium carbonate filler pigment, electrographic binder resins, plasticizing resins and sensitivity dyes. This paper accepts and records a black and white photographic image on its surface from a coated paper copying machine. Its surface accepts ballpoint pen ink. A sample of the paper was submitted along with the protest.

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Counsel for the protestant claims that the electrostatic copying paper should be classified under the provision for papers, impregnated, coated, surface colored, embossed, ruled, lined, printed, decorated or any combination thereof, other, not specifically provided for, not lithographically printed, impregnated, coated or both, other, in item 254.80, Tariff Schedules of the United States (TSUS).

The Boston import specialist liquidated the entry under the provision for coated writing paper weighing over 18 pounds per ream, not lithographically printed, in item 254.56, TSUS.

ISSUE:

Is the electrostatic copying paper classifiable as writing paper in item 254.56, TSUS, or as other paper in item 254.80, TSUS?

LAW AND ANALYSIS:

Counsel for the protestant argues that electrostatic copying paper is not writing paper. He argues that electrostatic copying paper accepts a black and white photographic image on its surface and does not accept ballpoint pen ink. He claims that electrostatic copying paper has a different manufacturing process, different properties and qualities and different end use applications than writing paper. He points to Treasury Decision 56320(53), Treasury Decision 66-99(31), and New York letter 804344, dated November 15, 1982, as instances in which electrostatic copying paper was classified

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as other paper in item 254.80, TSUS. He asserts that electrostatic copying paper is not used as writing paper because it is chiefly used in electrostatic copiers.

Previous administrative rulings have been neither uniform nor consistent. In the three letters cited by counsel for the protestant, electrostatic copying papers were classified as other papers, not specially provided for, in item 254.80, TSUS. However, in Customs Headquarters Ruling Letter (HRL) 011168 of 1971, HRL 014036 of 1972, and HRL 035826 of 1974, electrostatic and other duplicating papers were held to be writing papers.

The May 1984 Supplement to the Dictionary of Paper specifically describes electrostatic copying paper as a writing paper, but counsel for the protestant argues that the May 1984 Supplement to the Dictionary of Paper does not cover the protestant's paper because that paper is coated with zinc oxide, while the Supplement refers only to uncoated paper. He also argues that there are two types of electrostatic copying, the xerographic or plain paper copier and the zinc oxide or coated paper copier. He claims that only plain bond photocopying paper falls within the American Paper Institute's definition of writing paper.

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Counsel cites two experts in the paper field who say that coated electrostatic copying paper is not writing paper. The second expert admits that the Dictionary of Paper definition of writing paper is general enough to cover copying paper, but he says it is his opinion that the paper industry would not consider coated copying paper to be writing paper.

Finally, counsel cites the Summaries of Trade and Tariff Information, 1968 and 1969 editions, in support of his claim that coated electrostatic copying paper is not writing paper but other coated paper classifiable in item 254.80, TSUS. He admits, however, that coated copying paper is used almost exclusively on copying machines.

Despite counsel's claim, tests in Customs Headquarters indicate that the instant paper can readily be written on by ballpoint pens.

Headnote 2(d), Part 4, Schedule 2, TSUS, defines writing paper as follows:

> the term "writing paper" includes, but is not limited to, papers such as ledger, letter, manifold, mimeograph, note, onionskin, tablet, and typewriter papers.

The American Paper Institute, in its May 1984 Supplement to the Dictionary of Paper, Fourth Edition (1980), stated that "...there is now a need for additional definitional material describing writing papers and printing papers." Page 1 of that Supplement, in the "Description of Uncoated Writing and

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Related Papers" portion, states that "Writing papers consist of a wide variety of papers suitable for pen and ink writing or for use with the typewriter, automatic accounting equipment, copiers, computers, etc." It says that "They are usually used by an individual, within a company for correspondence, copying, computer output or on a direct basis -- conducting business transactions." The Supplement specifically notes that "End use products include, but are not limited to, writings, letters, notes, mimeographing, spirit duplicating, electrostatic copying...." Recent correspondence with the API confirms that these statements apply to coated electrostatic copying paper as well as uncoated copying paper.

The instant paper, contrary to counsel's claim, readily accepts writing by a ballpoint pen. The May 1984 Supplement to the Dictionary of Paper confirms that copying paper is regarded as a writing paper within the trade. Based on these factors, New York letter 804344 is hereby revoked. See HRL 077093 for the official revocation notice. We find that electrostatic copying paper is a writing paper and that the instant paper is properly classified as such in item 254.56, TSUS.

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HOLDING:

The instant electrostatic copying paper is classified as writing paper in item 254.56, TSUS. The protest should be denied in full. A copy of this decision letter should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 13 1986

REFER TO

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077862 JLV

Mr. Errol L. G. Powell
Industrial Commercial Developments Limited
7 - 9 Harbour Street
Kingston, Jamaica

Dear Mr. Powell:

In your letter of February 24, 1986, you requested a ruling on whether galvanizing of steel sheets was a substantial transformation for purposes of determining whether the galvanized product was a product of Jamaica and eligible for tariff preferences under the Caribbean Basin Initiative (CBI).

Enclosed is our ruling of July 25, 1986 (file 076342), concerning the galvanizing of steel sheet, in coil form. In this ruling we held that hot dip galvanizing was not a substantial transformation. This ruling applies to the merchandise described by you.

You propose to galvanize and corrugate steel sheet by either a sheet-by-sheet process or a continuous process. In the sheet-by-sheet process, cold rolled coiled steel is cut to length and then pickled, washed, galvanized, washed, and chromated in a hot dip galvanizing process. The flat sheets are then passed through roll-formers to give the desired corrugation profile in order to improve rigidity and to enhance the aesthetics when the product is used as a roofing and cladding material.

In the continuous process, the cold rolled coiled steel is galvanized in the same manner as the individual sheets, and, depending on user requirements, either cut to length and corrugated or re-coiled and shipped in coil form.

The galvanizing process is not a substantial transformation. Furthermore, the additional process of corrugating does not make the article a new and different article having a new name, character, or use. Steel sheets, corrugated or not, remain as steel sheets in their essential character.

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Therefore, the country of origin of the galvanized and corrugated sheets of steel is the country in which the cold rolled steel sheet, in coil form, was originally produced.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

26 SEP 1986

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Steven W. Baker, Esq.
Law Offices of
Bellsey and Baker
100 California Street
Suite 670
San Francisco, California 94111

Dear Mr. Baker:

In a letter dated February 24, 1986, on behalf of Avocet, Inc. a manufacturer and wholesaler of bicycle parts, you requested pursuant to 19 U.S.C. 1516 and Part 175, Customs Regulations, information as to the tariff classification of an electronic bicycle speedometer device exported by Tsuyama Manufacturing Co., Ltd. of Japan, and known as the Cateye Solar Model CC 2000 cyclo-computer.

In a ruling dated October 17, 1983 (our file No. 071022), this office held that a Cateye-Velo CC-1000 cyclocomputer which is a microcomputer-based-instrument designed to provide cycling information on trip distance, elapsed time and speed is classifiable as a bicycle speedometer under item 711.93, Tariff Schedules of the United States (TSUS).

The rationale expressed in this ruling was that merchandise is classifiable on the basis of its primary design and construction even though it is capable of performing other auxiliary or incidental operations. In this case we found that the primary purpose of the cyclocomputer was to function as a speedometer.

The instant Cateye 2000 measures 2-15/16 inches by 2-7/8 inches by 1-1/8 inches and weighs 2.29 ounces without batteries. This unit is powered by solar cells and two rechargeable silver-oxide cells. In addition to the main unit, this model includes a magnetic sensor ring to be mounted on the front fork with an attached cord to be plugged into the main unit, a magnet to be mounted on the crank arm, and a magnetic cadence sensor to be mounted on the frame with a cord to connect it to the main unit.

The Cateye 2000 has a liquid crystal display (LCD) which provides a digital readout of the following functions:

1. correct speed in mph or km/h;

2. odometer measuring the total distance since installation;

3. trip distance measured from the last reset of the meter;

4. time elapsed since the last reset of the meter;

5. average speed in mph (or km/h) from the last reset of the meter;

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6. maximum speed attained since the last reset of the meter;

7. cadence, i.e. the instantaneous pedal rotation per minute (range 15-30 rpm);

8. clock, i.e. time-of-day;

9. alarm, settable every 1 minute for time; every .1 mile (or km) for distance; or every .1 mph (km/h) for speed (to sound if the set speed is exceeded).

It is to be noted that the Cateye 2000 adds to the speed, distance and time functions of the Cateye 1000, a cadence function. The cadence function produces a count of revolutions of the pedals per minute and is a pacing device for the rider.

Our New York office has issued a ruling (file No. 816966) dated March 11, 1986, to the Japanese manufacturer holding that the Cateye 2000 is classifiable under item 711.98, TSUS, as other revolution counters, production counters, taximeters, odometers, pedometers and counters similar to the foregoing articles. The rationale for this classification was that inasmuch as the cadence function is a second significant function to the speed function, the Cateye 2000 is more than a bicycle speedometer. We do not agree with this result and an elaboration of our viewpoint on this matter is set out below.

Where an article is in character or function something other than as described by a separate statutory provision -- either more limited or more diversified -- and the difference is significant, it cannot find classification within such provision. It is said to be more than the article described in the statute. Robert Bosch Corp. v. United States, 63 Cust. Ct. 96, 103, C.D. 3881 (1969). Merchandise, however, is classifiable on the basis of its primary design and construction, even though it is capable of performing other auxiliary or incidental operations. Durst Industries, Inc. v. United States, 73 Cust. Ct. 160, C.D. 4568 (1974). In order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the provision and compare it with the merchandise in issue. E. Green & Son (New York), Inc. v. United States, 59 CCPA 31, C.A.D. 1032 (1971).

The information you have provided persuades us that the Cateye 2000 is designed, manufactured, advertised, sold and used as a speedometer. The additional functions such as solar power, cadence and time dispay may add to the versatility of the unit and may provide selling points to differentiate a particular unit from other speedometers. The unit is purchased in place of a mechanical speedometer, but the primary reason for purchase is

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for the speedometer function. It should be noted that the Cateye 2000 has "speed" as the only permanently displayed function. Any other function must be selected by a mode button on the cateye.

Additional functions, such as cadence, may be important to some individual users, but these functions are not significant enough to support the development of commercial bicycle devices which do not incorporate speed functions.

In conclusion, we do not regard the cadence function as a second significant function which is co-equal with the speed function. It is in our view incidental or subordinate to the speed function. For this reason it is now our position that the Cateye 2000 is properly classifiable under the provision for bicycle speedometers in item 711.93, TSUS, and dutiable at the rate of 18.3 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

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Mr. D.S. Rana
Commerce Attache
Embassy of India
2536 Massachusetts Ave., N.W.
Washington, D.C. 20008

Dear Mr. Rana:

This is in response to your letter of February 19, 1986, to William Marchi, regarding the proper classification and textile category numbers of merchandise described by the importer as ladies cotton knit night dresses and cotton swimsuits. Upon viewing the samples submitted, the merchandise may be described as follows. The first sample is a cotton ladies' knit short sleeve, pullover shirt with a round, capped neckline and hemmed bottom with long side slits. The shirt has no ornamenting features. It is worn over underwear and the bottom of the shirt is worn on the outside of either a skirt or pants. The second sample submitted is a sleeveless cotton ladies' knit playsuit with short leg coverage. It has a deep V-neck and would require another top such as a blouse or tank top to be worn under it in order to provide decent coverage of the wearer. The playsuit also features functional drawstrings across the neck and at the shoulders. It is intended to be worn as outerwear.

The first sample garment may be appropriately included in the class or kind of merchandise worn as an outerwear "big shirt." Therefore it is properly classifiable under the provision for other women's wearing apparel, not ornamented, of cotton, knit, shirts, other, in item 384.29, Tariff Schedules of the United States (TSUS), with a textile category of 339.

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The second sample is a playsuit and falls within the general category of merchandise known as outerwear. The construction and design of the garment indicate that it is not to be worn under another garment and therefore does not fall within the general class of merchandise known as underwear. Due to the lightweight nature of the cotton fabric of which the playsuit is made, classification of the garment as a swimsuit is inappropriate. The playsuit is properly classifiable under the provision for other women's wearing apparel, not ornamented, of cotton, knit, playsuits, other, in item 384.34, TSUS, with a textile category of 337.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

CLA-2:CO:R:CV:G
077871 JLF

1986

Mr. D. S. Rana
Commerce Attache
Embassy of India
2536 Massachusetts Ave., N.W.
Washington, D.C. 20008

Dear Mr. Rana:

This is in response to your letter of February 19, 1986, regarding the proper classification and textile category number of ladies' vests made of woven cotton fabric. The sample you submitted features a full front opening secured by seven buttons, pointed collar, elasticized waist and two front patch pockets secured by velcro flaps.

Upon importation, the garments were classified as sleeveless blouses and visas were required for textile category 341. The importer believes that proper classification of the articles is as vests requiring visas under textile category 359.

Ruling 074584, December 13, 1984, illustrates the idea that a vest is normally worn over another garment. It is generally a shorter garment, reaching to the waist, without sleeves and with buttoning down the front. See T.D. 78-205. Determining the classification of each article of apparel will be made on an individual basis balancing factors such as the cut, overall appearance, style and weight. See Ruling 039454, May 9, 1975.

We find the garments to be designed for wear over other outerwear and lacking appropriate coverage for wear without a blouse or shirt. Specifically, the armholes are cut very wide to accomodate a garment worn underneath in comfort.

Therefore, the sample garment is properly classifiable under the provision for vests in item 384.0652, Tariff Schedules of the United States. The appropriate textile category number is 359.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

CLA-2:CO:R:CV:G
077905 PR

25 JUL 1986

077905

Gail T. Cumins, Esq.
Sharretts, Paley, Carter & Blauvelt, P.C.
80 Broad Street
New York, New York 10004

Dear Ms. Cumins:

This is in reply to your letter of January 3, 1986, concerning the tariff status of a certain reversible rainsuit or golfsuit which is manufactured in Hong Kong.

Our ruling on the matter is enclosed.

Sincerely,

John T. Lail

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

077905

REFER TO

25 JUL 1986 CLA-2:CO:R:CV:G
077905 PR

This ruling concerns the tariff status of a certain rainsuit.

ISSUE:

The issue presented by the subject inquiry is whether the two garments comprising the "rainsuit" are properly classifiable under the provision for garments designed for rainwear, hunting, fishing, or similar uses, wholly or almost wholly of fabrics that have been coated or filled, or laminated, with rubber or plastics material, in item 376.56, Tariff Schedules of the United States (TSUS), even though those garments are reversible and may be worn with exterior outershells that have not been coated or filled, or laminated, with rubber or plastics material.

FACTS:

The subject merchandise is a two-piece set which consists of a pair of trousers and a jacket. Both are constructed in the same manner and may be worn with either side out. Both garments consist of a knit white man-made fiber fabric that has been laminated on its inner surface with a layer of plastics material, and a red woven man-made fiber fabric that is not coated or laminated. It is stated that the plastics lamination makes the garments both windproof and waterproof,

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thereby allowing the garments to be worn as a rainsuit and while a person is participating in outdoor sports activities during inclement weather.

The trousers have an elasticized waistband with a drawstring, piping down the side seams, and pocket-like openings secured with fabric fasteners that allow the wearer access to pockets of garments worn underneath the trousers. The bottoms of both trouser legs have adjustment tabs which are secured with metal snap fasteners. The jacket has a full front zipper opening that is usable from either side, a squared off collar with a fabric closure, fabric closures on the long sleeve cuffs, an elasticized waistband, and side pockets on either side of the front opening that are accessible from either side of the jacket. On the white side of the garment there is red piping that extends around the raglan sleeve seams.

LAW AND ANALYSIS:

In order to be classifiable in item 376.56, it must be determined that the garments in question are "wholly or almost wholly" of fabrics which are laminated with rubber or plastics material. Since both garments consist of two layers of fabric, one of which does not have any rubber or plastics material applied to it, the garments cannot be considered "wholly of" fabrics which are laminated with rubber or plastics material. Therefore, to be classifiable in that tariff provision, the garments must be "almost wholly of" such fabrics.

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General Headnote 9(f)(iii), TSUS, defines the term "almost wholly of" as meaning that the essential character of the article is imparted by the named material, notwithstanding the fact that significant quantities of some other material or materials may be present.

While we have not tested the laminated fabric portion of the submitted samples, advertising literature and our own visual inspection of the merchandise indicates that the laminated plastics layer on the white knit fabric does provide, if not complete waterproof protection, then at least substantial and significant water repellent or water resistant properties.

Considering the fact that the garments are apparently sold as a rainsuit or a foul weather suit to be worn during sports activities, the waterproof, windproof, and heat retention properties of the laminated white knitted fabric do, in fact, provide the essential character to the garments in question.

A question has been raised concerning the appropriateness of classifying these garments as rainwear or similar garments when one of the fabrics which may be worn exposed to the elements is not coated, filled, or laminated with rubber or plastics material. In this instance, it makes no difference whether the wearer has the coated or the uncoated outershell exposed, the protection afforded to the wearer against moisture and wind is still present. Note that we take no position at this time on the classification of other

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reversible garments that may be padded or quilted and have only one exterior shell which protects against moisture or rain.

HOLDING:

Each of the two garments comprising the sample set are classifiable in item 376.56, TSUS.

Sincerely,

John T. Lech

Harvey B. Fox
Director, Classification
and Value Division

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077905

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 3 1986

REFER TO
CLA-2 CO:R:CV:V
077928 jlj

Ms. Janice E. Toohey, Esquire
Givens, Kelly and Shaw
9225 Katy Freeway, Suite 309
Houston, Texas 77024

Dear Ms. Toohey:

You requested a tariff classification for Texsport "flight suit coveralls" on behalf of your client Texsport. You submitted a sample along with your letter.

The sample submitted is a pair of unixsex coveralls composed of 65 percent polyester and 35 percent cotton. On each shoulder there is a textile overlay. The coveralls are in chief value of polyester. They were made in China. They are available in five sizes, ranging from extra small to extra large.

The issue is whether the textile overlays on the shoulders ornament the coveralls. You argue that the overlays are not ornamentation because they impart no more than an incidental, decorative effect and because they have a function when used as flight suits. You cite United States v. Endicott Johnson, 67 CCPA 47, C.A.D. 1242 (1980), Brittania Sportswear v. United States, Slip Op. 83-46, 5 C.I.T. 212 (1983), and Ferriswheel v. United States, 68 CCPA 21, C.A.D.1260 (1981). You also submit three affidavits from former military personnel stating that the shoulder overlays are designed to reinforce and protect the shoulder from wear (e.g., from parachute straps or harness straps).

While the shoulder overlays may have some function among flight personnel, these overalls are for the general public, not flight personnel. The overlays simulate an allegedly necessary feature of a flight suit, but they are unnecessary on the instant garment. The overlays are more than incidentally decorative, therefore they constitute ornamentation. See Blairmoor Knitwear Corp. v. United States, 60 Cust. Ct. 338, C.D. 3396 (1968), where the court held that a feature which is more decorative than functional ornaments a garment for tariff purposes.

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The coveralls are unisex because they may be worn by both men and women and are available in a range of sizes fitting both men and women. As such, they fit within the Schedule 3, Part 6, Headnote 2(c), Tariff Schedules of the United States (TSUS), definition of "women's and girls' wearing apparel" as "wearing apparel commonly worn by either sex and not identifiable as being intended exclusively for the wear of men or boys."

The unisex, ornamented coveralls are classified under the provision for other women's wearing apparel, ornamented, of man-made fibers, not knit, coveralls, overalls, jumpsuits and similar apparel, in item 384.2530, TSUS, dutiable at the 1986 rate of 28.3 percent ad valorem. The textile category for items classified in item 384.2530, TSUS, is 659.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

JUL 1 1996

CLA-2:CO:R:CV:G
077941 JCH

District Director of Customs
300 South Ferry Street
Terminal Island
San Pedro, California 90731

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 27044003313

The above-captioned protest and application for further review were filed against your tariff classification of toy figures which were the subject of entry No. 84-751044-2 filed at the port of Los Angeles in 1983. This merchandise is a product of Taiwan. Our decision follows:

ISSUE:

The merchandise was classified by Customs Officers under the provision for dolls in item 737.24, Tariff Schedules of the United States (TSUS). This item is not on the Generalized System of Preferences (GSP) list for eligibility for an exemption from duty, and the applicable column 1 rate of duty in 1983 was 14.8 percent ad valorem. It is contended the merchandise is eligible under a GSP exemption for toy figures of animate objects (except dolls) in item 737.40, TSUS. The main issue for resolving this classification competition is whether the article in question possesses human features and, therefore, constitutes a doll, or whether it is merely humanoid and, therefore, constitutes an animate object other than a doll.

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FACTS:

The specific toy in question is an action figure approximately 5-1/2 inches in length. It is designated "Stratos, Winged Warrior," and is part of Mattel's Masters of the Universe series of action figures. The wings exist as separate attachments to the wrists.

LAW AND ANALYSIS:

Our position concerning the classification of so-called action figures as dolls was set forth at length in our decision in C.S.D. 84-32, 18 Cust. Bull. 896 (1983). That decision was responsive to arguments similar to those now being made here that the merchandise cannot be classified as dolls because of considerations pertinent to commercial designation, and it is unnecessary to repeat our position as to those points.

In our decision in C.S.D. 81-236, 15 Cust. Bull. 1202 (1981), we also affirmed our position that toys which depicted extraterrestrial creatures and which were merely humanoid rather than human were not classifiable as dolls, but rather as toy figures of animate objects. The characteristics of the figures which made them humanoid and other than human were distortions, exaggerations, etc., short of hybridizations which had no analogies to actual living or known species. Against the background of the language of Headnote 3, Subpart E, Part 5, Schedule 7, TSUS, it now may be said that an article is classifiable as a toy figure of an animate object if it is less than predominantly nonearthly, but not sufficiently human to constitute a doll.

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While it is claimed in the protest that Stratos combines "animate" features with human features, and therefore, cannot be regarded as a doll, he lacks any definite hybridizations. If Stratos is to be regarded as merely humanoid rather than human, that characterization must rely on certain distortions of otherwise human features. The main distortions embodied in the figure are arms which are excessively long and exaggerated lips. However, these distortions and exaggerations do not result in a figure sufficiently grotesque or otherwise unwordly to necessarily suggest extraterrestrial origin.

While it is further claimed that eye treatment and head ridges further set Stratos apart from usual human depiction, we find that these features should rather be interpeted as a type of helmet with built-in goggles.

HOLDING:

For the foregoing reasons, we find that Stratos is properly classifiable as a doll under item 737.24, TSUS. Therefore, the protest should be denied in full and a copy of this decision attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

CLA-2:CO:R:CV:G
077946 jlj
817426

077946

Ms. F. R. Brown
Bonar Packaging Ltd.
5615 - 44th Street, S.E.
Calgary, Alberta, Canada T2C 2J1

Dear Ms. Brown:

In New York letter 816770, dated January 21, 1986, we advised you that a repulpable linerboard/wax/linerboard would be classified as test or container board in item 251.30, Tariff Schedules of the United States (TSUS). Now you have advised us that the instant merchandise is used as a roll wrap, e.g., for wrapping rolls of newsprint.

In Customs Headquarters Ruling Letter 005399, dated September 21, 1970, we held that a similar wrapping paper made by passing two webs of kraft paper through the paper machine and joining them together with wax between the two webs, was classified, if under 0.012 inch in thickness, as wrapping paper, in item 252.81, TSUS.

Following HRL 005399, we hereby find that the instant linerboard/wax/linerboard, used as a roll wrap, is classified in item 252.81, TSUS, dutiable at the 1986 Column 1 rate of 0.5 percent ad valorem. New York letter 816770 is modified accordingly.

Sincerely,

Arthur J. Shapiro
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 27 1986

REFER TO

DATE:

FILE: CLA-2 CO:R:CV:G
077947 jlj

District Director of Customs
2039 Federal Office Building
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3001-5-000336

This protest was filed against your decision in the liquidation on June 28, 1985, of entry No. 85-564463-7 dated April 12, 1985, covering a shipment of textile ice cream cones produced in Taiwan.

This ruling concerns whether a textile "cherry" sewn to the top of a textile ice cream cone constitutes ornamentation.

FACTS:

The merchandise at issue is a three dimensional stuffed textile item made to resemble an ice cream cone with a cherry on top. The protestant claims that the article is ornamented by the textile cherry on the top. The import specialist claims that the cherry is an integral part of the cone and that the article is not ornamented. The merchandise was liquidated under the provision for articles not specially provided for, of textile materials, other articles, not ornamented, of man-made fibers, pile or tufted construction, in item 389.50, Tariff Schedules of the United States (TSUS).

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ISSUE:

Does a textile cherry sewn to the top of a textile ice cream cone constitute ornamentation?

LAW AND ANALYSIS:

The protestant's broker claims that the textile cherry decorates and ornaments the textile ice cream cone. He claims that the item is classified under the provision for articles not specially provided for, of textile materials, other articles, ornamented, other, in item 386.13, TSUS.

The import specialist asserts that the ice cream cone is not ornamented because the cherry is an integral part of the cone. The merchandise was liquidated as an unornamented textile article in item 389.50, TSUS.

The item is meant to imitate a complete edible article (i.e., an ice cream cone with fruit topping). Ice cream cones have various toppings (e.g., chocolate bits, fruit, nuts, etc.). These items are part of the dessert, not merely decoration.

Customs Headquarters has held previously that features which are necessary to create the article do not constitute ornamentation for tariff purposes. See Customs Headquarters Ruling Letter (HRL) 073813, dated January 7, 1985, Protest Review Decision 75-15 dated May 27, 1975, ORR Letter 72-0263, CIE Letter 6871/66 and Treasury Decision 56241(8). The cherry is necessary to create or complete the article. It does not constitute ornamentation.

The ice cream cone with a cherry is unornamented. It is classified as an unornamented textile article in item 389.50, TSUS.

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HOLDING:

The ice cream cone with a cherry is unornamented and is classified in item 389.50, TSUS. The protest should be denied in full. A copy of this letter should be sent to the protestant along with the CF19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DY

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

03 OCT 1986

CLA-2:CO:R:CV:G
077968 jlj

077968

Philip S. Gallas, Esq.
Grunfeld, Desiderio, Lebowitz & Silverman
2000 L Street, N.W., Suite 518
Washington, D.C. 20036

Dear Mr. Gallas:

In your letter of March 17, 1986, you requested a tariff classification ruling for a blouse on behalf of your client Mast Industries Inc. You submitted a sample blouse along with your letter.

The sample submitted is a ladies' shirt manufactured from a 100 percent cotton fabric. No style number is indicated. The shirt features a full front opening with placket secured by six buttons, 3/4 length sleeves with rolled up cuffs, pointed collar, rounded tailed bottom slightly longer in the rear, and two breast pockets with unsecured flaps.

A rectangular textile label measuring 1-1/8 inches wide and 1/2 inch high with the words "VENEZIA SPORTSWEAR" in plain block letters appears on the lower corner of one pocket flap. The letters in "VENEZIA" measure 3/16 of an inch wide and high, while those in "SPORTSWEAR" measure 1/8 of an inch high and wide. The words appear on separate horizontal planes. The letters in "SPORTSWEAR" are arranged close together, while those in "VENEZIA" are farther apart, so that both words extend the width of the label.

The issue here is whether this label constitutes ornamentation or not. We find that the label, which contains plain block letters, does not constitute ornamentation.

Sincerely,

John Rach

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP 19 1986

CLA-2:CO:R:CV:G
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077972

Mr. Salvatore E. Caramagno, Esq.
Ross & Hardies
1090 Vermont Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Caramagno:

You request a reconsideration of the tariff classification of certain strippable wall paper base stocks exported to the United States by your client, J. Ford and Co. Ltd. of Canada. The three types of base stocks at issue are sold under the trademark "Permastrip." They are Mark I, Mark II, and Permastrip L.

In a letter dated July 4, 1985, Mr. Luc M. Guay, Vice President in charge of Research and Specialty Marketing for J. Ford and Co. Ltd., states that Mark I is made on a Rotoformer. He states that Mark I is made of a combination of cellulosic and polyester fibers. Mark I S has polyester fibers which are 1/4 inch in length, while Mark I M has polyester fibers which are 1/2 inch in length. In the same letter, Mr. Guay states that the cost per pound of the polyester fibers in Mark I S is substantially higher than the cost per pound of the cellulosic fibers. (This agrees with what Mr. Guay said at a conference at Customs Headquarters in the summer of 1985, when he stated that the polyester is the component of chief value of Mark I).

In the same letter, Mr. Guay states that Mark II is made of 100 percent cellulosic fibers and is impregnated for dry strippability. He also says that Permastrip L is virtually the same as Mark I, except that it is composed of cellulosic fiber and mechanical pulp. At the conference in the summer of 1985, Mr. Guay stated that the Mark I and Permastrip L base stocks are made on Fourdrinier (i.e., standard) paper making machines.

In two previous ruling letters (Customs Headquarters Ruling Letter (HRL) 061169 of September 7, 1980 and HRL 070949 of September 13, 1983), Customs found that Mark I and Mark II Permastrip were classified under the provision for other printing paper, not lithographically printed, impregnated, coated or both, but not otherwise treated, in item 254.46, Tariff Schedules of the United States (TSUS).

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You argue that none of the three Permastrip base stocks are printing papers because:

(1) They do not belong to a class or kind of paper commonly or commercially known as printing paper,

(2) They do not belong to a class or kind of paper chiefly used in the United States as printing paper,

(3) They are not suitable for use as printing paper, and

(4) They are not unfinished printing papers.

You submit two affidavits, one from Mr. Guay and one from Mr. Stephen Bodrogi of Imperial Manufacturing Company, in support of the above-mentioned contentions. You argue that the three Permastrip base stocks should be classified under the provision for papers, impregnated, coated or both, not gummed, in item 254.80, TSUS.

After reconsideration of the previous rulings, we agree with you that none of the Permastrip base stocks constitute printing paper. If both Mark II and Permastrip L are impregnated or coated at the time of importation, we find that they are classified under the provision for other coated or impregnated papers in item 254.80, TSUS, dutiable at the 1986 Column 1 rate of 0.4 percent ad valorem.

The Permastrip Mark I base stock is a different matter, however. We note that it is made on a Rotoformer, that its component of chief value is polyester, and that it contains polyester fibers 6 millimeters or longer in length which have not been digested in the manufacturing process.

Customs HRL 061187 dated June 19, 1979, and HRL 065193 dated February 17, 1981 concern a similar material. They stated that "the length of the fibers is one way of distinguishing nonwovens from paper. Fibers used in nonwoven technology are generally 6 to 12 millimeters in length, while papermaking fibers are between 1 and 4 millimeters." They concluded that "This material with textile fibers in excess of 4 millimeters in length which are not digested in the manufacturing process is not paper" and that the material was classified as a nonwoven textile material. These letters also established that the Rotoformer was not a standard papermaking machine. See HRL 073555 dated May 29, 1984, in which a

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material which was partly polyester fibers was classified as a nonwoven textile fabric in item 355.25, TSUS. See also HRL 076899, dated February 24, 1986, in which a product used as a substrate or backing for vinyl wall covering materials and composed of 65 percent cellulosic wood pulp fibers and 35 percent man-made textile fibers was classified as a nonwoven fabric in item 355.25 TSUS.

Following HRL 061187, HRL 065193, HRL 073555 and HRL 076899, we find that Mark I is not classifiable as paper of any kind because it is produced on a Rotoformer and contains polyester fibers 6 millimeters in length or longer which have not been digested in the manufacturing process. Mark I is classified as a nonwoven textile fabric of man-made fibers in item 355.25, TSUS, dutiable at the Column 1 rate of 12.9 percent ad valorem plus 2 cents per pound.

Sincerely,

Allen R. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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076972

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 10 1985

CLA-2:CO:R:CV:G
077984 JLF

District Director of Customs
2039 Federal Office Building
900 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Application for Further Review of Protest No. 30015-000231, dated May 30, 1985.

This protest concerns the classification of nickel-cadmium (rechargeable) batteries contained within imported vacuum cleaners. The batteries are soldered in place and are neither replaceable nor removeable. Plastic brackets are available for hanging the vacuum cleaner on the wall while recharging. The protestant claims that the batteries and brackets are an integral part of the vacuum cleaner and should be classified as an entirety in item A683.30, Tariff Schedules of the United States (TSUS), under the provision for vacuum cleaners.

The issue under consideration is whether the vacuum cleaner, rechargeable batteries and plastic brackets are classified as an entirety in item 683.30, TSUS, under the provision for vacuum cleaners. Ruling 074443, December 7, 1984, which is controlling for disposition of this issue, held that the battery pack used in a cordless telephone is separately classifiable. In this ruling, the principle is stated that the batteries, although soldered to and imported with an object, retain their identity as batteries. See United Merchandising Corp. v. United States, 48 Cust. Ct. 50, C.D. 2313 (1962). In the instant case, the batteries may be replaced even though soldered in place.

Also, note that as discussed in the case of James Betesh v. United States, 40 Cust. Ct. 186, C.D. 1981 (1958), batteries when combined with the vacuum cleaner do not create a new article of commerce. The batteries alone have a separate commercial identity.

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HOLDING:

The batteries are separately classifiable under the provision for other storage batteries and parts thereof, in item 683.15, TSUS. The vacuum cleaner is properly classifiable in item A683.30, TSUS, under the provision for vacuum cleaners. The plastic brackets are considered holders and not parts of the vacuum cleaner and thus are separately classifiable in item 772.15, TSUS.

You are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT - 3 1986

CLA-2:CO:R:CV:G
077985 JLF

077985

District Director of Customs
2039 Federal Office Building
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Request for Further Review of Protest No. 30015-000305, dated July 5, 1985.

This protest concerns the tariff classification of mobile shapes identified as "Pancake Rag" animal dolls. The articles were classified upon importation in item 389.62, Tariff Schedules of the United States (TSUS), under the provision for other articles, not specially provided for, of textile materials. The protestant claims that the merchandise is properly classifiable in either item 737.28 or 737.40, TSUS, under the provisions for toy figures of animate objects.

According to Headnote 2, Subpart E, Part 5, Schedule 7, TSUS, if an article is chiefly used for the amusement of children or adults, it is a toy and should be classified in Schedule 7. We find the subject articles to be chiefly used for the purpose of amusement and should be classified in Schedule 7.

However, in this case for an article to be classified as a toy figure of an animate object, the merchandise must be a representation of the animal. See Louis Marx & Co., Inc. v. United States, 66 Cust. Ct. 139, C.D. 4138 (1971). A representation has been interpreted to mean a defined configuration in three-dimensional form. The sample articles appear only to suggest the idea of an animal and are more like shapes defined by a flat area of outline and not to an area defined by contour, mass, volume or fullness. In essence, the samples are silhouettes of particular animals, not multi-dimensional representations. The one-sided coloration and pattern of the mobile shapes emphasizes the insufficient reproduction of the appearance of an animate object.

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Ruling letter 064360, May 8, 1980, classified a stick-on animal, having one-sided color and a flat shape in item 737.95, TSUS, as other toys.

The Pancake Rag animals are chiefly used for purposes of amusement and are classified accordingly in Schedule 7. They lack the features, composition and identity that would allow a more specific classification in items 737.28 or 737.40, TSUS, and are therefore properly classifiable under the provision for other toys in item 737.95, TSUS.

You are instructed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
077987 SM

077987

District Director of Customs
2039 Federal Office Bldg.
909 First Avenue
Seattle, Washington 98174

Dear Sir:

Re: Request for Further Review of Protest No. 3001-5-000275, Dated June 21, 1985

This protest concerns the tariff classification of an article known as "Kari-Me Baby" under item 737.24, Tariff Schedules of the United States (TSUS), as a doll. The protestant claims that it should be classified under item 737.95, TSUS, as other toys, a provision carrying duty-free treatment for articles that are products of the Republic of Korea. In addition to filing a memorandum in support of their protest, representatives of the protestant together with counsel made an oral presentation to Customs Headquarters officials on June 11, 1986.

The article in question has a soft-sculpture head with stitching on the front suggesting facial features. A lace-trimmed brushed flannel nightgown is gathered around the neck and has a soft-sculpture hand stitched at the end of each sleeve. A plastic infant toy is sewed to one hand. A bonnet matching the nightgown covers the head. There are no arms or legs and no torso. A lace-trimmed brushed flannel blanket wraps the entire figure; it is stitched across the bottom and about 3 inches up each side and 6 inches up the front. The nightgown is stitched into the seam at the bottom. A 6-inch opening in the back of the blanket and the nightgown permits insertion of a hand. By putting one finger into a tube extending up into the head and the others into each sleeve of the nightgown, one can make the head and hands move.

Counsel for the protestant claims that the article is a puppet and should therefore be classified as other toys rather than as a doll; that it is more than a doll; and that Customs has a uniform and established practice of excluding from classification as dolls figures such as "Kari-Me Baby" that lack legs and bodies, or are not "complete."

There is no question that "Kari-Me Baby" can be manipulated by the insertion of a human hand into the back. A puppet feature does not, however, prevent the classification of an article, that is otherwise a doll, under the eo nomine provision for dolls. Since Congress has created no eo nomine provision for "puppets," such articles must be classsified, according to their several features, under various provisions of the tariff schedules.

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The word "puppet" is related to the Middle French poupette (little doll) and the modern French poupee (doll). See Webster's Third New International Dictionary, Unabridged (1965 ed.). The same dictionary defines "puppet" as:

> 1a. a small-scale figure of a human or other living being often constructed with jointed limbs, appropriately painted or costumed, and moved usually on a small stage by a rod or by hand from below or by strings or wires from above.
>
> 2b. DOLL 1a

"Doll" is defined as follows:

> 1a. a small-scale figure of a human being (as of a baby or child) used especially as a child's plaything.
>
> b. PUPPET 1a

We note that the definitions of "doll" and "puppet" cross-reference each other, indicating that the two terms are not mutually exclusive. Puppets do have a broader representational capacity in that they may depict a variety of living beings, while dolls generally represent humans.

It was under the Tariff Act of 1930 that "toys" and "dolls" clearly became separate entities for tariff purposes. "Congress defined toys in the so-called 'toy provision' of paragraph 1513 and eo nomine provided for 'dolls' in the same paragraph." See American Import Co. v. United States 22 Cust. Ct. 51, 53, C.D. 1158 (1949). The Tariff Classification Study Explanatory Materials, Schedule 7, p. 293, states, with regard to the TSUS provision for "dolls, and parts of dolls, including doll clothing," that "[i]tem 737.20 [now items 737.21 through 737.27] covers all dolls . . . ." The tariff provisions for dolls have long been considered to cover many puppets. In fact, in the case of Brechner Bros. v. United States, 58 Cust. Ct. 272, 275, C.D. 2959 (1967), plaintiff argued that a mechanical dressed crawling baby wound up with a key was not a doll, but a toy figure of an animate object, and that quoted definitions of "doll" should result in the provisions of the Tariff Act of 1930 for dolls being limited to puppets. The court, however, rejected this narrow interpretation.

> With reference to the word 'puppet,' [in the definitions of "doll": a toy puppet representing a person...a child's puppet] plaintiff has suggested in its brief that this limits the term doll to those articles that can be manipulated. No authority is cited for this contention....the word 'puppet' is defined as '***A small figure, commonly representing a human being***.' As defendant points out, most dictionary definitions make the word 'puppet' synonymous with the word 'doll.' We know of no sound reason for limiting the meaning of dolls in paragraph 1513 to articles manipulated by hand or strings as one of the meanings of the word 'puppet' suggests.

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Thus, while the provision for dolls is not limited to puppets, it definitely includes them.

In Russ Berrie & Co., Inc. v. United States, 76 Cust. Ct. 218, C.D. 4659 (1976), appeal dismissed, 63 CCPA 125 (1976), the court held that miniature papier-mache figures of small girls were dolls, and not articles of papier-mache. The court noted that it is well established that the provision for dolls is not a use provision but an eo nomine provision covering all forms of dolls and reviewed some of the many court cases in which different types of articles had been held classifiable as dolls. The court also discussed what is meant by the term "doll," at 224-25:

> As we have seen, the common meaning of the word 'doll' encompasses a great variety of merchandise. Perhaps because the variety is so vast, the courts have not been able to render a comprehensive definition of the term 'doll,' nor have they been able to '...make any all-embracing finding as to what is a doll or to hold that all small figures are dolls....' Nonetheless, there does appear to be a certain amount of agreement among the lexicographical authorities.

The court then reviewed definitions of dolls from various sources, including the following:

> More recent lexicographical authorities agree that the word 'doll' encompasses a broad spectrum of articles which are commonly known as dolls. Thus in Webster's New International Dictionary (2d ed., 1953) p. 767, a doll is described as;
>
> doll * * * 2. A child's puppet; esp., a toy baby for a child; any similar figure for play or ornament. * * *

The court thus once again indicated that the definition of dolls includes puppets; the same definitions have been quoted over and over by the court.

Customs has consistently classified dolls with puppet features as dolls. In our ruling of March 27, 1978, file 056326, a 12-1/2 inch dressed figure of a girl that could be manipulated by five strings was so classified:

> Although the marionette is characteristically operated by the manipulation of strings from above, it is still a type of puppet, and in any event, is considered to be a doll for purposes of the tariff schedules. Webster's Third New International Dictionary of the English Language provides generally that a marionette is a 'puppet moved by strings or by hand.' In addition, the Encyclopedia Britannica describes marionettes as string puppets and refers to them as dolls.

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In file 800723 of June 11, 1981, a 10-inch figure dressed in a clown-like costume, manipulable by strings attached to its limbs, was also determined to be a doll for tariff purposes. If dolls that can be manipulated were excludable from the doll provisions, it would be a simple matter for importers to attach strings to many dolls, or to make some kind of opening in the clothing or the body of the doll, in order to claim the exclusion. Any doll, in fact, that is also a child's plaything can, by definition, be manipulated during play; that is in the nature of children's dolls. A doll with a long skirt can be manipulated by placing a hand under the skirt and moving the legs. A doll that can be manipulated through a special slot cut in the back can be moved in an even more lifelike manner, but is no less a doll for that.

Counsel for the importer states that "Kari-Me Baby" is more than a doll, but does not give reasons for this position. We assume that it is because of the article's puppet feature. However, we do not find this argument persuasive, since, as indicated above, doll-puppets are classifiable as dolls for tariff purposes, and neither the court nor the Customs Service has held that a puppet feature alone will make a doll more than a doll. The cases and rulings cited in support of counsel's position do not establish that "Kari-Me Baby" is more than a doll. File 057453 of November 2, 1978, concerned the classification of an animal figure, not a human one. The toy monkey classified in that ruling sat on a plastic barrel and had a battery mechanism that caused it to jump and beat the barrel; it was classified as a toy along with other articles that perform tricks, beat cymbals, etc. "Kari-Me Baby" is a human figure; does not have a battery mechanism; and does not perform any tricks. In file 056381, of May 10, 1978, some corn husk dolls were said to be more than dolls; no reason was given. However, we note file 042723 of December 12, 1976, in which two corn husk figures were found to be more than dolls. One was standing on a green floor simulating grass and holding a silver watering can with which she was "watering flowers"; the scene measured 5 inches by 6 inches and had a wooden base and a thin wooden arch roof. The other was similar but lacked a roof. "Kari-Me Baby" is not built into any such scene. In Dan-Dee Imports, Inc. v. United States, --CIT--, Slip Op. 86-2 (January 3, 1986), the court determined that an article was more than a doll because it had aspects of a book, not because it had any aspects of a puppet. In House of Ideas, Inc. v. United States, 2 CIT 68 (1981), an article was held to be more than a doll because its bank component was of equivalent or greater importance to its commercial function than was its human shape. We do not think that the fact that "Kari-Me Baby" can be manipulated by the insertion of a hand is of more commercial importance than the fact that it represents a "soft and cuddly" "real baby" "to hug and pat" "wherever you go" (language from the advertising on the box containing the sample). A bank is quite a different article from a doll; a puppet is not. In Janex Corp. v. United States, 80 Cust. Ct. 146, C.D. 4748 (1978), plastic battery-operated figures of Raggedy Ann and Andy that lit automatically when lifted off a surface or when a ring was pulled were held to be more than dolls because of the lighting feature, not because of any puppet characteristics. The court stated, at 155:

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> ...in the present merchandise the illuminating feature performs a function as a night-light, which is independent of any function or use the articles may have as a doll. And unlike such features commonly incorporated in dolls as mechanisms that create tears, cause the arms or legs to move, produce a voicelike sound, or otherwise contribute to a lifelike simulation, the illuminating feature of the instant articles does not in the least contribute to a lifelike simulation. On the contrary, the illumination feature was solely intended to make the articles useful in the dark as a night-light, a function mutually exclusive of the articles' use as dolls. [Court's emphasis]

We do not think that the puppet feature of "Kari-Me Baby" was intended to serve any function mutually exclusive of the article's use as a doll. Rather, it contributes to the figure's life-likeness, a feature emphasized in the advertising on the box: "Make me move. I'm like a real baby," etc. The court also repeated the definitions of dolls quoted in previous cases. Cragston Corp. v. United States, 51 CCPA 27, C.A.D. 832 (1963) did not concern the doll provisions of the Tariff Act of 1930. Rather, the provisions in dispute were toy figures having a spring mechanism and toy figures or images of animate objects. The court determined that the merchandise there -- a baby doll with an exposed key for winding the enclosed spring mechanism, and a metal walker consisting of two separable halves with each piece mounted on small wheels and used to support the baby in an upright position and make it "walk" -- was more than a figure of an animate object, "since a baby doll in a walker is an entirely different toy than without the walker." "Kari-Me Baby" lacks any added equipment such as the metal walker.

The Customs Service has repeatedly ruled that a variety of articles representing humans but lacking feet, legs, torsos, or various combinations of these "human" body parts are dolls for tariff classification purposes where the clothing is in such proportion that it gives the appearance of a full-figured representation. Thus, a figure consisting primarily of a textile-covered body formed from a hollow cardboard cone and wire was classified as a doll on April 4, 1972, file 018089. A figure with a hollow body made of cardboard and textile material, with no feet, was classified as a doll on May 13, 1970, file 003534. Corn husk dolls, also lacking torso and legs, were similarly classified in T.D. 71-146(6), as were Chinese broom dolls in file 057131 of October 3, 1978. A figure of a baby with a hollow body, laid in a basket and dressed in a woven cotton gown 11 inches in length in the front and 18 inches in length in the back, the back of which was folded over the figure to simulate a blanket, was classified as a doll in file 810815 of October 23, 1984. In each case the figure was determined to be a doll for tariff purposes despite the lack of certain "human" body parts because a full-length skirt or dress clearly suggested the limbs and would have concealed them if they had been present. Further, in IA 128/84, file 075101, of January 30, 1985, a Christmas angel with a textile frock covering a paper cone concealing the absence of legs and torso was determined to be classifiable as a doll:

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> We do not agree that the absence of legs or torso precludes the Christmas Angel from being considered a doll for tariff purposes. This office has ruled consistently that similar figures are dolls for tariff purposes. Further it should be noted with respect to the instant figure that the length of the doll's frock would conceal her legs and torso if she had them.

The file also noted that "the Christmas Angel does contain the shape, feature, and appearance of a doll." It is our position that these rulings are correct and that they indicate that "Kari-Me Baby," too, is properly classified as a doll, since it represents the full-length figure of a baby whose legs and torso, if present, would be swathed in the nightgown and blanket. "Kari-Me Baby" can certainly be described as having "the shape, feature, and appearance of a doll," too. Finally, we note that a letter of April 30, 1981, file 065010/061745, concerning articles imported by the protestant in this case stated that another angel, and a Santa, were classifiable as dolls since they had the required characteristics of "full or essentially full-bodied representations of human characters," despite their lack of feet.

Thus the protestant's claim that Customs has an actual uniform and established practice of not extending classification as dolls to articles that lack legs and bodies is not supported. What Customs has in fact done has been to exclude from the doll provisions partial human figures lacking various body parts or any representation thereof. Thus, in file 811621 of December 13, 1984, a wizard hand puppet not representing a full figure was classified as an other toy, as was another puppet with a human face but less than a full figure in file 805882 of May 16, 1983.

Counsel for the protestant in fact cites a number of other Customs rulings in which puppets were classified as other toys. However, the articles in question in those files could not have been classified as dolls in any case since they represented animals. It is not persuasive in this case that in file 056604 of October 3, 1978, a bunny hand puppet, not a full figure, was classified as an other toy. We note once again that Congress has not seen fit to provide eo nomine for puppets; nor has it done so for toy animals. It has so provided for dolls. The provision for "toy figures of animate objects" specifies "except dolls," and discussion of what constitutes an animate object may not be at all germane to a discussion of what constitutes a doll.

Counsel also refers to file 065423 of January 22, 1981, in which an "incredible hulk" figure was classified as a doll because it was considered a full-bodied representation of a character with human characteristics even if not exactly a human figure. As indicated above, dolls with long skirts or dresses have long been considered full-bodied representations.

Finally, counsel refers to two rulings in which articles described as finger puppets were classified as other toys. In file 064360, of May 8, 1980, the figure was approximately 2 inches tall and consisted mostly of a head with a dog face pasted on; the rest of the article was a band of felt

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large enough to accommodate one finger. The article involved in file 065852 of May 28, 1981, was human in form and designed to fit over the cylindrical top of a lipstick tube or the cylindrical handle on a bottle of nail polish. It could also be used as a finger puppet, again accommodating literally one finger. "Kari-Me Baby" is not remotely similar to these articles, and their classification has no bearing on its classification.

We cannot, then, agree with the protestant's proposed classification or with their claim that in this decision we have made a novel and radical departure from precedent. In importing an article for the first time, the protestant could have taken advantage of the existing procedure for obtaining an administrative ruling. In fact, they have presented a copy of a letter addressed to a National Import Specialist by name, asking for the tariff classification of the article in question here. There is no record that this letter was ever received; it was not logged in, and no acknowledgment, which normally goes out within 30 days, was sent. In the three months between the date of the letter and the date of the first entry, inquiry could have been made and a letter sent to the port indicating that a ruling request was pending. In any case, letters sent personally to National Import Specialists would have to be redirected through proper channels.

In conclusion, we point to the language in Brechner Bros., supra, where the court indicated that new forms of dolls were includable within the doll provision; that language is relevant in this case:

> Moreover, the rosy-cheeked, blue-eyed baby figure, clothed in bright colors and set in a classic crawl position...suggests the essential characteristics of a child's doll....the court can take judicial notice of the fact that technological advances have visited the doll making business to the extent that walking, talking, and crying dolls of all sizes and shapes permeate the modern market place. The extent and degree of imaginative and lifelike features incorporated in these products are sometimes almost incredible. However, it is simply a case of today's children playing with today's dolls, and while the product may change, it is in no way manifest that its use by young, would-be mothers has changed.

For the reasons stated above, "Kari-Me Baby" is properly classified as a doll under item 737.24, TSUS. Therefore, you should deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

John T. Rath

For: Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP - 9 1986

CLA-2:CO:R:CV:G
078034 SM

078034

Mr. Joseph D'Urso
Operations Manager
PKO Limited
434 Chelsea Street
East Boston, MA 02128

Dear Mr. D'Urso:

On behalf of East Wind Company, you have requested an administrative ruling for a proposed customs transaction involving a textile fabric, known as Tyvek, manufactured in the United States by Du Pont. East Wind plans to ship the fabric in rolls 108 inches wide and 3566 meters long to Taiwan, where it will be reworked into rolls of the same width but 59.44 meters long and returned to the United States. You have inquired as to whether the smaller rolls can be entered free of duty under item 800.00, Tariff Schedules of the United States (TSUS), as products of the United States returned without having been advanced in value or improved in condition while abroad.

The merchandise itself, of which you submitted a sample, consists of a spun bonded nonwoven fabric of olefin man-made fibers. It is classifiable under the provision for nonwoven fabrics, of textile materials, whether or not coated or filled, of man-made fibers, in item 355.2500, Tariff Schedules of the United States Annotated, textile quota category 669. The Customs Regulations for textiles and textile products provide, at 19 CFR 12.130(c), that merchandise that falls within the purview of Headnote 2, Part 1, Schedule 8, TSUS, concerning U.S. products advanced in value or improved in condition abroad, may not, upon its return to the United States, be considered a product of the United States. For the reasons stated below, the textile product you would be importing would be subject to Headnote 2, and thus would not be considered a U.S. product; quota restrictions on imported textiles would apply and a Taiwan visa would be required at the time of entry.

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The process to which the fabric would be subjected in Taiwan, cutting into shorter lengths and rewinding into smaller rolls of the same width, would advance it in value and/or improve its condition and constitute an alteration for tariff purposes. We note T.D. 56448(1), in which the operation abroad of cutting U.S.-made yarn to shorter lengths and rewinding it on smaller reels was determined to be an alteration within the meaning of item 806.20, TSUS. Thus, while the fabric, when reimported, would not be eligible for duty-free treatment under item 800.00, TSUS, it would be eligible for a partial duty exemption under item 806.20, TSUS, assuming that all regulations are complied with. The rate of duty, to be assessed against the cost or value of the alterations, including the cost or value of any foreign reels or spools supplied, would be the rate of duty applicable to articles imported under item 355.25, TSUS, converted to an ad valorem rate. The 1986 column 1 rate of duty is 2 cents per pound plus 12.9 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP 16 1986

CLA-2:CO:R:CV:G
078051 JLF

078051

District District of Customs
120 South Central Avenue
St. Louis, Missouri 63105

Re: Decision on Application for Further Review of Protest No. 4503-6-000003

This protest was filed against your decision in the liquidations of December 20, 1985, entry Nos. 112954, dated July 26, 1985, and 113206, dated August 28, 1985, covering articles called "Key Lites."

FACTS:

The subject merchandise is known as "Key Lites," and consists of a light with a key holder. The light is specifically designed to provide low intensity illumination required to locate a lock or keyhole.

The importer believes the subject articles are properly classifiable as other portable lamps in item 683.80, Tariff Schedules of the United States (TSUS), since the articles are made to hold a key as well as provide illumination for its use. Upon importation, the articles were reclassified as flashlights in item 683.70, TSUS.

ISSUE:

Whether the "Key-Lite" is properly classifiable under the provision for flashlights in item 683.70, TSUS, or under the provision for other lamps in item 683.80, TSUS.

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LAW AND ANALYSIS:

The definition of a flashlight is "a small battery operated portable electric light." See C.D. 2345. The addition of a physical device which may influence usage, such as a key holder, does not change the fact that the merchandise is a flashlight according to the above stated definition. See C.D. 4665. It is a well established Customs principle that the eo nomine designation will cover all forms of an article.

Note letter rulings 806008, May 19, 1983 and 810466, September 7, 1984, which have classified similar merchandise under the provision for flashlights in item 683.70, TSUS, with separate classification of the bulbs in item 686.80, TSUS.

Also, T.D. 56372(26) discusses an article which is similar to the merchandise which is the subject of this ruling and holds that a small lamp attached to a key chain which aids one in finding automobile keys, etc., is classifiable under the provision for flashlights, in item 683.70, TSUS.

HOLDING:

Thus, the "Key Lite" is properly classifiable under the provision for portable electric lamps with self-contained electrical sources...: Flashlights, in item 683.70, TSUS.

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The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

William P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 22 1986

CLA-2 CO:R:CV:G
078059 TLL

078059

District Director of Customs
477 Michigan Avenue
Detroit, Michigan 48226

Dear Sir:

Re: Application for Further Review of Detroit Protest No. 3801-5-002062

This is a protest against your decision in the subject application for further review of a product known as fleshing grease classified under item 178.30, Tariff Schedules of the United States (TSUS). Protestant claims classification under item 177.56, TSUS, as tallow. The Government's position now is that item 177.72, TSUS, the provision for other non-edible greases, applies.

FACTS:

The product in question is fleshing grease. This grease is derived from fat of bovine origin. It is not mixed, sulfonated, or hydrogenated. It is a grease that is produced from the rendering of animal fat.

ISSUE:

Whether the imported fleshing grease is a tallow classified under item 176.56, TSUS.

DISCUSSION OF LAW:

The merchandise in question, "fleshing grease" is asserted by the importer to be rendered fat of bovine origin. He maintains that the merchandise is tallow but does not provide any support for his contention. No samples of the subject merchandise were supplied and no laboratory tests were conducted.

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Fleshing grease is defined in Fatty Acids: Their Chemistry, Properties, Production, and Uses, Klare S. Markley, Interscience Publishers (1967), as:

> Fleshing Grease, sometimes referred to as leather grease is the fat from directly under the skin of the animal.

By-Products of the Meat Packing Industry, Institute of Meat Packing (1950), reprints a table issued by the Office of Price Administration during the Second World War listing the full range of grades for animal fats and greases which we understand are generally accepted and followed by the trade. The table divides the various listed fats into two general categories, tallows and greases. Fleshing grease is clearly listed among the greases and not as a tallow. The table carries a footnote stating "Materials of less than 40 titer shall be deemed greases and materials of more than 39.9 titer shall be deemed tallows." On page 153 of the cited book, titer is defined as the solidifying point of a material's fatty acids, and as an indication of the hardness of the material in question. Since no samples were obtained for laboratory analysis, there is no established titer for the merchandise in question here.

The Summaries of Trade and Tariff Information Schedule 1, Volume 12, **Animal** and Vegetable Fats and Oils (1969) contains a general discussion of tallows and greases. However, this discussion contains no physical standards to differentiate between tallow and other animal oils, fats, and greases.

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The question of tallow versus grease was considered by the Customs Court in Armour & Co. v. United States, C.D. 383, (1940). The court discussed the titer test noting that it is a measure, expressed in degrees centigrade, and represents the solidifying temperature point of the fatty acids contained in molten grease or tallow. The court noted the same standard employed by the Office of Price Administration, that is, a product with a titer below 40°C would be a grease while a titer of 40°C or higher would make the product a tallow.

In the absence of a laboratory test indicating the actual titer it is not possible to determine whether a substance is a tallow or a grease. However, the foreign shipper did invoice the merchandise as fleshing grease. This is a term firmly established in the trade as indicating an inedible grease with a titer of less than 40° centigrade. Therefore, based upon an established trade meaning for the term employed by the exporter, "fleshing grease," and in the absence of any evidence from the importer showing that the merchandise is a tallow, it is properly classifiable under item 177.72, TSUS, as an animal oil, fat, or grease, other than edible.

CONCLUSION:

You are instructed to deny the protest, except to the extent reclassification of the merchandise as indicated above results in a partial allowance.

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A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur J. Schiffler
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 26 1986

REFER TO
CLA-2:CO:R:CV:G
078063 PR

078063

Mr. Willie Tan
General Manager
American International Knitters Corp.
P.O. Box 1280
Saipan Northern Marianas 96950

Dear Mr. Tan:

This is in reply to your letter of April 1, 1986, concerning the country of origin of certain garments.

You state in your letter that the garments will be made from unmarked knitted sweater fabric, although you indicate that shirts as well as sweaters will be made. The unmarked fabric is imported into the Northern Marianas where it is cut by means of electric or manual cutters into patterned garment pieces. Those pieces consist of many parts but are mainly the body, collar, and sleeves of the garments to made from them. Also in the Northern Marianas, an overlocking, sewing, or linking machine is then used to join the front and back pieces, the sleeves, and the collar. The resultant finished garment is then exported to the United States.

Based on the facts outlined above, the garments imported into the United States would be considered to be products of the Northern Mariana Islands and are eligible for duty-free treatment under General Headnote 3(a), Tariff Schedules of the United States, provided they meet the other requirements contained therein.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OCT - 2 1986

CLA-2:CO:R:CV:G
078079 SM

078079

Mr. Mitchell Katz
Fashion Rite Corp.
40 Nathan Place
Neptune City, New Jersey 07753

Dear Mr. Katz:

You have requested a tariff classification ruling for an article of apparel described as an infants' pram overall, a product of Taiwan.

The garment, style 31413, is sized for infants up to 24 months of age. It has long sleeves and legs and a stitched-on hood with a drawstring and snap fasteners. Two zippers extend down the front from the neck to the legs. Textile overlays and appliques ornament the front. The hood and torso are lined with a knit acrylic pile; the arms and legs are lined with woven nylon. The interior fill is polyester; the outer shell is woven of 65 percent polyester/35 percent cotton. Rib knit cuffs finish the arm and leg openings. An unconstructed hand cover, made of the same fabric as the outer shell with the same pile lining, lacking detailing for individual fingers, is attached to the end of each sleeve with two snaps. Foot covers, of the same fabric, having some elastic and resembling booties, are attached by means of snaps to the end of each leg.

This pram suit is classifiable as one complete article for tariff purposes. The hand and foot covers are imported together with the main part of the suit. The covers have no viable separate identity; they would not stay on the body unless snapped in place on the suit. They are not likely to be sold separately. The suit is classifiable as ornamented women's, girls', or infants' wearing apparel, of man-made fibers, not knit, other, other, under item 384.2697, Tariff Schedules of the United States Annotated, quota category 659.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

LEARED TO THE

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 26 1986

CLA-2 CO:R:CV:G
078081 JLF

078081

Ms. Angela De Gaetano
Chief, Customs Information Exchange
U.S. Customs Service
6 World Trade Center
New York, N.Y. 10048

Dear Ms. De Gaetano:

A Customs Form 6431 dated May 24, 1986, received in this office on April 7, 1986, concerns entry No. 85-914797-8 dated April 28, 1985, covering a shipment of Radicchio from Italy. This difference of opinion is not listed on the last list of differences circulated as CIE N89/79, Suppl.47 of May 1986.

Radicchio is described as a salad chicory. The sending port maintains that Radicchio is botanically the same as witloof chicory, a form of endive. Therefore, the sending port concludes that Radicchio is properly classifiable in item 136.10, Tariff Schedules of the United States (TSUS), which provides for witloof chicory.

Previous New York Ruling letters 816092, December 12, 1985, and 813297, May 24, 1986, found Radicchio to be classifiable under the provision for other fresh vegetables in item 137.97, TSUS.

Although they may be of the same species, Radicchio is of a different subspecies than witloof chicory and the two are not commercially interchangeable. Radicchio is a specialty item. It could not be commercially designated as witloof chicory. For the foregoing reasons, it is our position that Radicchio is properly classifiable under the provision for other fresh vegetables in item 137.97, TSUS.

Sincerely,

Arthur P. Scheffler
for Harvey B. Fox
Director, Classification
and Value Division

F3

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 18 1986

CLA-2:CO:R:CV:G
078083 jlj

078083

District Director of Customs
127 North Water Street
Ogdensburg, New York 13669

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 0712-5-000756

This protest was filed against your decision in the liquidation of various entries covering shipments of Windsor papers manufactured by Domtar Fine Papers in Canada.

This ruling concerns whether or not the papers at issue are coated or impregnated.

FACTS:

The papers at issue are Windsor papers which have been treated with a small amount of Baysynthol at the size press. Baysynthol is a maleic acid anhydride copolymer.

The import specialist liquidated the entries under the provision for printing paper, not lithographically printed, other, impregnated, coated or both, but not otherwise treated, in item 254.46, Tariff Schedules of the United States (TSUS).

The protestant claims that the papers are neither coated nor impregnated and that they should be classified under the provision for papers, not impregnated, not coated, book and printing paper, not specially provided for, in item 252.67, TSUS.

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ISSUE:

Is paper which has been surface sized with Baysynthol classified as paper which has been impregnated or coated? Or is it classified as paper which has not been impregnated or coated?

LAW AND ANALYSIS:

The protestant claims that although Baysynthol is added to the instant papers at the size press, the papers are not impregnated or coated. It claims that addition of Baysynthol to the starch applied at the size press is not a treatment. It submits an affidavit from a technical expert who states that Domtar's Windsor Offset is neither coated nor impregnated. The expert defines "impregnation" as using a latex emulsion to alter the properties of the paper and "coating" as applying a pigmented coating to enhance the paper's printing properties.

In Customs Headquarters Ruling Letter (HRL) 018290, dated March 3, 1972, this office held that "...if the polymeric binder or other chemicals are added...as a treatment applied to the sheet or web of paper after it is formed on the paper making machine, the resultant paper is classifiable under the provision for papers impregnated, coated or both, but not otherwise treated, in item 254.80, TSUS...." Inasmuch as the instant papers are printing papers, they are properly classified under the provision for printing paper, impregnated, coated or both, in item 254.46, TSUS.

FS

In HRL 048308, dated January 6, 1977, a similar operation was discussed. The subject merchandise was a hanging paper made on a conventional Fourdrinier paper making machine. After the web was formed and passed through the driers, it was passed through a size press, where sizing, binder, and other additives were applied to the paper web. HRL 048308 stated "This Headquarters consistently has ruled that the addition of binders or other chemicals to the sheet or web of paper after it is formed on the paper machine results in a paper classifiable under the provision for papers impregnated, coated or both." HRL 048308 was followed by HRL 072501, dated April 12, 1983.

Following the precedent set in HRL 018920, HRL 048308 and HRL 072501, we find that the instant paper, which has been surface sized by Baysynthol, a maleic acid anhydride copolymer, after the web or sheet of paper is formed on the paper machine results in the classification of the papers under the provision for other printing paper, impregnated, coated or both, in item 254.46, TSUS.

HOLDING:

The instant Windsor papers treated with Baysynthol are classified as other printing paper, impregnated, coated or

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both, in item 254.46, TSUS. The protest should be denied in full. A copy of this letter should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

Arthur J. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

078083

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

SEP 18 1986

REFER TO
CLA-2 CO:R:CV:G
078084 jlj

078084

District Director Of Customs
127 North Water Street
Ogdensburg, New York 13669

Dear Sir:

RE: Decision on Application for Further Review of Protest
No. 0712-4-001956

This protest was filed against your decision in the liquidation of nine entries covering shipments of Windsor Offset paper manufactured by Domtar Fine Paper Ltd. in Canada.

This ruling concerns the correct tariff classification of the paper.

FACTS:

The instant merchandise is described as Windsor Offset white sheet paper, not coated, not embossed, imported in rolls 29-3/4 inches wide, with a basis weight of 45 pounds based on a ream of paper 25 inches by 38 inches.

The protestant's broker claims that the instant paper belongs to the class or kind of paper which is chiefly used for printing paper and that it is classified under the provision for printing papers, book and printing paper, not specially provided for, in item 252.67, Tariff Schedules of the United States (TSUS).

The import specialist asserts that the paper is writing paper and is classified under the provision for writing paper weighing over 18 pounds per ream in item 252.75, TSUS.

ISSUE:

Is the instant paper classifiable as printing paper in item 252.67 TSUS, or as writing paper in item 252.75, TSUS?

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LAW AND ANALYSIS

The protestant's broker claims that the Windsor Offset paper at issue here is chiefly used as printing paper if it is over 38 pounds basis weight (i.e., 40, 45 and 50 pounds basis weight) and is classifiable in item 252.67, TSUS. He presents a number of affidavits and cites United States v. Carborundum Co., 63 CCPA 98, C.A.D. 1172, cert. denied, 429 U.S. 979(1976), in support of his position.

The import specialist asserts that all Windsor Offset paper with a basis weight of 38 pounds (based on a ream of paper 25 inches by 38 inches), regardless of size, and all paper with basis weights from 40 pounds up to and including 50 pounds (based on a ream of paper measuring 25 inches by 38 inches), in the following sizes:

29-3/4 inches
29-23/32 inches
28-1/2 inches
25-1/2 inches
23-1/2 inches
14-7/8 inches
14-27/32 inches

constitutes writing paper classifiable in item 252.75, TSUS. He bases his assertions upon information received from the paper trade including Domtar, a Domtar customer, the American Paper Institute, and two American form bond paper manufacturers. (He stresses that his assertion applies only to regular Windsor Offset paper. Windsor Offset Opaque paper is not included, regardless of size or basis weight.) He also notes that, in his experience, over 50 percent of this type of paper is imported by manufacturers of business forms or of forms papers.

The protestant claims that Windsor Offset paper in the basis weight categories of 40 pounds and over belong to the class or kind of paper chiefly used in for commercial printing. The import specialist argues that the class or kind of paper proposed by the protestant is too wide. He argu

078084

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that the width of a paper in its condition as imported further defines the class or kind to which a paper belongs, citing as precedents Customs Headquarters Ruling Letter (HRL) 074564 of November 26, 1984, and Treasury decision 68-265(20). We agree.

The import specialist has found that Windsor Offset paper in roll width size of 29-3/4 inches (and the other sizes cited above) and in basis weights of 40 to 50 pounds inclusive are chiefly used in the United States as forms paper. Such chief use has previously been determined to be as writing paper. See HRL 065371, dated October 30, 1980, and HRL 074564, dated November 26, 1984. Following these precedents, we find that Windsor Offset paper in basis weights of 40 to 50 pounds inclusive (25 inches by 38 inches) and in the roll widths cited above are chiefly used as forms paper. We find that such paper is classified as writing paper weighing over 18 pounds per ream, in item 252.75, TSUS.

HOLDING:

The instant Windsor Offset paper in the above-mentioned basis weights and roll width sizes is classified as writing paper in item 252.75, TSUS. The protest should be denied in full. A copy of this letter should be sent to the protestant along with the CF19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Divisions

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078084

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 19 1986

CLA-2:CO:R:CV:G
078085 jlj

078085

District Director of Customs
127 North Water Street
Ogdensburg, New York 13669

Dear Sir:

Re: Decision on Aplication for Further Review of Protest No. 0712-5-000688

This protest was filed against your decision in the liquidation on May 6, 1985, of entry No. 85-341527, dated April 26, 1985, covering a shipment of "Concorde Opaque-White" paper manufactured by Rolland Inc. in Canada.

This ruling concerns whether or not the paper in question is coated or impregnated.

FACTS:

The paper at issue is described as Concorde Opaque-White, size 35 inches, basis 25x38 -- 100 "M." The protestant states that the paper is internally sized with a "minimal addition of rosin in the stock with a small quantity of synthetic chemical in the starch. The synthetic chemical used in the products is SCRIPTSET, a copolymer of maleic anhydride." Scriptset (styrene maleic anhydride copolymer) is described by its manufacturer as a "film-former for surface treating paper and paperboard to improve printability, create good surface qualities, and impart water resistance."

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The protestant claims that the paper is neither coated nor impregnated and that it should be classified under the provision for papers, not impregnated, not coated, book and printing paper, not specially provided for, in item 252.67, Tariff Schedules of the United States (TSUS).

The import specialist liquidated the entry under the provision for printing paper, not lithographically printed, other, impregnated, coated or both, but not otherwise treated, in item 254.46, TSUS.

ISSUE:

Is paper sized with Scriptset classified as paper which has been impregnated or coated? Or is it classified as paper which has not been impregnated or coated?

LAW AND ANALYSIS:

The protestant claims that even though a miniscule amount of Scriptset is added to the paper at the size press, the criteria to be used in determining whether or not a paper is coated or impregnated is the nature of the process itself and, more important, whether a new surface has been created. The protestant claims that a new surface has not been created and that the imported paper is neither impregnated nor coated, therefore it is classifiable as printing paper, not impregnated, not coated, in item 252.67, TSUS.

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In Customs Headquarters Ruling Letter (HRL) 018290 dated March 3, 1972, this office held that "...if the polymeric binder or other chemicals are added...as a treatment applied to the sheet or web of paper after it is formed on the paper making machine, the resultant paper is classifiable under the provision for papers, impregnated, coated or both, but not otherwise treated, in item 254.80, TSUS...." Inasmuch as the instant paper is a printing paper, it is properly classified under the provision for printing paper, impregnated, coated or both, in item 254.46, TSUS.

In HRL 048308, dated January 6, 1977, a similar operation was discussed. The subject merchandise was a hanging paper made on a conventional Fourdrinier paper making machine. After the web was formed and passed through the driers, it was passed through a size press, where sizing, binder, and other additives were applied to the paper web. HRL 048308 stated "This Headquarters consistently has ruled that the addition of binders or other chemicals to the sheet or web of paper after it is formed on the paper machine results in a paper classifiable under the provision for papers impregnated, coated, or both."

Protestant's claim that the criteria to determine whether or not a paper is coated or impregnated is the nature of the process itself and whether a new surface has been created were answered in HRL 072501, dated April 12, 1983. In HRL 072501,

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we found that a paper which had been surface treated with a sizing containing a significant amount of clay was classified under the provision for other printing paper, impregnated, coated or both, in item 254.46, TSUS. We observed that "If we read the entire definition of 'coating,' it is apparent that the Dictionary of Paper specifically includes surface sized paper among those papers which have been coated." We also found that there are many different processes which constitute a "coating" operation and that coating did not necessarily create a new surface on paper.

Following the precedents set by HRL 018290, HRL 048308, and HRL 072501, we find that the instant paper, which has been treated by Scriptset (styrene maleic anhydride copolymer) after the web or sheet of paper is formed on the paper machine results in the classification of the paper under the provision for other printing paper, impregnated, coated or both, in item item 254.46, TSUS.

HOLDING:

The instant paper treated with Scriptset is classified as other printing paper, impregnated, coated or both, in item 254.46, TSUS. The protest should be denied in full. A copy of this letter should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

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078085

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

AUG 26 1986

REFER TO

CLA-2:CO:R:CV:G
078086 SM
817776

078086

Mr. P. H. Kowal
Head
Market Entry Section
USA Marketing Division
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canada

Dear Mr. Kowal:

On behalf of Edwards Steel Fabricators, Inc., of Toronto, you have requested a tariff classification ruling for some fabricated single and multi-pole steel structures. You have provided illustrated literature.

The articles in question are of non-alloy steel. They are available in single-pole center and offset mount constructions, or in various multi-pole configuration constructions. The structures are used in the outdoor advertising sign industry, with the signs themselves to be supplied by the U.S. customers.

These articles are classifiable as other base metal structures of iron or steel under item 653.00, Tariff Schedules of the United States. If they are products of Canada, they are not subject to any Voluntary Restraint Agreements (VRA's), and no export certificates would be required. If there is any question as to whether, for tariff classification purposes, the structures would be considered products of a country subject to VRA's, you may wish to consult with the International Trade Administration, U.S. Department of Commerce, for information concerning VRA requirements.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Date:

File: CLA-2 CO:R:CV:G
078142 JNB

TO : District Director of Customs
Baltimore, Maryland 21202

FROM : Director, Classification and Value Division

SUBJECT : Reissuance of Protest and Application for Further Review Number 1303-5-000459

On October 2, 1986, this office issued a decision allowing the above-noted protest. Further review of the matter reveals that decision to be incorrect. Import Specialist Duda alertly identified an error in the classification due to a miscalculation of the effective date of Headnote 1(c), Schedule 7, Part 1, Subpart C, TSUS. She has withheld issuance of the October 2, 1986, letter pending receipt of a corrected decision.

The glove styles which were the subject of the protest are more properly classifiable as gloves of rubber or plastic under item 705.86, TSUS. The attached corrected decision reflects this change and should be issued to the protestant. The protest must, therefore, be denied. The decision of October 2, 1986, is revoked.

Harvey B. Fox

Attachment

See Next Frame

G2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
078142 JNB

District Director of Customs
40 South Gay Street
Baltimore, Maryland 21202

Re: Decision on Protest and Application for Further Review
Number 1303-5-000459

Dear Sir:

The above noted protest and application for further review were filed by counsel for protestant Plasco Safety Products, Inc., of Springfield, Ohio. At issue is the classification of vinyl-coated cotton gloves which are the products of Hong Kong. Two different styles of gloves are involved.

Customs claims that the gloves are properly classifiable as either gloves ... : of vegetable fibers: made from a pre-existing machine-knit or -woven fabric, or any combination of such fabrics: woven, under the provisions of item 704.40, Tariff Schedules of the United States (TSUS), dutiable at the rate of 25 percent ad valorem, or not woven, under the provisions of item 704.45, TSUS, also dutiable at the rate of 25 percent ad valorem. Importations of gloves which are the products of Hong Kong under either of these item numbers are subject to the restrictions of quota category 331, in that visas from the country of origin must be obtained in order to permit their entry into the United States.

Protestant claims that the gloves are properly classifiable as gloves of rubber or plastics: with textile fabric fourchettes or sidewalls, under the provisions of item 705.85, TSUS, dutiable at the 1984 rate of 14.4 percent ad valorem. Gloves classifiable under this item number are not subject to quota restrictions.

FACTS:

In November and December of 1984 at Baltimore, Maryland, protestant Plasco Safety Products, Inc., imported two styles of vinyl coated cotton gloves under the following entry numbers: 85-195063-9, -196206-7, -196305-3, and -196304-0. Style number 128 is composed of vinyl-coated knit cotton fabric. Style number 126 is composed of vinyl-coated woven cotton fabric.

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Redelivery of all gloves was requested because Customs found protestant's claimed classification to be incorrect. Protestant entered all the gloves under the classification as gloves of plastic with textile fourchettes under the provisions of item 705.85, TSUS. Customs determined that these gloves were more properly classifiable as gloves of vegetable fibers under items 704.40, or 704.45, TSUS. Additionally, classification of the gloves under the textile provision imposed visa requirements on their entry into the United States. Inasmuch as no visas had been obtained, redelivery was requested. Protestant filed this protest and application for further review in a timely manner in response to the denial of entry.

241820

ISSUE:

Are the gloves properly classifiable as gloves of rubber or plastics with textile fabric fourchettes under item 705.85, TSUS, or as gloves of vegetable fibers, under items 704.40 or 704.45, TSUS, and thereby subject to visa requirements pursuant to textile quota category 331?

ANALYSIS:

Counsel claims that Customs requests for redelivery have been issued improperly because a uniform and established practice exists to classify each style of glove as a glove of rubber or plastic. The practice claim is based on administrative precedent and uniform liquidations.

Plasco style 126 is composed of base fabric of plain woven cotton. Both sides of the base fabric have been heavily napped. The exterior of the base fabric is coated with plastic. Textile fibers from the nap penetrate through the coating. Tactilely the sample is furry or fuzzy. The weave construction is barely visible through the plastic. The glove has one textile fourchette on the inside of the pinky.

Plasco style 128 is composed of a base fabric of knit cotton, heavily napped on both sides. The exterior of the base fabric is coated with plastic. Textile fibers from the nap penetrate through the coating, but these fibers can only be seen microscopically. The coating is a flecked brown plastic and the sample has a rough grainy feel that does not resemble a textile. It has one textile fourchette on the inside of the pinky.

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A uniform and established practice exists to classify these styles of gloves as gloves of rubber or plastic. See Customs Ruling Letters of December 19, 1973 (Control No. 029939) and September 16, 1986 (Control No. 077460).

Headnote 1(c) of Schedule 7, Part 1, Subpart C, TSUS, provides that for purposes of the subpart, "the term '<u>with fourchettes</u>' includes only gloves which, at a minimum, have fourchettes extending from fingertip to fingertip between each of the four fingers." The subject gloves contain only one fourchette and are, therefore, precluded from classification under item 705.85, TSUS, as gloves of rubber or plastics, with textile fourchettes.

<u>HOLDING</u>:

We find the gloves to be classifiable as gloves of rubber or plastics, other, under the provisions of item 705.86, TSUS, dutiable at the 1984 rate of 21.9 percent ad valorem. Gloves classifiable under this item number are not subject to quota restrictions.

The classification of the gloves is not the claimed provision or the assessed provision. Because the correct classification is not one that is subject to import restrictions, the protest is granted in part, insofar as it relates to the entry of the gloves. However, the rate of duty under the correct classification is more than the rate under the claimed provision. Accordingly, the protest is denied in part as to rate of duty payable. Liquidation of the entries must occur under item 705.86, TSUS. A copy of this decision should be given to the protestant when notice of action is given on Customs Form 19.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078142

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

10 OCT 1986

CLA-2:CO:R:CV:G
078159 SM

078159

Dr. Elmar Flaskamp
New Products-Market Development Manager
Chemicals Division
Degussa Corporation
P.O. Box 2004
Teterboro, N.J. 07608

Dear Dr. Flaskamp:

You have asked us to reconsider T.D. 69-12(10), in which glycidol was determined to be classifiable under item 428.46, Tariff Schedules of the United States (TSUS), now item 428.47, as other alcohols, polyhydric . . . , and esters, ethers, and ether-esters and substituted derivatives. You have submitted literature describing glycidol (2,3-Epoxypropanol-1), which is a product of the Federal Republic of Germany.

Glycidol, a colorless and almost odorless liquid, contains two functional groups in the same molecule: an epoxide and a substituted monohydric alcohol. It contains no polyhydric alcohol functional groups, and therefore should not be classified under item 428.47, TSUS.

The Headnote to Subpart D, Part 2, Schedule 4, TSUS, provides: " . . . . Any compound which is described in more than one functional group is classifiable in the first group in which it is described." Epoxides are classifiable under item 428.88, TSUS. The substituted monohydric alcohol is classifiable under item 429.95, TSUS, a provision for other organic compounds. Glycidol is thus classifiable under item 428.88, TSUS, according to the above headnote.

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Bureau letter 417.0 of December 3, 1968, abstracted as T.D. 69-12(10), no longer reflects the views of the Customs Service, and is thus considered revoked in accordance with 19 CFR 177.9(d)(1).

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

078159

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OCT - 6 1986

CLA-2:CO:R:CV:G
078188 SM

078188

Mr. Judo J. D. Hsia
General Manager
Transworld Business, Inc.
1178 Folsom Street
San Francisco, California 94103

Dear Mr. Hsia:

You state in your letter of April 17, 1986, that certain hooks that you have imported from Taiwan have been classified at the port of San Francisco under item 657.3535, Tariff Schedules of the United States Annotated (TSUSA), a provision for other articles of copper, not coated or plated with precious metal. You believe that the hooks are properly classifiable under item 654.2590, TSUSA, a provision for other articles of brass, not specially provided for, not coated or plated with precious metal, of a type used for household, table, or kitchen use; toilet and sanitary wares. You have submitted samples and illustrated literature.

You state in your letter that these articles are spring hooks, of a brass alloy; the literature states that they are snap hooks of solid bronze. You state further that the hooks, each of which is equipped with a small spring controlled by a bolt, are sold in hardware stores for use on the ends of rope, chain, straps, or string; or for use with hanging planters. They are not used in heavy industry or the plumbing business.

These hooks have a wide variety of uses; we have no evidence indicating that they are chiefly used for the household, table, or kitchen. It would therefore be inappropriate to classify them under item 654.2590, TSUSA. They were properly classified under item 657.3535, TSUSA, as articles of copper.

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We note that you have requested a ruling on a matter that is not prospective, but rather is the subject of a current transaction. Technically, this is a contravention of the Customs Regulations. We caution that the Internal Advice procedures spelled out in section 177.11 of the Regulations, 19 CFR 177.11, should be used in the future when disputes arise with regard to current transactions.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078188

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

CLA-2 CO:R:CV:G
078201 SM

078201

10 OCT 1986

Area Director of Customs
JFK Airport Area
JFK Airport, Bldg. 178
Jamaica, New York 11430

Dear Sir:

Re: Request for Further Review of Protest No. 1001-5-003521 of March 22, 1985

This protest, filed by Sharretts, Paley, Carter and Blauvelt on behalf of Pier Connection, Ltd., concerns your classification of certain men's garments, made in India, as shirts. The protestant claims that they are properly classifiable as vests.

Samples of styles 47173, 7173, and 7562 have been submitted to this office. All are of 100 percent woven cotton fabric, sleeveless, and unlined, with full front openings. They are not pullover, as stated. Style 47173 is the same as style 7173, but in a boys' size. Style 7173 has a concealed front button closing, except for the seventh button at the waist; elastic all the way around the waist; and a stitched-on hood with a drawstring. A strip of fabric of a contrasting color finishes each armhole edge. A three-inch wide contrasting color strip across the chest forms an integral part of the garment and has a breast pocket set into it on each side. A small, plain, rectangular label about 1-3/8 inches by 1/4 inch bearing the words "Pier Connection" is stitched to the top of the strip finishing the left armhole. Style 7562 has six snaps down the front and elastic only at the sides of the waist. The collar band is of a contrasting color. A five-inch wide contrasting color strip extends downward at an angle from each side of the placket to the side seam and forms an integral part of the garment. A pocket with a snap flap is set in below the strip on each side. The same type of label as the one on style 7173 is stitched to the top of the left armhole.

A vest is normally worn over another outer garment. See, for example, ruling 074584 of December 13, 1984. It is generally a short garment, reaching to the waist, without sleeves, buttoning down the front, and may be worn under another garment, such as a suit jacket. See T.D. 78-205. A judgment as to what an article of apparel is for tariff purposes, such as a coat or jacket, blouse or shirt, will be made

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in the individual case, based on such factors as the cut, overall appearance, style, and weight. See ruling 039454 of May 9, 1975.

Examination of the three submitted samples indicates that none can be properly classified as a vest. The elastic makes gathers that would be too bulky if any of the garments were worn under a jacket. The contrasting strips finishing the armholes on Style 7173 would also create bulk. All three garments lack the deep V neckline and oversized armholes that often characterize vests. Rather, each is styled in such a way as to provide adequate coverage if worn alone next to the skin or over underwear, without another shirt. In fact, given the fit of the collars and armholes in particular, they would probably be uncomfortable if worn over other outer garments. Style 7562 has the close-fitting collar and collar band construction generally seen on men's dress shirts. Since the three garments are designed for men's or boys' wear and adequately cover the neck-to-waist area, they are properly characterized as shirts, and classifiable as such. They were correctly classified under then-item 379.5550, Tariff Schedules of the United States Annotated, as other men's sport shirts, not ornamented, of cotton, not knit.

Counsel for the importer does not advance any arguments in support of his contention that these garments are vests, and not shirts. Rather, he argues that they cannot in any case be classified as shirts because for Customs to do so would constitute a change without notice in the uniform and established practice of classifying these garments as vests. Counsel believes that a finding of such a practice was made in C.S.D. 84-111, but in fact no such finding was made. That decision, recognizing that in the past woven sleeveless men's garments had not been classified as shirts because sleeveless men's shirts were not an article of commerce, determined that because such shirts do now in fact exist, they are indeed classifiable as shirts. This conclusion is not at all the same as a determination that all woven sleeveless men's garments had been uniformly classified as vests, let alone that garments of the type the subject of this protest had been so classified. Before issuing that ruling, in which two pullover garments were classified as shirts and another garment as a vest, Customs in fact determined that woven sleeveless shirts, as new items of commerce, had been classified variously at different ports. One reason for issuing that decision was thus to clarify the confusion that had existed.

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Counsel argues further that these garments cannot be classified as shirts because C.S.D. 84-111 also included a determination that such sleeveless garments were not included in the eo nomine designation for shirts at the time of the enactment of that provision. However, what that decision actually stated was that "[t]here was a time when all men's and boys' woven shirts had sleeves," i.e., at one time, sleeveless men's shirts did not exist in the trade and commerce of the United States. As counsel correctly states, if an article exists at the time of the enactment of the statute and is not covered by the eo nomine provision at that time, it cannot subsequently be held to be classifiable in that provision. The point, however, was that such articles had not existed. As counsel also correctly states, a tariff provision will include all articles subsequently created that come within its scope. Thus men's woven sleeveless shirts, now that they are becoming common in that trade, can properly be included within the provisions for men's shirts.

You should deny this protest in full. A copy of this decision should be sent to the protestant along with your Form 19 Notice of Action.

Sincerely,

John T. Rath

for Harvey B. Fox
Director, Classification
and Value Division

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071820

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 26 1986

CLA-2:CO:R:CV:G
078204 SM
816609

078204

Mr. A. Roser
Roser Customs Service, Inc.
P.O. Box 48
Brownsville, Texas 78520

Dear Mr. Roser:

You have requested a tariff classification ruling for base metal name plates that you plan to import from Mexico. You have also inquired as to whether the assembly operation involved, which makes use of U.S.-fabricated components, would result in the qualification of the finished plates for duty reduction under item 807.00, Tariff Schedules of the United States (TSUS).

You have submitted a sample of an assembled name plate and of the U.S.-fabricated materials to be exported for assembly, the latter consisting of a gilding plate of 95 percent copper and 5 percent zinc, 2 studs, and vitreous enamel powder for each plate. You have also described the processing to be performed in Mexico. The first step would be the welding of the two studs to the back of the gilding plate. After the plate is degreased,,the vitreous enamel powder would be dissolved in a solvent and applied to the plate. The plate would then be placed in an oven at 1200 degrees F to create the enameling. After grinding, refiring, and polishing, the plate would be chrome plated. The final steps would be polishing, inspection, and packaging for shipment to the United States.

To qualify for duty reduction equal to the cost or value of U.S.-fabricated components, articles sought to be classified under item 807.00, TSUS, must have been assembled abroad in whole or in part of such components. The U.S.-fabricated components must have been exported in condition ready for assembly without further fabrication; must not have lost their physical identity in the articles by change in form, shape, or otherwise; and must not have been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process, such as cleaning, lubricating, and painting. The Customs Regulations concerning this provision are set out at 19 CFR 10.11-10.24.

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Although the welding of the two studs to the gilding plate is an assembly operation contemplated by section 10.16(a) of the Regulations, we view the subsequent operations as significant processing not incidental to the assembly. An exemption under item 807.00, TSUS, is therefore precluded. Specifically, the application, firing, and grinding of the enamel paint, as well as the plating with chrome, are intended to enhance the appearance of the plate, imparting a distinctive feature. Section 10.16(c)(3) specifically states that such an operation is not considered incidental to assembly for purposes of item 807.00, TSUS.

Although the chrome plating may result in protective properties for the two studs that may not be visible in the final use of the gilding plate, these properties are a result that is subsidiary to the primary purpose of the operation, which is to enhance the appearance of the plate and impart significant new characteristics to the article. Thus, the two studs, after being welded to the gilding plate, along with the gilding plate itself, cannot be exempted from duty under item 807.00, TSUS, since they are subjected to an operation that is more than incidental to the assembly, according to section 10.13 of the Regulations. Further, with regard to the enamel powder, section 10.16(a) of the Regulations specifically excludes amorphous solids from item 807.00, TSUS, treatment.

The finished nameplates would be classifiable under item 652.75, TSUS, as base metal signs. This item currently carries a column 1 rate of duty of 4.5 percent, scheduled to be reduced to 3.8 percent in 1987.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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G14

078204

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 10 1986

CLA-2 CO:R:CV:G
078215 c

078215

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-5-006979

This protest was filed against your decision in the liquidation on March 1, 1985, of entry No. 85-793181-4 dated January 23, 1985, covering a shipment of certain "Rainbow Sprites" manufactured in Hong Kong.

FACTS:

The merchandise involved called a "Rainbow Sprite" is a 5-1/2 inch or 10 inch plus stuffed figure. The head has eyes, a round nose and a mouth. The entire head, surrounded by colorful fur, has stars, legs and arms attached to the fur. This merchandise was classified in liquidation under the provision for toy figures of animate objects (except dolls): not having a spring mechanism stuffed: valued not over 10 cents per inch of height in item 737.28, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 13.3 percent ad valorem.

The protestant claims that the "Rainbow Sprite" is entitled to free entry under the provision in item 912.30, TSUS, for stuffed dolls (with or without clothing) * * * (provided for * * * in item 737.23 * * * Part 5E, Schedule 7).

ISSUE:

Is the "Rainbow Sprite" figure within the purview of the term "doll" for tariff purposes?

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LAW AND ANALYSIS:

The protestant defines the term "doll" as "an article with human characteristics which is used as a plaything by children." Russ Berrie & Co., Inc. v. United States, 76 Cust. Ct. 218, C.D. 4659 (1976).

Following this definition the protestant asserts that the "Rainbow Sprites" have numerous human characteristics such as arms, legs, hands, and feet. Their faces have eyes, a nose, and a mouth. These figures with human characteristics must be classified as dolls.

As support for its position the protestant cites Headquarters Ruling Letters (HRL) Nos. 066594 dated March 19, 1981, and 068813 dated December 4, 1981, wherein certain "Rainbow People" were held to be properly classifiable under item 737.21, TSUS, as dolls. The "Rainbow People" were described as "small PVC figures having a thumb and three fingers, large, heads, no necks and unusually large feet," and "comic in appearance." The protestant asserts that the "Rainbow Sprites" and the Rainbow People" have similar features except that the feet of the "Rainbow Sprites" are of normal size.

The "Rainbow Sprites" were advertised in the 1984 Mattel catalog as "fun, furry animals, so soft and cuddly." You have submitted copies of pages from the 1986 catalog which refers to them as dolls. Regardless of the change in designation of the merchandise, we are of the opinion that the 1984 catalog more aptly describes the merchandise.

The "Rainbow Sprites" are not similar to the "Rainbow People." The "Rainbow People" were "solid plastic figures of young children that are comic in appearance" whereas the "Rainbown Sprites" represent furry animals.

In HRL 068813 this office stated the following:

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078215

> The Customs Service has considered human figures with certain types of attachments to be dolls for tariff purposes as long as the attachments are not of such substantial physical size as to detract from the common and commercial definition of the term "doll." In other words, where the difference in an article constitutes something in the nature of an improvement or amplification, and the essential character is preserved or incidently altered, an unlimited eo nomine designation will include the merchandise so altered.

The protestant claims that in the instant situation the amplification or incidental alteration of certain human features in the "Rainbow Sprites," such as the arms or head, do not detract from their doll-like appearance. Thus, they feature human characteristics and are used as dolls by children and should be classified accordingly.

It is our observation that the head of the "Rainbow Sprite," "surrounded by colorful fur and having stars and legs attached to the fur," is not something in the nature of an improvement or amplification of the product. This feature of the merchandise in our opinion is not a human characteristic. We also note that this non-human characteristic completely dominates the entire article. Accordingly, we do not consider the "Rainbow Sprite" to be within the purview of the term "doll" for tariff purpose.

HOLDING:

The "Rainbow Sprites" were properly classified under item 737.28, TSUS. The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

078215

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

10 OCT 1986

REFER TO
CLA-2:CO:R:CV:G
078235 SM

078235

Steven P. Kersner, Esq.
Brownstein, Zeidman & Schomer
Suite 900
1401 New York Avenue, N.W.
Washington, D.C. 20005-2102

Dear Mr. Kersner:

On behalf of Inner Secrets, Inc., you have requested a tariff classification ruling for a women's garment. No country of origin is given.

The submitted sample has no style number and is not woven as stated, but knit, of a 65 percent polyester-35 percent cotton ribbed fabric. The garment would cover the entire torso and features a turtle neck, a snap opening at the crotch, a trim that serves to finish the raw edges on the leg openings, and fiber-fill padding of varying width around each armhole edge, extending down nearly ten inches from the shoulder.

You suggest that this article is classifiable under item 378.05, Tariff Schedules of the United States (TSUS), a provision for ornamented underwear. However, the garment is neither ornamented nor underwear. You also suggest that it would fall under quota category 352. However, that category is for articles in chief value of cotton.

Headnote 1 of Subpart 6E, TSUS, provides for the classification in that subpart of underwear not specially provided for. In determining what constitutes underwear, Customs has maintained that the term refers to garments worn under other garments and not exposed to view when the wearer is conventionally dressed for appearance in public, indoors or out of doors. This view is consistent with the court's holding in Children's Hose v. United States, 55 Cust. Ct. 6, C.D. 2547 (1965), that garments such as leotards and tights, partially covered and partially exposed during normal wear, could not be classified as underwear.

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It is evident that portions of this turtleneck garment will be visible during normal wear, such as with slacks, shorts, a skirt, or a jumpsuit. The presence of a snap closure in the crotch does not make the garment underwear; in fact, the snaps could be uncomfortable if worn against the skin. Further, the fact that a garment is worn against the skin does not make it classifiable as underwear; both diapers and swimsuits are so worn, but are not underwear. You state that the presence of the foam padding indicates that the garment is intended to be worn under outer garments lacking the currently popular shoulder pads, to give the effect of shoulder pads. Even if it were so worn, the turtle neck would still be exposed, and classification as underwear is thus precluded. Further, the fact that the fiber-fill extends ten inches below the shoulder would prevent the garment from being worn under most garments with normal set-in sleeves. Only an outer garment with a deeply cut raglan or dolman sleeve would be large enough to accommodate the foam. Such sleeves are usually made with raglan shoulder pads (if any), a specially cut oval pad that rides on top of the shoulder rather than being stitched around the edge of the sleeve seam, as normal shoulder pads are, since these sleeves lack the usual set-in sleeve seam.

This article is of the type that we have frequently classified as body suits. Body suits, by their structure and appearance, are capable of being worn as outerwear. They are one-piece garments similar to leotards, covering the torso, having leg openings, and designed to be form-fitting. See, for example, file 073980 of April 23, 1985. This garment is thus classifiable under item 384.8022, Tariff Schedules of the United States Annotated, quota category 659, as other women's wearing apparel, not ornamented, of man-made fibers, knit, blouses, . . . body suits.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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078235

Two Rulings
Same Number
See 666613

[redacted]

JUN 17 1986

CLA-2 CO:R:CV:G
078245 DW

Ms. Suzanne Goodwin
Columbia Sportswear Company
Post Office Box 03239
6600 North Baltimore
Portland, Oregon 97203

Dear Ms. Goodman:

Your letter dated June 2, 1986, requested the tariff classification of certain wearing apparel.

The sample garment is a pair of men's boxer-style shorts manufactured from a woven fabric that appears to be in chief value of cotton. They feature an elasticized waistband with a drawstring, a nylon liner and side pockets.

In determining whether men's boxer-style shorts are classifiable as shorts or as swimwear, the Customs Service has stated in a ruling dated May 2, 1984, file 073387 that:

> the term "swimwear" connotes garments which are intended for wear in water and which are predominantly used in that manner. We recognize that men's swimwear, especially in ocean beach areas, may be worn in certain commercial areas adjacent to, or in the immediate proximity of the water area by someone enroute directly to, or from, that area. Generally, however, we do not believe that swimwear has any real use other than being worn as such. Except for travel to and from the water, we believe that the use of swimwear for any activity other than swimming constitutes a fugitive use.

In distinguishing between shorts and swimwear, the Customs Service considers, inter alia, the weight and absorbancy of the fabric and the liner.

Given the lightweight fabric of the garment and the liner's lack of absorbancy, it is our judgment that the sample garment is classifiable as swimwear in item 381.65, Tariff Schedules of the United States.

[redacted]

Sincerely,

(signed) Harvey B. Fox

Harvey B. Fox
Director, Classification

078245

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC ____

[redacted]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

078253

REFER TO

09 SEP 1986 CLA-2 CO:R:CV:G
078253 DW

Mr. Diego A. De Obaldia
Fanasa
Apartado 2130
Panama, 1, R.P.

Dear Mr. De Obaldia:

This is in further response to your request for a ruling on the country of origin of certain polypropylene bags. You responded to our request for additional details by furnishing this office with samples and a supplemental statement dated December 27, 1985.

The first sample is a fabric composed of polypropylene strips that is woven in Taiwan and measures approximately 45 inches long and 40 inches wide. The other sample is a finished bag with dimensions of approximately 45 inches long and 26 inches wide that is manufactured from the polypropylene fabric.

Your submission indicates that the production process involves sending the cloth that is manufactured in Taiwan to Panama where it is cut to length, printed with the client's logo, folded, and overlocked on the bottom and side. Some of the bags are hemmed on the mouth to provide additional strength.

In determining the country of origin of textiles and textile products that consist of materials produced or derived from, or processed in, more than one country, the imported article is considered to be a product of that country where it last underwent a substantial transformation. A textile or textile product is considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing into a new and different article of commerce.

Our regulations concerning the country of origin of textiles state that cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use usually are not considered to be a product of that country. Section 12.130(a)(2)(ii), Customs Regulations. Thus, the fabric in question which is woven in Taiwan remains a product of that country unless it undergoes a substantial transformation in Panama.

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Unmarked polypropylene fabric can and is made into a variety of articles having different uses, including, inter alia, tarpulins, articles for soil irrigation and squares for wrapping around the roots of shrubs and trees. Based on an examination of the polypropylene fabric in issue, we believe that the required nexus in terms of ultimate use does not exist between the fabric and the finished bag. It is our judgment that the fabric as it left Taiwan was not reasonably identifiable as being intended for a particular commercial use.

The textile rule on country of origin contained in section 12.130, Customs Regulations, requires us to consider certain criteria in determining whether the merchandise has undergone substantial manufacturing or processing operations. These include the physical change in the material or article, time involved, complexity of the operations, degree of skilled labor and value added to the article.

In the landmark case of Uniroyal, Inc. v. United States, 3 CIT 220, 542 F. Supp. 1026, 702 F. 2d 1022 (1982), the court stated that a substantial transformation will occur from processing that results in an article having a name, character or use differing from that of the imported article. The same court recognized that a substantial transformation will not result from minor processing which leaves the identity of the imported article intact. Uniroyal, at p. 224.

Our appellate court held in Belcrest Linens v. United States, 741 F. 2d 1368 (1984), that embroidered cotton pillowcases that were cut, sewn and packaged in Hong Kong from bolts of fabric which were woven, embroidered and marked for cutting in the People's Republic of China were products of Hong Kong under General Headnote 3(f). Customs had assessed duty at the column 2 rate of 90 percent ad valorem on the pillowcases as products of China, pursuant to General Headnote 3(e), whereas the importer claimed as products of Hong Kong, the merchandise should be assessed at a column 1 duty rate of 34 percent ad valorem.

In affirming the trial court, the court stated that the embroidered and marked bolts of fabric were not dedicated to use as pillowcases, but were capable of other commercial uses. Following the principle set out in the Uniroyal decision that minor assembly operations that leave the identity of the article intact do not cause a substantial transformation, the court determined that the processes performed in Hong Kong were not minor assembly operations, but under the test of substantial transformation were processes that caused a change in identity, character and use. The court ruled that in Hong Kong the embroidered fabric was substantially transformed into a new and different article of commerce known as a pillowcase.

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Inspection of the merchandise at hand persuades us that after the cloth is sent to Panama where it is cut, printed, folded and sewn into a bag, a new and different article of commerce emerges. We conclude that the essence of the finished bag is not manifested until the fabric is processed in Panama. Following Belcrest Linens, it is our view that the processing performed in Panama causes a change in the identity, character and use of the merchandise.

In reaching this conclusion, we note that it differs from the ruling issued on December 9, 1985, file no. 077131, where polypropylene bags made from tubular woven fabric were considered to be products of the country where the fabric was woven. Decisive in that case were our findings that the tubular fabric was readily identifiable as being intended for a particular commercial use and was the essence of the finished bag.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

MAY BE RELEASED TO THE PUBLIC

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077253

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP 30 1986

CLA-2 CO:R:CV:G
078256 SM

Alan R. Klestadt, Esq.
Grunfeld, Desiderio, Lebowitz & Silverman
Two World Trade Center
Suite 2238
New York, New York 10048-0654

Dear Mr. Klestadt:

On behalf of Murjani Marketing Group, Ltd., you have requested that we reconsider Region II Ruling No. 817320 of March 20, 1986. That decision determined that a particular skirt was ornamented for tariff classification purposes. We have considered your submission and have decided that ruling 817320 was correct as issued.

The women's skirt in question is assumed to be a product of Hong Kong. It is made of a 100 percent cotton woven denim fabric that has a colored warp yarn and a white filling yarn. A full-length opening down the center front fastens with five snaps. There is a single vertical leather loop with the Coca Cola logo at the center back of the waistband and a five-inch slit at the lower edge of the center back seam. A large unsecured patch pocket is centered on each side seam.

V-shaped double-needle stitching penetrates a single layer of fabric across each pocket. Zig-zag stitching penetrates the facing and shell from the waist to the lower edge on one side of the opening. All of this stitching is readily visible and decorative. Since the fabric is woven of a colored and a white yarn, the colored stitching is readily visible against the two-colored background; it is not necessary to examine the garment closely in order to see the stitching. It forms a decorative pattern as well, a V-configuration and a zig-zag. We agree that it ornaments the garment.

Neither the stitching on the pockets nor the zig-zag stitching down the center front has any function. You state that the zig-zag prevents the facing from separating from the skirt body and that it is required to prevent the opening edge from buckling. In fact, however, the facing is held in place by a straight row of stitching down the length on either edge of the facing and by the snaps. If it were necessary, the zig-zag stitching would likely have been put on both opening edges instead of only on the outer edge visible during wear. With regard to buckling, the zig-zag stitching actually contributes to it; the side without this stitching is in fact neater and flatter, though less decorative.

A12

The stitching and garment in question here contrast with those discussed in files 065245 and 801705, of July 24, 1980, and November 27, 1981, respectively. In the former, white stitching on white pants pockets was determined to be "not readily visible"; in the latter, blue stitching on blue pants was determined to be "the same color as the fabric and ...barely visible." We note file 075866, of July 8, 1985, in which several rows of stitching placed on one side only of a shirt placket, the visible side, were determined to have no function.

The skirt was properly classified under item 384.0941, Tariff Schedules of the United States Annotated (TSUSA), quota category 342. We affirm ruling 817320.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 30 1986

CLA-2 CO:R:CV:G
078272 DW

071879

Ms. Laura Cobb
ERO Industries, Inc.
5940 W. Touhy Avenue
Chicago, Illinois 60648

Dear Ms. Cobb:

You have requested a ruling on the tariff classification of a transformable toy from Taiwan. A sample was submitted along with your letter dated April 24, 1986.

The sample known as a popple is a toy that can be converted into a nap bag. In its toy form, the article is composed of a pile fabric, and consists of an animal's head stuffed into a big pouch. The head has ears and hair composed of textile material. Arms and a tail with a pompon protrude from the pouch. The toy can be transformed into a nap bag by pulling the head out of the pouch. By telephone on September 11, 1986, you stated that the component material in chief value is of man-made fibers.

You contend the article is classifiable under the provision for toy figures of animate objects (except dolls), not having a spring mechanism, stuffed and valued over 10 cents per inch of height, in item 737.30, Tariff Schedules of the United States (TSUS), because it is chiefly used for amusement.

Schedule 7, Part 5, Subpart E, Headnote 2, TSUSA, provides that "For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults."

Here we have an article that has discrete, co-equal functions as a toy and as a nap bag. Neither of the functions is dominant. This means that the article does not have a chief use. The appropriate classification is under a basket provision based upon the component material in chief value. The sample is classifiable under the provision for articles not specially provided for, of textile materials, of man-made fibers, other, in item 389.62, TSUS, and dutiable at the rate of 4 cents per pound plus 10 percent ad valorem.

We have learned that the merchandise as imported will have a round label with a picture of the popple attached to the bottom of the article. It appears that such a label would be

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decorative and ornament the article. If it is permanently affixed and does, in fact, ornament the article, it is classifiable in item 386.13, TSUS. Articles from Taiwan classifiable in this provision are eligible for an exemption from duty under the Generalized System of Preferences upon compliance with all applicable regulations.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

06 OCT 1986

CLA-2:CO:R:CV:G
078302 SM

078302

District Director of Customs
Two India Street
Boston, Massachusetts 02109

Dear Sir:

Re: Request for Further Review of Protest No. 0401-5-000493 of April 25, 1985

This protest, filed by Grunfeld, Desiderio, Lebowitz and Silverman on behalf of Rolf C. Hagen (USA) Corporation, concerns your classification of certain merchandise called "Small Pals Home" as luggage under item 706.52, Tariff Schedules of the United States (TSUS). The protestant claims that it is properly classifiable as household articles of rubber or plastics under item 772.15, TSUS. For the reasons stated below, we are in agreement with the protestant.

The merchandise is a series of clear plastic boxes, roughly rectangular in shape, in four graduated sizes. A sample of each was submitted to this office. Each box has four plastic "feet." Each has a snap-on plastic lid with air vents all around its sides and all over the top. A "trap door" in each lid allows for feeding of the caged animals. The three smaller sizes have handles attached to the lid. Each contains a card advertising the article in French and English as a home for small animals including reptiles or goldfish. The boxes are products of Japan and have instructions stamped into the plastic on the bottom in Japanese giving precautions for the use of these "household articles" (katei yohin). Users are advised not to place the boxes near fire (Japanese homes have oil, gas, or electric room heaters rather than central heat). The importer's submission includes photocopies from an advertising catalog showing the boxes advertised as animal homes.

We have previously ruled that carriers designed to transport animals during travel are classifiable as luggage according to Headnote 2(a) of Subpart D, Part 1, Schedule 7, TSUS. However, we do not think the articles in question here are of the type covered by this provision.

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The fact that they are advertised as pet homes, or that they are characterized as household articles by the manufacturer, is not determinative for tariff classification purposes. But, having examined the submitted samples and considered all the facts presented, we conclude that these articles are not primarily carriers. The largest size, lacking handles, would be awkward to carry. The other sizes have their rather flimsy handles hooked onto the detachable lids, as indicated above, making them impractical as carriers. If the box were bumped or jostled while in transit, the lid could come off, particularly when the weight of the box was increased by that of water for fish, sand or gravel, and animals. While they lack features found in more expensive cages, such as attached feeding dishes, they provide visibility from all sides and are easy to wash. They lack features of carriers such as secure closings and covered sides that prevent animals from being frightened by strange surroundings during travel. They are too small to accommodate dogs or cats, the animals most likely to accompany owners on trips. They are most likely to be used in the home, and are properly classifiable as household articles of rubber or plastics under item 772.15, TSUS.

You should therefore allow this protest in full. A copy of this decision should be sent to the protestant along with your Form 19 Notice of Action.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

078302

MAY BE RELEASED TO THE PUBLIC

B3

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

SEP 10 1986

REFER TO

CLA-2 CO:R:CV:G
078353 SM

078353

District Director of Customs
517 East Wisconsin Avenue
Room 554
Milwaukee, Wisconsin 53202

Dear Sir:

Re: Request for Further Review of Protest No. 3701-3-000054 of October 12, 1983

This protest, by Barnes, Richardson and Colburn, on behalf of Jak-Pak, Inc., concerns your classification of several articles, products of Hong Kong, under item 737.95, Tariff Schedules of the United States (TSUS), as other toys. The protestant claims that they are properly classified under various provisions that would allow duty free treatment under the Generalized System of Preferences (GSP). We are in agreement with your position on all articles covered by this protest.

The Skyhawk Parachutist, J.P. No. 0196, is a molded plastic 3-3/4 inch human figure to which is attached by strings a thin plastic parachute two feet in diameter. The article can be held by the top of the chute and dropped, allowing the chutist to float down. The protestant claims that it is properly classifiable as a toy figure of an animate object under item 737.40, TSUS, the parachute being simply a natural extension of the character. We agree that the article is a toy, being chiefly for amusement, and that the figure portion representing a person is "animate." However, the article is more than an animate figure, and cannot be classified as one. The figure has hooks on its shoulders for attachment of the parachute, which would be useless alone. We have frequently ruled that similar articles are more than toy figures of animate objects. In file 061365, of August 10, 1979, for example, bendable animals designed to fit onto detachable skateboards were excluded from the animate figures provision. We stated there:

> Articles of this nature which are figures of animate objects but which also incorporate toy features are more than toy figures of animate objects and as such are precluded from classification in item 737.40, TSUS. The toy skateboard and the animate figure are specially designed to be attached to each other and to be used in conjunction with each other.

Like the animals with skateboards, the parachutists and parachutes are classifiable as entireties under item 737.95, TSUS, a provision for other toys NSPF. A similar article, a parachutist with a parachute and a plastic reel with nylon string, was so classified in file 037377.

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The other articles covered by this protest are sets containing animal printing stamps and ink pads, J.P. Nos. 0046 and 0285. The protestant claims that they are properly classifiable under item 774.55, TSUS, as articles of rubber or plastics NSPF. However, these articles are clearly toys. They are not substantial and have little utilitarian value. Similar articles have been classified under item 737.95, TSUS, as other toys; see, for example, file 062385 of August 7, 1979. These sets are also properly classifiable under item 737.95, TSUS.

Therefore, you should deny this protest in full. A copy of this decision should be sent to the protestant together with your Form 19 Notice of Action.

Sincerely,

Arthur P. Scheffler

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 1 1986

REFER TO
CLA-2 CO:R:CV:G
078377 jlj

078377

Ms. Angela De Gaetano
Customs Information Exchange, Room 450
6 World Trade Center
New York, New York 10048-0945

Dear Ms. De Gaetano:

A Customs Form 6431 dated February 5, 1986, from the port of Los Angelos/Long Beach California, concerns entry No. 86-219565-8 dated November 23, 1985, covering a shipment of furniture parts from Taiwan to Royola Pacific Ltd.

The merchandise at issue is furniture with parts missing (e.g., rocker parts with a missing seat, table legs and top with a missing center column, chair parts with a missing seat). The issue presented is whether the parts are classified as parts of furniture in item 727.40, Tariff Schedules of the United States (TSUS), or as substantially complete furniture in items 727.29, TSUS, and 727.35, TSUS.

One port believes that the items are substantially complete furniture and should be classified as such in item 727.29, TSUS, and 727.35, TSUS. He cites General Headnote 10(h), TSUS, Internal Advice 55/85, and Daisy Heddon, Div. Victor Comptometer Corp. v. United States, 66 CCPA 97, C.A.D. 1228 (1979) in support of his position.

The other port maintains that, inasmuch as each item is missing an integral component, the merchandise should be classified as parts of furniture in item 727.40, TSUS. He cites Customs Headquarters Ruling Letter (HRL) 025691, Treasury Decision 66/56(19), and HRL 073738, dated March 29, 1984, in support of his position.

Headnote 10(h), TSUS, states that "unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished." Parts of an article, when assembled, must result in a substantially complete article in order for them to be classified as the unfinished article.

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Each item mentioned lacks an integral component, therefore following HRL 073738, HRL 025691 and T.D. 66/56(19) the instant merchandise cannot be classified as unfinished furniture. Instead, the instant articles are classified as parts of furniture in item 727.40, TSUS.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

CLA-2 CO:R:CV:G
078385 JLJ
817741

07 NOV 1986

Mr. Paul S. Anderson, Esquire
Sonnenberg, Anderson & O'Donnell
One North LaSalle Street, Suite 3015
Chicago, Illinois 60602

Dear Mr. Anderson:

In your letters of September 25, 1986, and March 14, 1986, you requested a tariff classification for man-made fiber cordage from South Korea for your client Attwood Corporation of Lowell, Michigan. You submitted a sample of the final anchor kit product along with your second letter.

The instant merchandise consists of 100 foot, 150 foot, or 200 foot long twisted 3/8 inch or 1/2 inch nylon rope with an eye splice and a galvanized iron "thimble" attached to one end. The "thimble" is a small piece of metal placed inside the eye splice, presumably to protect the eye splice from wear. After importation these anchor ropes are packaged with the anchor chain and anchor and are sold as anchor kits.

You argue that the instant nylon rope with eye splice and "thimble" should be classified under the provision for yachts and pleasure boats, parts, in item 696.15, Tariff Schedules of the United States (TSUS), because the rope will be sold and used exclusively with the anchor kits. You cite Customs Headquarters Ruling Letter (HRL) 052298 of April 6, 1978, in support of your position. You submit five affidavits stating that the rope in the anchor kits is used in the lengths in which they are purchased and is not used for any other purpose than in connection with the anchor kits.

Despite your arguments, the instant rope cannot be classified as parts of boats because it has not been established that this merchandise belongs to a class or kind chiefly used as an anchor rope. But even if this could be established, we are not convinced that anchor ropes are parts of boats. We cannot find a precedent for rope with a loop and a "thimble" being classified as parts of boats.

HRL 052298 of April 6, 1978, classified man-made fiber cordage with eye splices on one or both ends under the provision for articles, not ornamented, of man-made fibers, other, other, in item 389.62, TSUS.

HRL 052298 has been superceded by HRL 077530 of January 7, 1986, however, which classified ropes with eye splices attached to their ends under the provisions for cordage. As HRL 077530 observed:

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> The splicing of eyes to the ends of ropes imported in sizable continuous lengths does not necessarily preclude those ropes from classification under the cordage provisions of the tariff schedules. See ORR Ruling 73-0278. In that ruling, it was held that manila rope hanks, each with a spliced-eye end and cut in 50- and 100-foot lengths were classifiable as cordage rather than as articles of textile materials, not specially provided for.
>
> The addition of eye splices to long lengths of cordage does not dedicate those lengths to a sole specific use as towing ropes or barge lines. The character of these articles is not fixed with certainty by the mere addition of eye splices. When long lengths of cordage are imported in a condition where dedication to other uses is probable, the addition of the eye splice is a de minimus act which cannot serve to make them articles rather than cordage.

We find that the mere addition of an eye splice and a "thimble" to the instant rope cannot serve to make it an article rather than cordage.

You argue, however, that HRL 077530 dealt with merchandise of much greater length (i.e., 200 through 720 feet) than the instant merchandise, which is in lengths of 100 to 200 feet. HRL 077530 did deal with longer rope, but ORR Ruling 73-0278 dealt with manila rope cut in 50 and 100 foot lengths and with eye splices. ORR Ruling 73-0278 found that such rope was classified as cordage rather than as articles.

According to component of chief value breakdowns which you submitted, the instant merchandise is in chief value of the nylon rope (i.e., man-made fibers). The metal "thimble" fitting is classified as an entirety with the cordage. The instant rope, with eye splice and "thimble", is classified under the provision for man-made fiber cordage, measuring 3/16 inch or over in diameter, in item 316.5800, TSUS, dutiable at 15 percent ad valorem plus 12.5 cents per pound.

This merchandise falls within textile category designation 605. As a product of South Korea, this merchandise is subject to quota restraints based upon international textile trade agreements.

The Harmonized Commodity Description and Coding System (HS) is scheduled to replace the TSUS as the tariff code of the United States on January 1, 1988. For your information, the HS provision applicable to the above-described merchandise appears to

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be Subheading 5607.50.40, rope of other synthetic fibers, other. This information is intended to assist you in becoming familiar with HS tariff classifications. It is not an official Customs Service ruling and may not be challenged by you at this time. It is anticipated that we will begin issuing HS tariff classification rulings on or about July 1, 1987. (Public notice will be given of the exact date such rulings will begin.) If you wish a HS tariff classification ruling, you may request one at that time.

Sincerely,

For Harvey B. Fox
Director, Classification and
Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 23 1986

CLA-2 CO:R:CV:G
078390 DW

Mr. Leon P. Caguioa, Jr.
Le Arc Manufacturing Corp.
Km. 23, Bo. Tuclas, Cupang, Muntinlupa
Metro Manila, Philippines

Dear Mr. Caguioa:

You have requested the tariff classification of a textile article described as a "medallion".

The submitted sample consists of a "V"-shaped design made from a sheer woven fabric of man-made fibers. It measures approximately 8 inches long and gradually reaches 2 1/2 inches at its widest point. The fabric contains an embroidered design and additional stitching along the bottom edge. The item is considered to be ornamented for tariff purposes.

The issue here is whether the item is classifiable as an ornamented motif in item 353.50, Tariff Schedules of the United States (TSUS). Headnote 2(a), Subpart B, Part 4, TSUS, provides that the term "motifs" embraces individual textile pieces designed and almost wholly used for incorporation in, or appliqueing on wearing apparel, furnishings, and other textile articles.

We regard the item as an applique rather than as an inserting. This view is supported by an article appearing in April 1986, in Body Fashions/Intimate Apparel that described similar items as appliques that will be used for daywear, sleepwear, and foundation garments. Having both examined this item and read the magazine article, it is our decision that the applique is "designed and almost wholly used for ... appliqueing on wearing apparel ...."

The item is classifiable as an ornamented motif in item 353.50, TSUS. Products classifiable under this tariff provision may be subject to quantitative restrictions under category 627.

Sincerely,

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Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT - 2 1986

CLA-2:CO:R:CV:G
078397 SM

078397

Steven P. Kersner, Esq.
Brownstein, Zeidman and Schomer
Suite 900
1401 New York Avenue, N.W.
Washington, D.C. 20005-2102

Dear Mr. Kersner:

On behalf of Inner Secrets, Inc., you have requested a tariff classification ruling for a women's garment to be imported from Hong Kong. In addition to making a written submission, you met with Customs staff on August 18, 1986.

The submitted sample is a 2 x 2 rib knit sleeveless turtleneck body suit composed of 65 percent polyester and 35 percent cotton. It has three plastic snaps at the crotch opening and a decorative trim around the leg openings, the latter serving to finish the raw edge of the fabric.

You suggest that this article is classifiable under item 378.05, Tariff Schedules of the United States (TSUS), a provision for ornamented underwear. However, the garment is neither ornamented nor underwear.

Headnote 1 of Subpart 6E, TSUS, provides for the classification in that subpart of underwear not specially provided for. In determining what constitutes underwear, Customs has maintained that the term refers to garments worn under other garments and not exposed to view when the wearer is conventionally dressed for appearance in public, indoors or out of doors. This view is consistent with the court's holding in Children's Hose, Inc. v. United States, 55 Cust. Ct. 6, C.D. 2547 (1965), that garments such as leotards and tights, partially covered and partially exposed during normal wear, could not be classified as underwear.

It is evident that portions of this turtleneck garment will be visible during normal wear, such as with slacks, shorts, a skirt, or a jumpsuit. The presence of a snap closure in the crotch does not make the garment underwear; in fact, such a snap closing could be uncomfortable if worn against the skin. Further, the fact that a garment is worn against the skin does not make it classifiable as underwear;

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both diapers and swimsuits are so worn, but are not underwear. This garment could easily be worn over underwear; many brassieres have strap configurations that would accommodate the back cut-outs.

This article is of the type that we have frequently classified as body suits. Body suits, by their structure and appearance, are capable of being worn as outerwear. They are one-piece garments similar to leotards, covering the torso, having leg openings, and designed to be form-fitting. See, for example, file 073980 of April 23, 1985. This garment is thus provided for under item 384.8022, Tariff Schedules of the United States Annotated, quota category 659, as other women's wearing apparel, not ornamented, of man-made fibers, knit, blouses, . . . body suits.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 3 1986

REFER TO
CLA-2 CO:R:CV:G
078415 c

Mr. Fred B. Hunt
President
Fairfield Line Inc.
P.O. Box 500
Fairfield, Iowa 52556

Dear Mr. Hunt:

In a letter dated May 27, 1986, you inquired as to the tariff classification of certain gloves manufactured in Korea. Two samples were submitted for examination.

The sample designated as Style 587 is a ladies' glove with a woven shell of man-made fibers which is described in the catalog as "taslon." This glove has a fiberfill lining with an additional layer of thinsulate on the back of the hand extending from the fingertips to the cuff. This style also has an additional layer of foam padding with a thin layer of vinyl reinforcement across the back of the knuckles. Additional features are a Goretex insert (interliner), pigskin leather palm and thumb reinforcement extending onto the first two fingers of the hand, an elasticized wrist on the palm side further secured by a velcro strap across the back of the hand, an applied ribbed knit cuff, and a hook and clasp.

The sample designated as style 378 is a juvenile's size glove with a taslon shell, fiberfill lining, additional layer of thinsulate on the back of the hand extending from the fingertips to the cuff, additional foam padding across the back of the knuckles, pigskin leather palm and thumb reinforcement extending onto the first two fingers of the hand, an elasticized wrist on the palm side, and a hook and clasp. On the back of the hand, a 2-1/2 inch long zipper secures a closed vent.

It is your position that these gloves are properly classifiable under the provision for other ski equipment in item 735.06, Tariff Schedules of the United States (TSUS). In support of your position you have submitted an affidavit stating that the gloves are designed for use in the sport of skiing.

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In the case of Stonewall Trading Co. v. United States, 64 Cust. Ct. 482, C.D. 4023 (1970), the court ruled that certain vinyl gloves were properly classifiable under the provision for other ski equipment in item 734.97, TSUS, currently item 735.06, TSUS. These gloves were found to possess the following characteristics:

(1) A hook and clasp to hold the gloves together;

(2) an extra piece of vinyl stitched along the thumb portion to meet the stress cause by the flexing of the knuckles when the skier grasps the ski poles;

(3) an extra piece of red colored vinyl with padding reinforcement and inside stitching, which is securely stitched across the middle of the glove where the knuckles bend and cause stress; and

(4) cuffs with an elastic gauntlet to hold the glove firmly around the wrist, so as to be waterproof, and to keep it securely on the wrist.

Styles 587 and 378 appear to possess all the features which would qualify them as ski equipment. However, we note that the palm, thumb, and finger reinforcements are made of pigskin. This characteristic would show that the gloves are not specially designed for use in the sport of skiing inasmuch as leather manufacturers generally recommend that pigskin not be allowed to get wet lest it be ruined. Also, the pigskin is not waterproof.

In view of the foregoing we cannot accept your affidavit stating that the gloves have been designed for use in the sport of snow skiing. However, we would consider as acceptable evidence an affidavit submitted by a manufactuer of pigskin positively stating that pigskin leather possesses characteristics that enable it to stand up to repeated wettings and wear from the action of the skier grasping ski poles in a snowy environment. The statement should be from a firm that has been in business long enough to have received product complaints. The firm should also be familiar with the demands of alpine skiing.

Another reason why the gloves in issue do not show a special design for use in the sport of skiing is that they lack an additional piece of vinyl reinforcement securely stitched across the middle where the knuckles bend and cause stress as described in Stonewall Trading Co., supra. Although you maintain that this court decision is out of date, you do not

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elaborate on this point to explain current design. Furthermore, this office issued a ruling on September 9, 1981 (IA 138/80 file No. 068362), holding that reinforcement continued to be necessary on textile gloves and that leather or vinyl was necessary as the reinforcing material. This ruling recognized that ski gloves were no longer made exclusively of leather and vinyl but took into consideration that a change in shell material could only be recognized if the accumulation of features showed design for use in the sport.

It should be noted that in the case of Stonewall Trading Co., supra, the court specifically stated that a better quality glove would not necessarily show design for use in the sport. Admittedly, your gloves are clearly superior to the mittens in Stonewall. However, you have failed to explain how these gloves show design for use in the sport of alpine skiing. This failure is particularly significant with respect to ski gloves because they so closely resemble another recognized category of glove, namely, winter gloves worn for warmth. Unlike baseball gloves and mitts which are so specially constructed that they bear no resemblance to any other known gloves, ski gloves are very similar to winter gloves worn for warmth because ski gloves must, of necessity, also provide warmth. Therefore, ski gloves must have some features that show design for use in the sport in addition to those features which merely relate to the warmth provided by the glove.

In view of the foregoing, we conclude that the sample gloves do not qualify for classification under item 735.06, TSUS, as other ski equipment. It is our opinion that style 378 is classifiable under the provision for gloves and glove linings, of man-made fibers: not knit in item 704.90, TSUS, and dutiable at the rate of 14 cents per pound plus 15.7 percent ad valorem. Inasmuch as style 587 has a Goretex logo on the velcro strap and label, it is considered ornamented. Therefore, it is classifiable under the provision for ornamented gloves of man-made fibers in item 704.32, TSUS, and dutiable at the rate of 21.7 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

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818176

078418

Mr. Donald M. Wood
President
Dynatoy International, Inc.
3594 West 1820 South
Salt Lake City, Utah 84104

Dear Mr. Wood:

You have requested reconsideration of New York ruling 818176 of April 23, 1986, in which a children's article known as a "Power Shirt" was determined to be classifiable as wearing apparel. You believe that it should be classified as a toy. For the reasons stated below, we are in agreement with your position.

A "medium" sample of the article, which is available in three boys' sizes, was submitted in a retail box with advertising literature. The Power Shirt is made of a 65 percent polyester-35 percent cotton flesh-colored fabric and polyurethane foam padding, with rib-knit cuffs, waist, and neck. Foam padding is inserted between layers of fabric in the front and sleeves and is stitched in place in such a way as to give the visual impression of large muscles. Illustrations on the box show a small bespectacled boy wearing the Power Shirt and vanquishing monsters. The child is challenged to "[d]efend the galaxy, the country, or your own backyard with the help of your dreams and Power Shirt! You are the ultimate force for good in the universe--and Power Shirt makes it happen." A large poster that accompanies the package invites the child to sign at the bottom, promising to use his power to promote goodness and right. "Power Shirt," states the advertising, "lets a kid run with his imagination."

Headnote 1 of Subpart E, Part 5, Schedule 7, Tariff Schedules of the United States (TSUS), provides: "The articles described in the provisions of this subpart . . . shall be classified in such provisions, whether or not such articles are more specifically provided for elsewhere in the tariff schedules." This subpart includes the provisions for toys, defined in Headnote 2 as "any article chiefly used for the amusement of children . . . ."

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There is no question that the chief use to which this article will be put is the amusement of children. The age group for which the submitted sample is advertised is that of boys between six and eight. A six-year-old boy loves to tear around and engages in almost constant activity. His many fears include witches and ghosts, and he has a quick capacity to pretend. "Shooting the enemy" and "getting under cover" are characteristic. Action is also a key feature of the play of eight-year-olds; wild running and combat games are favorites. They like to dramatize, impersonating book or movie characters, and love extreme action and gore. See Gesell, Ilg, and Ames, The Child from Five to Ten (rev. ed., 1977). The sturdily constructed Power Shirt would fit in well as a prop for such imaginative, active play. Because of its hot and bulky padding and bizarre appearance, it is not likely to be purchased by someone looking for a shirt, i.e., an article of apparel to be worn for reasons of decency or comfort. Rather, it would be purchased and used for amusement in any of the available sizes, and any functional uses it might have would be subordinate to its play value. Therefore, according to Headnote 1 of Subpart 5E of Schedule 7, above, it must be classified as a toy. Our appellate court has held, in interpreting the toy provisions, that the fact that an article is worn does not prevent it from being considered a toy for tariff purposes if its chief use is to provide amusement.

> The court thus stressed the quality of mind or emotion induced by the object as controlling, and we think that is the best approach to interpreting the TSUS definition. If the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement, whether the object is to be manipulated, used in a game, or, as here, worn.

United States v. Topps Chewing Gum, 58 CCPA 157, C.A.D. 1022, 440 F.2d 1384 (1971).

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This article is classifiable under item 737.95, TSUS, as other toys. Ruling 818176 is hereby revoked, pursuant to 19 CFR 177.9(d).

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

818176

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cc

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP - 9 1986

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078443

Ms. Eileen T. Romito
Department 733X, BSC 19-45
Sears, Roebuck and Company
Sears Tower
Chicago, Illinois 60684

Dear Ms. Romito:

In your letter of June 3, 1986, you requested a reconsideration of New York letter 817733 of April 23, 1986. You submitted a sample of the men's knit shirt from Hong kong which was the subject of New York letter 817733 along with your letter.

The sample, Stock Number 77176, is a men's 65 percent polyester, 35 percent cotton finely knit pullover shirt. The shirt was classified under the provision for other men's or boy's wearing apparel, ornamented, of man-made fibers, knit, shirts, other, in item 381.2430, Tariff Schedules of the United States (TSUS). This classification was based on the determination that the light grey overlock stitching on the center seam and on the armhole seams was more decorative than functional and that the overlock stitching constituted ornamentation for tariff purposes.

An examination of the garment shows that all the seams are sewn on the inside of the garment with a merrow stitch using a dark grey colored thread. This stitch securely joins the separate sections of fabric. In addition to this stitching, as noted above, the center front seam and the armhole seams are sewn on the outside of the fabric with an overlock stitch using a light grey colored thread. This light grey thread is a sufficient contrast to the darker grey fabric to be readily visible on the garment (and to provide a decorative effect).

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You believe that the overlock stitching reinforces the seams, but reinforcement is unnecessary in either area. The center front seam is not an area of stress, so additional reinforcement to that seam is unnecessary. The armhole seams are sufficiently secure against the stress of normal movement without the additional overlock stitching. We note that the armholes are also cut large, thereby reducing the normal stress of wear.

In Blairmoor Knitwear Corp. v. United States, 60 Cust. Ct. 338, C.D. 3396 (1968), the court held that a feature which is more decorative than functional ornaments a garment for tariff purposes. Following this reasoning, the overlock stitching on the armhole seams and on the center front seam is primarily a decorative feature, with little functionality. The overlock stitching constitutes ornamentation within the meaning of Headnote 3(a)(i)(B) of Schedule 3, TSUS.

We hereby reaffirm New York letter 817733. The shirt is ornamented, and it is classified in item 381.2430, TSUS, dutiable at the rate of 36.3 percent *ad valorem*.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 29 1988

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078444 SM

078444

Ms. H. K. W. Ho
Second Secretary
British Embassy
Hong Kong Office
Hong Kong Commercial Affairs
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Ms. Ho:

You have inquired as to the correct classification of an article of apparel the product of Hong Kong, described as a "skant" or "scant."

The garment is made of a 100 percent cotton knit fabric. It consists of a pair of long pants legs with an elasticized waistband, and rectangular panels hanging from the waist over the front and the back, respectively. The two panels are stitched together from the waist to the hip, but hang open from the hip to the ankle area. A colored design is printed over the center of each panel. The pants legs are visible below the bottom edges of the panels. A rectangular fabric label bearing the name of the importer, "jag," is stitched to the lower left corner of the front panel. The stylization and variegated colors of the letters give the label a decorative effect, and thus it ornaments the garment.

With its visible pants legs and panels open at the sides, the garment cannot be said to maintain the appearance of a skirt, and so cannot be classified as a skirt. Nor can it properly be described as trousers or slacks ornamented by overhanging panels. Rather, it is a unique garment. It is properly classifiable under item 384.0497, Tariff Schedules of

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the United States, Annotated, as other women's, girls, or infants' wearing apparel, ornamented, of cotton, other, knit, other, other, quota category 359.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

REFER TO

SEP - 5 1986

CLA-2 CO:R:CV:G
078447 DW

078447

Miss H.K.W. Ho
British Embassy
Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

Re: Your Ref. HK 9/86

This is in response to your letters March 20, 21, and April 15, 1986, concerning several shipments of 100 percent cotton knitted tops that were detained at the port of San Francisco, California for lack of an export license for category 339.

It is our view that the garment in question is neither a blouse nor a tank top, because it does not extend to the waist or provide full coverage to the wearer's body. Thus it is classifiable as a top in item 384.3438, Tariff Schedules of the United States Annotated, and requires an export license from Hong Kong for category 339.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

AUG 26 1986

REFER TO

CLA-2 CO:R:CV:G
078450 DW

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Miss H. K. W. Ho
British Embassy
Hong Kong Office
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Miss Ho:

Re: Your Reference No. 4/86

Your letter dated June 10, 1986, requested the tariff classification of certain garments that have been examined by the Hong Kong Trade Department which is of the opinion that they are classifiable as sleepwear.

Except for style 8620 which we consider to be nightwear and classifiable in item 384.3420, Tariff Schedules of the United States Annotated (TSUSA), under category 351, it is our view that the remaining garments belong to a class or kind of merchandise which have multiple uses. Therefore, they are not classifiable as nightwear. The following list represents the appropriate classification for these garments:

Styles:

8508	8158	8350 - Top piece		Item 384.2950, TSUSA
8429	8308			Category 339
8402	8422	8421	8447	Item 384.3210, TSUSA
8420	8140	8406	8151	Category 336
8448	8426	8427	8408	
8350 - Bottom Piece				Item 384.3124, TSUSA
				Category 348
8623	8611			Item 384.4609, TSUSA
8610	8621			Category 341
8717 - Top				Item 384.5299, TSUSA
				Category 359

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C11

8717 - Bottom

Item 384.4765, TSUSA
Category 348

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

078450

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PUBLIC _____

C12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 22 1988

CLA-2 CO:R:CV:G
078462 JCH

078462

District Director of Customs
P.O. Box 2450
San Francisco, California 94126

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 2809-5-000692

The above-captioned protest and application for further review were filed against the tariff classification of certain laser surgical apparatus which was the subject of several entries filed in 1983 and 1984 at the port of San Francisco. This merchandie is a product of Japan. Our decision follows:

ISSUE:

All of the merchandise was classified by Customs officers under the provision for optical measuring, checking, analyzing or automatically-controlling instruments and apparatus and parts in item 712.05, Tariff Schedules of the United States (TSUS). The column 1 rates of duty required under that provision in 1983 and 1984 were 17.5 and 15.6 percent ad valorem respectively. It is claimed the merchandise exclusive of certain modules is classifiable under the provision for electro-surgical apparatus in item 709.15, TSUS. The column 1 rates of duty required under that provision in 1983 and 1984 were 13 and 11.7 percent ad valorem respectively. It is claimed the excluded modules are classifiable under the provision for control panels in item 685.90, TSUS. The column 1 rate of duty required under that provision in 1984 was 6.5 percent ad valorem.

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FACTS:

The merchandise consists of the Model 60Z surgical laser system consisting of a CO_2 laser generator, handpieces and manipulators, articulated arms and self-testing and monitoring modules for use with that system. Also included are self-testing and monitoring modules and articulated arms claimed to be for use with the Model 30Z laser system. The entries further included pressure regulators with alarms for use with the surgical lasers. The submitted record does not show how the merchandise was allocated among the several entries involved for the purpose of resolving entireties issues.

LAW AND ANALYSIS:

The instant surgical laser apparatus does not incorporate optics for an integrated viewing system and, therefore, must be distinguished from the apparatus which was the subject of the decision in our PRD of September 9, 1985, file No. 075837. Laser surgical apparatus, such as a CO_2 laser which essentially involves invisible light, when lacking integrated optical viewing components does not qualify for classification as optical apparatus on the basis of the laser optics by themselves. In that configuration, the merchandise does not qualify under the so-called fourth Engis requirement for a picture or image or the enhancement of vision. See Engis Equipment Company v. United States, 62 Cust. Ct. 29, C.D. 3670 (1969); EAC Engineering v. United States, 623 F. Supp. 1255 (CIT 1985).

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Under the rule in General Headnote 10(ij), TSUS, a parts provision cannot prevail when in competition with a specific provision for the part. Item 685.90 is a specific provision for the purposes of the headnote rule. J.E. Bernard & Co. v. United States, 59 Cust. Ct. 31, C.D. 3060 (1967). We have further followed that principle in regard to control modules used in medical applications. See our decision in IA 29/85 dated November 29, 1985, file No. 076339. However, the cited headnote rule is not for application when a control module is imported as an entirety with the controlled apparatus. In that context, a provision for apparatus includes the complete aggregation of all components needed to achieve the required function. ITT Thompson Industries, Inc. v. United States, 3 CIT 36 (1982).

HOLDING:

The surgical laser at issue and the parts for it, with the following exception, are properly classifiable under the provision for electro-surgical apparatus and parts in item 709.15, TSUS. Every self-testing and monitoring module shown to have been included in the same entry for which there is a corresponding piece of the basic laser generating equipment will be similarly classified as an entirety with such equipment. No distinctions will be made between self-testing and monitoring modules stated to be for the Model 60Z apparatus and those stated to be for the Model 30Z apparatus since the

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record is entirely lacking in any evidence that these modules are not interchangeable. However, any such module which otherwise is not shown to be an entirety with a piece of basic laser generating equipment in the same entry is separately classifiable under the provision for control panels in item 685.90, TSUS.

Therefore, the protest should be denied except to the extent reclassifications in accordance with the above otherwise will result in a full or partial allowance. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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078762

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 21 1986

REFER TO

CLA-2 CO:R:CV:G
078463 JGH

Area Director of Customs
JFK Airport
Jamaica, New York

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-5-016135, on the Classification of Bobbins of Stripped Tobacco Imported from Holland

The merchandise in question is manufactured from natural wrapper tobacco leaves. The leaves are subjected to a die-cutting operation to produce a particular shape (cut to pattern) that does not have stems or any discolored or otherwise undesirable portion of the leaves. The number of die-cuts per leaf will depend on the size of the leaf, the usable portion of the leaf, and the particular pattern involved. The die-cuts are placed on cloth strips which are then wound around a core or bobbin for use in the automated production of cigars.

In behalf of the protestant it is urged that the merchandise be classified under the provision for tobacco, manufactured or not manufactured, not specially provided for in item 170.80, TSUS.

Customs, relying on Headquarters letter 060650, classified the merchandise under the provision for stemmed wrapper tobacco in item 170.15, TSUS.

Headnote 1, Part 13, Schedule 1, TSUS, defines the term "wrapper tobacco," as that quality of leaf tobacco which has the requisite color, texture and burn, and is of sufficient size for cigar wrappers.

It is claimed that this definition refers to "leaf tobacco," tobacco in its natural form, except where the midrib or stem has been removed. This interpretation is supported, it is claimed, by Headnote 2 which refers to wrapper quantity in terms of the total number of leaves. It is claimed further that the precedent relied on which considered a similar type of tobacco (060650, dated August 30, 1979) relied on the similitude provision, item 798.00, TSUS, to reach the decision.

D3

Regardless of any earlier decisions and the supposed rationale therefor, we take the position that the merchandise under consideration is covered by the headnote definition of wrapper tobacco. We see no reason why the die cutting of the leaf should take the leaf out of that provision which is clearly intended to cover the product.

The cigar leaf is not radically treated. It is merely die-cut. What is different is the manner in which the leaf is utilized in the production of the cigar. It is placed on a bobbin and the bobbin is placed in the automated cigar making machine, and through the operation of the machine the die-cut tobacco is wrapped around the cigar. Thus, it is not the cigar wrapper which has been advanced to a new product but the method of production has been radically changed. The cigar leaf has not been advanced in condition or value to a new or manufactured state but remains stemmed wrapper tobacco.

Thus, the protest as to the classification of the stemmed wrapper tobacco is denied.

The protest also raised a question as to the dutiable weight of the tobacco. We agree with the conclusion of the District Director that the dutiable weight is 106 pounds and that portion of the protest should be allowed.

That portion of the original protest file submitted is hereby returned.

A copy of the decision should be furnished to the protestant along with the Form 19 Notice of Action.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

Enclosure

078463

D4

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

25 SEP 1986

REFER TO
CLA-2 CO:R:CV:G
078465 SM

078465

Harold I. Loring, Esq.
Grunfeld, Desiderio, Lebowitz & Silverman
Two World Trade Center
Suite 2238
New York, New York 10048-0654

Dear Mr. Loring:

On behalf of Ruby International, Inc., you have requested a tariff classification ruling for styles 607, 609 and 611 men's boxer shorts. The style number will depend on the print in the fabric. The country of origin is not stated.

The submitted sample is made of a 100 percent cotton woven printed fabric. The fabric is unusual for men's underwear in that it shows cartoon drawings of monkeys eating bananas, and palm trees. Further, the garment is constructed with the print upside down. Each front panel wraps around the side and meets the single center back panel. The shorts have an elastic waistband. Two buttonholes are worked through all thicknesses of the left front fly opening, one at the waist and the other half way down the fly. There is no zipper or other closure aside from the two buttons.

Lacking a zipper or other closure, these shorts are not likely to be worn except under another garment and in such a manner that they would not be visible during ordinary wear. Thus they are classifiable under item 378.2011 or item 378.2510, Tariff Schedules of the United States Annotated, quota category 352, as other men's underwear, not ornamented, not knit, of cotton, according to whether or not they are valued over 75 cents per separate piece.

Sincerely,

Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

DS

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 9 1986

CLA-2:CO:R:CV:G
078483 SM

078483

District Director of Customs
555 Battery Street
P.O. Box 2450
San Francisco, California 94126

Dear Sir:

You have asked how three articles of printed matter, all stated to be written by Jim Maynard and published by Quicksilver Productions of Ashland, Oregon, would be classified for customs purposes and whether they would be subject to the restrictions of the manufacturing clause of the copyright law. The samples are returned to you herewith.

Celestial Influences 1986: An Almanac and Textbook of Astrology, Ephemeris, and Calendar, consists of twelve sheets of paper, each approximately 11 inches by 17 inches, printed on both sides, laid on a heavier paper cover of the same size, printed in color on the outside, all fastened at the center by three wire staples. When the cover and inside pages are folded in half, the article is closed. The inside front cover is printed with a chart; the inside back cover, with advertising. Holes punched in the outer edges of the pages would allow the article to be hung up on a wall. A table of contents on page one lists information concerning the use of the calendar, the appearance of Halley's comet, the signs of the zodiac, planting by the moon, and related subjects, and a month-by-month calendar, which takes up fewer than half of the 50 pages.

We have not ruled on whether such an article, which includes a calendar but also many pages which are not calendar, is still classifiable as a calendar. There are no court cases directly on point. We note, however, that in Brooks Bros. v. United States, 68 Cust. Ct. 91, C.D. 4342 (1972), the court determined that an article was properly classified as a diary (a blank book), and was not printed matter (a book of facts), as the importer contended. Examination of the article revealed that, while it contained a number of pages of text and maps, it contained more blank pages for recording events and appointments. Twenty-four of the fifty pages of the Celestial Influences 1986 are taken up by the calendar; thus, while approximately half of it consists of a calendar, just over half consists of text, maps, or charts.

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This article fits the definition of a pamphlet set out in ORR Ruling 102-71 of April 15, 1971, as it consists of more than two separate sheets of printed matter stapled together in book form, the pages opening like a book and following each other in a regular sequence. By Headnote 2(b) of Part 5, Schedule 2, Tariff Schedules of the United States (TSUS), it would therefore be classifiable as a book. Celestial Influences 1986 would thus be covered by item 270.25, TSUS, a provision for books not specially provided for. The Pocket Astrologer 1986, a similar 65-page article in a smaller size -- approximately 5-1/2 by 8-1/2 inches when opened out flat -- but lacking the holes, is also so classified.

The third sample, entitled Celestial Guide 1986: An Astrological Week-at-a-Glance Engagement Calendar, is a paper-bound book of 160 pages. It contains some charts and a small amount of textual material, but over 100 pages are devoted to the 1986 calendar, with each week spread over two pages. Space is allowed for making notes under each day's date; the calendar for the entire month is printed at the top of every two pages. It is classifiable under item 274.10, TSUS, as a calendar of paper, printed in whole or in part by a lithographic process, not over 0.020 inch in thickness. Since this article is a bound book, it is not considered to consist of permanently mounted lithographs within the meaning of Headnote 3 of Part 5, Schedule 2, TSUS. The thickness to be measured is thus that of the thinnest paper in the book.

The manufacturing clause of the copyright law expired on July 1, 1986. Therefore, Customs no longer requires English-language non-dramatic literary works by authors living in the United States and bearing a notice of copyright to be printed in the United States or Canada. See telex of July 2, 1986, copy enclosed.

Sincerely,

Arthur P Schaffner

FOR Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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078483

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 27 1986

FILE: CLA-2 CO:R:CV:G
078488 jlj

TO : Area Director of Customs
New York, New York 10048

FROM : Director, Classification & Value Division

SUBJECT: Internal Advice Request No. 5/86 Concerning the Proper Classification of Cambozola Cheese, A Soft Cheese With Blue Mold

This request for Internal Advice was initiated by a letter from Ms. Marsha A. Echols, 3213 O Street N.W., Washington, D.C. 20007, on behalf of her client, Champignon North America, Inc.

FACTS:

The cheese at issue is Cambozola, a soft ripened cheese with blue mold. It is manufactured by Kaserei Champignon Hofmeister K.G. in Bavaria, West Germany.

Cambozola is a mild, triple cream, soft ripened cheese. It has a prominent crust formed on the exterior surface as a result of curing or ripening. It cures or ripens from the surface toward the center. Cambozola has a fat content by weight (on a moisture free basis) of not less than 50 percent. The product has a moisture content (calculated by the weight of the non-fatty matter) of not less than 65 percent. The body of Cambozola is soft, creamy and pasty. Its taste is mild, and its aroma is subdued.

During the manufacturing process, mold spores of penicillium roqueforti and penicillium camemberti are added to the curd. When the penicillium roqueforti oxidizes, a mold results. The growth of the blue mold is limited

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by the white mold and by the softness of the brie. As a result, the blue mold in Cambozola appears as spots in the cheese. The blue mold begins as a few spots in the young cheese and increases to many spots throughout an older ripening cheese.

The inquirer claims that Cambozola has been misclassified. She maintains that it is classifiable under the provision for other cheeses, and substitutes for cheese, other, valued over 25 cents per pound, other, other, in item 117.8875, Tariff Schedules of the United States (TSUS).

The import specialist believes that Cambozola is properly classified under the provision for blue mold cheese, in original loaves, in item 117.0010, TSUS. As such, it is also provided for in item 950.07, TSUS, which covers blue mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, blue-mold cheese (provided for in items 117.00, 117.05, 117.75 or 117.88).

078488

ISSUE:

Is Cambozola correctly classified as a blue mold cheese in items 117.00 and 950.07, TSUS, or as other cheese, in item 117.88, TSUS?

LAW AND ANALYSIS:

The inquirer claims that Cambozola is a soft ripened cheese which meets the requirements of Headnote 3(a)(iv), Part 3 of the Appendix, TSUS, and which is therefore exclued from quota and import license requirements. She argues that Cambozola meets the curing process and fat/moisture content requirements of Headnote 3(a)(iv), supra. She contends that Customs has incorrectly taken the position that Cambozola has mold distributed throughout its interior (which would exclude Cambozola from the requirements of Headnote 3(a)(iv), supra).

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She argues that Cambozola is a new product which is classifiable as a soft ripened cheese because it possesses an essential resemblance to soft ripened cheeses and because its essential character is that of a soft ripened cheese, not a blue cheese. She claims that Headnote 3(a)(iv), supra, which excludes cheese with mold distributed throughout its interior does not exclude Cambozola because the blue mold does not occur throughout the cheese's interior. She argues that Cambozola is not a blue cheese because it is not blue veined.

Blue mold cheeses have traditionally been made in the form of semi-soft cheeses, such as Stilton, Roquefort and Gorgonzola, whose physical structures permit the growth and development of the blue-mold cultures in a typical veining or branching pattern. The relatively recent growth in popularity of the soft paste, mold ripened cheeses such as Camembert or Brie has led to the development of a new type of soft, blue mold cheese (e.g., Saga, Lymeswold and Bavariablu). In these latter cheeses, which have pasty, close-textured bodies, the growth and development of the blue mold cultures often tend to a spherical (rather than a veining) pattern of mold in the cheese. Whether soft or semi-soft, however, these blue mold cheeses share one common characteristic—they all contain blue mold cultures.

According to Frank Kosikowski's Cheese and Fermented Milk Foods (Edwards Bros., Inc., Ann Arbor, Michigan, 2nd Ed., 1977), "Like other cheeses of its type, Blue is produced by introducing the mold spores of P. roqueforti or P. glaucum into the milk or curds before pressing. Air passages are then bored into the heavily salted cheese. The air induces the mold spores to grow vegetatively with a resulting spread of their greenish blue mycelia. The penicillia molds are rich in proteolytic and lipolytic enzymes, and during

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0788488

the resulting ripening or curing these enzymes are released. Their activities lead to free enzymes, amino acids, carbonyls and fatty acids which ultimately effect the flavor and texture." Based on the foregoing, the blue mold cultures are introduced into the production of the Cambozola either in the cheese vat or when the cheese curd is poured into the cheese mold, so that the mold cultures have already been distributed throughout the curd before pressing.

Three photographs attached to the file show the actual distribution of the blue mold throughout the cheese body when the Cambozola is not fully ripened, fully ripened and somewhat past fully ripened. The photograph of Cambozola at the end of Exhibit 3 in the inquirer's submission also shows the distribution of the blue mold throughout the cheese body. In each photograph, the distribution of the blue mold cultures throughout the cheese is readily apparent. Customs Laboratory Report Number 2-86-10211-001, dated November 12, 1985, also states that "Blue mold was found throughout the sample." (The sample was a Cambozola cheese submitted to our New York office along with the request for internal advice.)

The blue mold cultures in the soft cheeses grow as the cheeses ripen. Whether more cultures are mixed with the curd for stronger blue mold development (as the inquirer claims is the case with Bavariablu) or fewer cultures are mixed with the curd for a milder, slower developing blue flavor (as is claimed in the case of Cambozola), the product is essentially the same. It is the presence and the flavor, whether mild or strong, of the blue mold which distinguishes these cheeses from other mold-ripened varieties such as Camembert and Brie. (Even the name Cambozola seems to be a combination of

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Camembert, a white mold cheese, and Gorgonzola, a well known blue mold cheese.)

It is an established principle of Customs law, as noted by the Court in Northam Warren Corp., Alltransport, Inc. et. al. v. United States, 65 Cust. Ct. 584, C.P. 4142 (1970), that "The maxim of construction de minimis non curat lex does not apply to a fractional ingredient which performs a useful function." In the instant case, the blue mold cultures—although present in a very small amount by weight in Cambozola—perform a useful function. They impart to the cheese the character and flavor of blue mold (which is why they were added to the cheese) in much the same way as peppercorns, chives, onions or other similar ingredients add their own characteristic flavors to other cheeses. There are important differences between cheeses flavored with these other materials and cheeses flavored with blue mold, however. First, unlike the other flavoring ingredients mentioned, blue mold cultures continue to grow in the cheese and to participate in ripening the cheese. Second, while no specific tariff provision exists for cheese with peppercorns or for cheese with chives, a specific provision does exist for cheese containing blue mold. Accordingly, the presence of blue mold in Cambozola, distributed as it is throughout the cheese, cannot be regarded as negligible.

Regarding the inquirer's claim that Cambozola is a soft ripening cow's mild cheese under Headnote 3(a)(iv), Part 3 of the Appendix TSUS, we note that Cambozola does not meet the tariff definition for such cheese, which excludes cheese with mold distributed throughout its interior. The four photographs mentioned above, the Customs Laboratory report, and the time and manner in which the blue mold cultures are added to the cheese all indicate that the blue mold is distributed throughout the cheese.

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Based on the foregoing, we find that Cambozola is a white and blue mold ripening soft paste cheese similar to Bavariablu, Saga, Lymeswold and other blue cheeses of this white and blue mold type. As such, Cambozola, which is imported in original loaves, is classified under the specific provision for blue mold cheese in item 117.0010, TSUS, and subject to quota in item 950.07, TSUS. An import license, issued to the importer by the United States Department of Agriculture, is required at the time of entry of this merchandise into the United States.

HOLDING:

Cambozola is classified as a blue mold cheese in item 117.00, TSUS, and is subject to quota under item 950.07, TSUS. You should inform the inquirer of this decision.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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D13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 4 1986

REFER TO

CLA-2 CO:R:CV:G
078489 jlj

District Director of Customs
Patrick V. McNamara Building
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Application for Further Review of Protest No. 3801-6-000288

This protest was filed against your decision in the liquidation on December 27, 1985, of entry No. 84-687692, dated September 12, 1984, covering a shipment of correctable film typewriter ribbons produced in Canada.

This ruling concerns the correct classification of the ribbons.

FACTS:

The merchandise at issue is part No. 9805037, correctable film ribbons, 5/8 inches wide, black, for IBM Selectric II Typewriter, imported in plastic cassettes. The manufacturer states that the approximate value of the components at the time of final assembly is 14 cents for the cassette and 25 cents for the ribbon.

The protestant's broker argues that the instant ribbon cartridges are used in various office machines such as printers and typewriters. He claims that the ribbons are classified under the provisions for office machines not specially provided for, parts of the foregoing, typewriter parts, in item 676.50, Tariff Schedules of the United States (TSUS).

The import specialist believes that, since the ribbon has already been slit and is a textile material at the item of importation, the ribbon is classified under the provision for articles not specially provided for, of

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textile materials, other articles, not ornamented, other, in item 389.62, TSUS.

ISSUE:

Is the correctable film typewriter ribbon cassette classified as typewriter parts in item 676.50, TSUS, or as other textile articles not specially provided for in item 389.62, TSUS?

LAW AND ANALYSIS:

The protestant's broker claims that a protest covering similar merchandise was approved under item 676.50, TSUS, in the past and that the instant merchandise should also be classified in item 676.50, TSUS. He cites Kores Manufacturing Corp. v. United States, Slip Op. 82-42, 3 C.I.T. 178 (1982), Appeal No. 82-33 (decided April 23, 1983), in support of his position.

The import specialist states that, based on cost data from the shipper which indicates that the ribbon is the component of chief value, the articles are of textile material and are classified as other textile articles in item 389.62, TSUS.

In Slip Op. 82-42, supra, the court held that the ribbon imported for further assembly into a cassette in the United States was not textile material "at the point in time for determining component material in chief value." The instant ribbon meets the criteria for textile material at the point in time when its is assembled into a cassette to form the complete article; therefore, Slip Op. 82-42 is distinguishable.

Headnote 1 (iv), Part 4, Schedule 6, TSUS, states "This part does not

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cover...articles of textile material." Inasmuch as the ribbon is the component of chief value of the cassette, the cassettes are of textile material and cannot be classified in item 676.50, TSUS, because Headnote 1 (iv), supra, precludes it.

An earlier Detroit protest involving similar ribbons was approved by the Detroit import specialist because he assumed that the imported merchandise was similar in all important aspects to the merchandise which was the subject of Slip Op. 82-42. The instant ribbons differ from those in Slip Op. 82-42 in one important way: they are imported in plastic cassettes. Since the ribbon, which is the component of chief value, has already been slit and is a textile material at the time when nothing further remains to be done to it and to the plastic cassette but to assemble them into the completed article, Headnote 1 (iv), supra, precludes them from classification in item 676.50, TSUS. The ribbons are properly classified in item 389.62, TSUS.

HOLDING:

The instant film typewriter ribbon cassettes are classified in item 389.62, TSUS. The protest should be denied in full. You should attach a copy of this decision to the CF19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078489

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OCT - 3 1986

CLA-2 CO:R:CV:G
078497 c

078497

Ms. Darlene E. O'Brian
Post Entry Supervisor
F. W. Myers & Co. Inc.
West Service Road, 1-87
P.O. Box 188
Champlain, New York 12919

Dear Ms. O'Brian:

In a letter dated June 13, 1986, on behalf of your client, Elite/Biltrite, you inquired as to the dutiable status of the product lines Regency, Opta and Panel Form.

It is your view that this merchandise is classifiable under the provision for wood furniture in item 727.35, Tariff Schedules of the United States (TSUS).

You assert that the named product lines do not include room dividers and thus should not be governed by Headquarters ruling letter No. 076745 dated June 18, 1985, which held that divider panels imported for use with a work station are classifiable under the provision other wood screens in item 206.67, TSUS. It is your position that the imported units are "work stations."

We do not agree with your contentions. As stated in your letter, the work stations start with the "basic-unit" such as RE 374 on page 40 of the Casegood Price List catalogue. The ultimate purchaser then has the alternative to add any combination of shelves, files, desks, returns, pedestals, etc., to complete the unit.

If the basic unit were an actual bookcase, we would agree that it should be classifiable as a unit of furniture. However, it is merely a panel or divider. It serves a dual function of segregating an area in the office and supporting units of furniture.

Consequently, it is our position following HRL 076745 that the back or divider panels are classifiable under the provision for other wood screens in item 206.67, TSUS, and dutiable at the rate of 8 percent ad valorem. Any attachments would be

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dutiable at the rate of 2.8 percent ad valorem under item 727.35, TSUS, if free standing, or at the rate of 5.8 percent ad valorem under item 727.40, TSUS, as parts of furniture, if in need of a divider for support.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

078497

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT - 6 1986

CLA-2 CO:R:CV:G
078507 c

078507

Mr. Cha Lin Wang
The Protective Gloves Manufactory, Ltd.
(DOMINICANA) C POR A
De La Manzana 1B, Zona Franca Industrial
San Pedro De Macoris, Dominican Republic

Dear Mr. Wang:

In a letter dated June 7, 1986, you inquired as to the dutiable status of all cotton work gloves produced in the Dominican Republic from materials made in the United States. A sample glove was submitted for examination.

The sample, style No. 4827, is an all cotton terry cloth knit work glove. The direct processing operation costs are said to be $1.41 per dozen pairs and the U.S. materials costs are stated to be $4.32 per dozen pairs.

You suggest that these gloves are entitled to duty-free treatment under the Caribbean Basin Initiative (CBI).

General Headnote 3(e)(vii), (D), Tariff Schedules of the United States (TSUS), states that articles provided for in an item for which a rate of duty appears in the 'special' column followed by the symbol 'E*' in parentheses, shall be eligible for the duty-free treatment provided for in subdivision (e)(vii) of this headnote except --

> (3) textile and apparel articles --
> (i) in chief value of cotton, wool, man-made fibers, or blends thereof in which those fibers, in the aggregate, exceed in value each other single component fiber thereof.

In view of the foregoing, gloves represented by the sample being in chief value of cotton are not eligible for duty-free treatment under the CBI.

It is our position that gloves represented by style No. 4827 are classifiable under the provision for gloves of cotton, not woven, made from a pre-existing machine knit or woven fabric, or any combination of such fabrics in item 704.4502, TSUSA, and dutiable at the rate of 25 percent ad valorem.

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Cotton gloves are within textile category No. 331. As a product of the Dominican Republic they are currently subject to visa requirements but not to quota restraints.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

AUG 29 1986

CLA-2 CO:R:CV:G
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078516

Ms. H. K. W. Ho
Second Secretary
Hong Kong Commercial Affairs
British Embassy
3100 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Ms. Ho:

In a letter dated April 25, 1986, you inquired as to the dutiable status of certain headbands produced in Hong Kong. Three samples (orange, blue, and pink) have been submitted for examination.

You described the merchandise as 70 percent lambswool, 20 percent angora and 10 percent nylon knitted headbands. Noting that the large-sized headbands provide warmth to the wearer in cold weather and are ornamented with a loop, it is our position that they are classifiable under the provision for other women's girls', or infants wearing apparel, ornamented: of wool: Knit in item 384.1390, Tariff Schedules of the United States Annotated, and dutiable at the rate of 28.3 percent ad valorem. The applicable textile category number is 459.

Your samples are being returned under separate cover.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

1[illegible]366 CLA-2 CO:R:CV:G
078521 jlj

078521

Ms. H.K.W. Ho, Second Secretary
British Embassy
Hong Kong Office, Commercial Affairs
3100 Massachusetts Avenue N.W.
Washington, D.C. 20008

Dear Ms. Ho:

In your letter of June 18, 1986, you ask us to reconsider the textile category of a 100 percent cotton sweatshirt entered at the port of Champlain, New York on entry No. 86-131865-6. You submit a sample along with your letter.

You state that inasmuch as the garment has a hood, a partially opened front, two waist pockets, ribbed bottom and ribbed cuffs, it has all the typical features of a pullover jacket and was correctly classified in textile category 359. The port of Champlain classified the garment in textile category 338/9. You ask us to request the Commerce Department to adjust the 1985 import data in accordance with the change you suggest.

The submitted sample is constructed from finely knit 100 percent cotton French terry fabric which contains approximately 24 wales per inch. The garment has long sleeves with rib knit cuffs, a rib knit waistband, a 2 button placket at the neck, and a hood with a drawstring closure.

The item is designed in sweatshirt style, but with the French terry fabric substituted for the brushed or napped inner surface common to a sweatshirt. It is designed to be worn over the skin or underwear as a sweatshirt is worn. The French terry material is commonly used in shirts. The garment is properly classified under the provision for other men's or boys' wearing apparel, not ornamented, of cotton, knit, other, shirts and sweaters, other, in item 381.4130, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the 1986 rate of 21 percent ad valorem. Textile category 338 applies to garments classified in item 381.4130, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

10 OCT 1986 CLA-2 CO:R:CV:G
078548 JNB

078548

District Director of Customs
6th Floor, Plaza Nine Building
55 Erieview Plaza
Cleveland, Ohio 44114

Re: Decision on Protest and Application for Further Review
Number 4102-5-000019

Dear Sir:

The above noted protest and application for further review was filed by counsel for protestant West Chester Marketing, Inc., of West Chester, Ohio. At issue is the classification of plastic-coated cotton gloves which are imported from Hong Kong. Ten different styles of gloves are involved.

Customs claims that the gloves are properly classifiable as either gloves ... : of vegetable fibers: made from a pre-existing machine-knit or -woven fabric, or any combination of such fabrics: woven, under the provisions of item 704.40, Tariff Schedules of the United States (TSUS), dutiable at the rate of 25 percent ad valorem, or not woven, under the provisions of item 704.45, TSUS, also dutiable at the rate of 25 percent ad valorem. Importations of gloves which are the products of Hong Kong under either of these tariff provisions are subject to the restrictions of quota category 331, in that visas from the country of origin must be obtained in order to permit their entry into the United States.

Protestant claims that the gloves are properly classifiable as gloves of rubber or plastics: other, under the provisions of item 705.86, TSUS, dutiable at the 1985 rate of 19.3 percent ad valorem. Gloves classifiable under this tariff provision are not subject to quota restrictions.

FACTS:

Commencing February 8, 1985, and ending September 20, 1985, at Cincinnati, Ohio, protestant West Chester Marketing imported ten different styles of plastic-coated cotton gloves (not including men's and women's versions of the same style) under twenty entry numbers. Style numbers 201, 202, 210 and 211 are composed of plastic-coated knit cotton fabric. Style numbers 203, 204, 206, 207, 208 and 788 are composed of plastic-coated woven cotton fabric. Style numbers 208, 210, 211 and 788 contain textile backs and cuffs and are coated only on the palm and inside of the fingers.

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Redelivery of all gloves was requested because Customs found protestant's claimed classification to be incorrect. Protestant entered all the gloves under the classification as other gloves of plastic under the provisions of item 705.86, TSUS. Customs determined that these gloves were more properly classifiable as gloves of vegetable fibers under items 704.40, or 704.45, TSUS. Additionally, classification of the gloves under the textile provision imposed visa requirements on their entry into the United States. Inasmuch as no visas had been obtained, redelivery was requested. This protest and application for further review was timely filed in response to the denial of entry.

Counsel for protestant describes the gloves as having an outer surface composed of plastic and an inner lining of cotton. The outer surface is claimed to have a plastic, as distinguished from a textile, surface. It is suggested that in some styles the grainy outer surface results from the nature of the plastic coating.

ISSUE:

Are the gloves properly classifiable as gloves of rubber or plastics under item 705.86, TSUS, or as gloves of vegetable fibers, under items 704.40 or 704.45, TSUS, and thereby subject to visa requirements pursuant to textile quota category 331?

ANALYSIS:

Style numbers 203, 204, 206 and 207 are composed of base fabric of plain woven cotton. Both sides of the base fabric have been heavily napped. The exterior of the base fabric is coated with plastic. Textile fibers from the nap penetrate through the coating. Tactilely samples 203 and 204 are furry or fuzzy. The weave construction is barely visible through the plastic. Style number 203 is coated with either yellow or black nontransparent plastic. Style 204 is coated with a yellow plastic. Styles 206 and 207 are coated with a speckled plastic that imparts a grainy feel not characteristic of textile.

A uniform and established practice exists to classify these styles of gloves as gloves of rubber or plastic. See Customs Ruling Letters of December 19, 1973 (Control No. 029939) and September 16, 1986 (Control No. 077460).

West Chester styles 201 and 202 are composed of a base fabric of knit cotton, heavily napped on both sides. The exterior of the base fabric is coated with plastic. Textile fibers from the nap penetrate through the coating, but these

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fibers can only be seen microscopically. The coating is a flecked brown plastic and the samples have a rough grainy feel that does not resemble a textile.

As with the aforementioned woven styles, a uniform and established practice exists to classify these styles of gloves as gloves of rubber or plastic. See Customs Ruling Letter of September 16, 1986, supra.

Style numbers 210 and 211 are composed of plastic-coated knit cotton fabric. They are similar to styles 206 and 207 except that they are coated only on the palm and inside of the fingers. The back and cuff of these styles are not coated. Style numbers 208 and 788 are composed of plastic-coated woven cotton fabric. Style 208 is similar to style 204 except it, too, is coated only on the palm and inside of the fingers. Style 788 is coated on the palm and inside of the fingers with a nontransparent plastic featuring black polka dots.

Customs has held that gloves which are coated with nontransparent plastic on the palm and inside of the fingers are classifiable as gloves of rubber or plastic pursuant to a uniform and established practice. See Customs Ruling Letter of December 19, 1973, supra. Additionally, Customs has held, without making reference to the existence of a practice, that partially coated gloves are classifiable as gloves of rubber or plastics if their component material of chief value is plastic as opposed to textile. See Customs Ruling Letters of June 19, 1973 (Control No. 026483); February 22, 1974 (Control No. 031651); and January 3, 1975 (Control No. 037515). The subject partially coated gloves, if in chief value of rubber or plastic, must be classified in a manner consistent with the noted rulings.

HOLDING:

Pursuant to a uniform and established practice, West Chester glove styles 201, 202, 203, 204, 206 and 207 are classifiable as gloves of rubber or plastics: other, under the provisions of item 705.86, TSUS, dutiable at the 1985 rate of 19.3 percent ad valorem.

If in chief value of plastic, glove styles 208, 210, 211 and 788 also are classifiable as gloves of rubber or plastics: other, under the provisions of item 705.86, TSUS, dutiable at the 1985 rate of 19.3 percent ad valorem. Gloves classifiable under this tariff provision are not subject to quota restrictions.

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If in chief value of textile, glove styles 210 and 211 are classifiable as gloves ... : of vegetable fibers: made from a pre-existing machine-knit or -woven fabric, or any combination of such fabrics: not woven, under the provisions of item 704.45, TSUS, dutiable at the rate of 25 percent ad valorem. Glove styles 208 and 788, if in chief value textile, are classifiable as gloves ... : of vegetable fibers: made from a pre-existing machine-knit or -woven fabric, or any combination of such fabrics: woven, under the provisions of item 704.40, TSUS, also dutiable at the rate of 25 percent ad valorem Importations of gloves which are the products of Hong Kong under either of these tariff provisions are subject to the restrictions of quota category 331.

Accordingly, if you find the partially coated gloves to be in chief value of plastic, the protest should be allowed in its entirety. If you find the partially coated gloves to be in chief value of textile, the protest should be allowed in part and denied in part. A copy of this decision should be given to the protestant when notice of action is given on Customs Form 19.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON D.C. 20229

03 OCT 1986

CLA-2 CO:R:CV:G
078560 JGB

078560

Mr. Harold I. Loring
Grunfeld, Desiderio,
Lebowitz and Silverman
Counselors at Law
Suite 2238
Two World Trade Center
New York, New York 10048-0654

Re: G86-1466-5(16)C

Dear Mr. Loring:

This letter is in response to your request for a ruling on four styles of two-piece infants' garments claimed to be playsuits. You have made this request on behalf of M. Hidary & Company, Inc., the importer. Your legal arguments, presented at a meeting at Headquarters on June 12, 1986, and followed by your memorandum of law dated June 30, 1986, represent a further request from your client following your client's direct ruling request to us answered by our file no. 076089. This request substitutes styles presented in our file 076089.

Each sample is a two piece light-weight play-wear garment consisting of shirt-tops and shorts. The shorts each have an elasticized waistband in back covering less than half the circumference. The shorts of styles 1111, 1112, and 1113 are woven twill. The tops for styles 1111, 1112, and 1113 are knitted and lack sleeves. These tops feature a knitted collarband. The top of style 1114 is a shirt with a button closure in front and a collar. The top and bottom are of the same woven fabric and are coordinated in color with an identical printed tropical flower design. The leg openings for the shorts in style 1111 are capped to cover the unfinished edge. No feature ornaments the styles.

Styles 1111, 1113, and 1114 are joined together in wear by the use of various buttonhole/button combinations. Style 1111 has buttons sewn to the outside of the shirt on either side about three inches from the hem. In wear these buttons attach to the shorts through a buttonhole on either side of the

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elastic portion of the waistband. As the theory would have it, an elastic waistband less than half-way around is insufficient to hold the shorts up. So the button attachment of the shorts to the shirt is necessary in order to keep the shorts from falling down, making the use of the top without the bottom not practicable.

Style 1112 is a variation with buttons on the outside of the waistband instead of the buttonholes of style 1111. The shirt has loops of braided textile-covered elastic sewn to the inside seam of the shirt. The shirt would be worn outside the waistband and the loops would encircle the buttons when both parts are worn, so that the shirt would keep the shorts from falling down.

Style 1113 is a button/buttonhole variation with buttons sewn to the outside of the waistband as in style 1112. But here the shirt has buttonholes cut vertically in the appropriate places of the sides of the shirt so that the buttons of the shorts may fit through the buttonholes of the shirt and keep up the shorts. The buttonholes in the shirt are reinforced with thread to keep the friction of the button from unraveling the knitted fabric of the shirt during wear.

Style 1114 is the same design as style 1113 as far as the button/buttonhole arrangement. The difference is that both top and bottom are of the same woven fabric with the same printed design.

You refer in your memorandum to the description of goods intended for textile category designations 337 and 637, found on page 22 of the Textile Category Guidelines, C.I.E. 36/79. That description states in part, "[t]wo-piece physically connected entireties, such as shirts and shorts having buttons and buttonholes...designed to join the two pieces, which are so manufactured that the use of one without the other is not practicable are encompassed within this category. However, button/buttonhole sets in which the pants have substantial elastic waistband, whereby the use of the pants without the shirt is practicable, are not within this provision...." An examination of the samples reveals that styles 1111, 1113, and 1114 fit squarely within the description of the sets that belong in the playsuit category. Buttons and buttonholes are

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placed in various ways to attach the garments during wear so that the attachment functions to keep the shorts from falling down. The loop and button combination of style 1112 performs the same function as the buttonhole/button features and must reasonably be included in this category grouping.

It should be noted that categories 337 and 637 are applied to two-piece garment sets under very limited circumstances. The two pieces must meet the standards for entireties. They must be imported together and marketed and sold as a unit, as well as being intended to be worn together. The parts must also be coordinated as to color or fabric so that the combination of the two parts creates an article having a new commercial identity. These two-piece combinations meet these standards.

Some observers in Customs have noted that elastic loops and buttons as in style 1112 are inconsequential in that they could be cut off or simply not used, yet both pieces would probably still be wearable. To this point we must respond that it may be true that the top and the bottom may be worn separately on occasion and the shorts may stay up without attaching the buttons to the buttonholes or loops, depending on the individual fit. However, in general, the design dictates the wear of the two pieces together and attached. If there were a different standard for what makes a substantial waistband, requiring, for example, no more than one-quarter of the waistband to be elasticized before it is considered substantial, then a stronger case could be made for the necessity of attaching the tops and bottoms in wear. However, the standard generally applicable is less than one-half for elasticized waistbands, and in reality all the samples under consideration here meet the standard for non-substantial waistband. By meeting that standard, they are unaffected by the exclusion for substantial waistbands in the Guidelines, supra.

You have indicated that your client expects to import these styles either with cotton as the fiber in chief value for both top and bottom or with man-made fibers as the component fiber in chief value for both top and bottom.

Styles 1111, 1112, and 1113 combine a knitted top with shorts. In these combinations, the shirt is considered the predominant feature. Therefore, if cotton is in chief value, these styles are classified in item 384.3426, Tariff Schedules of the United States Annotated (TSUSA), dutiable at 10.2 percent ad valorem. This is the provision for "Other women's,

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girls', or infants' wearing apparel, not ornamented: Of cotton: Knit: Other, Playsuits, sunsuits, washsuits and similar apparel: Consisting of two pieces." This takes textile category 337. If man-made fibers are in chief value, these styles are classified in item 384.8642, TSUSA, dutiable at 7 cents per pound plus 21.4 percent ad valorem. This is the provision for "Other women's, girls', or infants' wearing apparel, not ornamented: Of man-made fibers: Knit: Other, Playsuits, sunsuits, washsuits, and similar apparel: Consisting of two pieces." This takes textile category 637.

Style 1114, with both top and bottom of woven fabric of the same print, if cotton is in chief value, is classified in item 384.5233, TSUSA, dutiable at 9.4 percent ad valorem. This is the provision for "Other women's, girls', or infants' wearing apparel, not ornamented: Of cotton: Not knit: Other: Other: Other..., Coveralls, overalls, jumpsuits and similar apparel: Other: Other: Infants'." This takes textile category 337. If man-made fibers are in chief value, it is classified in item 384.9415, TSUSA, dutiable at 4 cents per pound plus 18.8 percent ad valorem. This is the provision for "Other women's, girls', or infants' wearing apparel, not ornamented: Of man-made fibers: Not knit: Other: Other, Playsuits, (except coveralls, overalls, jumpsuits and similar apparel)...." This item takes textile category 637.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 23 1986

REFER TO
PTA-2 CO:R:CV:G
078572 JGH

District Director of Customs
701 San Jacinto
P.O. Box 52790
Houston, Texas 77052

Re: Decision on Application for Further Review of Protest No. 5301-5-000006, on the classification of a Petroleum Product

Dear Sir:

The petroleum product in question was imported from Rotterdam, Netherlands, and entered April 4, 1984, under the provision for motor fuel in item 475.25, TSUS, as unleaded gasoline.

Customs analysis of a sample of the importation disclosed that it had a 50 percent evaporated temperature which exceeded the 250°F maximum set out in ASTM D439, which sets out the standards for recognizing whether a petroleum product is a motor fuel. In addition the Customs laboratory determined that the product contained 14.7 percent dutiable benzenoids of which 9.9 percent was ethyl benzene. It was therefore classified as a benzenoid mixture in item 407.16, TSUS.

In behalf of the importer it is contended that since the product is chiefly used as motor fuel and meets the statutory definition of motor fuel under Headnote 2(b), Part 10, Schedule 4, TSUS, it should be classified as motor fuel. It is argued that the ASTM standards are only guidelines and even if the product's characteristics do not meet the standards, the product could still be chiefly used as motor fuel. Affidavits from claimed experts in petroleum were submitted to substantiate the assertion that the product is chiefly used as a fuel for internal combustion engines in the United States.

In the one affidavit it was stated that from an examination of the specifications and test results, it was concluded that the product was a pyrolysis gasoline. In the affidavit the opinion was expressed that the product was one that the refineries either blend or sell directly. In another affidavit it was concluded that the product was chiefly used in the United States as a motor fuel or as a gasoline blending stock, or "a base for a fuel to which other gasoline components will be added to stretch the number of gasoline barrels finally manufactured."

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As to the contention that the period of time elapsing between the sampling and Customs analysis rendered the results reached unreliable, there is no proof submitted of any Customs lack of care in regard to the tests it conducted. The main contention, however, is that the product, regardless of whether or not it meets requisite ASTM standards, is chiefly used as motor fuel as shown by the affidavits submitted.

The one expert described the product as pyrolysis gasoline. However, there is no evidence that the product in question, whether or not pyrolysis gasoline, is chiefly used as motor fuel in the United States. It might be noted that the court in Dow Chemical Co. v. United States (Slip Op. 86-85) concluded that pyrolysis gasoline was a benzenoid mixture under the predecessor tariff provision to item 407.16, TSUS.

While it is true that ASTM D439 is merely a guideline intended to facilitate the recognition of a petroleum product as a motor fuel, classification of an import as a motor fuel is not precluded even though those standards are not met, if the product is chiefly used in the United States as a motor fuel. The claim in behalf of the protestant is that the product is of a class or kind of petroleum product used as motor fuel or in the blending of a motor fuel. However, as the court has pointed out, petroleum derivatives suitable for use in motor fuels are not dutiable as petroleum derivatives suitable as motor fuels. United States v. Exxon Corp. 66 CCPA 129, C.A.D. 1233, 607 F 2d. 985 (1979). Furthermore, as pointed out in Amorient Petroleum v. United States (Slip Op. 84-46) (1985), if a product was physically incapable of being used as motor fuel without further blending or modification, it could not be classified as motor fuel.

From the evidence in this case, including the affidavits submitted in behalf of the protestant, it is concluded that the product as imported is used in blending a motor fuel and is not chiefly used as a motor fuel as imported. Therefore, the product is correctly classifiable in item 407.16, TSUS.

The protest is denied in full. A copy of the protest decision should be furnished the protestant with the Form 19 Notice of Action.

Sincerely,

Arthur P. Scheffler

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

AUG 27 1986

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CLA-2 CO:R:CV:G
078574 DW

Ms. Suzanne Goodwin
Columbia Sportswear Company
P.O. Box 03239
6600 North Baltimore
Portland, Oregon 97203

Dear Ms. Goodwin:

This is in response to your request for a ruling on the tariff classification of certain men's boxer-style shorts. Samples were provided along with your letter dated June 25, 1986.

Style 6008 is a pair of men's woven nylon shorts that has a fully elasticized waistband with a functional drawstring, a full support liner of knit construction, two side seam pockets, and a rear inserted pocket on the right side with a zipper closure. The other garment, style 6016, is a pair of men's woven nylon shorts with a fully elasticized waistband and two side seam pockets. It does not have a support liner.

We consider style 6008 to be swimming trunks which are classifiable under the provision for other men's wearing apparel, not ornamented, of man-made fibers, not knit, swimming trunks, in item 381.9570, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 15 cents per pound plus 27.5 percent ad valorem. Style 6008 falls under category 659.

To be classifiable as swimwear, men's boxer-style shorts must have a substantial liner that is lightweight and nonabsorbable. Thus, style 6016 which does not have a support liner is classifiable as men's woven shorts in item 381.9585, TSUSA, dutiable at the rate of 15 cents per pound plus 27.5 percent ad valorem. This merchandise requires a visa for category 647.

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Due to the frequent changes to the statistical suffixes (the last two digits of the item number) and the applicability of import restraints, you should contact your local Customs office prior to the importation of this merchandise to determine its current status.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

NOV 3 1986

CLA-2:CO:R:CV:G
078602 JCH

Mr. Dave Richards
Richard's Hydro-Tech Inc.
Box 1259
Summerland, British Columbia VOH 1ZO
Canada

Dear Mr. Richards:

This is in further response to your letter of June 19, 1986, in which you requested information concerning the dutiable status of merchandise described as a snow valve.

The merchandise in question is a stainless steel hydrant assembly designed specially for use at ski resorts for the production of snow artificially. Its special features adapting it to this use include, among others, a drain cock to prevent freezing of residual water and modular construction for easy disassembly for repair purposes.

Steel hydrants are classifiable under the provision for hand-operated valves of iron or steel in item 680.17, Tariff Schedules of the United States. The current column 1 rate of duty required under this provision and applicable to products of Canada is 8.5 percent ad valorem.

Sincerely,

William P. Heuffler

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT - 2 1986

REFER TO

CLA-2 CO:R:CV:G
078623 jlj

078623

Ms. Marcia K. Cowan, Esquire
1201 Pennsylvania Avenue N.W.
Suite 730
Washington, D.C. 20004

Dear Ms. Cowan:

In your letter of May 12, 1986, you requested a tariff classification for a ladies' disposable undergarment on behalf of Kimberly-Clark. You submitted a sample along with your letter. The garment will be worn by menstruating women. It is disposable and is intended for one-time use only.

The sample has an elasticized waistband and leg opening. The garment is composed of a central panel of two layers of non-woven man-made fibers and two side panels of knit man-made fibers. You indicate that the absorbent core in the crotch area will consist of either 100 percent wood pulp (fluff); coform, which ranges from 70 percent to 95 percent pulp and from 30 to 5 percent polymer; or a combination of wood pulp and coform. A component material breakdown which you submitted indicates that man-made fibers are the component of chief value.

You also indicate that the components, which are of United States origin, will be shipped to Mexico ready for assembly by mechanically stitching the nylon side panels to the central panel and by elasticizing the leg and waist openings using standard thread and rubber elastic.

With respect to foreign assembly operations, item 807.00, Tariff Schedules of the United States (TSUS), applies to fabricated United States components that are designed to be fitted together with other components in an assembly process, with no operations performed thereon except attachment of the components to form the imported merchandise and operations incidental thereto.

In the absence of samples of the aggregate components, we are unable to determine with definiteness the applicability of item 807.00, TSUS. Allowances will be made under item 807.00, TSUS, however, for all components of United States origin, that are exported in condition ready for assembly without further fabrication. Allowances may also be made for the absorbent core insert between the outer and inner liner of the center panel, provided that the absorbent core is exported as a cut-to-shape component ready for assembly. No allowances can be made for the absorbent material, wood pulp, coform, or a combination, if it is exported as an amorphous, fungible mass from which certain portions are pulled to insert between the baffle and liner.

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You claim that the instant garment is not an item of wearing apparel, since the absorbent pad is the main component by both weight and function and since the side panels serve only to keep the pad in place. The instant article is similar to the diaper panty in Customs Headquarters Ruling Letter (HRL) 065855, dated September 17, 1981, which held that a diaper panty used in conjunction with urinary and colostomy problems was classified as underwear.

The instant garment is made of knit fabric (the side panels) and non-woven fabric (the center panels). The central panel is more noticeable than the side panels, however, so the non-woven fabric imparts the essential character of the garment. Accordingly, the ladies' disposable undergarment is classified under the provision for underwear, of man-made fibers, not knit, in item 378.6530, TSUS, dutiable at the rate of 8.5 percent ad valorem plus 2 cents per pound.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 12 1986

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078626

Robert L. McGeorge, Esq.
Lillick, McHose and Charles
Attorneys at Law
21 Dupont Circle, N.W.
Washington, D.C. 20036

Dear Mr. McGeorge:

Your letter dated April 3, 1986, submitted on behalf of your client, Ice Dream International, Inc., regarding the tariff classification and quota status of a product called "Restorative T/C."

Your submission describes the subject merchandise as consisting of fructose, whey, and stabilizers. Fructose is the component material in chief value. The butterfat content is approximately 1.3 percent. When mixed with water and frozen, the resulting product is said to be comparable to soft ice cream or frozen yogurt in appearance, texture, and taste. Your client plans to import this merchandise in three forms: as a dry mix in 25 kilogram bags, a dry mix in two pound bags, and as a frozen, fluid dessert product in pints and quarts. Twenty-five kilogram bags would be destined for new Ice Dream retail outlets or established retail outlets, where the mix would be used to prepare a dessert for sale to retail customers. Two-pound bags of dry mix and frozen, prepared, pints and quarts would be sold directly to the consuming public through retail outlets.

Since the product is a mixture of ingredients, it would not qualify for classification as either a fluid or dried whey under either item 118.00, for 118.05, Tariff Schedules of the United States (TSUS). The frozen prepared product would not qualify for classification as an ice cream under item 118.25, TSUS, inasmuch as it is not produced from milk or cream.

The Restorative T/C preparations would therefore be classifiable as other edible preparations not specially provided for, in Subpart B, Part 15, Schedule 1. The 25 kilogram dry mix is classified in item 183.00, TSUS, dutiable at 10 percent ad valorem and subject to quota restrictions in item 950.19, TSUS; the two-pound dry mix and the prepared, frozen product are classified in item 183.05, TSUS, dutiable at 10 percent ad valorem, not subject to quota restrictions.

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In your submission, you argue that the subject product imported in 25 kilogram bags, packaged for institutional use is subject to both the end product and retail product exception. You have based this argument on certain Customs decisions pertaining to Presidential Proclamation 5071, promulgated under item 958.15, Appendix to the Tariff Schedules, to enforce the sugar quota. The language of item 958.15 is identical to the language set forth in item 950.19. The rulings which you rely upon are Headquarters letters 553050/073278 LCS dated August 22, 1984, and 073002/073277 LCS dated October 28, 1983, concerning identical language appearing in tariff item 958.15, TSUS, a quota for certain edible preparations containing sugar. In brief, the latter ruling held that if certain sugar containing products were used in the same form as imported and retained that form in the end product, they would be considered to have established a prima facia case that they were incapable of being further processed or mixed with other ingredients; reconstituting a concentrated product with water was not to be considered "mixing with...other ingredients." The former ruling held that certain edible preparations containing sugar packed in "institutional sized packaging" were within the retail packaging exemption.

It is the position of the Customs Service that the above decisions on the administration of the sugar quota are not to be applied in administering the dried milk quota. Our position is that the "finished product" and "retail package" exceptions to this and other dairy quotas were intended to be, and administratively have been, narrowly defined.

In this regard, your attention is directed to page 5 of ORR Ruling 072051 dated January 28, 1983, in which we stated:

> Headquarters has consistently ruled that the cited language of the quota restraint provision in item 950.16, TSUS, as well as the others referenced, together with similar language set forth in item 182.92, TSUS, (i.e, "...not packaged for retail sale"), is to be strictly construed to effectuate the obvious and stated intent of excluding or limiting importations of dairy products and certain products containing dairy products in order to protect domestic industry and prevent material interference with price support programs of the Federal Government. T.D. 69-52; Swan & Finch Company v. United States, 190 U.S. 143 (1943); Plez-Greenstein Co. v. United States, 17 CCPA 305, T.D. 43718 (1929).

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Simply stated, other policy considerations were involved in implementing Presidential Proclamation 5071.

T.D. 69-24 concerned itself with tariff item 182.95 (now 182.92), the provision for edible preparations containing over 5.5 percent butterfat and not packaged for retail sale. This decision noted that Customs would require evidence of chief use of a product in the retail trade to justify classification outside this provision. T.D. 69-52, setting forth Presidential Proclamation 3884 containing quota categories 950.22 and 950.23 for the edible preparations subject to the above tariff classification, noted as an exception to the quotas those articles "which are packaged for distribution in the retail trade and ready for use by the purchaser at retail." The "retail package" exemption language of the quota at issue (950.19) was cited by Headquarters in letter 072051 LCS dated January 28, 1983, where such language was stated to be "strictly construed" in order to carry out the intent of the dairy quotas. In Headquarters letter 065964 MJ August 26, 1981, the tariff classification of a certain dry beverage base hinged upon whether it would be "packaged for retail sale in consumer size containers." If not so packaged item 950.19 would have applied.

From the above, it is evident that the "retail package" exemption for dried milk quota purposes is not to be treated the same as that for sugar quota purposes. The "retail package", for dairy quota purposes, has never been, and was never intended to be broadened to include "institutional-size" containers. The instant merchandise, in dry form in 25 kilogram bags sold to retail outlets, is within the scope of item 950.19.

Packaging, however, is but part of the exception to the dried milk quota provision. As noted above, to be outside the quota a product must be retail packaged and not capable of being further processed or mixed with other ingredients. The subject dry mixes must be combined with water and then frozen. Although Headquarters has held that reconstituting a concentrated product with water is not within the scope of this language for sugar quota purposes, a careful reading of administrative decisions regarding the dried milk quota results in a different conclusion.

Headquarters letter 069225 JH dated December 17, 1981, concerned the classification and quota status of a concentrated liquid beverage base. C.S.D. 81-157 and letter 065964 MJ of August 21, 1981, dealt with dry beverage bases. All three had to mixed with water to make the finished product. All were, or potentially were to be, packaged in retail size

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containers. Where these products were classified in item 183.05, the reason was due to their packaging, rather than form. When so packaged they no longer met the final requirement of item 950.19. Clearly, then, a dry or concentrated product that must be mixed with water is within the scope of the milk quota. The subject dry mixes meet this quota test.

Based upon the foregoing, it is the opinion of this office that "Restorative T/C," in 25 kilogram bags, is classifiable in the provision for edible preparations not specially provided for... other, in item 183.00, TSUS, dutiable at 10 percent ad valorem and subject to quota restrictions. The dry mix in 2 pound retail packages, and the prepared, frozen product in pints and quarts, is classifiable in the provision for edible preparations not specially provided for... other, in item 183.05, TSUS.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

10 OCT 1986

REFER TO
CLA-2:CO:R:CV:G
078627 JCH
810984

Irving W. Smith, Jr., Esq.
Law Offices of
George R. Tuttle, P.C.
National Place, Suite 1200F
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mr. Smith:

This is in response to your letter of July 9, 1986, in which you request a second reconsideration of New York Region ruling No. 810984, dated October 31, 1984, concerning the tariff classification of certain Konig brand snow chains made in Italy. In our letter of June 19, 1986, in response to your previous petition for reconsideration, we sustained the tariff classification of the chain under the provision for "chain * * * other" in item 652.35, Tariff Schedules of the United States (TSUS).

It is your position that the tariff classification is controlled by an established and uniform practice and that a further reconsideration is now warranted since we did not previously respond to the practice issue when initially raised. Specifically, you claim the merchandise is classifiable under the provision for "chain * * * the links of which are of stock essentially round in cross section * * * under 5/16 inch in diameter" in item 652.24, TSUS. You further assert that the practice requiring that classification was created by the publication of C.S.D. 80-240, 14 Cust. Bull. 1158, in which certain chain was classified under the same superior heading, but not under the same item number. It is your position that that decision stands for the proposition that D-shaped chain is regarded as essentially round in cross section and that the instant merchandise constitutes D-shaped chain as contemplated in the cited decision.

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Regardless of those claims, it is clear, as we explained in our previous reconsideration, that the cross-sectional configuration of the instant merchandise and that of the chain which was the subject of the published decision are not the same, however you or we choose to describe them. Therefore, your claims, at best, can only be regarded as the argument that the principle of the published decision controls. The purpose of the practice statute, section 315(d), Tariff Act of 1930, as amended, is to prevent changes in the tariff classification of the same merchandise without advance notice. We do not concede that section 315(d) requires application of the principle of a published decision to merchandise which is not the same as the merchandise in the decision. Nor do we concede that the tariff classification of merchandise under one breakout under a superior heading necessarily constitutes a practice for the classification of similar, but not identical, merchandise under another breakout.

However, to the extent a publication establishes a practice, that practice is for the merchandise as described and identified in the decision as a whole, not in any isolated description or designation in any single line of the decision out of context with the rest of the decision. Taking the published decision in question in its entirety, it did not deal with chain simply described as D-shaped in cross section. The chain was rather variously referred to as having a cross section "more of a 'D' rather than a circle" and as "in the general shape of a 'D'." Emphasis now supplied. Further the merchandise was described, in accordance with its actual "lemon" shape we later referred to in our previous reconsideration, as having a "shorter diameter" and a "longer diameter." If a strict "D" shape had been involved, there would have been only one diameter and a radius. It is our view that a fair inference from reading the published decision in its entirety is that the merchandise, whether or not described as D-shaped, had no single flat surface, and the decision in no way could be regarded as a precedent or a practice governing the tariff classification of the instant merchandise which by contrast, and unlike the typical "D" shape, has in its cross-sectional configuration three flat surfaces.

In this connection, we further note that the maximum cross-sectional dimensions of the instant product are along diagonals which are not congruent with the diameter of any curved surface. In our previous discussion in our published

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decision we made allowances in determining diameter size where the product was only essentially round and therefore out of round. We do not believe it is a fair inference from our comments that we would regard diameter dimensional criteria in the applicable TSUS provisions to be satisfied by dimensions, as with respect to the instant merchandise, which have no reference to any circular configurations at all.

Our tariff classification of the instant merchandise is predicated on our finding that a factual situation is involved significantly different from the factual situation which was involved in our previously published decision. It is well established that we may, and in fact have the obligation to, evaluate merchandise as to whether it involves the same facts as those involved in a published precedent. Such factual determinations merely involve the performance of required duties and do not constitute rulings by the Secretary of the Treasury changing dutiable status as a result of new interpretations under the law within the contemplation of section 315(d). Hensel, Bruckmann & Lorbacher, Inc. v. United States, 49 CCPA 15, C.A.D. 787 (1962).

For the foregoing reasons, we continue to affirm the New York Region ruling concerning which you have petitioned for a reconsideration.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP - 8 1986

CLA-2 CO:R:CV:G
078628 JCH

078628

District Director of Customs
P.O. Box 2450
San Francisco, California 94126

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 2809-4-001250

The above-captioned protest and application for further review were filed against your tariff classification of a color plotter which was the subject of entries filed at the port of San Francisco in 1984. This merchandise is a product of Japan. Our decision follows:

ISSUE:

Duty was liquidated at the 1984 column 1 rate of 5.9 percent ad valorem for drafting machines in item 710.80, Tariff Schedules of the United States (TSUS). It is claimed this merchandise is properly classifiable under the provision for office machines, not specially provided for (n.s.p.f.), in item 676.30, TSUS. The 1984 column 1 rate of duty required under that provision was 4.2 percent ad valorem.

FACTS:

The merchandise is the Apple Color Plotter Model 410. It is a peripheral for an Apple computer producing graphics in eight colors using four pens. It provides printouts on paper or transparencies of charts, graphs, and other X-Y data for business, scientific or engineering purposes.

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LAW AND ANALYSIS:

In order for merchandise to be classifiable under item 676.30, it must meet the definition for office machines in Headnote 2(a), Subpart G, Part 4, Schedule 6, TSUS. But even if the machine meets the definition, Headnote 1(v), Part 4, Schedule 6, excludes from that schedule merchandise otherwise described in Schedule 7, TSUS, or elsewhere.

Therefore, avoidance of item 710.80 can only be based on the conclusion that the plotter in question is not a drafting machine. However, it uses pens and operates on a coordinate system just like any other drafting machine, automatic or otherwise. Further, we can discern no significant differences between the finished product drafted by other means and one made by the instant device. It is to be further noted that a tariff provision includes all forms of the article. Astra Trading Corp. v. United States, 56 Cust. Ct. 555, C.D. 2703 (1966).

With respect to the claim that the merchandise is excluded under the doctrine of ejusdem generis, that doctrine does not apply since the pertinent language under which the merchandise has been classified is "drafting machines" not "other instruments * * * which are drawing * * * instruments." If the latter were the case, then there would be some comparison with calipers, angles, etc., which are simple devices. However, "drafting machines" are not limited to simple devices, and, in fact, we are unaware of any devices other than complicated coordinate-type apparatus which would be included under that description.

With respect to the argument that Data Products Corporation v. United States, 4 CIT 234 (1982), is controlling, that litigation dealt with a different competing tariff provision with a different legislative history. We do not agree that it necessarily follows that because a peripheral

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printer in a data processing system does not qualify for tariff purposes as printing machinery a plotter does not qualify as a drafting machine. We have consistently been of the opinion that control by a computer or other employment of digital electronics does not bring merchandise within the provisions for office machines in Subpart G, Part 4, Schedule 6, if the ultimate function is covered by provisions elsewhere in the TSUS. More specifically, we have always excluded computer-controlled plotters from Subpart G as far back as our decisions in T.D. 70-254(13), 4 Cust. Bull. 784 (1970), and T.D. 56353(44), 100 Treas. Dec. 48 (1964).

Finally, classification under item 710.80 cannot be avoided solely on the basis that drawing apparatus does not operate independently and is controlled by a computer. Our conclusion that that item is applicable makes it unnecessary to consider the argument that classification by similitude is warranted.

HOLDING:

We find that the merchandise is properly classifiable under the provision for drafting machines in item 710.80, TSUS. Accordingly, the protest should be denied in full. A copy of this decision also should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Scheffler

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

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SEP - 4 1986

CLA-2 CO:R:CV:G
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818448

Ms. Chari Hoffman
Import Department
Pagoda Trading Co., Inc.
44 Kimler Drive
St. Louis, Missouri 63043

Dear Ms. Hoffman:

In a letter dated April 23, 1986, you inquired as to the dutiable status of a woman's fabric boot produced in China. A sample was submitted for examination.

The sample designated as style No. 64123W consists of a polyvinyl chloride bottom with a cotton corduroy upper extending to above the ankle. Two laces are stitched on both sides of the instep. The laces are guided through six corduroy loops across the vamp and tied at the center.

Item 700.59, Tariff Schedules of the United States (TSUS), provides for footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners. The sample does not qualify for classification under this provision because it has a braided lace across its instep which can be tightened to adjust the fit.

Therefore, it is our position that the subject boot is dutiable according to value per pair under items 700.64 through 700.69, TSUS.

Sincerely,

Arthur P Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

25 SEP 1986

CLA-2 CO:R:CV:G
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078638

Ms. Chari Hoffman
Import Department Pagoda
Trading Company Inc.
44 Kimler Drive
St. Louis, Missouri 63043

Dear Ms. Hoffman:

Your letter dated March 7, 1986, addressed to our New York office concerning the tariff classification of two styles of ladies' boots produced in Taiwan, has been referred to this office for a direct reply to you. Two sample boots were submitted for examination.

The sample designated as style No. 24977 is a woman's plastic boot with a bifurcated top and a zipper closure in the front. This boot has a unit molded sole with some overlap which is less than 1/4 inch and this overlap would not be considered a foxing-like band. It is our view that this boot was intended to be worn with a cuff because of the point at which the zipper terminates at the top of the boot, and the fact that the size label is stitched into the back of the boot at a point where it would be below the top of the cuff.

The sample designated as style No. 20904W is a woman's plastic slip-on kneeboot with a synthetic fleece lining and a unit molded wedge type sole. There is some overlap of the sole onto the upper which is less than 1/4 inch and this overlap would not be considered a foxing-like band. While the top of this boot is not bifurcated, it could conceivably be turned down for a cuff effect especially since the size label on the sample is loosely basted and could be easily removed.

Inasmuch as the exterior surface areas of the boot uppers are not over 90 percent plastic, classification under item 700.56, Tariff Schedules of the United States (TSUS) is precluded. It is our opinion that boots represented by the samples are protective against cold and wet weather and are, therefore, classifiable under the provision for other footwear which is over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics and having uppers of which not over 90 percent of the exterior surface area is rubber or plastics and which is

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designed to be worn over or in lieu of other footwear as a protection against water, oil, grease, or chemicals or cold or inclement weather in item 700.57, TSUS, and dutiable at the rate of 37.5 percent ad valorem.

However, in the event that the size label on style No. 20904W is securely stitched at the top of the boot where it is now located, it is our view that the boot is intended to be worn without a cuff. In that case the sample would be dutiable at the rate of 6 percent ad valorem under item 700.56, TSUS.

Sincerely,

Thomas L. Lobred
for

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT - 6 1986

REFER TO
CLA-2:CO:R:CV:G
078659 jlj

078659

Area Director of Customs
6 World Trade Center
New York, New York 10048-0945

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-017356

This protest was filed against your decision in the liquidation on October 7, 1983, of entry No. 83-374997, covering a shipment of footwear produced in South Korea.

This ruling concerns the correct component of chief value and tariff classification of the footwear.

FACTS:

The tariff classification of three types of shoes is at issue here: a child's velcro jogger, men's B/B shoes, and youths' B/B shoes.

The protestant's lawyer claims that each shoe is in chief value of leather and is properly classified under the provision for footwear of leather (except footwear with uppers of fibers), other, for men, youths and boys, in item 700.35, Tariff Schedules of the United States (TSUS), or for other persons, other, in item 700.45, TSUS.

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The import specialist maintains that, according to the protestant's own figures, the chief value is rubber/plastic and that the footwear is correctly classified under the provision for other footwear, other, other, in item 700.95, TSUS.

ISSUES:

What is the component of chief value? What is the proper tariff classification of these shoes?

LAW AND ANALYSIS:

The protestant's attorney claims that each of the shoes (all of which are claimed to be in chief value of leather) is covered by a CF 5523 and/or a detailed component cost breakdown which establishes that the shoes are in chief value of leather. He claims that this protest should be processed pursuant to Headquarters instructions as contained in its recent telex of October 15, 1984. He asserts that the shoes are classified as footwear of leather, in items 700.35, TSUS, and 700.45, TSUS, and that the protest should be approved.

No new value breakdowns were submitted along with this protest. The original manufacturer's value breakdowns

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submitted with the entry reflect the following costs:

Invoice #1		Leather Costs:		Rubber and Plastic Costs:
Child's Velcro Joggers		$0.99		$0.74
	Cutting	0.11	Cutting	0.17
		$1.10	Trimming	0.08
			Sole Labor	0.14
				$1.13
Invoice #2				
Men's B/B Shoes		$1.33		$1.05
	Cutting	0.12	Cutting	0.17
	Trimming	0.06	Trimming	0.09
		$1.51	Sole Labor	0.20
				$1.51
Invoice #3				
Youths' B/B Shoes		$1.91		$1.75
	Cutting	0.22	Cutting	0.15
	Trimming	0.09	Trimming	0.10
		$2.22	Sole Labor	0.40
				$2.40

(We note that there is no breakdown of weights on footwear uppers shown, so it is not possible to allocate stitching charges shown on the above manufacturer's breakdowns.)

In view of the costs outlined above, we find that the footwear is in chief value of rubber/plastics and is correctly classified in item 700.95, TSUS.

HOLDING:

The footwear at issue is classifiable as other footwear in item 700.95, TSUS. The protest should be denied in full.

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A copy of this decision should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

SEP 18 1986

CLA-2:CO:R:CV:G
078660 jlj
818781

078660

Mr. Martin Silverman
D.M.A.S. Corporation
P.O. Box 3206
San Rafael, California 94912

Dear Mr. Silverman:

In your letter of May 6, 1986, you requested a tariff classification ruling for a three-piece pajama set consisting of a top and two bottoms. You submitted a sample set along with your letter.

We assume that the pajamas are in chief value of cotton. The top and one bottom would be classified as pajamas in item 384.4215, Tariff Schedules of the United States (TSUS), dutiable at the 1986 Column 1 rate of 8 percent ad valorem. The applicable textile category is 351. The additional bottom is classified under the provision for other nightwear in item 384.5226, TSUS, dutiable at 9.4 percent ad valorem. The applicable textile category is 351.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 21 1986

REFER TO
CLA-2 CO:R:CV:G
078665 c

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005601

This protest was filed against your decision in the liquidation on February 10, 1984, of entry No. 84-121858-5 dated January 17, 1984, covering a shipment of athletic footwear produced in Korea.

FACTS:

The athletic footwear involved was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

1. Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

2. Is Customs required to accept the cost breakdowns submitted by the protestant?

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LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that data submitted by importers need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

In reviewing the component value breakdowns submitted, we note that the manufacturer has allocated his stitching costs on the basis of his material costs counting the costs of materials with the "V" typed in the "stitching part" column. This allocation is not in agreement with the instruction set forth in L.D. 81-0186 dated December 16, 1981, that the "cost of stitching leather overlays onto the fabric uppers should be allocated among the materials comprising the uppers in proportion to their relative weights."

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Therefore, we have ignored the stitching charges shown on the value breakdowns because they are not calculated correctly. After excluding the stitching charges, we note the following styles are in chief value of rubber/plastics as follows:

Style No.	Leather Total	Rubber/Plastic Total
JOG 6540 (Inv. 2/pg. 28)	$0.573	$0.576
BOG 96277 (Inv. 3/pg. 34)	1.109	1.253
BOG 96410 (Inv. 4/pg. 43)	0.822	0.959
JOG 6542 (Inv. 4/pg. 49)	0.573	0.576
BOG 96277 (Inv. 5/pg. 65)	1.109	1.253
JOG 96543 (Inv. 5/pg. 71)	0.573	0.576

In view of the foregoing, classification under item 700.95, TSUS, was appropriate.

With respect to the other styles which are claimed to be in chief value of leather, we have no "tangible evidence" which would permit us to categorically state that the information provided by the protestant as to component material of chief value is false. Accordingly, those styles should be reliquidated under item 700.35, TSUS, or item 700.45, TSUS, as applicable.

HOLDING:

The protest should be denied in part as to style Nos. JOG 6540 (Inv. 2/pg. 28), BOG 96277 (Inv. 3/pg. 34), BOG 96410 (Inv. 4/pg. 43), JOG 6542 (Inv. 4/pg. 49), BOG 96277 (Inv. 5/pg. 65)

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and JOG 96543 (Inv. 5/pg. 71). The protest should be allowed in part as to the remaining styles. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

078665

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

30 SEP 1986

REFER TO
CLA-2 CO:R:CV:G
078666 c

078666

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

RE: Decision on Application for Further Review of Protest No. 1001-4-005597

This protest was filed against your decision in the liquidation on February 10, 1984 of entry No. 84-121668-4 dated January 3, 1984, covering a shipment of nylon/leather athletic footwear manufactured in Korea.

FACTS:

The nylon/leather footwear involved was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

1. Does the documentation presented by the protestant show that the shoes are in chief value of leather?
2. Is customs required to accept the cost breakdowns submitted by the protestant?

LAW AND ANALYSIS:

In TD 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless

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(1) the cost breakdown is incomplete; (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous; or (3) the cost breakdown is so patently inaccurate on its face that customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that importer submitted data need not be accepted if there is "tangible evidence" that it is false: "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

In reviewing the component value breakdowns submitted, we note that the manufacturer has allocated his stitching costs on the basis of his material costs, counting the costs of materials with the "V" typed in the "stitching parts" column. This allocation is not in agreement with the instruction set forth in L.D. 81-0186 dated December 16, 1981, that the "cost of stitching leather overlays onto the fabric uppers should be allocated among the materials comprising the upper in proportion to their relative weights"

Therefore, we have ignored the stitching charges shown on the value breakdown because they are not calculated correctly. After excluding the stitching charges, we note that the following styles with split leather overlays are in chief value of rubber/plastics:

Style No.	Leather Total	Rubber/Plastic Total
BOG-6277(Inv.2/page12)	$1.109	$1.253
BOG-6275(Inv.3/page17)	$1.109	$1.253
NOG-6460(Inv.3/page23)	$0.573	$0.576

078666

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In view of the foregoing, classification of the listed styles under item 700.95, TSUS, was appropriate.

With respect to the other styles which are claimed to be in chief value of leather, we have no "tangible evidence" which would permit us to categorically state that the information provided by the protestant as to component material of chief value is inaccurate. Accordingly, those styles should be reliquidated under item 700.35. TSUS, or item 700.45, TSUS, as applicable.

HOLDING:

The protest should be denied in part as to the listed styles and allowed in part as to the remaining styles. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

078666

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 21 1986

REFER TO
CLA-2 CO:R:CV:G
078668 c

Area Director of Customs
New York Seaport Area
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005487

This protest was filed against your decision in the liquidation on January 27, 1984, of entry No. 84-121548-1 dated December 19, 1983, covering a shipment of athletic footwear produced in Korea.

FACTS:

The nylon/leather athletic footwear involved was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its

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possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on the matter was that data submitted by the importer need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

A review of the cost breakdowns submitted shows that the manufacturer has allocated his stitching costs on the basis of his material costs, counting the costs of materials with the "V" typed in the "stitching part" column. This allocation is not agreement with the instructions set forth in L.D. 81-0186 dated December 16, 1981, that the "cost of stitching leather overlays onto the fabric uppers should be allocated among the materials comprising the uppers in proportion to their relative weights."

Therefore, we have ignored the stitching charges shown on the manufacturer's cost breakdowns because they are not calculated correctly and without the stitching charges, we note that the following styles with split leather overlays are in chief value of rubber/plastics:

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Style No.	Leather Total	Rubber/Plastics Total
BOG 96277 (Inv. 1/pg.1)	$1.109	$1.253
EOG 6277 (Inv. 1/pg.4)	.894	1.082
HOG 6277 (Inv. 1/pg.10)	.702	.857
HOG 96380 (Inv. 1/pg.13	.775	.803
BOG 6274 (Inv. 4/pg.56	1.109	1.253
HOG 96380 (Inv. 4/pg.59)	.775	.803

In view of the foregoing, classification under item 700.95, TSUS, was appropriate.

With respect to the other styles which are claimed to be in chief value of leather, we have no "tangible evidence" which would permit us to categorically state that the information provided by the protestant as to component material of chief value is false. Accordingly, those styles should be reliquidated under item 700.35, TSUS, or item 700.45, TSUS, as applicable.

HOLDING:

The protest should be denied in part as to the above listed styles and allowed in part as to the remaining styles. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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A12

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 22 1986

CLA-2 CO:R:CV:G
078669 c

078669

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005708

This protest was filed against your decision in the liquidation on March 9, 1984, of entry No. 84-122123-9 dated January 31, 1984.

FACTS:

The nylon/leather athletic footwear involved was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

1. Do the cost breakdowns submitted by the protestant show that the footwear is in chief value of leather?

2. Is Customs required to accept the cost breakdowns submitted by the protestant?

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LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions, cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete; (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining the component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, was that importer submitted data need not be accepted if there is "tangible evidence" that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

In reviewing the component value breakdowns submitted, we note that the manufacturer has allocated his stitching costs on the basis of his material costs counting the costs of materials with the "V" typed in the "stitching part" column. This allocation is not in agreement with the instruction set forth in L.D. 81-0186 dated December 16, 1981, that the "cost of stitching leather overlays onto the fabric uppers should be allocated among the materials comprising the uppers in proportion to their relative weights."

078669

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Therefore, we have ignored the stitching charges shown on the value breakdowns because they are not calculated correctly. After excluding the stitching charges, we note that the following styles are in chief value of rubber/plastics as follows:

Style No.	Leather Total	Rubber/plastic Total
BOG 96277 (Inv. #1&2)	$1.109	$1.253
EOG 96217 (Inv. #3)	.844	1.099
BOG 6217 (Inv. #5)	1.177	1.313
EOG 6217 (Inv. #6)	.844	1.099

In view of the foregoing, classification under item 700.95, TSUS, was appropriate.

With respect to the other styles which are claimed to be in chief value of leather, we have no "tangible evidence" which would permit us to categorically state that the information provided by the protestant as to component material of chief value is false. Accordingly, those styles should be reliquidated under item 700.35, TSUS, or item 700.45, TSUS, as applicable.

HOLDING:

The protest should be denied in part as to style Nos. BOG 96277 (Inv. #1&2), EOG 96217 (Inv. #3), BOG 6217 (Inv. #5) and EOG 6217 (Inv. #6). The protest should be allowed in part as to the remaining styles.

Sincerely,

Arthur P. Schaffner

For Harvey B. Fox
Director, Classification
and Value Division

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017866

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 6 1986

REFER TO

CLA-2 CO:R:CV:G
078685 JLJ
819322

Ms. Marquita Liguori
F.B. Vandegrift & Co., Inc.
320 Walnut Street
Philadelphia, PA 19106

Dear Ms. Liguori:

In your letter of June 20, 1986, on behalf of your client Motormite Manufacturing Co., Inc., you asked for a tariff classification ruling covering a product catalog from Taiwan.

The catalog, of U.S. authorship, both illustrates and describes the products offered for sale by Motormite. The prices of the various products of U.S. origin will not be shown, but will be printed on separate price sheets in the United States.

Printed catalogs without prices or printed price lists are classified under the provision for books not specially provided for, in item 270.25, Tariff Schedules of the United States (TSUS), following ORR Ruling 74-0099 (T.D. 74-98(10)), dated April 18, 1974. Item 270.25, TSUS, is a duty free provision.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification &
Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D C 20229

CLA-2:CO:R:CV:G
078686 jlj
819233

078686

[redacted]

Dear [redacted]

In your letter of June 16, 1986, you request a tariff classification for nursing pads manufactured in Canada. You submitted two samples of these pads along with your letter, one intact and one bisected in order to show a cross-section of the pad's components. Each bears the printed instructions: "Peel (release paper)...Press Firmly to Inside of Bra." Neither is marked with the country of origin, Canada.

You state that the pads are manufactured in a continuous operation in Montreal. First, a pulp sheet is processed in a Fitz mill where it is ground, deposited in a pulp batt and later conditioned. The pulp is bound to a tissue to form the inner pad. This pad is covered with a polyester/rayon non-woven fabric to which the release paper is affixed.

The nursing pad is composed of five components: pulp, tissue, cover, release paper, and adhesives. In deference to your request for confidentiality, we will not mention a specific value breakdown for these components, but the pulp is the component of chief value.

The nursing pads are classified under the provision for articles of pulp in item 256.70, Tariff Schedules of the United States (TSUS), because the component of chief value is pulp.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

B3

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 21 1986

REFER TO
CLA-2 CO:R:CV:G
078687 c

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-005509

This protest was filed against your decision in the liquidation on February 3, 1984, of entry No. 84-121511-9 dated December 16, 1983, covering a shipment of athletic footwear manufactured in Taiwan.

FACTS:

The nylon/leather joggers involved were liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Does the cost breakdown submitted by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

The cost breakdown submitted with this protest is same as the original cost breakdown submitted by the manufacturer. It shows a leather cost including cutting and trimming charges of 95 cents per pair while the rubber/plastics cost, including

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cutting and trimming charges, amount to $1.90. If there was an error in the manufacturer's rubber/plastics calculations, it should have been corrected and a new cost breakdown submitted by the protestant. Based on the information before us it is our position that classification of the footwear under item 700.95, TSUS, was appropriate.

HOLDING:

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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BS

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

SEP - 4 1986

REFER TO

CLA-2 CO:R:CV:G
078690 JNB
818897

078690

Mr. Darrell R. Norman
Norman Krieger, Inc.
P.O. Box 92599
Los Angeles, California 90009

Dear Mr. Norman:

This is in response to your letter of May 22, 1986, filed on behalf of Internet Trading Corporation, requesting the tariff classification of a wine bottle suit, two bottle suits and a can suit, all manufactured in Taiwan. Samples of these products are provided. The articles are designed to fit wine bottles, beverage bottles or beverage cans. They are all composed of neoprene rubber which is laminated to two-way nylon stretch material. The material forms the entire exterior and interior surfaces of the suits with the exception of the exterior of the bottoms, which is of neoprene rubber.

The wine bottle suit measures approximately 10 and 3/4 inches in height. It has a zipper closure which runs 7 inches lengthwise up the bottle neck. There is a braided textile carrying cord onto which a wooden carrying handle is attached.

Both bottle suits measure approximately 8 and 1/2 inches in height. They have zipper closures 6 inches in length running lengthwise up the bottle neck. Both have designs printed on their front and back surfaces. One sample has a triangular textile logo glued to its front side.

The can suit is approximately 4 and 1/4 inches in height. It has designs printed on the front and sides of its exterior surface. It is sewn together and finished with a multicolored textile strip covering the seam. Unlike the other products, it does not have a zipper closure.

You suggest that all the articles are most properly classifiable as articles chiefly used for serving or storing food or beverages: all the foregoing of rubber or plastic; other, under the provisions of item 772.1500, Tariff Schedules of the United States Annotated (TSUSA), dutiable at the rate of 4 percent ad valorem.

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076890

You provide information indicating that the cost of the neoprene rubber exceeds that of the nylon jersey fabric in all of the products. Based on this evidence of component material of chief value, you assert that the products can be classified under the aforementioned Schedule 7 tariff provision.

We do not agree. Schedule 3, Headnote 2(a)(iv), TSUSA, defines the term "textile materials" for tariff purposes to include the fabrics provided for in Part 3 and Part 4 of Schedule 3. Woven fabrics of textile materials that are coated, filled or laminated with rubber or plastic material are expressly provided for in Schedule 3, Part 4C, TSUSA. As such, the cost of the coating, filling or lamination is allocated to the cost of the textile material. See I.A. 62/81, and ORR Ruling 379-68. Using the cost breakdowns provided and allocating the cost of the neoprene rubber filling to the cost of the textile material, the articles are considered to be of textile materials for tariff purposes. Classification under item 772.1500, TSUSA, is precluded.

In Headnote 2(a), Schedule 7, Part 1D, TSUSA, the term "luggage" is defined as "... articles designed to contain clothing or other personal effects during travel." The wine bottle carrier is designed with a wooden handle attached to a braid textile cord to facilitate carrying. The suggested use of the wine bottle carrier as serving and storing beverages is, in our view, subordinate to its use as a carrier of personal effects, in this case wine. Accordingly, the wine bottle carrier is classifiable as luggage ... : wholly or in part of braid: of other textile materials, of man-made fibers, under item 706.3415, TSUSA, dutiable at the rate of 10 percent ad valorem. Articles which are classifiable under this provision and are the product of Taiwan are subject to the import restrictions of textile quota category 670.

Both the bottle suits and the can suit are in chief value of textile material, but are not in chief value of man-made fibers. The bottle suit with the logo is classifiable as articles not specially provided for, of textile materials: ... other articles ornamented: other, under item 386.1360, TSUSA, dutiable at the rate of 12.5 percent ad valorem.

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The bottle suit without the logo and the can suit are classifiable as articles not specially provided for, of textile materials: other, under item 389.70, TSUSA, dutiable at the rate of 6.5 percent ad valorem. It should be noted that the multi-colored textile strip on the can suit is functional in that it reinforces the seam. Accordingly, it is not considered to be ornamentation.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076896

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 21 1986

REFER TO
CLA-2 CO:R:CV:G
078692 jlj

Area Director of Customs
6 World Trade Center
New York, New York 10048-0945

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-004659

This protest was filed against your decision in the liquidation on January 20, 1984, of entry No. 84-724109-3, dated December 2, 1983, covering a shipment of athletic footwear produced in South Korea.

This ruling concerns the correct classification of the athletic footwear.

FACTS:

The merchandise is described by the protestant's attorney as nylon and leather jogging shoes and other athletic footwear composed in part of leather.

The import specialist claims that the footwear, stock numbers 851, 751, 651, 861, 761, 873, 896 and 796, is classified under the provision for other footwear, other, other, in item 700.95, Tariff Schedules of the United States (TSUS). The import specialist has approved the protest in part with regard to stock numbers 850, 750, and 650, so these stock numbers are not at issue here.

The protestant's attorney claims that the footwear is in chief value of leather and is properly classified under the provision for footwear of leather (except footwear with uppers

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of fibers), other, for men, youths and boys, in item 700.35, TSUS, or under the provision for footwear of leather, other, for other persons, other, in item 700.45, TSUS.

ISSUE:

Is the instant footwear in chief value of leather and classified in items 700.35, TSUS, and 700.45, TSUS, or is it in chief value of rubber and plastics and classified in item 700.95, TSUS?

LAW AND ANALYSIS:

The protestant's attorney claims that the imported footwear is classified in items 700.35, TSUS, and 700.45, TSUS, because the instant athletic footwear is in chief value of leather.

The import specialist requested component material value breakdowns for stock numbers 851, 751, 651, 861, 761, 873, 896, and 796 by a letter dated April 26, 1985. Neither the protestant nor his attorney has responded to this request.

Customs Headquarters Telex No. 10378 of October 15, 1984, stated that, if Customs requests information regarding component value breakdowns for footwear but does not receive the requested information, the merchandise should be liquidated under the higher duty rate. Following Telex 10378, stock numbers 851, 751, 651, 861, 761, 873, 896 and 796 are classified in item 700.95, TSUS.

HOLDING:

The protest is approved in part with regard to stock numbers 850, 750, and 650. The protest is denied in part with regard to stock numbers 851, 751, 651, 861, 761, 873, 896, and

078682

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796, which are classified in item 700.95, TSUS. You should attached a copy of this decision to the CF 19 Notice of Action to be sent to the protestant.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

078682

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B11

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 21 1986

FILE: CLA-2 CO:R:CV:G
078693 jlj

Area Director of Customs
6 World Trade Center
New York, New York 10048

Dear Sir:

RE: Decision on Application for Further Review of Protest No. 1001-4-007488

This protest was filed against your decision in the liquidation on March 30, 1984, of entry No. 84-268621-3, dated February 23, 1984, covering a shipment of athletic footwear produced in South Korea.

This ruling concerns the correct tariff classification of the footwear.

FACTS:

The merchandise at issue is nylon/leather athletic footwear produced in South Korea. The protestant's broker claims that the footwear is in chief value of leather and that the exterior surface is in excess of 50 percent leather. He claims that the footwear should be classified under the provision for footwear of leather (except footwear with uppers of fibers), other, for men, youths and boys, in item 700.35, Tariff Schedules of the United States (TSUS), or under the provision for footwear of leather, other, for other persons, other, valued over $2.50 per pair, in item 700.45, TSUS.

The import specialist liquidated the footwear under the provision for other footwear, other, other, in item 700.95, TSUS.

ISSUE:

Is the footwear in chief value of leather and classified in items 700.35, TSUS, and 700.45, TSUS, or in chief value of rubber and plastic, and classified in item 700.95, TSUS?

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LAW AND ANALYSIS:

In reviewing the manufacturer's component value breakdowns submitted with entry No. 84-268621-3, we note that the manufacturer allocated his stitching costs on the basis of his material costs. This method of allocating labor costs does not follow Customs Headquarters instructions, set forth in Legal Determination 81-0186 of December 16, 1981, that the "cost of stitching leather overlays onto the fabric uppers should be allocated among the materials comprising the uppers in proportion to their relative weights." (Emphasis added.)

Inasmuch as the stitching charges shown on the manufacturer's value breakdowns were calculated incorrectly (and cannot be calculated properly because we lack the weights of the materials comprising the uppers), they must be omitted. Without the stitching charges, we note that the following footwear styles with split leather overlays are in chief value for rubber and plastic:

Style No.	Leather Total	Rubber and Plastic Total
JOG 6543 (Invoice #1)	$0.573	$0.62
HOG 96542 (Invoice #1)	$0.573	$0.62
NOG 6420 (Invoice #1)	$0.961	$0.977
HOG 6277 (Invoice #2)	$0.702	$0.901

The above-mentioned styles are properly classified as other footwear in item 700.95, TSUS.

In accordance with Customs Headquarters telexes of April 25, 1984, and October 15, 1984, which concern chief value, the other footwear styles liquidated in item 700.95, TSUS, are classified as footwear of leather, in items 700.35, TSUS, and 700.45, TSUS, as applicable.

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HOLDING:

The protest is denied in part with regard to styles JOG 6543, HOG 96542, NOG 6420, and HOG 6277, which are classified as other footwear in item 700.95, TSUS. The protest is approved in part with regard to the other footwear styles involved in this protest, which are classified as footwear of leather, in items 700.35, TSUS, and 700.45, TSUS, as applicable. A copy of this decison should be sent to the protestant along with the CF 19 Notice of Action.

Sincerely,

William P. Schaffler

for Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

078693

B14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

CLA-2 CO:R:CV:G
078699 c

30 SEP 1986

078699

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-5-003098

This protest was filed against your decision in the liquidation on December 21, 1984, of entry No. 84-893927-8 dated July 5, 1984, covering a shipment of athletic footwear produced in Korea.

FACTS:

The men's leather/nylon athletic footwear involved was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under item 700.35, TSUS, as other footwear, of leather, for men, youths, and boys.

ISSUE:

Are the shoes in chief value of leather?

LAW AND ANALYSIS:

The claim that the shoes are in chief value of leather has not been substantiated. The protestant was requested on a CF 29 dated August 14, 1984, and in a letter dated September 5, 1984, to submit a component material breakdown.

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The protestant has not responded to our requests for a component material breakdown. For this reason it is our view that classification of the shoes under item 700.95, TSUS, was appropriate.

HOLDING:

The protest should be denied. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

078699

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c2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

30 SEP 1986

CLA-2 CO:R:CV:G
078703 JAS

078703

Ms. Martha J. Schoonover, Esq.
Fulbright & Jaworski
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Ms. Schoonover:

In your letter of July 22, 1986, you inquire as to the tariff classification of certain anchor plates, presumably from a country entitled to the column 1 rate of duty.

A submitted drawing depicts a flat stamped article of non-alloyed commercial quality steel, 7-1/4 inches long and 3-1/2 inches wide. Although snub nosed at the front, it is moderately tapered with two fin-like projections at the rear. It is designed to be attached to a fence post with rivets by means of three oval shaped holes along its length. The anchor permits the fence post to be driven into the ground and remains attached to the post.

You cite lexicographic definitions of "anchor" and "anchor plate," and conclude that the former is inclusive of the latter. Noting the statutory preference for an eo nomine classification over a possibly applicable classification under a "parts" proviso, you maintain that the provision for anchors, grapnels, and parts thereof, all the foregoing of iron or steel, in item 652.03, Tariff Schedules of the United States (TSUS), represents the proper classification.

We respectfully disagree with this position. The rule of noscitur a sociis is appropriate to clarify the scope of the term "anchor" by reference to "grapnel" appearing in the same line item. See Victor England Agencies, Inc. v. United States, 50 Cust. Ct. 83, C.D. 2394 (1963), and related cases. A grapnel is a grappling iron or hook primarily used to drag the bottom of a body of water and thereby secure or anchor a small boat. By design and function, the anchor plate under consideration is not the type of anchor classifiable in item 652.03, TSUS.

The anchor plate is not within the Schedule 6, Part 2, Subpart B, Headnote 3(h), TSUS, definition for Wire, as you alternatively maintain, because it has been fabricated beyond the enumerated processes in Schedule 6, Part 2, Headnote 1, TSUS, and, therefore, is not considered a basic shape or form of iron or steel, for tariff purposes.

C3

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Customs has adopted the common meaning of the term "structure" enunciated in S.G.B. Steel Scaffolding & Shoring Co., Inc. v. United States, 82 Cust. Ct. 197, C.D. 4802 (1979). Moreover, the court, at pp. 214, 215, noted that Heading 73.21, Brussels Tariff Nomenclature, sufficiently parallels the corresponding TSUS provisions for structural units, structures and parts of structures, so as to be indicative of Congressional intent. Explanatory notes thereunder delineate, among other things, assembled railings and fencing, level crossing gates and similar barriers, and such parts as sheets and plates which have been prepared (e.g., drilled, bent or notched).

There is no specific tariff provision believed applicable to these anchor plates. Because there is every indication that by function and design the subject articles are chiefly used in metal fences, noting General Interpretative Rules 10(e)(i) and 10(ij), TSUS, respectively, the anchor plates are classifiable under the tariff provision for other structures and parts of structures, of iron or steel, in item 653.00, TSUS, dutiable at the rate of 6.2 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 2 1986

REFER TO
CLA-2 CO:R:CV:G
078709 c

078709

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-008294

This protest was filed against your decision in the liquidation on April 6, 1984, of entry No. 84-268635-2 dated March 6, 1984, covering a shipment of athletic footwear manufactured in Korea.

FACTS:

The athletic footwear involved was liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Does the documentation provided show that the shoes are in chief value of leather?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions cost breakdowns must be accepted as accurate unless (1) the cost breakdown is incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the

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cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining component material of chief value.

With respect to those shoes covered by stock No. EOG-6543 a component material breakdown was not submitted. Therefore, classification under item 700.95, TSUS, was appropriate.

With respect to those shoes covered by stock Nos. NOG-96480 and POG-6480 the component material breakdowns submitted show that they are in chief value of plastics. Therefore, classification under item 700.95, was appropriate.

HOLDING:

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

078709

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 10 1986

CLA-2 CO:R:CV:G
078711 c

078711

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-0011741

This protest was filed against your decision in the liquidation on June 8, 1984, of entry No. 84-190643-7 dated April 6, 1984, covering a shipment of athletic footwear manufactured in Korea.

FACTS:

The leather/nylon joggers involved were liquidated under the provision for other footwear in item 700.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the shoes are in chief value of leather which requires their classification under the provision for leather footwear in item 700.35, TSUS, or item 700.45, TSUS, depending on gender and value per pair.

ISSUE:

Do the breakdowns submitted by the protestant show that the footwear is in chief value of leather?

LAW AND ANALYSIS:

In T.D. 78-195, the Customs Service stated that in accordance with cited judicial decisions cost breakdowns must be accepted as accurate unless (1) the cost breakdown is

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incomplete, (2) the Customs Service has evidence in its possession that the cost breakdown is erroneous, or (3) the cost breakdown is so patently inaccurate on its face that Customs officers have both reason and cause to look to other reasonable factors in determining component material of chief value.

The thrust of the instructions set forth in our telexes dated April 25 and October 15, 1984, on the matter was that importer submitted data need not be accepted if there is tangible evidence that it is false. "Tangible evidence" was stated to include findings contained in laboratory analysis reports, investigation reports and like reports or responses.

With respect to those shoes covered by Invoice No. 1, the amount of leather claimed to be present appears to be overstated. However, in the absence of a laboratory report as to the amount of leather actually present in the shoes, we have no "tangible evidence" to refute the claim that that shoes are in chief value of leather.

With respect to those shoes covered by Invoice No. 2, the component material breakdowns submitted clearly show that they are in chief value of rubber/plastics. Consequently, classification under item 700.95, TSUS, was appropriate.

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HOLDING:

The protest should be allowed in part as to that footwear covered by Invoice No. 1 and denied in part as to the footwear covered by Invoice No. 2. A copy of this decision should be attached to your Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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078711

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
078723 JGH

078723

1986

Thomas Hoover, Esq.
Dennison Manufacturing Company
300 Howard Street
Framingham, Massachusetts 01701-0344

Dear Mr. Hoover:

In your letter of July 7, 1986, you state that Dennison is the manufacturer and seller of "Glue Sticks" similar to the sample importations which you submitted. You request the classification, rate of duty and appraised value of the imported merchandise pursuant to section 516, Tariff Act of 1930, as amended.

The glue-stick, which is an adhesive dispensed from a cylindrical tube, is in a plastic cylinder about 3 inches high, with circumference of about 1/2 inch. To use the glue-stick, the cap is removed and the base twisted to expose the glue which is rubbed on the surface to be sealed.

Merchandise of this type is classifiable under the provision for cements, not specially provided for, in item 494.60, TSUS, with a column 1 rate of duty of 2.2 percent ad valorem.

Products of South Korea classifiable in item 494.60, TSUS, are entitled to duty-free treatment under the Generalized System of Preferences.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

CLA-2 CO:R:CV:G
078729 JAS

26 SEP 1986

078729

Mr. George F. Jahn, Jr.
WearEver Proctor Silex
2209 Sulphur Spring Road
Baltimore, Maryland 21227-2988

Dear Mr. Jahn:

In your letter of May 8, 1986, to the Regional Commissioner of Customs, New York Seaport, you inquire as to the tariff status of a battery operated beater/mixer with accessories, and related equipment, from Hong Kong. A sample was submitted.

The sample is a hand-held cordless beater/mixer with self-contained electric motor that is powered by a rechargeable nickle-cadmium battery. It comes with five different mixing, blending or whipping tools and a plastic wall mounting bracket to hold and store the tool attachments. Merchandise represented by the sample would be classifiable under the tariff provision for food mixers with self-contained electric motors, of types used in the household, in item 683.32, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4.4 percent ad valorem. The five tools are considered an entirety with the mixer and likewise classifiable. The mounting bracket is classifiable under the provision for other household articles not specially provided for, of rubber or plastics, in item 772.15, TSUS, dutiable at the rate of 4 percent ad valorem. The nickel-cadmium battery is specifically provided for and, therefore, separately classifiable under the provision for other storage batteries, in item 683.15, TSUS, dutiable at the rate of 5.5 percent ad valorem.

Also included with the beater/mixer is a charging unit or plug-in power supply and a plastic wall mounting bracket with male and female electrical connectors. These act as an electrical interface to permit the charging unit to recharge the battery when the mixer is not in use. The craddle of the mounting bracket permits storage for the mixer, but this is believed to be a subsidiary feature. The charging unit is classifiable under the tariff provision for transformers rated at less than 1 kva, in item 682.05, TSUS, dutiable at the rate of 7.3 percent ad valorem. The electrical interface, because of its specific design and function, is classifiable under the provision for other electrical apparatus for making or breaking

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electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits, in item 685.90, TSUS, dutiable at the rate of 5.7 percent ad valorem.

Articles from Hong Kong classifiable in items 682.05, 683.32, 685.90, and 772.15, TSUS, are eligible for entry free of duty, under the Generalized System of Preferences (GSP), upon compliance with applicable law and regulations relating thereto. Copies of these provisions are enclosed.

Sincerely,

Arthur P. Schifflin
Chief, General
Classification Branch

Enclosure

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 22 1986

CLA-2 CO:R:CV:G
078731 c
818339

078731

Ms. Chari Hoffman
Pagoda Trading Company Inc.
44 Kimler Drive
St. Louis, Missouri 63043

Dear Ms. Hoffman:

Your letter dated April 15, 1986, addressed to our New York office concerning the tariff classification of a woman's embroidered plastic pump manufactured in Taiwan, has been referred to this office for a direct reply to you. A sample was submitted for examination.

The sample designated as style No. 54495W has a polyurethane upper with decorative embroidery designs on one side of the upper.

The classification of the sample will probably depend on how much of the exterior surface area of the upper is covered by the stitching. For example, the embroidered design on the upper of the sample shoe consists of parallel lines of stitching with a matching color thread so that, while the stitch lines are only about 1/32 inch apart, they still leave a sizeable portion of the plastic exterior surface area within the design area. It is our opinion that even though this embroidery is not, strictly speaking, filled in, it would be too difficult for a customs laboratory to measure accurately the uncovered areas within the design and that this design more closely resembles solid, filled in embroidery rather than open, outline embroidery.

Based on the assumption that the embroidery design occupies at least 10 percent of the exterior surface area of the upper, the sample is classifiable under the provision for footwear of the slip-on type that is held to the foot without the use of laces or buckles or other fasteners in item 700.59, Tariff Schedules of the United States, and dutiable at the rate of 37.5 percent.

Sincerely,

Arthur P Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

AUG 27 1986

CLA-2 CO:R:CV:G
078736 jlj
818127

078736

Mr. Rolando A. Perez
Vice President
Gator Industries, Inc.
1000 South East 8th Street
Hialeah, Florida 33010

Dear Mr. Perez:

In your letter of April 3, 1986, you requested a tariff classification for a cotton canvas footwear upper made in Taiwan. You enclosed two samples uppers along with your letter; one was retained in New York, and one was forwarded to this office. Later you submitted two samples of a second upper; both samples were forwarded to this office.

The first upper is constructed of a white woven outside fabric backed with laminated foam and a nylon tricot knit inner fabric. There are six pairs of eyelets in the tongue area for closure purposes. There is an additional piece of cotton material sewn onto the upper at either side, which starts at the eyelets and curves to the rear heel counter. It is wide at the beginning but narrows near the counter. There is a cut in the main fabric underneath this additional material, which is stitched together. In addition, there are rows of white stitching on either side which start at the bottom and curve up through the mustache in the heel area. The stitching is sewn through the main laminated fabric of the upper. The stitching begins with four rows at the bottom. At the cut in the upper, the stitches become two rows which continue to the mustache. The stitches then pass underneath the curved piece of material. You have marked in ink the word "reinforcement" on the additional piece of material.

The issue is whether the additional curved piece of material and the curved stitching constitutes ornamentation. You state that the Miami import specialist tentatively advised you that the upper was classified under the provision for articles not specially provided for, of textile materials, other articles, not ornamented, of cotton, other, shoe uppers, in item 386.52, Tariff Schedules of the United States (TSUS).

In a telephone conversation with our New York office, your sales representative said that the additional pieces of material are reinforcements; he stated that they also add a design to the shoe. He said that the cuts in the upper enable the manufacturer to work the upper.

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On the first upper submitted, the additional curved overlay piece of material does not constitute ornamentation because it reinforces the strength of the upper at a point which would receive a great deal of stress when the shoe is tied. The functional aspect of the overlay outweighs any decorative aspect it may have.

The rows of curved stitching through the laminated fabric portion do not constitute ornamentation. United States v. Endicott Johnson Corporation, 67 CCPA 47, C.A.D. 1242 (1980), found that non-contrasting white stitching was not conspicuous and hence not ornamental. Following Endicott Johnson, supra, we find that the rows of curved stitching are not ornamental.

The first sample upper is not ornamented. It is classified under the provision for articles not specially provided for, of textile materials, other articles, not ornamented, of cotton, other, shoe uppers, in item 386.5210, Tariff Schedules of the United States (TSUS), dutiable at the rate of 8.2 percent ad valorem. Textile category number 369 applies.

In a letter dated June 27, 1986, you submitted two samples of a second footwear upper. The second upper differs from the first upper in the following ways:

(1) The vinyl top on the outside of the heel counter has been replaced with a textile top.

(2) The curved stitching on the side panels has been eliminated.

(3) A fabric binding has been sewn over the seam on the inside to add more strength.

(4) The location of the seam has changed. On the second sample, the seam runs along the bottom of the overlay, while on the original sample, the seam ran along the center of the overlay.

The issue for the second sample is whether the additional piece of curved overlay ornaments the upper. Inasmuch as the curved overlay reinforces the strength of the upper at a point which would receive a great deal of stress when the shoe is tied, the curved overlay does not constitute ornamentation. The binding added to the inside of the upper serves to reinforce the seam; it does not constitute ornamentation either.

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The second sample is not ornamented. It is also classified in item 386.5210, TSUS, dutiable at the rate of 8.2 percent ad valorem. Textile category number 369 applies.

We note that there may be a question of trademark similarity concerning the first sample upper submitted. We have referred a copy of your letter to the Entry, Licensing and Restricted Merchandise Branch, which will respond to the trademark question in a separate letter.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 23 1986

CLA-2 CO:R:CV:G
078745 DW

William J. Maloney, Esq.
Rode & Qualey
295 Madison Avenue
New York, New York 10017

Dear Mr. Maloney:

You have requested a ruling on the country of origin of certain garments. Samples of both the knit-to-shape components and the completed garments were submitted along with your letter dated July 31, 1986.

Our ruling will cover the three sample garments comprising two skirts and a sweater. You have indicated that the yarn usually will be of United Kingdom origin, but also may be sourced in third countries. In each case, all of the component parts will be knit -shape in the United Kingdom. The sweater parts consist of f it and back panels, arms, collar and a pocket patch. The omponents of skirt A are composed of a front panel, back panel and waistband, and the components of skirt B consist of a one-piece knit tube and a waistband. All components will be shipped to the People's Republic of China where the parts will be joined together by looping and linking. You further state that some of the garments assembled in China will be sent to Hong Kong where they will be dyed.

Since these garments are processed in more than one country, they are subject to the provisions of section 12.130 of the Customs Regulations (19 CFR 12.130). The regulations provide that in determining the country of origin of textiles and textile products that consist of materials produced or derived from, or processed in, more than one country, the imported article is considered to be a product of that country where it last underwent a substantial transformation. A textile or textile product is considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing into a new and different article of commerce.19 CFR 12.130(b).

These regulations require us to consider certain criteria in ascertaining whether the merchandise has undergone substantial manufacturing or processing operations. These include the physical change in the material or article, time involved, complexity of the operations, degree of skilled labor and value added to the article.

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The principles contained in the regulations originate from our interpretation of the test of substantial transformation set out in various court cases, particularly, the landmark case of Uniroyal, Inc.v. United States, 3 CIT 220, 542 F. Supp. 1026, 702 F. 2d 1022 (1982), in which the court stated that a substantial transformation will occur from processing that results in an article having a name, character or use differing from that of the imported article. The same court recognized that a substantial transformation will not result from minor processing which leaves the identity of the imported article intact. Uniroyal, at p. 224.

With specific reference to the country of origin of garments whose components are knit-to-shape in one country and assembled in another country, our position has been that usually the assembly into a completed garment of knit-to-shape component parts does not constitute a substantial transformation. 19 CFR 12.130(e)(2)(iii). Generally, we regard such assembly operations as minor based on considerations of complexity, time, and degree of skill.

The garments in issue have been assembled in China from components that are knit-to shape in the United Kingdom. In each case, the essence of these garments stems from the knitting of the panels in the United Kingdom. The assembly of these components by looping and linking that occurs in China does not result in a substantial transformation so as to effect a change in the country of origin. We note, too, that under 19 CFR 12.130(e)(v), dyeing the garments in Hong Kong will not result in a change in the country of origin.

For these reasons, the country of origin of the submitted garments is the United Kingdom. As products of the United Kingdom, these garments may be entered into the United States free from any quantitative restrictions. This determination is consistent with several rulings issued by Customs concerning the country of origin of knit-to-shape garments that are processed in more than one country. On each occasion, we have ruled that the country of origin of the completed garment is the country where the components are knit. See, for example, file 074658 of September 27, 1984, and file 075692 of May 2, 1985.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078745

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 31 1986

REFER TO

CLA-2 CO:R:CV:G
078748 c
819221

Mr. Fred Goris
International Traffic
Fisher-Price
636 Girard Avenue
East Aurora, New York 14052-1885

Dear Mr. Goris:

Your letter dated June 13, 1986, addressed to our New York office concerning the tariff classification of a "Miniature Bread Bag" produced in Mexico, has been referred to this office for a direct reply to you. A sample was submitted for examination.

The sample is a small duffle style pouch made of polyester which measures approximately 9 inches in height with a 3 inch base. It has one central compartment which is secured by a drawstring closure. The finished article will have flowers and the word "Bread" imprinted on it. You state that after importation the article will be incorporated into a playset and marketed as a child's plaything.

The issue involved is whether the article is within the purview of the term luggage for tariff purposes or whether it is considered a flat good.

Schedule 7, Part 1, Subpart D, Headnote 2(a)(i), Tariff Schedules of the United States (TSUS), provides that "the term '<u>luggage</u>' covers - (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel."

Schedule 7, Part 1, Subpart D, Headnote 2(c), TSUS, states that "the term '<u>flat goods</u>' covers small flatwares designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change purses, cigarette cases, coin purses, coin holders, compacts, currrency cases, keycases, letter cases, license cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles."

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This headnote explains that the term 'flat goods' covers "small flatwares designed to be carried on the person," and lists a number of exemplars that are commonly carried in this manner. It is our view that the instant merchandise is not the type of article which is "designed to be carried on the person." It is in fact designed and used to contain personal effects while traveling.

In view of the foregoing, it is our opinion that merchandise represented by the sample is classifiable under the provision for luggage of other textile materials in item 706.41, TSUS, and dutiable at the rate of 20 percent ad valorem.

Sincerely,

Arthur P. Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

078748

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

NOV 10 1986

CLA-2 CO:R:CV:G
078765 JLJ
818491

Ms. Sandy Leawprasert
TP & M Overseas Corp.
500 Ivy, Apt. 3
Glendale, California 91204

Dear Ms. Leawprasert:

You requested a tariff classification for a cotton cologne towelette produced in Thailand. You submitted a sample with your letter.

The sample towelette is manufactured from a plain woven cotton material which has been napped. The item is impregnated with cologne and measures approximately 7-7/8 inches by 6-1/2 inches. Its edges are not turned and sewn to prevent raveling.

You suggest classification under the tariff provision for cosmetics and other toilet preparations, containing alcohol, in item 461.45, Tariff Schedules of the United States (TSUS), or under the provision for articles not specially provided for, of textile materials, other articles, not ornamented, of cotton, pile or tufted construction, other, in item 386.40, TSUS.

The cologne is an inexpensive preparation and would not be the component material of chief value in the article. The cotton cologne towelette is classified under the provision for articles not specially provided for, of cotton, in item 386.40, TSUS, dutiable at the 1986 Column 1 rate of 9.4 percent ad valorem.

The Harmonized Commodity Description and Coding System (HS) is scheduled to replace the TSUS as the tariff code of the United States on January 1, 1988. For your information, the HS provision applicable to the above-described merchandise appears to be Subheading 6307.90.80, other made up textile articles. This information is intended to assist you in becoming familiar with HS tariff classifications. It is not an official Customs Service ruling and may not be challenged by you at this time. It is anticipated that we will begin issuing HS tariff classification rulings on or about July

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1, 1987. (Public notice will be given of the exact date such rulings will begin.) If you wish a HS tariff classification ruling, you may request one at that time.

Sincerely,

Harvey B. Fox
Director, Classification and
Value Division

078765

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

NOV 6 1986

CLA-2 CO:R:CV:G
078775 JLJ

Area Port Director of Customs
P.O. Box 280
Pacific Highway Station
Blaine, Washington 98230

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3004-5-000189

This protest was filed against your decision in the liquidation on May 3, 1985, of entry No. 869450, dated November 29, 1984, covering a shipment of Arbrene lumber wraps produced in Canada.

This ruling concerns the correct tariff classification of the lumber covers.

FACTS:

The merchandise at issue is described by a descriptive brochure as "Arbrene lumber wrap for kiln-dried lumber shipment and storage." According to the brochure, it is a "new woven polyolefin lumber wrap."

The protestant's broker claims that the lumber wrap is a container and is classified under the provision for containers, of rubber or plastics, with or without their closures, chiefly used for the packing, transporting, or marketing of merchandise, in item 772.20, Tariff Schedules of the United States (TSUS).

The import specialist claims that the lumber covers are not containers because they are protective covers which do not "contain" lumber. The entry was liquidated under the provision for articles not specially provided for, of rubber or plastics, other, other, in item 774.55, TSUS.

ISSUE:

Is Arbrene lumber wrap a container classified in item 772.20, TSUS, or an article of rubber or plastic classified in item 774.55, TSUS?

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LAW AND ANALYSIS:

A memorandum from the Deputy Assistant Regional Commissioner, C&V, Pacific Region, dated November 18, 1985, indicates that she thinks that a conflict exists between ORR Ruling 77-0057 of September 20, 1977 (Customs Headquarters Ruling Letter (HRL) 044129 of September 30, 1976) and New York letter 812574 of March 4, 1985.

HRL 044129 ruled on lumber covers made from woven strips which were laminated on one side only with clear plastic film. The covers were also reinforced near one edge with a band made from woven strips coated with a milky white plastic film. Inasmuch as the strips in the band could be seen through the coating, Headnote 5 (now 5a), Schedule 3, TSUS, applied neither to the band portion nor to the balance of the cover, which was clear coated. Therefore, Type I (rolls with precut holes) and Type II (finished covers with sewn ends) were both held to be textile articles classified in Schedule 3, TSUS.

New York letter 812574 concerned bags used to pack, transport and market plastic resins, which were actually containers for tariff purposes. They were made from woven strips which were laminated with non-transparent white plastic film. By virtue of Headnote 5(a), Schedule 3, TSUS, they were held to be plastic containers.

The above-mentioned rulings do not conflict. What they have in common is a consideration of whether or not the coatings or laminations are nontransparent. (At this point, we note that neither the sample lumber wrap nor the two photographs mentioned by protestant's broker on the Customs Form (CF) 19 were received in New York or in this office. The national import specialist in New York examined a sample swatch forwarded on the CF6431 report for the protested entry. He found that the swatch was coated or laminated with a nontransparent plastic. The sample swatch was forwarded to but not received by this office.)

HRL 044129 and New York letter 812574 differ in that the lumber covers in HRL 044129 had clear coats with bands of reinforcing material which were coated with a milky white plastic through which the base fabric of woven strips could actually be seen, as opposed to the bags in New York letter 812574 in which the lamination was nontransparent. It cannot be assumed that the coatings in HRL 044129 and New York letter 812574 were the same. The fact that one ruling dealt with a container coated or laminated with nontransparent plastic while the other concerned an article, not specially provided for, which was not coated with a nontransparent plastic does not mean that the rulings conflict. Each is correct based upon its specific set of facts.

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The protestant's broker's arguments are mostly lexicographical. We disagree with his contentions that a bag is comparable to a lumber wrap. The subject lumber wrap is used as a lumber cover. It is our understanding that the lumber is not placed into the subject cover. Instead, the wrap is put over the top of the stacked lumber and is then secured for shipment. Item 772.20, TSUS, does not apply to protective covers which do not contain the merchandise. The lumber wrap is actually a specialized form of tarpaulin, not a container.

For the above-mentioned reasons, we find that the instant lumber wraps are classified under the provision for articles of rubber or plastics, in item 774.55, TSUS.

HOLDING:

The instant lumber covers are classified in item 774.55, TSUS. The protest should be denied in full. A copy of this decision should be attached to the CF 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 1 7 1986

REFER TO

CLA-2 CO:R:CV:G
078798 JGH

William Morales, B.A.
Modern Equipment Co., Inc.
G.P.O. Box "O"
San Juan, Puerto Rico 00936

Dear Mr. Morales:

This is in reference to your inquiries concerning the dutiable status of adjustable steel post shores manufactured in Italy.

Adjustable steel post shores are classifiable under the provision for posts and parts of structures, of base metal: of iron or steel: other, in item 653.00, TSUS, dutiable at the rate of 6.2 percent ad valorem.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

14 OCT 1986 CLA-2:CO:R:CV:G
078800 SM

078800

Mr. D. S. Rana
Commercial Attache
Embassy of India
2536 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Dear Mr. Rana:

You have asked us to review the classification by Customs officials at JFK Airport of certain garments imported from India by West End Blues, Inc. You state that they are men's undershorts and pajamas, whereas they were classified as women's garments.

The three submitted samples are of a woven cotton fabric in white, with red flowers and green and blue leaves. The shorts have an elasticized waistband that does not open and a two-button front fly. A white textile label at the center front is bordered decoratively in red and black; its stylized letters spell out "Tony Tango." This feature ornaments the garment. The pants are the same as the shorts except for the length and a pocket set into each side seam. The legs are very narrow at the lower edges. The short-sleeved shirt has a full-front left-over-right five-button opening, a single breast pocket on the left side, and a long, rounded shirt tail at the back.

Headnote 2(c) of Part 6, Schedule 3, Tariff Schedules of the United States, provides:

> 'women's and girls' wearing apparel' is wearing apparel for females over 6 years of age, including wearing apparel commonly worn by either sex and not identifiable as being intended exclusively for the wear of men or boys.

The articles in question here fall within this headnote description. They are not intended exclusively for the wear of men or boys, but rather are commonly known, marketed, and used as sportswear and are associated with the female sportswear trade. The floral design of all three garments, the long

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D13

lower back edge of the shirt, and the narrow pants legs are fashion features that particularly indicate that the garments are unisex or women's. We also note that the importer is identified as a sportswear firm and carries only a limited line that can be described as exclusively men's apparel.

The shirts fall within quota category 341; the pants and shorts, within category 348. Your samples are returned.

Sincerely,

For Harvey B. Fox
Director, Classification
and Value Division

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D14

078800

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

AUG 27 1986

REFER TO
CLA-2 CO:R:CV:G
078807 DW

078807

Mr. Jack Shamash
J. Shamash & Sons Inc.
42 West 39th Street
New York, New York 10018

Dear Mr. Shamash:

You have requested the country of origin of certain greige goods from China that are sent to West Germany for further processing.

Once the greige goods arrive in Germany, they are bleached, printed with from three to six screens, steamed, washed, resin finished and calendarized.

Under section 12.130(b), Customs Regulations, a textile or textile product which is processed in more than one foreign territory or country is a product of that territory or country where it last underwent a substantial transformation. A textile or textile product is considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing into a new and different article of commerce.

Our regulations further provide that a fabric usually will be a product of the country where it is dyed and printed and subjected to two of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing. Section 12.130(e)(i), Customs Regulations.

The information submitted indicates that the fabric is not dyed in West Germany. Dyeing is essential to a finding that the fabric has undergone a substantial transformation. Thus, it is our judgment that the finishing of the fabric in West Germany is not sufficient to result in a change in the country of origin of the merchandise. Accordingly, the fabric remains a product of China.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

E1

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 10 1986

REFER TO

CLA-2:CO:R:CV:G
078839 SM

Mr. Harry Bank
Sugihara Trading of California, Inc.
P.O. Box 66275
Los Angeles, California 90066

Dear Mr. Bank:

You have requested a tariff classification ruling for scaffolding hooks imported from Taiwan. Such hooks are components of scaffolding systems used in construction areas.

Scaffolding systems and their parts, of base metal, are classifiable as other structures and parts thereof under item 653.00, Tariff Schedules of the United States (TSUS), a provision allowing duty-free treatment for qualifying articles from Taiwan. The Customs Court, in S. G. B. Steel Scaffolding & Shoring Co., Inc. v. United States, 82 Cust. Ct. 197, C.D. 4802 (1979), noted that scaffolding is included within both the common meaning and the Brussels Tariff Nomenclature meaning of "structures." In following this decision, we have ruled that adjustable screw jacks for scaffolding, for example, are parts of structures under item 653.00, TSUS. See file 074401 of July 19, 1984.

We note, however, that you have requested a ruling on a matter that is not prospective but the subject of a current customs transaction. Technically, to do so is in contravention of the Customs Regulations. We caution that the Internal Advice procedures spelled out in section 177.11 of the Regulations, 19 CFR 177.11, should be used in the future when disputes arise with regard to current transactions. Alternatively, once entries have been liquidated, the Regulations covering protests, Part 174, apply.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

E2

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
078842 c
819025

10 OCT 1986

078842

Mr. Bill Holmes
President
Upstream Products
209 Highland Avenue
Piedmont, California 94611

Dear Mr. Holmes:

Your letter dated May 1, 1986, addressed to our New York office concerning the tariff classification and marking of liquid containers from Korea, Taiwan, and Thailand, has been referred to this office for a direct reply to you. Samples were submitted for examination.

The sample containers have plastic liners and are made of woven man-made fiber fabric. Two of the samples have velcro closures and measure approximately 5-1/2 inches by 11 inches. One has shoulder clasps and is not ornamented. The other has shoulder straps attached and is ornamented by means of a sewn on label bearing the importer's name and address. The remaining container has a camouflage print and measures approximately 8-1/4 inches by 11-1/2 inches with zipper closures and shoulder straps. It has an open ended pocket on the rear for insertion of one's hands in the cold weather.

If the liquid containers are in chief value of man-made fibers, the unornamented ones would be classifiable under the provision for articles, not specially provided for, of textile materials, not ornamented, of man-made fibers in item 389.6270, Tariff Schedules of the United States Annotated (TSUSA), and dutiable at the rate of 4 cents per pound plus 10 percent ad valorem.

The ornamented liquid container would be classifiable under the provision for articles not specially provided for, ornamented, of man-made fibers in item 386.1343, TSUSA, and dutiable at the rate of 12.5 percent ad valorem.

If the liquid containers are in chief value of plastics, they would be classifiable under the provision for other articles chiefly used for preparing, serving, or storing food or beverage ingredients, of plastics in item 772.1500, TSUSA, and dutiable at the rate of 4 percent ad valorem.

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Merchandise classifiable under items 386.1343 and 772.1500, TSUSA, which are products of Korea or Thailand are entitled to duty-free treatment under the Generalized System of Preferences, if otherwise qualified.

With respect to country of origin marking, the law requires that each imported article produced abroad be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article permits, with the English name of the country of origin, to indicate to the ultimate purchaser in the United States the name of the country in which the article was manufactured or produced.

As you propose, a separate sewn-in label alongside the instruction label inside the bag that reads "Made in Korea" is an acceptable marking.

However, we note that one of the liquid containers has a rectangular patch with your company name and mailing address imprinted thereon. The law provides that when the name of a locality other than the country of origin appears on a product "there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning."

Your question regarding labels which identify materials used in the product should be directed to the Federal Trade Commission, Washington, D.C. 20580.

Your samples are being returned under separate cover.

Sincerely,

John T Rick

For Harvey B. Fox
Director, Classification
and Value Division

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074842

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
U.S. CUSTOMS SERVICE 1301 CONSTITUTION AVENUE WASHINGTON, D.C. 20229	ACTION: INFO:	UNCLASSIFIED
ACCOUNTING CLASSIFICATION	DATE PREPARED 10-01-86	FILE CLA-2 CO:R:CV:G: 078844 JGH
FOR INFORMATION CALL		
NAME JOHN G. HURLEY	PHONE NUMBER 566-8181	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

078844

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO: MRS. G. B. FOWLER
CIMDF/51
SCITO LONDON

REUNWIRE AUGUST 18, 1986, METHYL METHACRYLATE MONOMER IS CLASSIFIED IN ITEM 428.72, TARIFF SCHEDULES OF THE UNITED STATES.

HARVEY B. FOX
DIRECTOR, CLASSIFICATION
AND VALUE DIVISION

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PAGE NO.	NO. OF PGS	SECURITY CLASSIFICATION
1	1	UNCLASSIFIED ES

STANDARD FORM 14
REVISED 11-80
GSA FPMR (41 CFR) 101-35.306

Previous editions usable NSN 7540-00-634-3968

14-103

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G

06 OCT 1986 078858 JGH

078858

Mr. Mark Beran
Alcohol USA Inc.
P.O. Box 629
Niwot, CO 80544

Dear Mr. Beran:

Your letter, which was postmarked August 12, 1986, concerns the dutiable status of fuel grade anhydrous ethanol from Panama. The sugar cane will be of Panamanian origin and the ethanol production facility located in Panama. If the regulations (enclosed) are complied with, importations of such ethanol would be free of duty under the CBI.

Otherwise fuel grade anhydrous ethanol is classifiable, if imported to be used for fuel purposes, in items 427.88/901.50, TSUS, dutiable at the rate of 3 percent ad valorem plus 60 cents per gallon.

As to denaturing the alcohol subsequent to importation, this would be done in a distilled spirits plant. However, for specific instructions on how this may be accomplished it is suggested that you write to the Office of Compliance Operations, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226.

Enclosed is a copy of "Importing to the United States," which will provide additional information on the "logistics of importing."

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

EC

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 13 1986

REFER TO

CLA-2:CO:R:CV:G
078862 jlj

Area Director of Customs
6 World Trade Center
New York, New York 10048-0945

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-4-015874

This protest was filed against your decision in the liquidation on July 27, 1984, of entry No. 83-388965-0, dated September 26, 1983, covering a shipment of athletic footwear produced in Taiwan.

This ruling concerns the correct classification of the athletic footwear.

FACTS:

The merchandise at issue is athletic footwear produced in Taiwan. The protestant's counsel claims that the footwear is in chief value of leather and is classified under the provision for footwear of leather (except footwear with uppers of fibers), other, for men, youths, and boys, in item 700.35, Tariff Schedules of the United States (TSUS).

The entry was liquidated under the provision for other footwear, other, other, in item 700.95, TSUS.

LAW AND ANALYSIS:

Protestant's counsel claims that the athletic footwear at issue is in chief value of leather and is classified in item 700.35, TSUS. She claims that component value breakdowns attached to the entry show that the footwear is in chief value of leather. She asks that we do not decide the question presented by this protest until she furnishes us with detailed

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E7

additional value breakdowns in support of the protestant's position. (This request was made on October 23, 1984, however, and no additional breakdowns have been filed with this protest. In view of the length of time allowed already, we must decide the protest without any additional documentation.)

The component value breakdowns submitted with the entry show that Style 2471 on Invoice 1 and Style 2245 on Invoice 2 are in chief value of rubber and plastics. These styles are classified as other footwear in item 700.95, TSUS.

The New York commodity team indicates that all the other styles covered by the instant entry are in chief value of leather and are classified in item 700.35, TSUS.

HOLDING:

This protest is denied in part with regard to Style 2471 on Invoice 1 and Style 2245 on Invoice 2, which are classified in item 700.95, TSUS. This protest is approved in part with regard to all the other styles covered by this entry, which are classified in item 700.35, TSUS. A copy of this letter should accompany the CF 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffin

for Harvey B. Fox
Director, Classification
and Value Division

078862

ES

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

NOV 4 1986

REFER TO
CLA-2 CO:R:CV:G
078864 c

District Director of Customs
610 South Canal Street
Chicago, Illinois 60607

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3901-4-000729

This protest was filed against your decision in the liquidation on April 27, 1984, of entry no. 84-672943 dated October 7, 1983, entry No. 83-737250 dated September 28, 1983, entry No. 83-737244 dated September 27, 1983, entry No. 84-672925 dated October 4, 1983, and entry No. 83-737159 dated September 22, 1983, covering shipments of "magic eggs" produced in Taiwan.

FACTS:

The merchandise involved consists of clear egg containers with foam creatures. When the creatures are placed in water, they expand to 100 times their original size. When removed from the water, and allowed to dry, they will return to their original size.

The "magic eggs" were liquidated under the provision for other toys, and parts of toys, not specially provided for in item 737.95, Tariff Schedules of the United States (TSUS).

The protestant maintains that the merchandise should have been classified under the provision for magic tricks and practical joke articles in item 737.65, TSUS.

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E9

ISSUE:

1. Does the merchandise place one at a humorous disadvantage so as to qualify as a practical joke item?

2. Will the "magic eggs" be used as part of a performance of magic?

LAW AND ANALYSIS:

In order to qualify for classification under item 737.65, TSUS, as a practical joke article, it must be shown that the "magic eggs" are chiefly used to place an individual at a humorous disadvantage. See Parksmith Corp. v. United States, 67 Cust. Ct. 405, C.D. 4304 (1971).

It is our observation that an individual might be amused by the creature's growth, but he is not placed at a humorous disadvantage. Also, the "magic eggs" are not within the purview of the provision for magic tricks. There has been no evidence submitted to indicate that the merchandise would be included as part of a performance of magic.

In view of the foregoing, it is our position that classification of the merchandise under item 737.95, TSUS, was appropriate.

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HOLDING:

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

William P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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078804

E11

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 4 1986

REFER TO

CLA-2 CO:R:CV:G
078865 c
819671

La Rue Distributors, Inc.
339 Fifth Avenue
New York, New York 10016
ATTN: Brigitte Dapelo

Dear Ms. Dapelo:

Your letter dated July 11, 1986, addressed to our New York office concerning the dutiable status of a lady's handbag, has been referred to this office for a direct reply to you. A sample was submitted for examination.

The sample, style No. 1222HL produced in the People's Republic of China, is a tote bag composed of man-made fiber and measures approximately 11 inches by 16.25 inches by 2.88 inches. It contains a zippered central compartment and a small interior purse-like pouch secured with a nylon zipper closure. The bag has a front exterior snap closure and open pockets upon which are imprinted "House of Lloyd," and "toys and gifts" respectively. There are also double self-material handle straps for easy carrying.

The issue presented is whether the sample bag is considered luggage for tariff purposes or is considered a handbag.

Schedule 7, Part 1, Subpart D, Headnote 2(b), Tariff Schedules of the United States (TSUS), provides that "the term '<u>handbags</u>' covers pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls, but not including luggage or flat goods as defined herein or shopping bags; ***."

Although the bag in issue has dimensions exceeding the dimensions set forth in the published guidelines for handbags and would be considered luggage if the guidelines were strictly construed, it is our opinion that it is of a class or kind of articles which are similar to the pocketbooks, purses and shoulder bags which have been defined as handbags.

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In view of the foregoing, it is our position that the sample bag is classifiable under the provision for handbags of other textile materials in item 706.4125, TSUS, and dutiable at the rate of 20 percent ad valorem. The applicable textile quota category number is 670. As a product of the People's Republic of China this merchandise is not currently subject to visa requirements or quota restraints.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

078865

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E13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 30 1986

REFER TO

CLA-2 CO:R:CV:G
078872 c
819987

Gerald B. Horn, Esq.
Soller, Singer & Horn
Attorneys at Law
No. 10 The MEWS
421 Hudson Street
New York, New York 10014

Dear Mr. Horn:

Your letter addressed to our New York office dated August 5, 1986, concerning the tariff classification of a LCD watch-lighter manufactured in Taiwan, has been referred to this office for a direct reply to you. A sample was submitted for examination.

The sample is a battery operated solid-state electronic wristwatch with a digital LCD display in combination with a refillable butane gas cigarette lighter.

The lighter portion is in a plastic case with a stainless steel back. The watch module portion slides into a channel in the bottom section of the plastic case. A rubber watch strap is attached to the case by means of spring bars customarily found on watches.

The flame hole for the lighter is located at the top left of the case. A flame adjusting screw and gas filler is at the right side and the ignition lever is at the lower left side. Time display and time setting switches (S1 and S2) are located to the right of the LCD display. Access to the watch battery is obtained by sliding the module out of the case.

It has been suggested that the merchandise is classifiable under the provision for other cigar and cigarette lighters (including articles in which lighters are incorporated as significant integral parts), valued over $5 per dozen pieces in item 756.06, Tariff Schedules of the United States (TSUS).

Classification of the instant combination article under item 756.06, TSUS, is precluded by virtue of the inferior heading preceding item 756.06, TSUS, which limits the provision to lighters which are ordinarily carried in pockets or handbags. Inasmuch as the combination article is worn on the wrist, it will not be carried in the pocket or in a hangbag.

E14

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The merchandise is not classifiable under the provision for solid state electronic watches in item 688.36, TSUS, because the combining of the watch and lighter makes it more than an electronic watch.

In view of the foregoing, it is our opinion that the sample LCD watch lighter is classifiable under the provision for other electrical articles and electrical parts of articles, not specially provided for in item 688.42, TSUS, and dutiable at the rate of 4.1 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

078872

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F1

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 10 1986

CLA-2 CO:R:C:V:G
078877 c

Mr. Jan Berry
Designs International
of Palm Beach Inc.
Grove Centre
Suite 302
21301 Powerline Road
Boca Raton, Florida 33433

Dear Mr. Berry:

In a letter dated August 25, 1986, you inquired as to the dutiable status of an area rug manufactured in Swaziland.

The area rug is said to be manufactured of 100 percent wool yarns that have been hand-loomed into a rug with self fringe. A photograph has been provided but we cannot determine whether the rug is flat woven or of pile or tufted construction. For the purpose of this reply we assume that it is flat-woven.

You have enclosed a letter from the Swaziland Ministry which you claim confirms that the rug is hand-loomed and the designs are based on Swazi folklore and ethnic concepts. Therefore, you suggest that the area rug is classifiable under the provision for floor coverings not specially provided for, of textile materials: of wool: woven, but not made on a power driven loom: valued over 30 cents per square foot: certified hand-loomed and folklore products in item 361.43, Tariff Schedules of the United States (TSUS), and entitled to duty-free treatment under the Generalized System of Preferences (GSP), if otherwise qualified.

Before an article can be classified as a hand-loomed and folklore product, the requirements of Schedule 3, Headnote 6, TSUS, copy enclosed, must be satisfied. Inasmuch as there is no certification as required by the headnote, item 361.43, TSUS, cannot apply.

It is our position that the area rug is classifiable, assuming that it is valued at over 30 cents per square foot, under the provision for other floor coverings not specially

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F2

provided for, of textile materials, of wool: valued over 30 cents per square foot in item 361.45, TSUS, and dutiable at the rate of 5.9 percent ad valorem. Products classifiable under this item number are not entitled to GSP treatment.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

078877

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PUBLIC _____

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 23 1986

CLA-2 CO:R:CV:G
078889 DW
818259

Mr. Edgardo J. Garcia
Commercial Counsellor
Embassy of the Philippines
Washington, D.C. 20036

Dear Mr. Garcia:

Your letter dated April 14, 1986, requested the tariff classification and textile category of an article described as a lady's dress accessory.

The item is a "V"-shaped design made from a sheer woven fabric of man-made fibers. It measures approximately 8 inches long and gradually reaches 2 1/2 inches at its widest point. The fabric contains an embroidered design and additional stitching on the bottom edge. The item is considered ornamented.

Headnote 2(a), Part 4B, Schedule 3, Tariff Schedules of the United States (TSUS), defines the term motifs" as "individual textile pieces such as, but not limited to, labels, badges, emblems, insignia, initials, numbers, and ornaments, designed and almost wholly used for incorporation in, or appliqueing on, wearing apparel, furnishings, and other textile articles..."

We regard the item as an applique rather than as an inserting. This view is supported by an article appearing in April 1986, in Body Fashions/Intimate Apparel that described similar items as appliques that will be used for daywear, sleepwear, and foundation garments. Having examined this item and read the magazine article, it is our decision that the applique is "designed and almost wholly used for ...appliqueing on wearing apparel...."

The item is classifiable as an ornamented motif in item 353.50, TSUS. Products classifiable under this tariff provision may be subject to quantitative restrictions under category 627.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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F4

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: NOV 4 1986

FILE: CLA-2 CO:R:CV:G
078887 jlj

TO : Area Director, J.F.K. Airport

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request 13/86 Concerning the Classification of Certain Cloth Emblems or Patches

This request for Internal Advice was initiated by a letter from Mr. Norman Katz, Esquire, on behalf of his client, Allison Corporation.

FACTS:

The merchandise at issue is an emblem or patch in the form of a profile of a rabbit head with a bow tie (in short, the Playboy bunny). The under surface of the emblem is coated with a thermoplastic adhesive substance. The head consists of a woven textile fabric base or ground, to which vertical and near parallel rows of a single style of white yarn stitching have been applied to create the surface or "hair" of the rabbit. There is a slight space where the stitching to mark the neck portion of its bow tie or collar will be applied. The "wings" of the bow tie are of the same type of white yarn stitching, but they are sewn on at right angles to the stitching comprising the body of the emblem. There is a circular space left for the eye, which will be created later with stitching using black thread.

The eye is composed of a narrow band of radial stitching around the edge of the socket, with parallel stitching filling in the balance of the eye. The neck strap (or collar) of the bow tie and the bow tie are outlined by the stitching or embroidery of black thread. The outline of the whole rabbit head is also stitched with black thread. The black embroidery type stitches are essentially perpendicular to the edge throughout the

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entire periphery, forming a band approximately 3/16 inch wide which overlaps the white stitching.

These emblems were originally classified by the importer under the provision for ornamented textile articles in item 386.13, Tariff Schedules of the United States (TSUS). The JFK import specialist sent a Notice of Action to the importer classifying the emblems as textile articles, not ornamented, in item 389.62, TSUS. The inquirer believes that the patches or emblems are ornamented and were correctly classified in item 386.13, TSUS.

ISSUE:

Are the emblems ornamented by the black stitching?

LAW AND ANALYSIS:

The inquirer claims that the black embroidered border, the black embroidered outline of the collar and bow tie, and the black embroidered eye are all nonfunctional and were added to a fully recognizable and complete bunny emblem solely for ornamental purposes to enhance the appearance and visual effect of the emblem. He cites Customs Headquarters Ruling Letter (HRL) 059267, dated October 25, 1978, in support of his position.

The bunny in the emblem appears to represent the Playboy Enterprises registered trademark of a "Rabbit Head Design," (i.e., the Playboy bunny), believed to be trademark No. 728,889. See Customs circulars COP-4-RM(2), of October 23, 1969, MS-TMK-2(5) of June 30, 1980, and TM No. 82-89, of May 28, 1982. The trademark registration has been extended to March 20, 2002.

Noting these circulars, only the final stage of the bunny emblem, with all the black stitching embroidered in, is the universal and instantly recognizable Playboy bunny symbol. Inasmuch as the black stitching has a

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significant purpose regarding the character of the article (i.e., to complete the design of the famous Playboy bunny), it is functional in nature. As such, the black stitching does not constitute ornamentation because it is an integral part of the Playboy bunny design.

Few patches or emblems of this type are ornamented, because very few have embellishments added to a complete patch. Instead, the patches are created by the embroidery, as the Playboy bunny patch is created by all the stitches, white as well as black embroidery. The issue is whether the black embroidery completes the article or is an additional embellishment to a complete article. There is no doubt but that the black embroidery completes the Playboy bunny design, therefore it does not constitute ornamentation. We find that the instant emblems or patches are classified under the provision for other textile articles, not ornamented, in item 389.6270, TSUS.

HOLDING:

The emblems are not ornamented and are classified in item 389.62, TSUS. You should inform the inquirer of this ruling.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078887

57

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

17 SEP 19

CLA-2 CO:R:CV:G
078894 JNB

078894

Salvatore E. Caramagno, Esq.
Ross & Hardies
1090 Vermont Avenue, N.W.
Washington, D.C. 20005-4905

Dear Mr. Caramagno:

This is in response to your letter of August 28, 1986, submitted on behalf of National Hand Tool Corporation, requesting a binding ruling with regard to the tariff classification of a socket wrench case. A sample of the case is provided. Specifically, you request that we find the case to be "of plastic" for tariff purposes. You state that the case will be shipped to the United States in quantity by the end of September. As such, it is incumbent upon your client to know whether the shipments will be subject to quota restrictions. You indicate that a binding ruling on the exact classification of the product will be sought at a later date.

We are unaware of any procedure whereby binding rulings may be sought in stages. The provisions of section 177.1(a)(1) of the Customs Regulations, (19 CFR 177.1(a)(1)), limit the issuance of binding rulings to prospective transactions. If, as you indicate, the wrench cases will be shipped to the United States in the near future, it would be inappropriate to request a further binding ruling on their tariff classification as they would be the subject of a current, rather than a prospective, transaction.

Accordingly, this ruling shall address the tariff classification of the product and will not be limited to a finding of whether it is "of plastic" for tariff purposes. Other administrative mechanisms are available (requests for internal advice or protests) to contest Customs actions in current or completed transactions.

The product in question is a case which when closed is 10 and 1/2 inches in length and 9 and 1/2 inches in width. It has a zipper closure around three edges. The surface of the case is comprised of a black calendered plastic material. The plastic is backed with a textile. Beneath the textile backing is a layer of foam rubber. The case opens to reveal numerous plastic compartments designed to hold tools. The inside surface is comprised of a black smooth plastic covering a layer of compressed paper fibers.

F8

078894

Headnote 5(a), Schedule 3, Tariff Schedules of the United States, (TSUS), provides that for purposes of certain parts of the tariff schedules:

> [I]n determining the classification of any article which is wholly or in part of a fabric coated or filled, or laminated, with nontransparent rubber or plastics (which fabric is provided for in Part 4C of this schedule), the fabric shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that (as used in the article) the nontransparent rubber or plastics forms either the outer surface of such article or the only exposed surface of such fabric.

Pursuant to this language, the surface character of the outer surface of the article governs its tariff classification. See Customs Ruling Letters of September 10, 1986 (Control No. 077139), August 15, 1984 (Control No. 074686) and June 3, 1985 (Control No. 076069). Fabric will be considered nontransparent if the coating obscures the textile fibers or yarns so that they cannot be seen and eliminates the textile surface character of the fabric. C.S.D. 79-82.

The outer surface of the socket wrench case is comprised of a calendered plastic that completely obscures the textile fibers beneath it. The textile surface character of the fabric is eliminated. Accordingly, for tariff purposes, the surface fabric of the case is considered to be of plastic. The case itself will be considered to be of plastic if it is in chief value thereof.

In Headnote 2(a)(ii), Schedule 7, Part 1D, TSUS, the term "luggage" is defined as "brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', sample, etc.), and like containers and cases designed to be carried with the person ... ". The subject case is portable and can be used by the professional or the hobbyist to store and carry socket wrenches. It is akin, therefore to the occupational luggage cases or hobby cases described in the above-noted tariff definition.

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Assuming that it is in chief value of plastic, we find the wrench socket case to be classifiable as Luggage ... : of other material: other, under item 706.62, TSUS, dutiable at the rate of 20 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078894

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

26 SEP 1986

CLA-2 CO:R:CV:G
078895 c

078895

Mr. Seymour Rothstein
Allegretti, Newitt, Witcoff & McAndrews, Ltd.
125 South Wacker Drive
Chicago, Illinois 60605

Dear Mr. Rothstein:

In New York Ruling Letter (HRL) No. 816966 dated March 11, 1986, you were advised that the Cateye Solar Model CC 2000 cyclo computer is classifiable under item 711.98, Tariff Schedules of the United States (TSUS), as other revolution counters, production counters, taximeters, odometers, pedometers and counters similar to the foregoing articles with duty at the rate of 0.6 percent ad valorem.

We have reconsidered the result reached in New York Ruling Letter No. 816965 and have concluded that the merchandise is more specifically provided for as a bicycle speedometer under item 711.93, TSUS, with duty at the rate of 18.3 percent ad valorem. Therefore, the ruling issued to you by our New York office is revoked insofar as it is inconsistent with the result reached in the enclosed copy of a ruling (our file No. 077865 c) of even date issued to the law firm of Bellsey and Baker. This ruling will be effective as to the subject merchandise entered or withdrawn from warehouse for consumption by your client after the date of this letter.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

F11

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 21 1986

REFER TO
CLA-2 CO:R:CV:G
078898 c

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue
Detroit, Michigan 48226-2568

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3801-5-001871

This protest was filed against your decision in the liquidation on May 3, 1985, of entry No. 85652933 dated March 13, 1985, covering a shipment of laundry tubs manufactured in Canada.

FACTS:

The merchandise involved may be described as laundry/utility tubs of high-impact, chemical resistant polypropylene plastic having a 22 gallon capacity.

The tubs were liquidated under the provision for other articles not specially provided for, of rubber or plastics in item 774.55, Tariff Schedules of the United States (TSUS).

The protestant claims that the tubs are properly classifiable under the provision for other household articles not specially provided for, of rubber plastics in item 772.15, TSUS.

ISSUE:

Are these tubs of a class or kind chiefly used in the household?

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F12

LAW AND ANALYSIS:

The seller of the tubs in a letter to the protestant dated April 18, 1984, stated that the tubs "are used in homes or commercial institutions in conjunction with laundry equipment for the washing of clothes."

Sales literature presented by the protestant describes the tubs as "products for home improvement," and states that "your plascolite utility and laundry tubs could outlive your home."

Information before this office is that the tubs are marketed through retailers, such as K-Mart, Payless Cashways, Home Depot and B&B Home Centers, who are "self help" home improvement centers.

Based on the foregoing and the relative inexpensive cost of the tubs, it appears that they are chiefly used in the household.

HOLDING:

The tubs are classifiable under the provision for other household articles not specially provided for, of rubber or plastics in item 772.15, TSUS. The protest should be allowed. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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078898

F13

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

SEP 1 1986

CLA-2 CO:R:CV:G
078912 DW

078912

Ms. Edith M. Taylor
Standun Packaging Systems
1740 South Sacramento Avenue
Ontario, California 91761

Dear Ms. Taylor:

This is in response to your letter dated August 25, 1985, requesting reconsideration of Headquarters Ruling Letter 076521 dated November 25, 1985.

In that ruling, we determined that plastic net bags from Taiwan were classified under the provision for articles not specially provided for, of plastics in item 774.55, Tariff Schedules of the United States (TSUS). The rationale for our decision was that both store personnel and shoppers would use the bags to package the produce, and in the absence of establishing a chief use for the bags, item 772.20, TSUS, the provision for containers of rubber or plastics, with or without their closures, chiefly used for the packing, transporting and marketing of merchandise was precluded.

You state that our decison relied on erroneous statements by your broker that the bags were used by shoppers to package the produce. In fact, you state that the bags are never used by the ultimate consumer. Growers, wholesale packers and retail produce clerks use the bags in their merchandising operations.

Based on your clarification, we conclude that the subject bags are classifiable in item 772.20, TSUS, because they are chiefly used for the packing, transporting and marketing of merchandise. The bags are used to package produce which is still in the stream of commerce.

Articles from Taiwan that are classifiable in item 772.20, TSUS, are eligible for an exemption from duty under the Generalized System of Preferences upon compliance with all applicable requirements.

In view of our decision, Headquarters Ruling Letter 076521 is revoked.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

Arthur P. Schifflin
Chief, General
Classification Branch

514

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 6 1986

CLA-2 CO:R:CV:G
078916 JGB
819725

078916

Mr. Robert Heffley
President
Goldpoint International, Inc.
213 Valley Street
Suite 333
South Orange, New Jersey 07079

Dear Mr. Heffley:

Your letter of July 18, 1986, requests a ruling on the tariff classification of an electronic optical text reader to be imported from France for the exclusive use of the blind.

The machine, trademarked Delta, manufactured by the Systelec Co., "reads" print and converts it to an electrical impulse that, in turn, creates raised Braille dots on an output pad. The Braille symbols, composed of arrangements of dots, are made by pins that rise on a flat surface, depending on the Braille symbol to be made. After a few symbols have been made, the pins drop back to the flush position. This machine is to be used as a reading aid for blind people exclusively.

This device is classified in item 826.20, Tariff Schedules of the United States. This item provides duty-free treatment for "Articles for the blind: Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively."

With regard to your question about country-of-origin marking, please find enclosed a copy of our regulations on the subject.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT 15 1986

CLA-2:CO:R:CV:G
078920 JGH

078920

Area Director of Customs
New York Seaport
6 World Trade Center
New York, New York 10048

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-1-010222 Timely Application of Photographic couplers, products of Japan.

The chemical, 5 Nitro-2-Amino Phenol, was entered on April 7, 1978, and was liquidated on July 24, 1981, under item 403.60, TSUS.

It is claimed that the imports are cyclic organic chemical products used in the manufacture of photographic couplers, and thus free of duty under former item 907.10, TSUS, which provided for temporary suspension of duty for certain benzenoid cyclic organic chemicals used in the manufacture of color couplers.

General Interpretative Rule 10(e)(ii) and Customs Regulations 10.133 (which are more specific than section 10.112 cited by protestant) make it clear that an actual us provision is satisfied only (1), if such use is intended at the time or importation; (2) if the article is so used; and (3) if proof thereof is furnished within 3 years after the date the article has been entered.

The protestant asserts that the chemicals were used in the manufacture of photographic couplers and, therefore, should receive duty free entry under 907.10, TSUS. This is felt to be established by the letters from Tennessee Eastman and Eastman Kodak, dated August 7, 1981, which explained that the chemicals were used in the production of photographic color couplers. As stated by the court, "even though a product is actually used in the manner contemplated by an actual use provision, it may be classified under that provision only if the mandate of general interpretative rule 10(e)(ii) has been complied with." J. E. Bernard & Co., Inc. v. United States, (C.D. 4743) 1978.

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In this case the chemicals were entered in April 1978, but the evidence of proof of use was submitted in August 1981. As remarked by the court in the Bernard case, the timely filing of certificate of actual use is as much a requirement for classification under an actual use provision as proof of the actual use itself.

The requirement is not submission of required proof within 90 days of liquidation, as claimed by protestant, but within 3 years after the date the article has been entered.

You are directed to deny the protest in full. A copy of this decision should be attached to the Form 19 Notice of Action.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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078920

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

29 SEP 1986

CLA-2 CO:R:CV:G
078923 JGB
815361

078923

Mr. Antti Luhtala
Almarin, Inc.
2955 State Road 84
Building D5
Fort Lauderdale, Florida 33312

Dear Mr. Luhtala:

Your correspondence of September 7, 1985, requests a ruling on the classification of a flotation jacket qualifying as a Type III Personal Flotation Device under Coast Guard standards. Implicit in the ruling request is the potential eligibility of this garment for tariff treatment under item 807.00, Tariff Schedules of the United States (TSUS).

The garment may be imported from Guatemala and may consist primarily of United States components according to information we recently received from you by telephone. We understand that the plan stated in your letter has changed and that you do not plan to assemble the garment in St. Lucia. Instead, you intend to send fabricated United States components to Guatemala where all construction and assembly would take place. Then the finished garments would be returned to the United States where packing, sorting, and safety testing would be completed, prior to sale to a wholesaler.

The jacket is composed of 200 denier nylon fabric with a filling of polyvinylchloride foam for buoyancy. It features a full front opening, two lower slash pockets, full zippered sleeves, stand up convertible collar, a whistle pocket with whistle, and tie strings at the waist.

The pocket for the whistle has letters set vertically that spell the name of the importer. If these letters, which have a flocked surface, had an existence prior to being applied to the fabric, then they would be considered an applique and, consequently, an ornamenting feature of the garment. If they were applied directly by stenciling or silk screening or some printing method, then their presence would not constitute ornamentation.

The jacket combines features found in wearing apparel and articles used solely for protection against hazards. It provides warmth and protection from the wind and elements for passengers in open boats, for example. Therefore, because it provides some comfort which is a characteristic of wearing apparel, it would not be removed from classification as wearing apparel just because it provides some protection from the hazard of drowning.

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The jacket is classifiable as follows:

If ornamented, it is classified in item 384.23, TSUS, the provision for "...other women's, girls', or infants' wearing apparel, ornamented: Of man-made fibers: Not knit: Blouses, coats, shirts, suits, swimming suits and other swimwear, trousers, slacks, and shorts, coats: Women's and girls': Other," dutiable at 32.1 percent ad valorem.

If not ornamented, it is classified in item 384.91, TSUS, the provision for "Other women's, girls', or infants' wearing apparel, not ornamented: Of man-made fibers: Not knit: Other: ...coats...: Other, Other: Coats: Other: Women's," dutiable at 18 cents per pound plus 27.5 percent ad valorem.

The whistle, made of a substantial durable plastics material, does not belong to the class or kind of goods known as toys. Following the principles in Headquarters Ruling Letter (HRL) 062854, January 14, 1980, the whistle does not form an entirety with the jacket, but is separately dutiable. It is classified in item 774.55, TSUS, the provision for articles, not specially provided for, of rubber or plastics, dutiable at 5.7 percent ad valorem.

Item 807.00, TSUS, provides that certain articles assembled abroad, in whole or in part of fabricated components which are the product of the United States, may be subject to duty upon the full value of the imported article, less the cost or value of such products of the United States. The operation described, which entails sending the nylon fabric in the piece to Guatemala for cutting and assembly with the other components, would not result in an exemption for the components that are a product of the United States. Materials exported in a basic shape or form, from which components of wearing apparel or other articles will be cut according to a pattern, are not considered fabricated components for purposes of item 807.00, TSUS.

In the alternative, you stated that all the pieces of the foam and fabric would be cut in the United States prior to exportation to Guatemala for sewing assembly. Presuming that no operation is performed on the exported United States components except for sewing or attaching them to other components to form the completed article, item 807.00, TSUS, would be applicable. Certain insignificant operations, incidental to the assembly process, would not constitute further fabrication and would not preclude application of the exemption. However, further information concerning the operations performed in Guatemala, would be needed for definite advice.

Sincerely,

John Raith

for Harvey B. Fox
Director, Classification
and Value Division

GS

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078923

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

078926

25 SEP 1986

CLA-2:CO:R:CV:G
078926 c

District Director of Customs
517 E. Wisconsin Avenue
Room 554
Milwaukee, Wisconsin 53202

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 3701-3-000006

This protest was filed against your decision in the liquidation on September 4, 1981, of entry No. 81139935 dated March 23, 1981, covering a shipment of target games manufacturned in Hong Kong.

FACTS:

The merchandise involved consists of projectile guns which shoot corks and sponge tipped plastic rockets. These items are packaged on a blister card with a target printed on the reverse of the paper card.

This set was liquidated under the provision for other toys in item 737.95, Tariff Schedules of the United States (TSUS).

The protestant claims that the merchandise is properly classifiable under the provision for game equipment in item 735.20, TSUS.

In support of its position the protestant cites Internal Advice Request No. 191/81 dated June 17, 1982, which held that essentially the same merchandise is classifiable under item 735.20, TSUS.

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The protestant further argues that the failure of Customs to follow precedent in this matter which resulted in an erroneous classification amounts to a clerical error which is correctable under 19 U.S.C. 1520(c)(1).

ISSUE:

1. Should the merchandise have been classified under item 735.20, TSUS?

2. If so, is the misclassification correctable by recourse to 19 U.S.C. 1520(c)(1)?

LAW AND ANALYSIS:

The classification of the subject merchandise is governed by the result reached in Internal Advice Request No. 191/81 and the entry should have been liquidated under item 735.20, TSUS, as claimed by the protestant. However, the protest against the classification of the merchandise was untimely because it was not made within the 90 day period after liquidation as required by 19 U.S.C. 1514.

The protestant's claim that the error is correctable by recourse to 19 U.S.C. 1520(c)(1) fails for the following reasons:

1. The misclassification of the merchandise was an error in the construction of the law rather than a clerical error; and

2. the misclassification was brought to the attention of Customs more than one year after the date of liquidation.

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HOLDING:

The protest should be denied. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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076896

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

OCT - 2 1986

CLA-2 CO:R:CV:G
078939 DW

078939

Mr. Ronald L. Rapaport
Metal Film Company, Inc.
1717 Patterson Plank Rd.
North Bergen, New Jersey 07047

Dear Mr. Rapaport:

Thank you for your letters dated August 22, and September 12, 1986.

As stated by you, Lurex® yarn is manufactured by metalizing aluminum directly onto a single layer of polyester and then covering it with a very thin coating.

You further state that this process is identical to the way that lame and tinsel are manufactured.

Your understanding that Lurex is made in the identical way as lame is the basis of our disagreement with you. It is our position that the following statement in the 1948 Summaries of Tariff Information provides an accurate description of lame and tinsel wire.

> Tinsel wire is round wire composed chiefly of copper or brass. It is usually coated or plated with a bright metal, such as real or imitation gold or silver and it is also produced in colors. Lame (a French word) (lahn in Germany) is manufactured by passing the tinsel wire through metal rollers which flatten it into various widths depending on the gage of the wire; it is often subjected to ornamental corrugating or coloring processes.

Inasmuch as the Lurex® product is made differently, we cannot agree that it is classifiable as a metalized yarn in item 312.30, Tariff Schedules of the United States (TSUS). As we previously advised you, items that are classifiable in 312.30, TSUS, must be in chief value of tinsel wire or lame. The product in question contains no tinsel wire or lame.

We appreciate the importance of this matter to your company. However, we are convinced of the soundness of our position. Should you wish to contest our classification, we are enclosing a copy of the Customs regulations regarding protests.

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RELEASED TO THE PUBLIC

With regard to your statement that similar merchandise is being allowed to enter this country with a lower duty rate, we are circulating the decision in this matter to our field offices to ensure uniform classification.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosure

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079839

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: OCT 15 1986

FILE: CLA-2 CO:R:CV:G
078945 c

078945

TO : District Director of Customs
Terminal Island, San Pedro 90731

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 51/86 Concerning the Tariff Classification of a Polypropylene Plantholder Manufactured in Taiwan

The merchandise involved is used as a plantholder by florists. It is constructed of polypropylene monofilament yarns and strips. The monofilament yarns and strips are woven or braided to form 3/4 inch wide fabric which is sewn together to form the plantholder.

This article cannot be considered a net article because it is woven. See T.D. 75-57(1). A laboratory report states that the "sample consists of olefin strips which in their unfolded, untwisted, uncrimped condition measure over 1 inch in width and less than 0.01 inch in thickness. Therefore, the polypropylene strips are not considered textile noting Schedule 3, Part 1, Subpart E, Headnote 3(d), Tariff Schedules of the United States (TSUS). However, the polypropylene monofilament yarns are considered to be man-made fibers. The cost breakdown shows a cost of $.1448 per piece for the polypropylene which combines the strips and the filaments.

If the plantholder is in chief value of the monofilament yarns, it would be classifiable under the provision for other articles not specially provided for, of textile materials, not ornamented, of man-made fibers in item 389.62, TSUS, and dutiable at the rate of 4 cents per pound plus 10 percent ad valorem.

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If the plantholder is in chief value of plastics, it would be classifiable under the provision for other household articles not specially provided for, or rubber or plastics in item 772.15, TSUS, and dutiable at the rate of 4 percent ad valorem.

William P. Schaffler
for Harvey B. Fox

078945

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 27 1982

REFER TO
CLA-2 CO:R:CV:G
078949 jlj
820106

Mr. Ronald J. Meiselman
Undersea Supply Corp.
3569 North Dixie Highway
Ft. Lauderdale, Florida 33334

Dear Mr. Meiselman:

You asked for the tariff classification of an embroidered emblem manufactured in Taiwan and used for decoration or insignia. The emblem could be made of either cotton or man-made fibers. You submitted a sample with your letter.

Inasmuch as the embroidered stitching makes the design, logo or symbol, finishes the emblem and does not further embellish the emblem with extraneous stitching, the emblem is not considered an ornamented motif.

If the emblem is in chief value of cotton, it is classifed under the provision for articles not specially provided for, of textile materials, of cotton, other, in item 386.5300, Tariff Schedules of the United States (TSUS), dutiable at the rate of 8.2 percent ad valorem. If the patch is in chief value of man-made fibers, it is classified under the provision for articles not specially provided for, of textile materials, of man-made fibers, other, in item 389.6270, TSUS, dutiable at the rate of 4 cents per pound plus 10 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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G13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 27 1986

REFER TO
CIA-2 CO:R:CV:G
078950 jlj
819447

Mr. Joe Binder
Schweizer Emblem Company
3345 North Wolcott Avenue
Chicago, Illinois 60657

Dear Mr. Binder:

You asked for the tariff classification of embroidered emblems of man-made fibers from Taiwan. Several samples were submitted with your letter.

Inasmuch as the embroidery stitching makes the design, logo or symbol, finishes the emblems and does not further embellish the emblems with extraneous stitching, the emblems are not considered ornamented motifs.

The emblems are classified under the provision for articles not specially provided for, of textile materials, of man-made fibers, other, in item 389.6270, Tariff Schedules of the United States(TSUS), dutiable at the rate of 4 cents per pound plus 10 percent ad valorem.

If the "Experimental Aircraft Association" emblem is in chief value of the nonwoven portion, it is classified under the provision for non-woven articles not specially provided for, of man-made fibers, in item 355.25, TSUS, dutiable at the rate of 2 cents per pound plus 12.9 percent ad valorem. Textile category 669 applies to merchandise classified in item 355.25, TSUS. As a product of Taiwan, merchandise classified in item 355.25, TSUS, is subject to visa requirements based on international textile trade agreements.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

G14

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 21 1986

REFER TO
CLA-2 CO:R:CV:G
078958 c
819205

Mr. Joe Schmid
J.S. International
8621 Bellanca Avenue
Suite 213
Los Angeles, California 90045

Dear Mr. Schmid:

Your letter dated June 3, 1986, addressed to our New York office concerning the tariff classification of a novelty cap manufactured in Taiwan, has been referred to this office for a direct reply to you. A sample was submitted for examination.

The sample "Funny Cap" is a novelty cap made of 100 percent man-made fibers and has a crown consisting of six panels. The four back panels are of a knit mesh construction with the balance of the cap, the crown, brim and sweat band, of a woven fabric. The novelty face is stitched to the two front panels and is of a knit pile constructed fabric with two plastic eyes and a mouth made by stitching a contrasting color braid to the bottom and sides of the three dimensional face. The funny face represents a "Nerd" cartoon character and is stuffed with man-made fiber wadding.

General Headnote 9(f)(iv), Tariff Schedules of the United States (TSUS), provides that "'in part of' or 'containing' mean that the article contains a significant quantity of the named material." An item contains a significant quantity of braid if that portion or quantity serves a useful purpose and/or increases the saleability of the article.

The braid on the cap is the same color as the brim and the front panels. This office has previously ruled that non-constrasting braid on a cap, when viewed at arms length, is considered a braided cap for tariff purposes. The rationale for that position is that at arms length distance the braid is seen and whether it contrasts or not, it adds to the saleability of the cap because such a cap is per se ornamented.

However, the cap involved in that ruling was a baseball cap rather than a novelty cap which is the subject of this ruling. It is our position that the presence of the non-contrasting braid does not serve a useful purpose and does not increase the saleability of the cap for the following reasons:

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A3

(1) The presence of the three dimensional Nerd face is paramount and

(2) This "funny face" physically hides portions of the braid unless it is viewed from the side.

In view of the foregoing, it is our position that the cap is not in part of braid and is therefore classifiable under the provision for other headwear, of man-made fibers, not in part of braid, not knit in item 703.16, TSUS, and dutiable at the rate of 12 cents per pound plus 9.5 percent ad valorem.

Sincerely,

for Harvey B. Fox
Director, Classification
and Value Division

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078958

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 9 1986

REFER TO

CLA-2:CO:R:CV:G
078964 SM

078964

District Director of Customs
6th Floor, Plaza Nine Bldg.
55 Erieview Plaza
Cleveland, Ohio 44114

Dear Sir:

Re: Your File CLA-1-01-CL:DD:CV:CEB LG, Request for Internal Advice 58/86

Upon receipt of a letter from Blaser & Mericle, Inc., Customhouse Brokers, on behalf of their client Mrs. Else Schmelzer, you have asked us to review the tariff classification of wooden nutcracker dolls. Mrs. Schmelzer has been advised by the West German exporter that these articles are being classified differently at different U.S. ports. Specifically, while some ports, including Cleveland, have been classifying all such articles as dolls under item 737.24, Tariff Schedules of the United States (TSUS), others have been classifying those over ten inches tall as household utensils NSPF, of wood, under item 206.98, TSUS. For the reasons stated below, we are in agreement with your position that all such articles are classifiable as dolls.

A copy of the broker's letter was received in this office without the illustrated literature stated to be enclosed. A telephone call to the broker resulted in a promise to send some, but none was received. We assume, however, that the articles in question are similar to many others offered for sale in department stores, museum shops, theaters, and other locations. They are made from wood in a variety of countries including West Germany and Taiwan. They range in size from a few inches tall to over a foot tall and retail at prices ranging from a few dollars to around seventy-five dollars, perhaps more. They represent a variety of full-length human figures. Many depict the Nutcracker Prince, hero of the ballet The Nutcracker frequently performed around Christmas time. Others take the form of football players, violin makers, and other characters. They usually have arms that can be placed in a variety of positions and a wooden handle in the back that can be manipulated to open and close the mouth.

AS

It is established beyond doubt that a large variety of full-length human figures serving a number of purposes, including amusement and decoration, are classifiable as dolls for customs purposes. See, for example Russ Berrie & Co., Inc. v. United States, 76 Cust. Ct. 218, C.D. 4659 (1976), appeal dismissed, 63 CCPA 125 (1976). Headquarters has ruled many times that nutcracker dolls are classifiable as dolls. In file 004837, of August 21, 1970, a nutcracker wood doll about ten inches tall in the form of a soldier was classified as a doll. File 025460, of April 6, 1973, concerned a fifteen-inch wood soldier nutcracker doll with movable arms. It was also classified as a doll, and this decision was followed in file 043238 of January 6, 1976. Wooden nutcrackers shaped like humans were again classified as dolls in file 039777 of July 1, 1975. Ornate hand crafted nutcrackers in the shape of soldiers were classified as dolls in IA 53/77 of June 6, 1977. The question was raised again and the answer reaffirmed in file 056347 of March 14, 1976. A protest review decision of 1978, file 055065, concerned the classification of nutcrackers in the image of soldiers, up to 21 inches in height and up to seven pounds in weight. They, too were classified as dolls, with C.I.E. 36/75 and ORR Ruling 77-0055 cited as references. These rulings were correct and should continue to be followed.

We have never issued a ruling classifying these articles as other than dolls, much less classifying some of them differently from others according to height. A height distinction would in any case be arbitrary and easily evaded. More importantly, we find no justification for classifying any of the nutcracker dolls as household utensils of wood under item 206.98, TSUS. File 059395 of April 28, 1978 defined household utensils, for tariff purposes, as articles "used chiefly in the home where [they] serve[] some useful purpose in the operation of housekeeping." No evidence has been presented to support a claim that these articles are chiefly so used.

Apparently at one point a Customs import specialist decided to test a number of nutcracker dolls to see whether they could really be used to crack nuts. Smaller models broke or fell apart, while some of the larger ones actually did crack some nuts, although the paint chipped off in the process, contaminating the nuts. Thereafter, some verbal advice was given out to the effect that since the larger ones would crack nuts, they should be classified as household utensils of wood. As stated above, however, that has not been the position of Customs Headquarters, and no rulings to that effect have ever been issued. While it may be physically possible to crack some nuts with a few of these articles, they are generally too flimsy to be put to work in the kitchen

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cracking pounds of nuts for pie-baking, for example. We have no evidence that they are sold along with wooden meat tenderizers, spatulas, stirrers, and other household utensils of wood. See file 052280 of January 4, 1978.

Having searched through a number of books that provide style and price information for antique collectors, we have not found any that list full human figures of wood under the heading of nutcrackers. True functional nutcrackers have generally been made of metal. L. C. Franklin, 300 Years of Kitchen Collectibles (2d ed., 1984), lists, at 93-100, a number of nutcrackers sought by collectors; many are of cast iron. H. L. Rinker, ed., Warman's Americana and Collectibles (2d ed., 1986), indicates, under "collecting hints" on nutcrackers, at 365, that the most popular modern nutcrackers are military and civilian figures made in East Germany, collected primarily for show and not for practical use. Nineteenth century cast iron nutcrackers, many of which are in the shape of animals, were meant to be used.

Any functional use of nutcracker dolls would be incidental to their amusement or decorative aspects. They should continue to be classified under item 737.24, TSUS, the eo nomine provision covering all forms of dolls. Thank you for bringing this matter to our attention.

Sincerely,

Arthur P. Schaffer

For Harvey B. Fox
Director, Classification
and Value Division

THIS DOCUMENT MAY BE RELEASED TO THE

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079890

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OCT 21 1986

CLA-2 CO:R:CV:G
078975 DW

Mr. Louis Ichter
Customs Attache
French Embassy
4101 Reservoir Road, N.W.
Washington, D.C. 20007-2169

Dear Mr. Ichter:

This is in further response to your letter of June 4, 1986, on behalf of L. Payen SA, concerning the tariff classification of certain man-made fiber yarn that was entered at the port of Charlotte, North Carolina by U.S. Textile Corporation. A sample was submitted with your letter dated July 9, 1986.

The yarn is described as consisting of one 40 denier elastomere core thread and one twisting thread made from continuous 20 denier polyamide 66. The yarn is stated to be 100 percent synthetic; entirely continuous; over 20 turns per inch; and more than $1.00 per pound.

It was classified as entered under the provision for yarns of man-made fibers: other: wholly of continuous man-made fibers: plied: with over 20 turns per inch in the final twist: valued over $1 per pound in item 310.21, Tariff Schedules of the United States (TSUS) with duty at the rate of 1.5 cents per pound plus 12.3 percent ad valorem. It was reclassified as yarns of man-made fibers; other: other in item 310.60, TSUS, with duty at the rate of 2 cents per pound plus 15 percent ad valorem.

We are in agreement with Mr. Soly of L. Payen insofar as the yarn in question is wholly continuous. The yarn, however, is not considered to be plied for tariff purposes. The sample yarn was sent to a Customs laboratory where in a report dated October 3, 1986, it was determined that the core yarn is composed of a spandex-type elastic that is wrapped with a nylon yarn.

There is no question that Customs distinguishes between wrapped and plied yarns. Your attention is drawn to Headquarters Ruling Letter (HRL) dated October 23, 1980, file 066166 (copy enclosed), in which we set forth this distinction. Again, in HRL 068704 dated June 30, 1981, file

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068704 (copy enclosed), we ruled that a yarn composed of an elastomeric (Lycra) core that is wrapped with nylon was classified in item 310.60, TSUS. In short, a plied yarn consists of two or more yarns that are twisted together.

Wrapped yarns are considered to be neither singles nor plied for tariff purposes. Therefore, the merchandise at hand is not classifiable in item 310.21, TSUS, because it is not considered to be a plied yarn. Item 310.60, TSUS, is a basket provision for yarns of man-made fibers that are not more specifically described in the foregoing provisions. Wrapped yarns that are either in noncontinuous or continuous form would be covered by item 310.60, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

Enclosures

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THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

October 9, 1986

CLA-2 CO:R:CV:G
078977 JLF

Dear Mr. Frenzel:

Secretary Baker has asked me to reply to your letter of September 11, 1986, regarding our recent decision concerning the tariff classification of adult Halloween costumes. You ask that we reconsider that decision in view of the costumes' relative flimsiness and the fact that no similar costumes are produced by the domestic textile industry.

The import of the relative flimsiness of the sample costumes we were provided for examination was fully argued by counsel for the importers in the course of our consideration of this matter. In our opinion, however, this factor was not germane to the proper tariff classification of the costumes. As we noted in our ruling, adult Halloween costumes are properly viewed, for purposes of determining their chief use, as a class or kind of merchandise, irrespective of differences in cost or quality of construction. However, we do not believe that the chief use of even the relatively inexpensive or flimsy costumes is other than in the context of adult activities where costumes are required or appropriate. Adult costumes are, in essence, "party clothes" and as such differ in use from children's costumes, which are primarily bought and used for the traditional "trick-or-treat" journey for the amusement of neighbors, other children, and the wearer-children themselves.

Although information received from both the Toy Manufacturers Association and the American Textile Manufacturers Institute suggests that similar costumes are produced in the United States, this consideration had no effect on our decision. Rather, the proper classification of adult Halloween costumes is governed by their chief use in the United States which, because their chief use as toys was neither apparent nor demonstrated, we have determined to be as wearing apparel.

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We regret the difficulties our decision may cause your constituent but, after careful reconsideration of the matter, we believe the decision we have reached is proper.

If we can be of further assistance to you in this or any other matter, we hope that you will not hesitate to call on us.

Yours faithfully,

The Honorable
Bill Frenzel
Member of Congress
Washington, D.C. 20515-2303

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OCT 27 1986

CLA-2:CO:R:CV:G
078992 JAS

District Director of Customs
110 S. Fourth Street
U.S. Courthouse, Room 137
Minneapolis, Minnesota 55401

Dear Sir:

This is our decision on Application for Further Review of Protest No. 3501-3-000050, dated September 27, 1984, relating to entry No. 82-207629, dated August 13, 1982, and liquidated August 12, 1983. The merchandise in issue is heat exchangers from Sweden.

FACTS:

The protested merchandise consists of 19 models of the Heatexchanger, ranging from the H 200-100 to the H 1200B-600. Importer/protestant maintains that these air-to-air heat exchangers are actually parts of a total field installed air conditioning/heating system the main purpose of which is to change the temperature and humidity of air. The system is also referred to as a heat recovery ventilator consisting of one supply air fan, one exhaust fan and the heat exchanger, the subject of this protest. Protestant states the subject heat exchangers vary in application, from process to process, process to comfort, and comfort to comfort, in such uses as paint spray booths, welding shops, food processing, etc. The exchangers are limited to heating or cooling air only, rather than other materials.

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Brochures indicate these exchangers utilize a single or counterflow design and are static devices (no moving parts) designed to transfer heat. Although available in plastic, paper, stainless steel and other materials, the present heat exchangers are constructed of flat aluminum plates sealed with high temperature silicone, capable of withstanding continuous temperatures though 390 degrees F.

It is believed that the protested models are similar to those considered in ruling 074236, dated July 31, 1984. Similar in design to the one presently before us, the air-to-air heat exchangers considered in that ruling were placed on a diagonal at various locations in the ductwork of a combination air conditioning/heating apparatus used in a large domestic research laboratory. That ruling described the operation of these exchangers as follows: in the heating mode, a fan/blower arrangement introduces supply air into the ductwork. An exhaust fan draws contaminated, heated air from the system. As this stale air passes through the exchanger, heat is withdrawn via the metal plates and introduced to the supply air. Condensation is also removed from this heat during the process. In the air conditioning mode, coolness is removed from the stale exhaust air and is transferred to the fresh supply air. No refrigerant is used. A series of dampers and manifolds, which may or may not be imported with the exchanger but are not the subject of this protest, allow

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the air to bypass the exchangers when the outside temperature (i.e., in early spring and fall) makes it unnecessary to utilize the system to reach a preset room temperature.

Owing to the stated use of the subject heat exchangers, that is, to change the temperature and humidity of air, the importer/protestant maintains that the proper classification is under the tariff provision for air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity of air, and parts thereof, in item 661.20, Tariff Schedules of the United States (TSUS). Your office, relying on a series of prior administrative rulings, has liquidated the concerned entry under the tariff provision for fans and blowers, and parts thereof, in item 661.06, TSUS.

ISSUE:

Are the concerned heat exchangers "parts" for tariff purposes, and is the provision in item 661.20 more specific than the provision in item 661.06?

LAW AND ANALYSIS:

As to the issue of whether these heat exchangers are "parts" in a tariff sense, the combination air conditioning/heating apparatus in which they will be used appears to be a complete, fully functioning unit. However, they lack compressors, condensers or evaporator coils, basic elements of a compression-system air conditioner. They also lack a heater or generator normally found in an absorption-system air conditioner. The heat exchange elements under consideration

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replace these conventional compression and absorption elements. These heat exchangers do not appear to be preheaters or precoolers nor, as previously thought, are they in the nature of accessories which augment or amplify the functions of the main heating/cooling apparatus. There is sufficient information in the submitted brochures and elsewhere in the protest file that the subject heat exchangers in the system are the only components that change the temperature and humidity of the air. They are therefore parts in a tariff sense.

General Interpretative Rule 10(e)(i), TSUS, requires that evidence of record show that the subject heat exchangers belong to that class or kind or articles whose chief use, i.e., the use which exceeds all other uses (if any) combined, is to change the temperature and humidity of air. Brochures submitted by protestant and other evidence of record indicate these air-to-air heat exchangers vary in application. They include process to process, process to comfort, and comfort to comfort applications. They are used in a wide variety of energy intensive heat recovery applications as previously noted. However, the heat recovery and transfer function in every application remains the same, and is performed solely by these exchangers. There is no evidence that the exchangers are parts of fans and blowers.

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HOLDING:

There is sufficient evidence that the nineteen (19) models of heat exchangers are "parts" for tariff purposes and are chiefly used as required for classification in item 661.20.

The protest should be allowed. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P Schaffner
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

CLA-2 CO:R:CV:G
078994 c

Ms. Eileen T. Romito
Coordinator of Direct Import
Tariff Classification
Sears Merchandise Group
Sears Tower, Dept. 733X BSC-19-45
Chicago, Illinois 60684

Dear Ms. Romito:

In a letter dated September 16, 1986, you asked for a reconsideration of a ruling issued by our New York office dated July 31, 1985 (File No. 818995), holding that a novelty animal style child's shoulder bag, stock No. 33121, manufactured in Hong Kong, is classifiable under the provision for handbags, of other textile materials, in item 706.41, Tariff Schedules of the United States (TSUS) and dutiable at the rate of 20 percent ad valorem.

The merchandise involved may be described as a novelty animal shoulder bag made of man-made textile pile fabric which measures approximately 13 inches by 7.5 inches. The bag simulates a small dog, identified as the "Luv Mutt," having stuffed legs and flappy knitted ears. The head and torso are empty. The bag is secured on its posterior side by means of velcro fasteners. Attached to the exterior front surface is a textile motif of a little bear. It is carried by a woven textile shoulder strap measuring approximately 26.75 inches.

You maintain that the sample is properly classifiable under the provision for other toy figures of animate objects (except dolls): Not having a spring mechanism: Not stuffed in item 737.40, TSUS, and dutiable at the rate of 8.3 percent ad valorem.

In support of your position you make the following points:

(1) The item is imported and sold as a toy as shown on the packaging and the attached page 42 of the Sears Christmas catalog;

(2) it is primarily used to provide amusement to children,

(3) the chief use of the novelty bag as an article providing amusement to children overshadows its incidental use as a bag;

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(4) the amount of storage space in the bag is small and insufficient to carry anything of significance relative to other similar bags of comparable dimensions;

(5) the motivation for purchasing the item is significantly related to the enjoyment and the emotional attachment a child would have in owning the item; and

(6) the essential character of the item is that of a toy notwithstanding that a feature such as a conversion to a bag is added to the article.

In the alternative you stand with your original claim that the merchandise is classifiable under the provision for other articles not specially provided for, of textile materials, ornamented, of man-made fibers in item 386.13, TSUS.

The issue to be resolved is whether the novelty animal style child's shoulder bag is chiefly used for the amusement of children.

Schedule 7, Part 5, Subpart E, Headnote 2, TSUS, provides that "For the purposes of the tariff schedules, a '<u>toy</u>' is any article chiefly used for the amusement of children or adults."

Schedule 7, Part 1, Subpart D, Headnote 2(b), TSUS, provides that "the term '<u>handbags</u>' covers pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls, but not including luggage or flat goods as defined herein or shopping bags; ***."

The claim that the article is advertised and sold as a toy does not mandate the conclusion that it is chiefly used for the amusement of children. It is only a factor to be considered in making such a determination.

In the case of <u>Ideal Toy Corp. v. United States</u>, 78 Cust. Ct. 28, C.D. 4688 (1977), the court made the observation that "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose incidental to the amusement."

It is our opinion that the amusement derived from the novelty shoulder bag is incidental and subordinate to its primary function as a shoulder bag. Also, it is our observation that the amount of storage space in the handbag is adequate for carrying articles noting the age group who will use the novelty shoulder bag.

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The rationale for the alternative classification is that the article is more than a toy and more than a shoulder bag. In order to be classifiable under item 386.13, TSUS, it must be shown that the novelty shoulder bag possesses two coequal functions. See Amico, Inc. v. United States, 79 Cust. Ct. 125, C.D. 4723 (1977). We do not agree that the amusement factor of the bag is coequal with its handbag function. As stated previously, it is our opinion that the amusement factor is subordinate or incidental to the bag's primary function as a handbag.

In view of the foregoing, we affirm the ruling of our New York office holding that the merchandise is properly classifiable under item 706.41, TSUS.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 30 1986

REFER TO
CLA-2:CO:R:CV:G
079020 SM

Mr. Phil Pugh
Brown Group, Inc.
P.O. Box 29
St. Louis, Missouri 63166

Dear Mr. Pugh:

You have requested a tariff classification ruling for two styles of shoes, the Scamper pattern, sample 285L01, and the Paisley pattern, sample 186L02.

Both samples submitted to this office are open-toe casual shoes with embroidered plastic vamps. The Scamp style, a slip-on, is labeled as having a leather sock with the balance of the shoe of man-made materials. The Paisley style, of all man-made materials, features a strap that buckles around the ankle. The embroidery on the Scamp consists of several rows of parallel stitches very close together along the open edges of the vamp. Several more rows of stitching form concentric circles at the center of the vamp. On the Paisley style, the embroidery also in closely spaced rows, forms several paisley swirls scattered across the vamp. On both shoes, the embroidery is stitched through only the outer layer of plastic.

Since these shoes are over 50 percent by weight of rubber or plastics, do not have uppers of which over 50 percent of the exterior surface area is leather, and do not have foxing or a foxing-like band, the main issue for tariff classification purposes is whether they can be described as having uppers of which over 90 percent of the exterior surface area is rubber or plastics, the embroidery on the exterior surface here being of textile material.

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The Court of International Trade held, in Inter-Pacific Corp. v. United States, --CIT--, Slip Op. 84-97 (decided August 22, 1984), that decorative textile embroidery on the exterior surface of footwear with uppers of rubber or plastics was part of the exterior surface of the upper. The amount of exterior surface area covered by the embroidery is therefore a factor in determining whether such footwear can be said to have uppers of which over 90 percent of the exterior surface area is rubber or plastics.

We have previously determined that when lines of embroidery on shoes such as those you have submitted are so close together that it would be too difficult for the laboratory to measure the minute amounts of plastic surface area inside the embroidery lines but not actually covered by them, the embroidered design will be treated like a solid, filled-in embroidery design. See file 078731 of September 22, 1986.

Our determination, based on the assumption that the embroidery design on both shoes covers at least ten percent of the exterior surface area of the upper, is that both samples are classifiable under item 700.59, Tariff Schedules of the United States.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 4 1986

REFER TO

CLA-2:CO:R:CV:G
079022 SM

Mr. Ike Matitia
International Seaway Trading Corp.
1382 West 9th Street
Cleveland, Ohio 44113

Dear Mr. Matitia:

You have requested a tariff classification ruling for a women's leather casual shoe that you plan to import from Korea or Taiwan. The submitted sample of this slip-on style has a moc toe and a stitched-on plastic sole.

You suggest that this shoe is classifiable under item 700.20, Tariff Schedules of the United States (TSUS), a provision for turn or turned footwear of leather. However, the construction does not meet the requirements for such footwear.

In Daniel Green Shoe Co. v. United States, 262 F. Supp. 375, 58 Cust. Ct. 7, C.D. 2868 (1967), appeal dismissed, 54 CCPA 143 (1967), the Customs Court held that the common meaning of the term "turn," indicating the process and construction of a shoe sewn inside out and turned right side out, applied in interpreting the turned footwear provision. We have ruled that the term applies to a shoe on which a vamp plug and pieces of vamp trim are laced to the rest of the upper while the upper is inside out and before the entire upper is turned right side out and lasted. See file MCS 455.44 T of April 15, 1970. It is our understanding, however, that the submitted sample is constructed in a different fashion, i.e., the upper is turned down and stitched to the sole, and then the upper is turned up and the moccasin vamp, or toe plug, is added.

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Since the entire upper is not turned inside out but merely a part of it is turned down while the sole is stitched on, the shoe cannot be classified as turned footwear. Rather, it is classified under item 700.45, TSUS, assuming a value of over $2.50 per pair.

Sincerely,

William P. Schaffler
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 21 1986

REFER TO

CLA-2 CO:R:CV:G
079034 DW
818643

Mr. Leonard M. Shayne
Leading Forwarders Incorporated
One World Trade Center, Suite 1923
New York, New York 10048-0150

Dear Mr. Shayne:

You have requested a ruling on the tariff classification of rosettes on ribbon bows that are products of the Philippines. Samples were submitted along with your letter dated April 22, 1986.

The samples consisting of rosettes sewn on ribbons are constructed of ribbon made of man-made fiber woven fabric. The rosettes are formed by crimping the ribbon into a flower-like article. The flower is sewn onto a ribbon which has been folded over to form a bow. The sole difference between the samples is the presence of a bead sewn on the center of one of the samples.

Headnote 2(a), Subpart B, Part 4, Schedule 3, Tariff Schedules of the United States Annotated (TSUSA), states that "the term "motifs" embraces individual textile pieces such as, but not limited to, labels, badges, emblems, insignia, initials, numbers, and ornaments, designed and almost wholly used for incorporation in, or appliqueing on, wearing apparel, furnishings, and other textile articles..."

In our response to Internal Advice Request No. 160/81 dated March 23, 1982, file 069126, we ruled that similar articles were precluded from classification as motifs, because they did not fall within a class or kind of article "designed and almost wholly used for" the purposes specified in Headnote 2(a), TSUSA. Thus, these articles are not classifiable as motifs.

You believe that the rosettes ornament the underlying bows, which in your opinion make the articles classifiable in item 386.1343, TSUSA, dutiable at the rate of 12.5 percent ad valorem. Products of the Philippines that are classifiable in this provision are eligible for an exemption from duty under the Generalized System of Preferences.

Headnote 3, Schedule 3, TSUSA, lists the features that can ornament textile fabrics for tariff purposes. Beads are one of the listed features. Generally, a feature ornaments an article if it serves a primarily decorative rather than a

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primarily functional purpose. But if the feature, such as beading, forms a design that symbolizes or identifies something, then it creates the motif itself and is considered functional. See, file 040281 of May 10, 1976, where Headquarters ruled that woven fabric that was embroidered with varicolored yarns to simulate a peacock was not an ornamented motif. On the other hand, if the feature is essentially irrelevant in the formation of a design, it is considered to be decorative.

Having examined the samples, it is our view that neither item is classifiable as an oramented article. The rosette doesn't ornament the bow; it completes the article. All the pieces of the items in question represent parts of a flower. The bow represents the flower receptacle; the rosette typifies the petals; and the bead corresponds to the pistil.

The appropriate tariff classification for these items is under the provision for other articles not specially provided for, not ornamented, of man-made fibers in item 389.6270, TSUSA, with duty at the rate of 4 cents per pound plus 10 percent ad valorem.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OCT 21 1986

CLA-2 CO:R:CV:G
079035 DW
818792

Mr. J.F. Fritz
Norman Krieger, Inc.
5761 Imperial Highway
Los Angeles, California 90041

Dear Mr. Fritz:

You have requested a ruling on the tariff classification of rosettes from China and Hong Kong. Samples accompanied your letter dated May 12, 1986.

Two of the samples represented by style number LP 808 are identical. The rose-like articles are made from woven ribbon that have been stitched to ribbon approximately 3/4 inch long that has been folded over to simulate leaves. The third sample differs only in that the rosette and leaves have been stitched to the center of a ribbon that has been formed into a bow. You indicate that the articles will be imported in chief value of vegetable fiber, silk, or man-made fiber, and will be used on ladies' lingerie.

Headnote 2(a), Subpart B, Part 4, Tariff Schedules of the United States (TSUS), provides that the term "motifs" embraces individual textile pieces designed and almost wholly used for incorporation in, or appliqueing on wearing apparel, furnishings, and other textile articles.

In our response to Internal Advice Request No. 160/81 dated March 23, 1982, file 069126, we ruled that similar articles were precluded from classification as motifs, because they did not fall within a class or kind of article "designed and almost wholly used for" the purposes specified in Headnote 2(a). They were used also as decorations on bottles, greeting cards, and figurines. Though the items here will be used on lingerie, they belong to a class or kind of article that does not meet the stated purposes of the headnote.

Style LP 808 is classifiable under the provision for other articles not specially provided for, not ornamented, and depending on the component material in chief value, in item 389.30, Tariff Schedules of the United States (TSUS), with duty at the rate of 8 percent ad valorem if in chief value of silk; in item 387.37, TSUS, dutiable at the rate of 4.8 percent ad valorem if in chief value of vegetable fiber other than cotton; in item 386.53, TSUS, dutiable at the rate of 8.2 percent ad valorem if in chief value of cotton; and in item

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389.62, TSUS, with duty at the rate of 4 cents per pound plus 10 percent ad valorem if in chief value of man-made fibers.

With regard to the remaining sample, it is our view that the rosette with leaves ornaments the bow. Thus the article is classifiable in item 386.13, TSUS, with duty at the rate of 12.5 percent ad valorem if in chief value of silk, man-made fibers or vegetable fibers other than cotton. If in chief value of cotton, it is classifiable in item 386.04, TSUS, with duty at the rate of 25 percent ad valorem. Products of Hong Kong that are classifiable in item 386.13, TSUS, are eligible for duty-free treatment under the Generalized System of Preferences upon compliance with all applicable regulations.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

079035

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B13

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 9 1986

REFER TO

CLA-2 CO:R:CV:G
079049 c

079049

Mr. Randy Swords
Midway Sales, Inc.
P.O. Box 16509
Columbus, Ohio 43216-6509

Dear Mr. Swords:

In New York Ruling Letter (NYRL) No. 815352 dated March 18, 1986, you were advised that the KSC-2 cyclocomputer is more than a bicycle speedometer and therefore is classifiable under the provision for other revolution counters, production counters, taximeters, odometers, pedometers and counters similar to the foregoing articles in item 711.98, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 0.6 percent ad valorem.

We have reconsidered the result reached in (NYRL) No. 815352 and have concluded that the KSC-2 cyclocomputer is more specifically provided for as a bicycle speedometer under item 711.93, TSUS, with duty at the rate of 18.3 percent ad valorem. Therefore, the ruling issued to you by our New York office is revoked insofar as it is inconsistent with the result reached in the enclosed copy of a ruling (our file No. 077865 c) dated September 26, 1986, issued to the law firm of Bellsey and Baker. This ruling will be effective as to the subject merchandise entered or withdrawn from warehouse for consumption by your client after the date of this letter.

Sincerely,

Arthur P. Scheffler

For Harvey B. Fox
Director, Classification
and Value Division

B14

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 5 1986

REFER TO
CLA-2:CO:R:CV:G
079052 SM

Herbert T. Posner, Esq.
Posner & Stedina
630 Third Avenue
New York, New York 10017

Dear Mr. Posner:

On behalf of your client Gates-Mill, Inc., you have asked us to determine the country of origin of certain gloves to be imported from Romania.

You have submitted samples of an outer shell of a glove, a lining, and an assembled glove. The sample appears to be men's, and has seams stitched on the outside. You state that the outer shell is of lambskin, entirely fabricated and manufactured in Romania. The lining is knit, of cashmere, made in South Korea and transshipped through the United States from South Korea to Romania. We assume that all the requirements for transportation and exportation entries of the linings will be met.

The articles to be imported into the United States will be the finished gloves. The linings will be permanently sewn and hemmed into the shells and will no longer have a separate commercial identity or use. The merchandise will thus be classifiable as leather gloves, products of Romania.

The Harmonized Commodity Description and Coding System (HS) is scheduled to replace the TSUS as the tariff code of the United States on January 1, 1988. For your information, the HS provision applicable to the above-described merchandise appears to be subheading 4203.29.00, other gloves. This information is intended to assist you in becoming familiar with HS tariff classifications. It is not an official ruling of the Customs Service and may not be challenged by you at this time. It is anticipated that we will begin issuing administrative HS tariff classification rulings on or about July 1, 1987 (public notice will be given of the exact date such rulings will begin). If you wish an HS tariff classification ruling, you may request one at that time.

Sincerely,

Harvey B. Fox
Director, Classification
and Value Division

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CI

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

NOV 6 1986

CLA-2 CO:R:CV:G
079074 jlj

Mr. Peter P. Genero
Genero, Inc.
P.O. Box 144257
Coral Gables, Florida 33114-4257

Dear Mr. Genero:

In your letter of August 8, 1986, you requested a tariff classification covering shakes and shingles, made of Spanish cedar (Cedrela odorata) produced in El Salvador.

The merchandise at issue is wood shingles and shakes, which are relatively thin, tapered pieces of wood with parallel edges. Shakes are generally longer, narrower and thicker than shingles. Both are used for covering roofs and side walls of houses and other structures. Wood shakes and shingles are provided for eo nomine in item 200.85, Tariff Schedules of the United States (TSUS).

Presidential Proclamation 5498 of June 6, 1986, increased the duty on wood shingles and shakes of Western red cedar imported into the United States. Western red cedar (Thuja plicata)is a species of tree generally found in the states of Oregon and Washington and in British Columbian, Canada.

The shingles and shakes with which you are concerned are made of Spanish cedar (Cedrela odorata). Spanish cedar generally comes from Central and South America. Spanish cedar (Cedrela odorata) is a different species from Western red cedar (Thuja plicata), therefore Presidential Proclamation 5498 does not apply to importations of Spanish cedar shakes and shingles.

Shingles and shakes of Spanish cedar (Cedrela odorata) are classified under the provision for shakes and shingles in item 200.8540, TSUS, and are free of duty.

Sincerely,

Harvey B. Fox
Director, Classification
Value Division

C2

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

OCT 30 1986

REFER TO
CLA-2:CO:R:CV:G
079087 TLL

Area Director of Customs
New York Seaport
Room 432
6 World Trade Center
New York, New York 10048

Re: Application for Further Review of New York Protest No. 1001-0-010311

Dear Sir:

This subject application for further review is against your classification of certain coatings under item 182.99, Tariff Schedules of the United States. Protestant claims that coatings Nos. 9835 and 9836 are classifiable as confectioners' coatings, item 156.47, TSUS, at 2.5 percent ad valorem, and Coatings Nos. 9855 and 9861 are classifiable as sweetened chocolate in bars or blocks weighing 10 pounds or more, item 156.25, TSUS, at 0.4 cent per pound.

Protestant claims further that their proposed classifications are based upon the physical composition of the merchandise and upon the existence of established and uniform Customs classification practices consistent therewith, and any informal Customs guidelines contrary to the claimed classifications of Coatings Nos. 9855 and 9861 are arbitrary and unreasonable in light of the common meaning and commercial understanding of the tariff term "chocolate." No additional argument has been submitted by the protestant.

Absent additional information, we have no basis upon which to grant this claim. Accordingly, you are directed to deny this protest. Please see that a copy of this decision is attached to the Customs Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

OCT 31 1996

CLA-2 CO:R:CV:G
079088 TLL

District Director of Customs
Patrick V. McNamara Bldg.
477 Michigan Avenue, N.W.
Detroit, Michigan 48226-2568

Re: Application for Further Review of Protest
No. 3801-1-000465

Dear Sir:

This subject Application for Further Review is against your classification of "Seasoning for Snack Food" under item 182.92, Tariff Schedules of the United States (TSUS) and appraisement on the basis of invoice unit values, net. The protestant claims the merchandise should be classified under item 183.05, TSUS, and appraised on the basis of invoice unit values, less an allowance for duty and brokerage said to be included. No evidence supporting either claim has been submitted by the protestant.

Information within the file discloses that the subject merchandise was classified in item 182.92, TSUS, because of a laboratory report showing the product to contain 18.6 percent butterfat.

Since no information has been submitted which supports the protestant's claim, we have no alternative but to direct you to deny this protest. A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 21 1986

REFER TO
CLA-2 CO:R:CV:G
079090 jlj

Ms. Angela De Gaetano
Customs Information Exchange, Room 450
6 World Trade Center
New York, New York 10048-0945

Dear Ms. De Gaetano:

A Customs Form 6431 dated January 16, 1981, from the port of Los Angeles, California, concerns entry No. 81-108025-1, covering a shipment of natural hair lip brushes from Japan to Garrett Hewitt International, Menlo Park, California. This difference of opinion is listed as the ninth item on page 2 of C.I.E. N-89/79, Supplement 47, of May 1986.

This port difference was evidently lost in transmission between New York and Customs Headquarters. The file was reconstructed by New York and was received by this office on October 7, 1986.

The merchandise at issue is natural hair lip brushes, with plastic handles and caps, valued at 23 cents each. One port claims that such brushes are classified under the provision for artists' brushes and hair pencils, valued over 10 cents each, in item 750.60, Tariff Schedules of the United States (TSUS). This port cited Customs Headquarters Ruling Letter (HRL) 005951 of October 26, 1972, and Solo Horton Brush Co. (Inc.) v. United States, 63 T.D. 143, T.D. 46123 (1933).

The second port initially claimed that such brushes were classified under the provision for toilet brushes, except tooth brushes, valued not over 40 cents each, in item 700.45, TSUS. It cited United States v. M. Grumbacher, 27 CCPA 166, C.A.D. 80 (1939) in support of its position.

In the intervening years that this difference was lost, however, the second port has changed its opinion and has come to agree with the first port that such lip brushes are classified in item 750.60, TSUS. No further resolution of the difference is necessary. The natural hair lip brushes are classified under the provision for hair pencils, valued over 10 cents each, in item 750.60, TSUS.

Sincerely,

Arthur P. Schaffer
for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

OCT 21 1986

REFER TO
CLA-2 CO:R:CV:G
079091 jlj

Ms. Angela De Gaetano
Customs Information Exchange, Room 450
6 World Trade Center
New York, New York 10048-0945

Dear Ms. De Gaetano:

A Customs Form 6431 dated June 24, 1980, from the port of Mobile, Alabama, concerns entry No. 80-105131-3 dated May 12, 1980, covering a shipment of parts for plastic cassette shells with no tabs from Japan to Sony Magnetic Products Inc. of America, in Dothan, Alabama. This difference of opinion is listed as the eighth item on page 2 of C.I.E. N-89/79 of May 1986. This difference was evidently lost in transmission between New York and Customs Headquarters. It was reconstructed by New York and was received in this office on October 8, 1986.

The merchandise at issue is parts of plastic cassette shells with no tabs, specifically spools, anti-looseners and shells. One port argues that these parts are classified under the provision for tape recorders and parts thereof, in item 685.40, Tariff Schedules of the United States (TSUS). It cites ORR Ruling Letter 72-0359 of September 29, 1972, in support of its position. The other port argues that the parts are not parts of tape recorders, but are classified under the provision for other articles not specially provided for, of rubber or plastics, in item 774.55, TSUS.

ORR Ruling 72-0359 concerns a blank cassette shell with tabs which will allow the cassette to record. It deals with a complete shell containing tabs, not the instant incomplete merchandise. The instant merchandise is parts of cassette shells with no tabs, which are not capable of causing the tape recorder to record, therefore ORR Ruling 72-0359 is distinguishable. The spools, shells and anti-looseners are parts of the cassette shells with no tabs, not parts of the tape recorders, therefore item 685.40, TSUS, is not applicable. Inasmuch as there is no more specific provision, item 774.55, TSUS, applies to these parts.

Sincerely,

Arthur P. Schaffer

for Harvey B. Fox
Director, Classification
and Value Division

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

NOV 6 1986

CLA-2:CO:R:CV:G
079092 jlj

Ms. Angela De Gaetano
Customs Information Exchange, Room 450
6 World Trade Center
New York, New York 10048-0945

Dear Ms. De Gaetano:

A Customs Form 6431 dated April 21, 1981, from the port of New Orleans, Louisiana, concerns entry No. 81-800076-8 dated October 9, 1980, covering a shipment of embroidered rayon birds, fish and animals from Hong Kong to AR Casavant DBA ARC Products. This difference of opinion is listed as the second item on page 2 of CIE N 89/79, Suppl. 48, dated October 1986. This difference was evidently lost in transmission between New York and Customs Headquarters. It was reconstructed by New York and was received in this office on October 8, 1986.

The merchandise at issue is embroidered rayon birds with strings, embroidered rayon fish with strings, and embroidered animals with strings. One office believes that the stuffed rayon figures are classified under the provision for articles not specially provided for, of textile materials, other articles ornamented, other, other, in item 386.09 (currently 386.13), Tariff Schedules of the United States (TSUS). It argues that the stuffed figures are too delicate and decorative to be used as toys and that they have strings attached. It cites General Headnote 10(e)(1), TSUS, ORR Letter 465-70, Legal Determination 3611-83, and Advance Solvents & Chemical Corp. v. United States, 34 CCPA 148, C.A.D. 358 (1974) in support of its position.

The second port maintains that the stuffed figures are classified under the provision for toy figures of animate objects (except dolls), not having a spring mechanism, stuffed, valued over 10 cents per inch of height, in item 737.30, TSUS. It argues that the stuffed figures are of a class or kind of animal chiefly used for amusement.

These articles are pleasing to the eye and very decorative. There is fine workmanship involved, and the colors are bright and handsome. Many toys are attractive and decorative, however, and many stuffed animals adorn beds or shelves.

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These figures are not life-like representations of animals, but not all representations of animals are as highly evolved as, for instance, Mickey Mouse. Nor do the colors and ornamentation of a crazy quilt giraffe make it any less a toy. These animals are highly decorative, but they are still part of the class or kind of animals chiefly used for amusement. We find that the instant stuffed rayon articles are classified under the provision for toy figures of animate objects, in item 737.30, TSUS.

Sincerely,

Arthur P. Schaffner

for Harvey B. Fox
Director, Classification
and Value Division

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079092

C8

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: NOV 10 1986

FILE: CLA-2:CO:R:CV:G
079137 SM

TO : Area Director of Customs
JFK Airport Area
Jamaica, New York 11430

FROM : Director, Classification and Value Division

SUBJECT: Request for Internal Advice No. 62/86, Your File CLA-2 K:C:D: VI DN

You initiated this request for internal advice on behalf of Viking Unlimited, Inc. It concerns the proper tariff classification of bullion-embroidered parts of visors for caps used by the U.S. military.

A sample of the imported article, a product of India, was submitted. It consists of a crescent-shaped piece of woven black wool fabric embroidered in gold bullion with two clusters of oak leaves. The embroidered fabric is glued to a paper backing.

The importer's position is that these articles are properly classifiable under item 748.12, Tariff Schedules of the United States, a provision including insignia of bullion for uniforms of the U.S. armed forces. You have classified them under item 384.16, Tariff Schedules of the United States (TSUS), as ornamented women's wearing apparel, of wool. For the reasons stated below, we are in agreement with the importer.

There is no factual dispute here. You agree, having reviewed the information submitted by the importer, that the embroidery is of bullion and that the articles are for use on U.S. military uniforms. Apparently you do not disagree that they are marks of military rank, as stated in the submitted letter of May 12, 1986, to Viking Unlimited from the Chief, Clothing and Uniforms Division, Department of the Army. Assuming these facts, we conclude that these configurations of oak leaves fall squarely within the definition of "insignia," "a distinguishing mark of authority, office, or rank."

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Webster's Third New International Dictionary (unabridged ed., 1965). They are clearly classifiable under item 748.12, TSUS, since they meet all the requirements of that provison: (1) insignia; (2) of bullion (i.e., in chief value of bullion); (3) for uniforms of the U.S. armed forces.

The Sixth Supplemental Report, of May 23, 1963, to the Tariff Classification Study set out the purpose of the new provison, item 748.12: "to preserve the existing tariff treatment of certain insignia currently classified in paragraph 385, Tariff Act of 1930." The Customs Court had determined, in Gemsco, Inc. v. United States, Abs. 63445, 43 Cust. Ct. 372 (1959), that certain insignia of bullion, required to be worn as part of U.S. naval uniforms, were classifiable under that paragraph. Applying the classification principle set out in that case, Customs ruled, in C.I.E. 755/61, that fabric visor toppings having gold bullion affixed in a leaf design through the use of a utilitarian stitch, and required to be worn by certain U.S. military personnel, were classifiable in paragraph 385. Thus the embroidered visor parts in question here are clearly within the intended scope of item 748.12, TSUS.

You state that the embroidered fabric pieces are "more than just insignias." No explanation is given. You suggest that they are classifiable as wearing apparel. At best, they would be parts of wearing apparel. But item 748.12, TSUS, specifies insignia "for uniforms," i.e., articles that will be worn.

You also state that these articles are "more specifically provided for as parts of hats" in Subpart F of Part 6, Schedule 3, TSUS. This argument is without merit; there is no such provision in Subpart F. In the past, we have ruled that certain hat parts were classifiable as wearing apparel in Schedule 3. However, those articles were of textile materials and were not otherwise specifically provided for. The airline pilots' cap visor the subject of one ruling did not meet the requirements of the insignia provision because it was not for U.S. military uniforms. Insignia of bullion for U.S. military uniforms are provided for eo nomine in item 748.12, TSUS, and are properly classifiable thereunder.

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A copy of this decison should be sent to the inquirer.

Harvey B. Fox

079137

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

NOV 6 1986

CLA-2 CO:R:CV:G
079187 JLJ
820546

Ms. Peggy S. Easton
Fritz Companies, Inc.
17851 Englewood Drive
Cleveland, Ohio 44130

Dear Ms. Easton:

In your letter of September 10, 1986, on behalf of your client Creative Marketing Concepts, Inc., you requested a tariff classification for a floral arrangement insert from Taiwan. You submitted a sample along with your letter.

The sample submitted consists of a flat paper doll, approximately 7 inches tall, through which is inserted an embroidered cotton handkerchief which serves as a "dress" for the doll. There is a wooden stick taped on the back of the item for insertion in floral arrangements. The component material in chief value is the cotton handkerchief.

You state that the item is used in the floral industry and that the ultimate consumer may remove the "dress" from the doll and use it as a handkerchief.

The item is not classifiable as a doll or a toy because it is one-sided (i.e., only one side resembles a woman's figure, while the other side is blank). It would not be classified as a handkerchief since it is not marketed as such.

The floral arrangement insert is classifiable under the provision for ornamented articles not specially provided for, of textile materials, of cotton, other, in item 386.0430, Tariff Schedules of the United States (TSUS), dutiable at 25 percent ad valorem.

The Harmonized Commodity Description and Coding System (HS) is scheduled to replace the TSUS as the tariff code of the United States on January 1, 1988. For your information, the HS provision applicable to the above-described merchandise appears to be Subheading 6307.90.80, other made up textile articles, other, other. This information is intended to assist you in becoming familiar

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with HS tariff classifications. It is not an official Customs Service ruling and may not be challenged by you at this time. It is anticipated that we will begin issuing HS tariff classification rulings on or about July 1, 1987. (Public notice will be given of the exact date such rulings will begin.) If you wish a HS tariff classification ruling, you may request one at that time.

Sincerely,

Harvey B. Fox
Director, Classification and
Value Division

079187

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

NOV 6 1986

REFER TO

CLA-2 CO:R:CV:G
079222 SM

[redacted]

Dear [redacted]

On behalf of [redacted], you have requested a tariff classification ruling for an article known as the "Magic Roll." A sample and diagram were submitted. The article is marked "Made in Italy."

The Magic Roll is a hand-held paint roller that incorporates a hand-operated suction pump in its plastic handle. A plastic tube runs from the end of the handle to a plastic paint reservoir that has a synthetic-fiber shoulder strap. The pump creates a vacuum, drawing paint from the reservoir through the tube to the surface of the sponge rubber paint roller. The Magic Roll is to be imported assembled, and it is anticipated that it will be used mainly by householders.

You suggest that this article is classifiable in Schedule 6, Part 4, under item 662.50, Tariff Schedules of the United States (TSUS), a provision for "[m]echanical appliances, whether or not hand operated, for projecting, dispersing, or spraying liquids or powders . . . ". However, Headnote 1(v) of Part 4 provides that that part does not include "articles and parts of articles specifically provided for elsewhere in the schedules." Paint rollers are specifically provided for elsewhere in the schedules, namely under item 750.80, TSUS, in Part 8 of Schedule 7.

You state that the Magic Roll is not "simply" a paint roller, but "a specially constructed, hand-operated mechanical device used for applying paint directly onto the surface to be painted." We assume that you mean that because of the presence of the pump in the handle, the article constitutes more than a paint roller, and therefore cannot be classified as such. However, this article falls squarely within the common meaning of the term "paint roller." Webster's Third New International Dictionary (unabridged ed., 1965) gives the following definition of the term:

C14

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> a roller that consists typically of a rotating cylinder about two inches in diameter and six inches in length covered with an absorbent material and mounted on a handle so that the cylinder can be dipped into paint or otherwise (as through a hollow feed center) be supplied with paint and rolled over a flat surface (as a wall) so as to apply the paint[.]

Inasmuch as paint rollers by definition can have alternate paint feeding mechanisms, the addition of the hand pump will not take the Magic Roll out of the provision for paint rollers. Further, the Magic Roll functions like any other paint roller in that it spreads paint on a surface by means of a rotating absorbent roller mounted on a frame. You state, in fact, that applying paint directly onto the surface to be painted is the sole purpose and use for the article.

079222

We have ruled previously that paint rollers with various special features were still classifiable under the eo nomine provision. In CIE 218/65, for example, it was determined that a design roller with a separate aluminum roller that fed paint from a paint tank to the design roller was a paint roller for tariff classification purposes. The Magic Roll also falls within item 750.80, TSUS.

The Harmonized Commodity Description and Coding System (HS) is scheduled to replace the TSUS as the tariff code of the United States on January 1, 1988. For your information, the HS provision applicable to the above-described merchandise appears to be subheading 9603.40.00, which includes paint rollers. This information is intended to assist you in becoming familiar with HS tariff classifications. It is not an official ruling of the Customs Service and may not be challenged by you at this time. It is anticipated that we will begin issuing HS tariff classification rulings on or about July 1, 1987 (public notice will be given of the exact date such rulings will begin). If you wish an HS tariff classification ruling, you may request one at that time.

Sincerely,

Arthur Schayes

Harvey B. Fox
Director, Classification
and Value Division

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D1

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: NOV 13 1986

FILE: CLA-2 CO:R:CV:G
079255 DW

TO : Area Director of Customs
New York Seaport
New York, New York 10048

FROM : Director, Classification and Value Division

SUBJECT: Internal Advice Request No. 10/86 Concerning the Tariff Classification of Infants' Sets

This request for Internal Advice was initiated by counsel on behalf of Baby Togs, Inc.

FACTS:

The merchandise in question consists of two and three-piece garments for infants. A variety of sample garments were submitted. They are all woven ornamented garments in chief value of man-made fibers. Style 29073 comprises a coat, dress, and hat; styles 26233 and 62250 include a dress, panty and hat; style 58020 consists of a shirt, shorts and hat; styles 71206 and 50239 comprise a playsuit and hat; and style 25244 consists of a dress and hat.

ISSUE:

The ultimate issue to be resolved is whether these two and three-piece garments are classifiable under a single tariff item described as infants' sets. This, in turn, depends on whether Headnote 3, Part 6, Schedule 3 of the Tariff Schedules of the United States (TSUS) precludes the classification of these garments as an entirety.

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LAW AND ANALYSIS:

The Congress enacted the headnote as Section 122 of the Trade and Tariff Act of 1984, Pub. L. 98-573. The headnote provides, in pertinent part, that "each garment is to be separately classified under the appropriate tariff item, even if two or more garments are imported together and designed to be sold together at retail."

The headnote continues the general direction of Customs over the past several years on the subject of entireties by limiting, wherever possible, and consistent with legislative intent, the scope of entireties as applied to wearing apparel. The headnote virtually eliminates the tariff classification of two or more garments together as an entirety when they may be classified in separate items. The headnote, therefore, eliminates the tests used in the past, such as color coordination, and substitutes a prohibition against finding entireties where two or more garments are involved.

Paragraph (b)(vi) of the foregoing headnote excludes infants' sets designed for children who are not over two years of age from the scope of the headnote. The effect of this exception is to classify infants' sets comprising two or more garments according to the principles that existed before the enactment of the headnote. In judging whether two or more garments are classifiable as an infants' set, Customs will apply the doctrine of entireties as

079855

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articulated in Miniature Fashions v. United States, 54 CCPA 11, C.A.D. 894 (1966). In reversing the trial court, our appellate court ruled that cabana sets described as "two-piece shirt-short sets" were classifiable as an entirety based on the consideration of certain commercial tests. These tests included the way the garments are known and marketed, their use, their construction, the design as to fabric, print, and color match, and the way they may be worn together.

The inquirer contends that the headnote is applicable to wearing apparel, whether classifiable in Schedule 3 or Schedule 7, based on past administrative and judicial practice. The inquirer cites Headquarters Ruling Letter 059330 dated September 5, 1978, where Customs ruled that a jockey shirt and cap constituted an entirety for classification purposes, even though the items were classified in separate schedules.

In J. C. Penney Purchasing Corporation v. United States, 77 Cust. Ct. 48, C.D. 4671 (1976), the Customs Court held that a three-piece ensemble consisting of a leather jacket, a textile shell and textile pants was classifiable as an entirety.

These judicial and administrative decisions classified articles in Schedule 3 and Schedule 7 as entireties. Yet, it is your view that the headnote requires separate classification in Schedule 7 for hats and caps. This position is based on the language in Headnotes 1 and 3 in Schedule 3, Part 6, TSUS. Headnote 1, Part 6, Schedule 3, TSUS, provides in relevant part, "[t]his part does not cover -- (1) wearing apparel of textile materials provided for in Schedule 7." Read together

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079255

with Headnote 3, Part 6, Schedule 3, TSUS, you believe that woven hats in months' sizes are excluded from Schedule 3, because they are provided for in Schedule 7. As you see it, this position is supported by Headnote 1(iii), Subpart A, Part 1, Schedule 7, TSUS, and Headnote 1(a), Subpart B, Part 1, Schedule 7, TSUS, which excludes infants' knit footwear and headwear from Schedule 7.

We regard Headnote 3, Part 6, Schedule 3, TSUS, as applicable to wearing apparel, whether classifiable in Schedule 3 or Schedule 7. This new headnote does not contain any qualifying language, unlike Headnotes 1 and 2 of Part 6 to Schedule 3. The exception makes the classification principles applicable to infants' sets remain as they were before the enactment of the new headnote.

As for the combinations themselves, it is our view that woven textile hats and caps imported with coordinated dresses, shirts, shorts, and playsuits satisfies the traditional tests for classifying these infants' sets as entireties. The components are imported as a unit and are stated to be bought and sold as a unit. The hats and caps are coordinated in terms of fabric, color, and print with the remaining component.

The garments before us consist of hats and caps with coordinated lightweight shorts, playsuits, dresses, and coats. It is common for infants to wear hats to protect their sensitive scalps. That the baby may not wear both garments together is not a factor we regard as controlling. Under Miniature Fashions, supra, the capability for wearing one component of the cabana set was not decisive.

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With respect to the remaining combination, style 29073, consisting of a coat, dress, and hat, it is our conclusion that the dress and hat meet the standards for classification as an entirety under the provision for infants' sets. The coat, however, must be classified separately. This is so, because the interpretation of the words "infants sets" depends on their meaning at the time of the statutory enactment of Section 122 of the Trade and Tariff Act of 1984. Customs did not classify similar combinations containing coats as infants' sets.

Harvey B. Fox

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079255

D6

JAN 3 1974

VES-5-R:CD:C
100669 R

District Director of Customs
Seattle, Washington

Director, Carriers, Drawback and Bonds Division R:CD

Section 4.33, Customs Regulations-Diversion of cargo.

This is with reference to your memorandum of June 11, 1973, advising of a situation in your area wherein a vessel files a manifest listing cargo intended for various United States West Coast ports but subsequently some or all of these ports are dropped from the vessel's itinerary. The vessel will proceed directly to Vancouver, B.C., and there discharge cargo which will usually be transported to the United States on land. We regret the delay in responding to your memorandum.

As the diversions to Vancouver are because of business reasons, and not because of an emergency, you ask whether an approved procedure exists for this type of diversion and amendment of the manifest. You state that it appears that vessel convenience is not a proper reason to ordinarily permit the application of section 4.33(d), Customs Regulations.

Title 19, United States Code, section 1449, provides that merchandise imported on a vessel shall be unladen at the port to which the vessel is destined. However, the statute provides two exceptions. The second exception empowers Customs authorities to authorize the vessel to proceed to a port of entry other than the one to which it was destined if an emergency exists at the original port of destination and there unlade the merchandise. Through the promulgation of section 4.33(d), Customs has extended this exception to include diversions to foreign ports as experience has demonstrated that where emergencies exist at United States ports, a foreign port may be a more appropriate port to which to divert under the particular circumstances. Headquarters is of the opinion, however, that to further extend the Regulations

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to cover diversions to foreign ports where no emergency exists would not be conformable with the purpose and meaning of the statute in general or the second exception in particular.

Accordingly, a vessel which has made formal entry and filed a manifest showing inward foreign cargo for other domestic ports cannot be authorized to proceed to a foreign port under circumstances not constituting an emergency.

(SIGNED) J. P. TEBEAU

J. P. Tebeau

100669

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

D8

VES-5-19-R:CD:C
100835 R

Regional Commissioner of Customs
Houston, Texas 77002

Dear Sir:

This is with respect to your letter of September 24, 1973, in which you commented on the procedure to be followed when cargo which is manifested for one domestic port is overcarried to another such port. The intentional overcarriage of cargo is also the subject of Headquarters letter of August 30, 1973, to [redacted], on which you also commented. The situation under consideration is one wherein a vessel desires to depart one domestic port at which it has unladen foreign cargo for another domestic port in order to unlade additional foreign cargo, which consists in part of cargo which was manifested for the first port but which, due to time limitations, cannot be readily ascertained for the diversion procedure set forth in section 4.33 of the Regulations before the vessel's departure.

You suggest that the Regulations be amended to provide that, in the above-described situation, when the vessel arrives at the second port, the overcarried cargo be listed on a discrepancy report so that the cargo will in effect be included in the manifest filed at the second port. A copy of the discrepancy report would be sent to the first port to account for the shortage there.

Title 19, United States Code, section 1443, provides that before a vessel with residue foreign cargo departs from the port of first arrival to another domestic port the master must obtain with the permit to proceed a certified copy of the vessel's manifest showing the merchandise unladen at that port and the merchandise

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D9

remaining on board the vessel. Title 19, United States Code, section 1445 provides for a penalty of $500 for non-compliance. Therefore, although we appreciate that exigencies of trade may occasionally prevent compliance by amending the manifest in accordance with section 4.33(c), and recognize that such circumstances may be taken into account in considering a mitigation of any penalties assessed, prescribing a procedure in the Regulations which is not in accordance with law cannot, of course, be considered.

Except for statutory provisions relating to residue cargo and bulk cargo, title 19, United States Code, section 1449 provides for Customs approval of vessel and cargo diversions only in cases of emergency. Therefore, if the manifest cannot be amended in accordance with section 4.33(c) prior to the vessel leaving the first port of arrival, the merchandise cannot be treated as residue cargo. The question then becomes whether or not merchandise not covered by title 19, United States Code, sections 1442 or 1447, may be overcarried. As a general rule, exceptions in a statute must be construed strictly within the language of the exception. Since section 1449 only permits merchandise not covered by sections 1442 and 1447 to be overcarried when there is an emergency, the question must be answered in the negative. In accordance with the aforesaid rule of statutory construction, we cannot expand the exception to cover a situation where no emergency exists.

Sincerely yours,

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

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[redacted]

100835

D10

VES-8-01-R:CD:C
100860 R

District Director of Customs
Houston, Texas 77052

Dear Sir:

This is with reference to your letter of October 18, 1973, concerning the penalty in the amount of $500 assessed under title 19, United States Code, section 1584 against the master of the Peruvian [redacted] since molasses described on the manifest was not found on board the vessel. The explanation given on the Discrepancy Report, CF 5931, was that the merchandise was not delivered and evidence confirming non-importation would be furnished. A copy of a "freight payment support" from the importers was furnished and you ask if such evidence is acceptable. We regret the delay in responding to your inquiry.

Section 4.12(a)(2), Customs Regulations, requires that shortages be reported on CF 5931 and that satisfactory evidence to support a claim of nonimportation shall be obtained and retained in the carrier's files for one year. Whether or not evidence is "satisfactory" is a matter for the district director to determine. As stated on page 69 of the 1974 edition of the Quantity Control Manual, satisfactory evidence consists of a statement by the master, a statement by the master's agent, a vessel log extract, or other evidence considered satisfactory by the district director. Therefore, while we might note that the evidence presented seems reasonably satisfactory to us, the determination is one for your to make.

It is noted that the evidence was not presented until September 14, 1973. While the CF 5931 dated March 22, 1973, states that such evidence will be furnished

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within 60 days, and therefore the evidence was not timely furnished, the explanation given by the vessel agent in his letter of October 5, 1973, appears reasonable. In any case, neither law nor regulation provide that such evidence must be filed within 60 days and therefore no penalty is incurred for failure to do so.

Sincerely yours,

(SIGNED) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

[redacted]

1008960

D12

1975

VES-5-23-R:CD:C
101970 R

[redacted]

Dear [redacted]

This is with reference to your telegram dated October 24, 1975, in which you advise that [redacted] transports containerized cargo in United States-flag, United States-built vessels from New York via various foreign ports to Puerto Rico. The cargo is then transferred to "feeder" vessels and transported to the Virgin Islands.

You contend that because you are required under section 4.82(b), Customs Regulations, to prepare and have certified a coastwise manifest prior to departure for the foreign ports, you are placed at a disadvantage in relation to your competitors. You state that your competitors ship directly from the United States to the Puerto Rico Virgin Islands and therefore can accept and load shipments for the Virgin Islands up to the time of sailing with no Customs requirement for a manifest. The result is marketing problems and excessive operating costs for your firm. The alternatives you have are refusing cargo after a stated period of time so that manifests may be prepared and certified prior to sailing or delaying departure and incurring the extra heavy costs, especially if overtime, of stevedore labor, tugboat services, etc.

You ask for permission to present the coastwise manifest to Customs up to 96 hours after the vessel sails and

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[redacted]

waiver of the requirement that the coastwise manifest be certified.

The requirement in the Customs Regulations for a certified manifest is based upon title 19, United States Code, section 293, which states in pertinent part with respect to registered vessels of the United States engaging in coastwise trade which touch at intermediate foreign ports:

> ...All such vessels shall be furnished by the collectors of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes,...

The purpose of the certification is to obviate the necessity of having the master of the vessel account for the coastwise merchandise in the manner which would be required if the vessel were arriving solely from a foreign port. In the latter case, of course, the coastwise merchandise would be shown on the inward foreign manifest and the merchandise entered as American goods returned. By having the Customs officers at the domestic port of lading certify to the coastwise manifest, we are in a position to expeditiously clear the coastwise merchandise at the next domestic port of call, even though the vessel is, in fact, arriving from a foreign port. Of course these requirements are applicable to all vessels, not only [redacted], where the vessel is touching at a foreign port while engaging in coastwise trade.

In view of the foregoing your request is necessarily denied.

In any case, this agency is without authority to waive compliance with the navigation laws except upon a finding that such action is necessary in the interest of national defense (Act of December 27, 1950, 64 Stat. 1120 note preceding 46 U.S.C. 1). As it does not appear that

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[redacted]

national defense is here involved, the Customs Service must, in conformance with the statute, require the submission of coastwise manifests for certification at the various United States ports of lading on registered vessels of the United States which touch at foreign ports while in the coastwise trade.

Sincerely yours,

(SIGNED) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

[redacted]

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

028101

E1

JUL 1 5 1976

VLS-8-03-R:CD:C
101951 BJF

[redacted]

Dear [redacted]

This is in reply to your letters of December 3, 1975, and January 12, 1976, in which you state that your firm has in the past indicated "on the Customs manifest" the measurement of forest products in footboard measurement rather than weight. You state that certain Customs offices have stated that they will require that shipments of lumber include, on the manifest, a reference to the weight of the lumber and you ask whether the requirement is necessary since it would involve a hardship on your organization. You also ask whether the Customs Service will adopt the IMCO recommendations for the Cargo Declaration in 1976 and, if so, when the change will be made effective.

We have queried the various Customs Regions as to whether, on the inward foreign manifest, units of measurement other than weight can be used if those units are in general use in the trade. We have been advised by the Chief, Cargo Processing Branch, that the use of the gross weight on manifests describing lumber shipments serves no useful purpose for the Customs inspector and that the use of F.B.M., as used in industry, or M.B.F.t, as used in the Tariff Schedules of the United States, is more meaningful. In view of the foregoing, it will not be necessary for shipments made by your firm to be manifested in such a manner as to show the gross weight of the shipment.

With respect to your request for information on implementation of the IMCO General Declaration, we hope to complete Customs' aspect of the project in 1976.

Sincerely yours,

(Signed)

B. James Fritz
Acting Chief
Carrier Rulings Branch

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THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC

102540
OCT 31 1975

VES-8-01-R:CD:C/R

[redacted]

Dear [redacted]

Reference is made to your letter of February 3, 1975, requesting information concerning section 4.12, Customs Regulations. You cite a Headquarters decision of December 17, 1973, denying relief from penalties of $506.66 assessed against the master of the [redacted].

Section 4.12, Customs Regulations, has been the subject of a great deal of review in recent years. As you know, it was amended on January 19, 1971, by Treasury Decision 71-22. Proposals to further amend the section were published in the Federal Register on January 29, 1974 (39 F.R. 3682), relating to the extension of the time period for explaining a manifest discrepancy from 30 to 60 days, and on June 9, 1975 (40 F.R. 24527), relating to the definition of the term "clerical error or other mistake". It is hoped that in the near future section 4.12 as revised in part on the basis of comments received from private industry will be a much more satisfactory regulation for industry and for customs officers.

The particular case you mention involved two penalties. There was a failure to manifest certain merchandise which resulted in a penalty equal to the value of the merchandise under title 19, United States Code, section 1584. There was also a failure to timely correct the aforesaid failure to manifest which resulted in a $500 penalty under title 19, United States Code, section 1440.

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Section 4.12, Customs Regulations, in part provides a procedure whereby manifest discrepancies can be explained so that a determination can be made as to whether or not the discrepancy resulted from "clerical error or other mistake" as that term is used in section 1584. If the discrepancy explanation is timely and satisfies the district director and if there has been no loss of revenue penalties are not assessed under section 1584. If these conditions are not met and the penalty is assessed, relief can only be granted by action on a petition filed under title 19, United States Code, section 1618.

Vessel masters or agents are required to notify the district director of manifest discrepancies within a certain period of time. Failure to do so in the case of an overage results in a penalty of $500 under section 1440. Such a penalty will be assessed when incurred regardless of any later explanation of the overage and relief from the section 1440 penalty can only be granted by action on a petition filed under section 1618.

With regard to the section 1440 penalty in the [redacted] case, the overage was not reported by the master or agent within the prescribed time period and therefore a $500 penalty was assessed under section 1440. The petition stated that the merchandise which caused the overage was the property of a representative of the builder of the vessel who was aboard to inspect it on its maiden voyage, that the representative was not responsible to the master, that the representative declared the merchandise to Customs on CF 7523, and that the goods were found to be valued under $10 and free of duty. The petition further states that representatives of the vessel were not aware of the overage until receipt of the penalty notice dated June 28, 1973. However, the explanation relating to the violation of section 1440 was not considered sufficient by Headquarters to warrant relief under section 1618 and the petitioner was informed by the district director on August 27, 1973, that the petition had been denied by Headquarters and was

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informed by the district director on January 3, 1974, that a supplemental petition had been denied. Further information on the reason for the denials of relief from the section 1440 penalty would have to be obtained from Donald W. Lewis, Esq., Chief, Penalties Branch, Headquarters.

With regard to the section 1584 penalty in the [redacted] case, the district director was not satisfied that the overage resulted from a clerical error or other mistake and therefore a penalty equal to the value of the merchandise was assessed under section 1584. The petition stated that the overage resulted from the fact that the merchandise belonged to a representative of the builder as mentioned above. While the petition went on at length as to why an explanation of the overage on CF 5931, presented on July 16, 1973, should have been "accepted", the fact is that whether or not the explanation was accepted as "timely" would not resolve the penalty assessed under section 1584. Relief could only be granted from that penalty if satisfactory evidence of mitigating circumstances warranting relief had been presented in a petition. However, the explanation relating to the violation of section 1584 was not considered sufficient by Headquarters to warrant relief under section 1618. Further information on the reasons for the denial of relief would have to be obtained from Mr. Lewis.

We would appreciate your views and comments on section 4.12 as it has been amended and as it is proposed to be amended. We assure you that we will do whatever we can within our statutory responsibilities to protect the revenue and prevent smuggling to provide satisfactory requirements in our regulations so that international trade will be facilitated to the maximum extent possible. We believe the pending bill to amend or repeal some sixty very old and detailed navigation laws, which we have discussed in the past, is a step in that direction. The bill would repeal section 1440 and substantially amend section 1584 and would provide necessary statutory

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[redacted]

flexibility so that regulations relating to vessel manifests could take into consideration the changing needs of industry.

Sincerely yours,

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.
Chief
Carrier Rulings Branch

[redacted]

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[redacted]

102540

E6

MAR 7 1977

BOR-8-07-R:CD:C
102587 PC

[redacted]

Dear [redacted]

This is in response to your letter of December 20, 1976, addressed to the Port Director, Hidalgo, Texas, concerning the inward manifest requirements applicable to trucks arriving at Hidalgo from Mexico. You forwarded a copy of your letter to the Commissioner of Customs.

On January 12, 1977, this office requested a report on the matter from the Port Director, Hidalgo, Texas. The Port Director made his report on the matter to the Regional Commissioner, Houston, who in turn reported on the matter to this office.

The Regional Commissioner states that since the date on which your letter was written, a meeting between the Association and Customs management officials has produced desired results without any delay of merchandise and without generating the amount of paper work your letter infers. Also, a meeting was held January 4, 1977, between the Port Director at Hidalgo and yourself which cleared many of the fears expressed in your letter of December 20, 1976. Since that time manifest requirements have been enforced, and all vehicles are arriving with a proper manifest and no further difficulties with manifesting requirements are anticipated.

Inasmuch as any number of vehicles may be cleared on a single entry, the only additional paper work required is the preparation of an inward foreign manifest for each vehicle, as required by the Customs Regulations. We believe that compliance with the regulations will enable Customs to give better service in clearing trucks arriving at Hidalgo from Mexico. [redacted]

Sincerely yours,

(SIGNED) J. P. TEBEAU

J. P. Tebeau,
Director
Carriers, Drawback and Bonds Division

CODE AND DATE	[redacted]	[redacted]	[redacted]				
SURNAME							
CODE AND DATE							
SURNAME							

DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE — CORRESPONDENCE APPROVAL AND CLEARANCE — Form 100 (11-18-73)

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

9 AUG 1979

REFER TO

VES-8-03-R:CD:C
104041 DR

LTC James N. McCune, JAGC
Department of the Army
Headquarters,
Military Traffic Management Command
Washington, D.C. 20315

Dear Colonel McCune:

This is with reference to your letter in which you request a ruling that the Transceived Manifest (a copy of which you enclosed with your letter) is in full compliance with Customs requirements and will be accepted by Customs officers upon entry of vessels operated on the behalf of the Military Sealift Command.

The requirements for an inward foreign manifest (now referred to as a Cargo Declaration, Customs Form 1302, copy enclosed) are prescribed by sections 431 and 432, Tariff Act of 1930, as amended (19 U.S.C. 1431, 1432), and the provisions of the Convention on Facilitation of International Maritime Traffic, ratified by the United States on March 17, 1967 (18 U.S.T. 411, TIAS 6251). The form of the Cargo Declaration was developed by the Intergovernmental Maritime Consultative Organization (IMCO), as modified by the International Chamber of Shipping (ICS). The adoption of this and other maritime forms is part of an international program to simplify paperwork in international commerce through the use of standardized forms.

The statutes and Convention referred to above require the Cargo Declaration to contain certain specific information. The information required and our comments as to the adequacy of the Transceived Manifest (TM) in complying with the requirements are as follows:

a. Name of ship
This is set forth on the TM.

b. Nationality of ship
Although this is not specifically set forth on the TM, it could be assumed the vessel is of United States nationality.

c. Name of master
This is not on the T.M.

d. Port of lading
This is on the TM (in code).

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e. Port of discharge
This is on the TM (in code).

f. Mark and numbers
These are not on the TM.

g. Container numbers (where applicable)
Apparently there is no provision for container numbers. If the cargo is not containerized, the lack of provision is of no consequence.

h. Container seal numbers (where applicable)
See our comments on g.

i. Number and kind of packages
This apparently is on the TM (in code).

j. Description of goods
Although this on the TM, the goods are not described with sufficient clarity to meet Customs requirements.

k. Gross weight or Measurement
The weight is on the TM.
There appears to be no provision for measurement.

n. Bill of lading number
This is not on the TM.

o. Date of sailing from port of lading
This is on the TM (in code).

From the foregoing, it is apparent that with a few exceptions, the Transceived Manifest is not in compliance with the Customs requirements. Although we appreciate that this manifest contains all the information required by the MSC, Customs officers would find this to be of practically no value as a working document. Should you wish to discuss this matter further with the view of developing a manifest in conformance with Customs requirements, we shall be glad to meet with you. The member of my staff who is concerned with this matter is John Mathis, whose telephone number is 566-5706.

Sincerely,

B. P. Kirk, acting

George C. Steuart
Acting Director
Carriers, Drawback and Bonds Division

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104041

OCT 7 1982

VES-3-21-CO:R:CD:C
105802 PH

This ruling concerns the dutiability of, and the applicability of the coastwise laws to, foreign-built vessels to be used as stationary coal storage facilities at a United States port.

ISSUE:

1. Are foreign-built vessels brought into the United States for use as coal storage facilities subject to duty under the Tariff Schedules of the United States?

2. Do foreign-built vessels used as stationary coal storage facilities in United States territorial waters violate the coastwise laws?

FACTS:

The inquirer represents a company which is considering acquiring several foreign-built vessels for use in the United States. The vessels, now operating under a foreign flag, would enter the United States at a port of entry not yet known and would be berthed permanently alongside a public utility facility where they would be used to store coal. The inquirer requests a ruling that (1) the vessels would not be subject to duty upon entering a United States port, and (2) use of the vessels as stationary coal storage facilities would not be in violation of 46 U.S.C. 883.

105802

LAW AND ANALYSIS:

Pursuant to General Headnote 5(e), Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), "vessels which are not 'yachts or pleasure boats' within the purview of subpart D, part 6, of schedule 6, [TSUS] ..." are not subject to the Tariff Schedules. "Vessels are defined in section 401(a), Tariff Act of 1930 (19 U.S.C. 1401(a)), as including "... every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water ..." but not including aircraft. Accordingly, vessels, whether commissioned or not, brought into the United States for use as coal storage facilities, and not as yachts or pleasure boats, are not subject to duty under the Tariff Schedules.

Title 46, United States Code, section 883, provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in and documented under the laws of

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the United States and owned by persons who are citizens of the United States. The Customs Services has held that this prohibition includes the transportation of merchandise in a non-coastwise-qualified vessel betwen points in a harbor.

The Customs Service consistently has held that the use of a foreign-flag vessel as a storage facility in United States territorial waters does not violate the coastwise laws, or any other laws administered by the Customs Service, provided that the vessel remains stationary. Customs also has held that if the vessel is being loaded or unloaded and must be moved to another location because of stress of weather or other reason involving the vessel's safety, subsequently is returned to the same point to continue its loading or unloading, and loads or unloads no merchandise at any other point in the United States, the coastwise laws are not violated.

Upon its arrival in the United States, the vessel would be required to make a report of arrival (19 CFR 4.2) and entry (19 CFR 4.3) and would be subject to the payment of tonnage taxes (19 CFR 4.20, et seq.).

HOLDINGS:

1. Foreign-built vessels brought into the United States for use as coal storage facilities, and not as yachts or pleasure boats, are not subject to duty under the Tariff Schedules.

2. Foreign-built vessels used as coal storage facilities in United States territorial waters do not violate the coastwise laws, provided that the vessels remain stationary.

EFFECT ON OTHER RULINGS:

None.

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.

[redacted]

105802

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CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
SURNAME							
CODE AND DATE	(8) REVIEWER	(9) REVIEWER	(10) REVIEWER	(11) REVIEWER	(12) REVIEWER	(13) REVIEWER	(14) REVIEWER
SURNAME							

DEPARTMENT OF THE TREASURY - U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

AUG 30 1983

REFER TO

VES-13-18-CO:R:CD:C
106239 LLB

This ruling concerns certain vessel repair duties assessed pursuant to title 19, United States code, section 1466.

ISSUE:

Whether repairs made in compliance with government requirements qualify for remission under section 1466?

FACTS:

In April of 1980, the owner of this LASH barge made application for remission of duties, stating that the repairs were casualty related and were made in order to maintain the safety and seaworthiness of the barge. This application was denied on August 18, 1981.

A petition for remission was filed on September 21, 1981, in which it is claimed that the repairs were necessitated by government requirements.

LAW AND ANALYSIS:

Title 19, United States Code, section 1466, provides in pertinent part for payment of an ad valorem duty of 50 percent on the cost of foreign repairs to a vessel documented under the laws of the United States to engage in the foreign or coastwise trade. Section 1466(d)(1) provides that the Secretary of the Treasury is authorized to remit or refund such duties if the owner or master of the vessel provides good and sufficient evidence that the vessel was compelled by stress of weather or other casualty to put into such foreign port to make repairs to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination.

The language of the statute is clear and specific in requiring "good and sufficient evidence" of casualty. We have previously ruled that mere bald statements, unsupported by evidence, are insufficient to support grants of remission. (Ruling letter 105812, October 27, 1982). The file contains absolutely no evidence of casualty.

Furthermore, we have previously ruled (Ruling Letter No. 105668, June 25, 1982), that repairs necessitated by agencies of the government do not qualify as casualty occurrences for which remission or refund may be permitted.

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HOLDING:

In light of the foregoing facts and analysis, the petition is denied.

Edward B. Gable, Jr.
Chief
Carrier Rulings Branch

106239

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

JUL 29 1983

REFER TO
VES-8-01-CO:R:CD:C
106282 JM

[redacted]

Dear [redacted]

This is in reply to your letter dated July 1, 1983, concerning your proposal to use a privately printed form in lieu of the Cargo Declaration, Customs Form 1302. Your letter of April 27, 1983, and our reply of May 25, 1983, also concerned this proposal.

We note that your proposed form has been amended to show the Customs form number and the Office of Budget approval number. In addition, columns 6 and 7 appear as separate columns in agreemnet with the official form. These amendments correct deficiencies in your proposed form which were noted in our letter of May 25, 1983.

It appears that the word "ship" has been inadvertently omitted from block No. 3 which reads "nationality of ship" on the official form. Since block No. 3 was correctly shown on the proposed form forwarded with your letter of April 27, 1983, this correction should pose no problems.

Section 4.7a(c)(1), Customs Regulations (19 CFR 4.7a(c)(1)) provides in part that the measurement in column 9 be shown according to the unit of measure specified in the Tariff Schedules of the United States (TSUS). Accordingly, column No. 9 of the proposed form should be corrected to read "measurement (per TSUS)" as shown on the official form rather than "measurement (CBM)".

As provided by section 4.99 of the Customs Regulations, your revised privately printed form is approved for use in lieu of Customs Form 1302 on condition that block No. 3 and column No. 9 are amended to conform to the official form as stated above.

Sincerely,

Edward B. Gable, Jr.

Edward B. Gable, Jr.
Chief
Carrier Rulings Branch

E14

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MAY 6 - 1985

VES-3-02-CO:R:CD:C
107573 JM

Herbert B. Halberg, Esq.
Beck, Halberg & Williamson
40 Exchange Place
New York, New York 10005

Dear Mr. Halberg:

This is in response to your letter dated April 9, 1985, concerning the use of a foreign-built vessel as a pilot boat. The United New York and United New Jersey Sandy Hook Pilot Associations are contemplating the construction in Europe of a vessel for use as a pilot boat at the entrance to New York Harbor.

You state that the Sandy Hook Pilots do not intend to transport either cargo or passengers with their new vessel. You also state that the vessel will be used only as a station boat and for the transportation of pilots. You ask whether the vessel will be subject to penalties if the vessel is used solely as stated above. You also ask whether the vessel will be subject to duty when she enters the United States.

Title 46 United States Code, section 289, provides that no foreign vessel shall transport passengers between ports or places in the United States either directly of by way of a foreign port, and provides a penalty of $200 for each passenger so transported and landed. Title 46, United States Code, section 12106(b), provides in part that only a vessel for which a coastwise license or an appropriately endorsed registry has been issued may engage in the coastwise trade. Since transportation of passengers between points in the United States is coastwise trade, only a vessel documented for the coastwise trade may engage in such transportation.

Section 4.50(b), Customs Regulations (19 CFR 4.50(b)), defines a passenger as any person carried on board a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.

In view of the fact that the pilots in the subject case own the transporting vessel, they do not come within the meaning of passengers as defined by section 4.50(b), Customs Regulations. Accordingly, transportation of the pilots in the United States on a non-coastwise-qualified vessel does not constitute a violation of the coastwise laws.

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In a telephone conversation of May 2, 1985, you informed Mr. John Mathis of my staff that use of the vessel as a "station boat" means that the vessel will remain at a station with pilots living aboard while awaiting vessels arriving in the New York Harbor. Such use of subject vessel will not constitute a violation of the coastwise laws.

With respect to the dutiable status of the subject vessel, General Headnote 1, Tariff Schedules of the United States, provides in general that all articles imported into the Customs territory of the United States are subject to duty. General Headnote 5 of the Tariff Schedules provides that:

> For the purposes of headnote 1 - *** (g) vessels which are not "yachts or pleasure boats" within the purview of subpart D, part 6, of schedule 6, are not articles subject to the provisions of these schedules.

A pilot vessel is not a yacht or pleasure boat within the purview of subpart D and would therefore not be treated as an article subject to duty.

In a telephone conversation with Mr. Mathis on April 26, 1985, you requested that Customs answer the questions within the jurisdiction of Customs as soon as possible and disregard your question concerning documentation of the vessel, a matter within the jurisdiction of the U.S. Coast Guard. Under the circumstances, we have not referred your inquiry to the Coast Guard.

Sincerely,

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

[redacted]

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	(1) INITIATOR	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
CODE AND DATE	[redacted]						
SURNAME	[redacted]						
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SURNAME							

DEPARTMENT OF THE TREASURY - U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73) (Previous editions may be used)

☆U.S. GPO: 1984-719-979

107573

JUN 28 1985

VES-10-02-CO:R:CD:C
107680 PH

John E. McDermott, Esq.,
and Edwin S. Matthews, Jr., Esq.
Coudert Brothers
200 Park Avenue
New York, New York 10166

Dear Messrs. McDermott and Matthews:

In your letter of May 22, 1985, on behalf of Ham-U.S.A. Inc., you request a ruling on the use of a foreign-built cutter suction-type dredge in dredging operations in the Beaufort Sea off the North Coast of Alaska. You state that the dredge would be used to dredge trenches in the seabed for the placement of oil pipelines. To prevent back-flow of the dredged material into the trenches, it would be disposed of through a floating pipeline or transported by barge and dumped at an offshore site. It is likely that the dredged material would be without value but it is also possible that the dredged material would deposited for the purpose of creating an artificial island. The dredge itself would not store or transport dredged material. The dredging operation would, for the most part, take place outside United States territorial waters on the outer continental shelf (OCS) but, "such dredging may also involve operations which are within U.S. territorial waters."

You seek a ruling that:

1. The foreign-built dredge under consideration may engage in dredging outside the territorial waters of the United States because the Jones Act (46 U.S.C. 883) and the dredging statute (46 U.S.C. 292) do not apply outside United States territorial waters;

2. The proposed dredging by the dredge under consideration does not constitute "transportation" or "merchandise" under 46 U.S.C. 883; and

3. The foreign-built dredge under consideration may engage in dredging in United States territorial waters if it is "documented as a vessel of the United States" without violating 46 U.S.C. 292.

The questions you raise are discussed at length in two of our recent rulings (see C.S.D. 85-11 and ruling VES-10-02-CO:R:CD:C 106913 PH, September 17, 1984, copies enclosed).

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Under these rulings, the dredge under consideration, as a foreign-built dredge, may not engage in the proposed dredging on the OCS, assuming that the oil pipelines to be placed in the trenches to be dredged are to be used to carry oil to or from oil platforms or other installations or devices used to explore for, develop, or produce resources from the OCS (C.S.D. 85-11). If the dredging on the OCS outside territorial waters is not related to the exploration for, development, or production of resources from the OCS, it would not be prohibited. For your information, the use of a dredge to engage in dredging in the United States is not considered an engagement in the coastwise trade under 46 U.S.C. 883, when such dredging does not include any transportation by vessel.

If the dredged material is completely without value and is merely dumped, it would not be considered "merchandise," for purposes of 46 U.S.C. 883, and could be transported by a non-coastwise-qualified vessel. If it is used to construct an artificial island it would be considered "merchandise." Its transportation by a non-coastwise-qualified vessel from the dredging site to the site of the artificial island would be prohibited by the coastwise laws, if there was an installation or other device permanently or temporarily attached to the seabed for the purpose of exploring for, developing, or producing resources from the OCS or, if there was no such installation or device at the site, after any part of the incipient artificial island was above the level of mean high water, if the artificial island was to be used for one of the purposes described in the OCSLA. The use of a dredge in effecting the movement of dredged material through a pipeline, and not by movement of the dredge itself, is not considered a transportation of merchandise by the dredge between points in the United States (C.S.D. 85-11 and ruling 106913).

The foreign-built dredge under consideration may not engage in dredging in United States territorial waters even if "documented as a vessel of the United States" (C.S.D. 85-11).

With regard to the contention in your letter that Customs has limited the geographical scope of 46 U.S.C. 883 to the transportation of merchandise between two points within the territorial waters of the United States, your attention is directed to Treasury Decision 54281 (1957), copy enclosed. Since that time, we have consistently applied the coastwise laws to the transportation of merchandise between "installations and other devices" subject to United States law by virtue of the Outer Continental Shelf Lands Act of 1933, as amended (OCSLA),

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and between such installations and other devices and points actually in the United States or its territorial waters. Congress was aware of our interpretation of the OCSLA with regard to the coastwise laws and, at least implicitly, approved that interpretation in its 1978 Amendments to the OCSLA (see House Report 95-590 and House Conference Report No. 95-1471, reproduced, in pertinent part, at 1978 U.S.C.C.A.N. 1450, 1535, 1722 and 1723). The ruling to which you refer to support this and other contentions in your letter, VES-10-02-RRUCDC 104541 PH, May 28, 1980, has been revoked (see our telegram VES-10-02-RRUCDC 104811 PH, September 1, 1980, copy enclosed).

The foregoing paragraph is also applicable with regard to your contention that 46 U.S.C. 292 is not made applicable to the OCS by the OCSLA. Although Customs had not ruled 46 U.S.C. 292 to be applicable to the OCS at the time of the 1978 Amendments to the OCSLA, we believe that the intent of the OCSLA is met by our ruling in C.S.D. 85-11. As stated in the preceding paragraph, ruling 104541 has been revoked.

Our position on your contention that a foreign-built dredge may engage in dredging in the United States if "documented as a vessel of the United States" is discussed in C.S.D. 85-11. The court case of Great Lakes Dredge and Dock Company v. Ludwig, 486 F. Supp. 1305 (1980), which you cite with regard to this issue, did not involve a foreign-built dredge (see 486 F. Supp. at 1312). The material in that decision which you quote, which considers the question of whether "American-built dredges should be able to engage in dredging in the United States without being licensed and enrolled to engage in the coastwise trade" (486 F. Supp. 1312), is dicta. In reaching our position on the meaning of the phrase "unless documented as a vessel of the United States" we have, as the court in Great Lakes Dredge and Dock Company suggested, "reexamine[ed] the ancient documentation statutes" (486 F. Supp. 1312) (see C.S.D. 85-11).

Sincerely,

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

[redacted]

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CODE AND DATE	[redacted]	(2) REVIEWER	(3) REVIEWER	(4) REVIEWER	(5) REVIEWER	(6) REVIEWER	(7) REVIEWER
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DEPARTMENT OF THE TREASURY - U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

107680

VES-3-06/VES-7-03
VES-12-01 CO:R:CD:C
107991 PH
108007

27 DEC 1985

Jess G. Webster, Esq.
Mikkelborg, Broz, Wells, Fryer & Yates
3300 Seattle First National Bank Building
Seattle, Washington 98154

Dear Mr. Webster:

In your letters of October 3 and 28, 1985, you request a ruling on the applicability of the coastwise laws, documentation laws, Nicholson Act, and Customs duty provisions to the proposed use of a foreign-built, United States-flag fish processing vessel off the coast of Alaska.

You state that it is proposed to form a United States citizen corporation which would purchase a foreign-built vessel. This vessel would be documented as a vessel of the United States and used for the processing of seafood products. The vessel would receive fish from United States catching vessels on the high seas and process the fish into seafood products on board. The vessel would then transship the processed fish within United States territorial waters to another vessel bound for foreign ports.

You request a ruling on whether the vessel would be dutiable on its transfer to United States owners and documentation. You recognize that certain foreign repairs to, and equipments purchased abroad for the vessel after it is documented in the United States would be subject to duty under 19 U.S.C. 1466. You ask about the dutiability of the fish processed by the processing vessel and whether the seafood products could be stored at shore based facilities pending shipment abroad.

You state that you understand that a foreign-built, United States-flag vessel may engage in seafood processing without violating 46 U.S.C. 12106 (we believe you mean 46 U.S.C. 12108) and request confirmation of this understanding. You request that we rule on whether the proposed operation violates the Nicholson Act (46 U.S.C. 251(a)).

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Finally, you request that we rule on the applicability of the coastwise laws to the proposed operation. You state that you understand that a foreign-built vessel may transship fish products at the same point in territorial waters at which it received them, even if it does move during the time between receipt and transshipment of the fish. You also understand that a foreign-built vessel may receive fish on the high seas and transship them in territorial waters or receive fish in territorial waters and transship them on the high seas, although such a vessel may not receive fish at one point in territorial waters and transship them at another point in territorial waters. You request confirmation of these understandings. You also request confirmation that if the foreign-built processing vessel loads fuel and supplies in territorial waters it may deliver portions of such fuel and supplies to United States catcher vessels outside territorial waters or at the same location at which they were loaded without violating the coastwise laws.

Pursuant to General Headnote 5(g), Tariff Schedules of the United States (19 U.S.C. 1202) (TSUS), vessels which are not "yachts or pleasure boats" within the purview of subpart D, part 6, of schedule 6, TSUS (see items 696.05 and 696.10, TSUS), are not subject to duty under the TSUS. Accordingly, a fish processing vessel would not be subject to duty in the United States on its transfer to United States ownership and documentation.

Products of an American Fishery qualify for duty-free entry under item 180.00, Tariff Schedules of the United States (TSUS), and sections 10.78 and 10.79, Customs Regulations (19 CFR 10.78 and 10.79). An American Fishery is defined, as applicable to the proposed fishing venture under consideration, in these provisions as "a fishery enterprise conducted under the American flag by vessels of the United States on the high seas ...."

In applying these provisions, we have ruled that for fish taken on the high seas to be the product of an American Fishery and free of duty under the TSUS, they must have been caught by a United States-flag vessel. We have ruled that even if the fish are caught by a United States-flag vessel, they could lose their status as the product of an American Fishery if transshipped to a foreign-flag processing vessel for processing.

In this case, fish would be caught by United States catching vessels, transshipped to a United States-flag processing vessel, and, after processing, transshipped to a foreign-flag vessel for transportation abroad. Such fish would qualify for treatment as the product of an American Fishery and would not be subject to

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duty in the United States at the time it is transshipped to the United States-flag processing vessel for processing or the foreign-flag vessel for transportation abroad. The storage of the processed fish at shore based facilities in the United States pending their shipment abroad would not affect this determination, nor would it be prohibited by any law administered by the Customs Service, assuming that the processed fish were landed in the United States by the United States-flag processing vessel and that that vessel did not receive the fish in United States territorial waters (see discussion of 46 U.S.C. 251(a) and 883, below).

With certain exceptions not relevant to this case, only a vessel with a fishery license or an appropriately endorsed registry may engage in the fisheries, pursuant to 46 U.S.C. 12108. To obtain such a license or registry, a vessel must be of more than 5 net tons, United States owned, and United States built. "Fisheries" is defined in 46 U.S.C. 12101(6) to include "planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the fishery conservation zone established by [16 U.S.C. 1811]." The fishery conservation zone established by 16 U.S.C. 1811 is the zone between 3 miles and 200 miles from the baseline from which the territorial sea of the United States is measured.

Thus, the fisheries, as defined for purposes of vessel documentation, does not include fish processing. We confirm that the foreign-built fish processing vessel under consideration may engage in fish processing, either in or outside United States territorial waters, without violating 46 U.S.C. 12108.

Under the Nicholson Act (46 U.S.C. 251(a)), no foreign-flag vessel shall land in a port of the United States its catch of fish taken on board the vessel on the high seas or fish products processed therefrom, or any fish products taken on board the vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. In this case, the fish processing vessel would be a United States-flag vessel. Thus, it would not violate 46 U.S.C. 251(a) even if it received fish on the high seas and landed them or the products processed therefrom in the United States (e.g., landed them in a port of the United States or transshipped them to another vessel in United States territorial waters).

Under the coastwise merchandise statute (46 U.S.C. 883), no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws

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of the United States and owned by citizens of the United States. A point in United States territorial waters is considered a point embraced within the coastwise laws of the United States, for purposes of this provision. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

The fish processing vessel under consideration, as a foreign-built vessel, may not engage in the coastwise trade. As you suggest, the vessel could not receive fish at one coastwise point (e.g., a point in United States territorial waters) and off-load the fish or products processed therefrom at another coastwise point (e.g., a point on shore in the United States or a second point in United States territorial waters). The processing vessel could receive fish outside United States territorial waters and off-load or transship the fish or products processed therefrom at a coastwise point and it could receive the fish inside United States territorial waters if the location at which it off-loaded or transshipped the fish or products processed therefrom was outside United States territorial waters. The processing vessel also could receive fish in territorial waters and transship the fish or products processed therefrom at the same point in territorial waters at which it received the fish, even if it moved between the time of receipt and transshipment of the fish.

The same principles apply with regard to the transportation by the processing vessel of fuel and supplies for United States catcher vessels. The coastwise laws would not be violated by such transportation if the point at which the processing vessel loaded the fuel and supplies was a coastwise point and the point at which it transshipped them to the catcher vessels was outside United States territorial waters or, if inside United States territorial waters, the same point at which it loaded the fuel and supplies.

We note that it is intended that the fish processed on board the United States-flag processing vessel are to be transshipped in United States territorial waters to another vessel for transportation to foreign ports. As you indicate you are aware, the definition of fishing in the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, et seq.), differs substantially from that of the fisheries in 46 U.S.C. 12101(6), quoted above, and includes the processing and transportation of fish (see 16 U.S.C. 1802(10). The National Marine Fisheries Service (NMFS) in the National Oceanic and Atmospheric Administration (NOAA) administers the Magnuson Act. We understand that, under 16 U.S.C. 1824, a foreign-flag vessel may not, unless it has a valid permit issued under that statute, receive fish or fish products in the

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fishery conservation zone and transport those fish or fish products and that, under 16 U.S.C. 1857(2)(A), a foreign-flag vessel may not receive fish or fish products in United States territorial waters and transport those fish or fish products.

If you wish to write to NOAA about this matter, the mailing address for inquiries on this subject is:

Ron Steinberg, Esq.
Office of the General Counsel
National Oceanic Atmospheric Administration
3300 Whitehaven Street
Washington, D.C. 20235

Sincerely,

(Signed) Edward B. Gable, Jr.

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

[redacted]

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TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
U.S. CUSTOMS SERVICE 1301 CONSTITUTION AVENUE, NW. WASHINGTON, D.C. 20229	ACTION: P INFO:	UNCLASSIFIED
ACCOUNTING CLASSIFICATION	DATE PREPARED 4/16/86	FILE VES-3-07-CO:R:CD:C 108320 DHR
FOR INFORMATION CALL		
NAME DONALD REUSCH	PHONE NUMBER 566-5706	TYPE OF MESSAGE ☒ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO: [redacted]

16 APR 1986

TELEX NO. 790704

INFO R/C HOUSTON

REUTEL APRIL 15, REF 108320, DISCHARGE AT HOUSTON OF 7 CONTAINERS OF COFFEE FROM [redacted]. ALTHOUGH THESE CONTAINERS WERE MANIFESTED FOR HOUSTON, YOU STATE THIS WAS IN ERROR AND THAT NEW YORK IS CORRECT DESTINATION AND YOU WISH TO LADE CONTAINERS ON BOARD FOREIGN-FLAG VESSEL OF SAME LINE [redacted] ON APRIL 16 FOR TRANSPORTATION TO NEW YORK UNDER SECTION 4.34, CUSTOMS REGULATIONS.

IF HOUSTON CUSTOMS CONFIRMS THAT NEW YORK IS IN FACT PORT OF DESTINATION ON BILLS OF LADING AND THAT THE CONTAINERS DID NOT LEAVE YOUR TERMINAL, NO PENALTY ACTION WILL BE TAKEN IF CONTAINERS ARE TRANSPORTED TO NEW YORK ON [redacted].

108320

[redacted]

Edward B. Gable

EDWARD B. GABLE, JR.
DIRECTOR, CARPIERS, DRAWBCK
AND BONDS DIVISION

SECURITY CLASSIFICATION

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C. 20229

8 - MAY 1986

VES-5-19-COR:CD:C
108324 DHR

[redacted]

Dear [redacted]

This is with reference to your letter dated April 2, 1986, concerning Baltimore District Case 84-1303-51289 in which a penalty of $500 was assessed under 46 U.S.C 1445 for violation of 19 U.S.C. 1444. Apparently, an automobile which was manifested for Newark, New Jersey, was overcarried and unladed from the [redacted] in Baltimore. Code 12 on the Discrepancy Report and Declaration (CF 5931) was filed by the vessel. The automobile was not returned to Newark, its manifested port of destination, in acorddance with section 4.34(b) of the Customs Regulations for overcarried cargo. It was therefore considered to be diverted.

You take issue with the assessment of the penalty because the vessel did in fact arrive in Baltimore with a manifest, albeit one with a discrepancy, which was corrected by the filing of the Post Entry.

Although it is true that the [redacted] arrived in Baltimore with a manifest, it arrived without a Baltimore destination manifest for the automobile in question and was therefore deemed not to have had a permit to proceed with the automobile to that port. The filing of a Post Entry for overages is required by 19 U.S.C. 1440, and is not addressed to the correction of the manifest.

In view of the foregoing, the action of the District Director at Baltimore is affirmed.

Sincerely,

Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

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VES-3-12-CO:R:CD:C
108368 PH

14 MAY 1986

Mr. John J. Bajor
President/Director
Keppel Marine Agencies, Inc.
26 Broadway
New York, New York 10004

Dear Mr. Bajor:

With your letter of May 9, 1986, you sent a copy of your telex of the same date concerning the use of foreign-built sludge barges by the city of New York to transport sludge to a point "some 106 miles off the coast." You request confirmation of the advice by Mr. Donald H. Reusch of my staff that the proposed transportation will not violate the Jones Act.

Title 46, United States Code, section 883 (46 U.S.C. 883) (often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States.

For purposes of section 883, a point in United States territorial waters is considered a point embraced within the coastwise laws. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

We have ruled that material, such as sludge or refuse, which has no apparent value and will not be used commercially or in trade but is being dumped as worthless is not considered "merchandise," for purposes of section 883. Such material could be transported between coastwise points by a non-coastwise-qualified vessel.

In this case, non-coastwise-qualified barges would transport sludge to the high sea where it would be dumped. The material transported would not be considered "merchandise," for purposes of

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section 883, and, in any event, the transportation would not be between coastwise points. Section 883 would not prohibit the proposed transportation of the sludge from a point in the United States to the dumping site approximately 106 miles offshore.

Sincerely,

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

[redacted]

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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)
(Previous editions may be used)

•U.S. GPO: 1984-719-979

DATE: 23 SEP 1986

FILE: VES-3-02-CO:R:CD:C
108589 PH

TO : District Director of Customs
Savannah, Georgia

FROM : Chief, Carrier Rulings Branch

SUBJECT: Applicability of Coastwise Laws to Vessel Transportation of Pilot Observer or Trainee

In your memorandum of September 2, 1986 (File: INS-1 DD:LCD), you request our advice on the applicability of the coastwise laws to the transportation of an employee of Atlantic Towing Company, Mr. John C. McCarthy, III, who is attempting to obtain a United States Coast Guard first class pilot's license for the port of Savannah. With your memorandum you forwarded copies of background material pertaining to this matter, including a letter from Mr. McCarthy, a letter from the Coast Guard to Alantic Towing Company, Savannah Marine Safety Circular 2-86 setting forth the service requirements for a pilot's license, and a letter from the Savannah Pilot's Association to Ivaran Agencies, Inc., the owner of or agent for the vessels on which Mr. McCarthy was transported.

You state that because one of the Coast Guard requirements for obtaining a pilot's license is that the candidate make a number of trips as an observer over the route for which the license would be granted, Atlantic Towing and Mr. McCarthy had obtained permission for him to ride and observe on Ivaran vessels. Mr. McCarthy has made several such voyages but the Savannah Pilot's Association has refused to allow Mr. McCarthy to ride their pilot boat to and from the sea buoy where pilots board or leave vessels for piloting in and out of the Savannah River. As a result, Mr. McCarthy has been forced to proceed with the vessel to its next port of call or to join the vessel at the port of call before Savannah, either Charleston, South Carolina, or Jacksonville, Florida.

The Savannah Pilot's Association has written to Ivaran contending that its transportation of Mr. McCarthy, described above, is in violation of the coastwise laws. The Pilot's Association has provided a copy of this letter to you with a verbal request that Customs not allow Mr. McCarthy to ride on the vessels.

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You state that it is your opinion, as well as that of Customs in Charleston, that there is no violation of the coastwise laws when Mr. McCarthy rides the vessels for the purpose of obtaining the required Coast Guard experience. You request a ruling on the matter as soon as possible.

Title 46, United States Code, section 289, as interpreted by the Customs Service, prohibits the transportation of passengers between points embraced within the coastwise laws, either directly or by way of a foreign port, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. For purposes of this provision, "passenger" is defined as "... any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business" (19 CFR 4.50(b)).

In our interpretation of the coastwise laws, we have held that a person transported on a vessel as a student in courses such as oceanography or sailing and seamanship, when the presence of that person is required on board the vessel as a part of his or her course or training, is not a passenger, for purposes of the coastwise laws. Analagously, we believe that Mr. McCarthy, when transported on a vessel over the route for which he is a pilot candidate for the purpose of observing so that he may obtain his pilot's license, is not a passenger, for purposes of the coastwise laws. We note that we have consistently held that a pilot transported on a vessel for the purpose of piloting the vessel, or transported to the vessel to be piloted by another vessel, is not a passenger, for purposes of the coastwise laws.

We concur with your opinion and the opinion of Customs in Charleston that Mr. McCarthy is not a passenger, for purposes of the coastwise laws, in the situation described in your memorandum and above.

(Signed) Kathryn C. Peterson

Kathryn C. Peterson

108589

PUBLIC

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7- OCT 1986

VES-3-CO:R:CD:C
108605 PH

John R. McKay, Esq.
Kurrus & Kirchner
1055 Thomas Jefferson Street, NW.
Washington, D.C. 20007

Dear Mr. McKay:

In your letter of September 15, 1986, you request a written ruling on the applicability of the coastwise laws to a number of vessel voyages originating, terminating, or touching at the United States Virgin Islands ("Virgin Islands").

Title 46, United States Code, section 883 (46 U.S.C. 883), often called the Jones Act), in part, prohibits the transportation of merchandise by water or by land and water between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by citizens of the United States. Title 46, United States Code, section 877, provides that "the coastwise laws of the United States shall not extend to the Virgin Islands of the United States until the President of the United States shall, by proclamation, declare that such coastwise laws shall extend to the Virgin Islands and fix a date for the going into effect of same." Because no such proclamation has been issued by the President, non-coastwise-qualified vessels are not prohibited from engaging in the coastwise trade in the Virgin Islands and the waters thereof.

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On the basis of the foregoing, we will rule on the applicability of the coastwise laws to the voyages you describe in the order presented.

A. A voyage from a United States port to the Virgin Islands in ballast would not be considered coastwise trade because no merchandise is transported and the coastwise laws do not apply to the Virgin Islands.

B. A voyage from the Virgin Islands to a United States port in ballast would not be considered coastwise trade because no merchandise is transported and the coastwise laws do not apply to the Virgin Islands.

C. A voyage from a United States port to the Virgin Islands with cargo to be discharged in the Virgin Islands would not be considered coastwise trade because the Virgin Islands are not

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embraced within the coastwise laws of the United States (i.e., such a voyage would be between a coastwise point and a non-coastwise point).

D. A voyage from the Virgin Islands to a United States port with cargo originating in the United States and previously transported to the Virgin Islands would be considered coastwise trade unless the cargo was being returned to the exact same point in the United States from which it was transported to the Virgin Islands or unless the cargo was manufactured or processed into a new and different product in the Virgin Islands (see 19 CFR 4.80b and American Maritime Association v. Blumenthal, 590 F. 2d 1156 (1978), cert. den. 441 U.S. 943). If the cargo was not being returned to the point of origin in the United States or being manufactured or processed into a new and different product in the Virgin Islands, the voyage from a United States port to the Virgin Islands, if by vessel, as well as the voyage from the Virgin Islands to a United States port, would be considered coastwise trade.

E. A voyage from the Virgin Islands to a United States port with cargo of foreign or Virgin Islands origin would not be considered coastwise trade, assuming that the foreign or Virgin Islands-origin cargo had not been transported, directly or indirectly, from a port in the United States.

F. A voyage from a United States port to another United States port, including a stop at the Virgin Islands at which the cargo is not discharged, would be considered coastwise trade, assuming that the cargo was loaded on the vessel at the first United States port and unloaded at the second United States port.

G. A voyage from the Virgin Islands to a United States port with United States crude oil that has been stored, without any refining or transformation, in the Virgin Islands would be considered coastwise trade, assuming the crude oil was not being returned to the exact same United States port from which it was transported to the Virgin Islands. If the cargo was not being returned to the point of origin in the United States, the voyage from a United States port to the Virgin Islands, if by vessel, would also be considered coastwise trade.

H. A voyage from the Virgin Islands to a United States port with a refined product derived from United States origin crude oil that was transported to the Virgin Islands for refining there would not be considered coastwise trade if the refining of the crude oil in the Virgin Islands actually consisted of manufacturing or processing which resulted in a new and different product (see D, above). Generally, we have ruled that the refining of crude oil into petroleum products is a manufacturing or processing into a new and different product.

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I. A voyage from the Virgin Islands to a United States port with foreign origin crude oil that has been stored, without any refining or transformation in the Virgin Islands, would not be considered coastwise trade, assuming that the foreign origin crude oil had not been transported, directly or indirectly, from a port in the United States.

J. A voyage from the Virgin Islands to a United States port with refined product derived from foreign crude oil that was transported to the Virgin Islands would not be considered coastwise trade, assuming that the foreign origin crude oil had not been transported, directly or indirectly, from a port in the United States. Even if the foreign origin crude oil had been so transported, if it was refined in the Virgin Islands to the extent that the refining operation was considered to be a manufacturing or processing into a new and different product, the voyage would still not be considered coastwise trade.

You should be aware that the Virgin Islands have their own Customs laws (see 48 U.S.C. 1406i and section 101.1(1), Customs Regulations (19 CFR 101.1(1)). You may wish to check with the appropriate authorities in the Virgin Islands to ensure that the voyages you describe are in compliance with the Customs laws of the Virgin Islands.

Sincerely,

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

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3- OCT 1986

VES-3-CO:R:CD:C
108606 PH

John R. McKay, Esq.
Kurrus & Kirchner
1055 Thomas Jefferson Street, NW.
Washington, D.C. 20007

Dear Mr. McKay:

In your letter of September 15, 1986, you request a ruling on the applicability of the coastwise laws to a number of voyages. You state that each voyage concerns a United States-flag vessel. The voyages are described as--

> A. From a United States port to the west coast of Panama and the western terminus of the trans-Panama pipeline with United States origin crude oil.
>
> B. From the east coast of Panama and the eastern terminus of the trans-Panama pipeline to the Virgin Islands with United States origin crude oil that has passed through the pipeline.
>
> C. From Alaska to a point off the west coast of Panama, where the cargo of United States origin crude oil is discharged onto a smaller vessel for a lightering operation or for passage through the Panama Canal.
>
> D. From the point of transfer envisioned in "C," above, through the Panama Canal and to a United States gulf or east coast port.

Title 46, United States Code, section 883 (46 U.S.C. 883, often called the Jones Act), in part, prohibits the transportation of merchandise by water or by land and water between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States. Title 46, United States Code, section 877, provides that "the coastwise laws of the United States shall not extend to the Virgin Islands of the United States until the President of the United States shall, by proclamation, declare that such coastwise laws shall extend to the Virgin Islands and

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fix a date for going into effect of same." Because no such proclamation has been issued by the President, non-coastwise-qualified vessels are not prohibited from engaging in the coastwise trade in the Virgin Islands and the waters thereof.

Merchandise which is transported by vessel or other means from a United States coastwise point to a non-coastwise point where it is manufactured or processed into a new and different product and then transported by vessel or other means, in the form of the new and different product, to another coastwise point is not considered to be transported in the coastwise trade. With regard to this interpretation of the coastwise laws, your attention is invited to section 4.80b, Customs Regulations (19 CFR 4.80b), and American Maritime Association v. Blumenthal, 590 F. 2d 1156 (1978), cert. den. 441 U.S. 943. It should be noted that the manufacturing or processing of merchandise must be done on land at the intermediate coastwise point (i.e., the merchandise must be unloaded from the vessel, if transported by vessel) to have this interpretation of the coastwise laws be applicable.

We will rule on the applicability of the coastwise laws to the voyages you describe in the order presented.

A. The applicability of the coastwise laws to this voyage depends on the destination of the crude oil after it passes through the trans-Panama pipeline. Transportation between a United States port and the west coast of Panama, by itself, would not, of course, be considered coastwise trade. If the crude oil is transported from the west coast of Panama by any means (e.g., through the pipeline and on another vessel) to another United States coastwise point without the crude oil being manufactured or processed into a new and different product at an intermediate non-coastwise point, both the pre-Panama and post-Panama transportation, if by vessel, would be considered coastwise trade. If the crude oil is not transported from Panama to a United States coastwise point, or, if transported to such a point, it is manufactured or processed into a new and different product at an intermediate non-coastwise point, the transportation of the crude oil from the United States port to the west coast of Panama would not be considered coastwise trade.

B. The applicability of the coastwise laws to this voyage depends on the destination of the crude oil if it is transported onward from the Virgin Islands and what is done to the crude oil in the Virgin Islands if it is transported onward. Transportation of the crude oil from a United States point to Panama, then through the trans-Panama pipeline, and then to the Virgin Islands, by itself, would not be considered coastwise trade because the coastwise laws do not apply to the Virgin Islands. If the crude oil is

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transported from the Virgin Islands to a point in the United States other than its point of origin (i.e., where it was originally loaded on the vessel for transportation to the trans-Panama pipeline), all vessel portions of the transportation would be considered coastwise trade. If the crude oil is consumed in the Virgin Islands or not transported from the Virgin Islands to a United States coastwise point, the transportation of the crude oil from its point of origin in the United States to Panama and from Pamana to the Virgin Islands, would not be considered coastwise trade. If the crude oil is manufactured or processed into a new and different product in the Virgin Islands and then transported to a United States port or anywhere else, no portion of the transportation of the crude oil and the new and different product would be considered coastwise trade.

C. See A, above. The applicability of the coastwise laws to this voyage depends on what is done with the crude oil after discharge from the vessel which transported the crude oil from Alaska to the point off Panama. If the crude oil is transported onward to a United States port, without being manufactured and processed into a new and different product at an intermediate non-coastwise point, all vessel transportation of the crude oil would be considered coastwise trade. If the crude oil is not transported onward to a United States coastwise point or, if transported to such a point, it is manufactured or processed into a new and different product at an intermediate non-coastwise point, the transportation of the crude oil would not be considered coastwise trade.

D. See C, above. Of course, both portions of this voyage between Alaska and a United States gulf or east coast port, via a point of transfer off the west coast of Panama, would be considered coastwise trade.

Sincerely,

(Signed) Kathryn C. Peterson

Kathryn C. Peterson
Chief
Carrier Rulings Branch

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(T. D. 54482)

Aircraft - Customs Regulations Amended

Sections 6.6, 6.7, and 6.9 of the Customs Regulations, relating to documents for entry of aircraft, amended.

TREASURY DEPARTMENT
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D. C.

To Collectors of Customs and Others Concerned:

TITLE 19--CUSTOMS DUTIES

CHAPTER I--BUREAU OF CUSTOMS

Part 6--AIR COMMERCE REGULATIONS

It has been found that the listing of accompanied baggage on the air cargo manifest, which is usually prepared prior to lading, is frequently inaccurate due to last minute changes in the number of pieces of such baggage presented for lading. Because of such inaccuracies, customs inspectors have been determining the number of pieces of accompanied baggage at the time of examination. For this purpose it is necessary that the customs officer have the total number of passengers and crew members on the flight. Therefore, the requirement for listing accompanied baggage on the air cargo manifest is being discontinued. Provision is being made for listing the total number of crew members on the general declaration when a crew manifest is not required.

The regulations of the Immigration and Naturalization Service (8 CFR Part 231) have been amended effective December 1, 1957, to provide for the manifesting of air passengers on individual card forms (Form I-94). As a result, there will be no passenger manifest

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available for the use of customs; therefore, a provision is being made for listing the total number of passengers on the face of the general declaration.

To implement the foregoing, the Customs Regulations are amended as follows:

Section 6.6(a) is amended by placing a period after "aircraft" in the first sentence and deleting the remainder of that sentence.

Section 6.6(b) is amended to read as follows:

> (b) The forms described in sections 6.7 and 6.8 may be obtained from collectors of customs upon payment by the owner or operator of the aircraft. These forms may be printed or dittoed by private parties, provided the forms so printed or dittoed conform to the official forms currently in use, with respect to size, wording, arrangement, style and size of type, and paper specifications. A small quantity of each of the forms shall be set aside by collectors of customs for free distribution and official use.

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The first complete sentence of section 6.7(b)(1) is amended by deleting the period at the end and adding:

> but the total number of crew members shall be shown on the general declaration.

Section 6.7(b)(2) is amended to read as follows:

> (2) The total number of passengers shall be shown on the face of the general declaration. (Note: No passenger manifest is required for customs purposes. For Immigration and Naturalization Service passenger manifest requirements, see 8 CFR Part 231.)

Section 6.7(b)(4) is amended by deleting the first four sentences.

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Section 6.7(h) is amended by deleting the period at the end of the first sentence and adding "with merchandise or unaccompanied baggage." and by inserting the word "unaccompanied" before the word "baggage" wherever it appears in the paragraph.

Section 6.9(b) is amended by deleting ", or passengers," from the first sentence.

(R. S. 161, 251, secs. 624, 644, 46 Stat. 759, 761, sec. 7, 44 Stat. 572, as amended; 5 U. S. C. 22, 19 U. S. C. 66, 1624, 1644, 49 U. S. C. 177.)

These amendments shall become effective at 12:01 a.m. local standard time on December 1, 1957.

[illegible]

Commissioner of Customs

Approved:

NOV 1[illegible] 1957

[illegible]

Secretary of the Treasury

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WAR-1 R:CD:D 5
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Your file: CLA-2 R:CV:MC
045733

Director, Classification and Value Division

Director, Carriers, Drawback and Bonds Division

Interaal Advice concerning men's three piece suits - entireties question

Assuming that vests, trousers, and jackets are classifiable as entireties under the TSUS provision for suits when imported directly for consumption, you ask whether warehouse entry of the merchandise would affect the tariff classification under the following circumstances.

Separately packaged and invoiced parts of suits - vests, trousers, and jackets - are shipped from Korea to the United States, where they are placed in a customs bonded warehouse. Without being repackaged or otherwise manipulated, they are forwarded from the warehouse to domestic purchasers. The purchasers assemble the components and sell them as three-piece suits.

The entry of merchandise in a customs bonded warehouse constitutes an importation for tariff purposes, unless otherwise provided by law. Section 144.12 of the Customs Regulations states that "the entry shall show the value, classification, and rates of duty as approved by the district director at the time of entry. However, no deposit of estimated duties shall be required until the merchandise is withdrawn for consumption." Except as otherwise provided in statute and regulations, only the obligation to pay customs duties is postponed by the warehouse entry. In the case under consideration, the classification of merchandise as an entirety at the time of the warehouse entry will necessarily determine the classification and rate of duty at the time of its withdrawal.

Accordingly, upon withdrawal from bonded warehouses separate packages containing jackets, trousers, and vests should be classified and assessed duty in the same manner as if entered for consumption, even though the packages may be released under separate withdrawals at different times.

[redacted]

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J.P. Tebeau

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DEC 14 1977

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DRA-1 R:CD:D S
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Your Ref: DRA-1-O:CV:LIQ HL

Regional Commissioner of Customs
San Francisco, CA

Director, Carriers, Drawback and Bonds Division

Presidential Proclamation 4538, dated November 11, 1977, "Import Fees on Sugar, Sirup, and Molasses."

You asked whether the import fees on sugar, sirup, and molasses that were imposed by Presidential Proclamation 4538, dated November 11, 1977, and incorporated into the Tariff Schedules of the United States (TSUS) as items 956.10, 956.20, 957.10, and 957.20 are subject to drawback under the provisions of 19 U.S.C. 1313.

Section 528 of the Tariff Act of 1930, as amended (19 U.S.C. 1528) provides as follows:

> No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to the customs revenue, unless the law imposing such tax or charge designates it as a customs duty or contains a provision to the effect that it shall be treated as a duty imposed under the customs laws.

The Customs Court held in Don W. Snyder v. United States, C.D. 2343, 48 C.C.R. 243 (1962) that section 528 applies to drawback.

In the headnote to Part 3 of the appendix to the TSUS (Schedule 9), Congress stated its intention to consider import fees proclaimed by the President pursuant to Section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), to be import duties rather than internal revenue taxes. The same intention is stated in Section 22(c) of the Agricultural Adjustment Act.

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Accordingly, the fees on imports of sugar, sirups, and molasses imposed by presidential proclamation pursuant to the Section 22 of the Agricultural Adjustment Act and found in schedule 9 of the TSUS are subject to drawback upon compliance with 19 U.S.C. 1313 and Part 22 of the Customs Regulations.

J. P. Tebeau

J.P. Tebeau

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO
BON-1-RRUCDB
211374 L

DEC 9

[redacted]

Reference: Your letter dated January 22, 1980

Dear [redacted]

Your letter requests clarification of C.S.D. 79-461 concerning termination of a surety's liability under an antidumping bond.

You ask first why bonds were given on Customs Form 7591 as no finding was issued with respect to Portland hydraulic cement from Canada.

We have no information as to why Antidumping Bonds were issued by the surety and, apparently, accepted by the Customs Service. However, the information submitted by the inquirer indicated that these were the facts.

Secondly, you state that the meaning of the paragraph beginning "Accordingly" is unclear to you. You suggest that if a reliquidation under 19 U.S.C. 1521 is made on the last day of the two-year period and increased duties are found due, on the next day the surety on the bond is absolved from liability for the increased duties found due in that liquidation. The suggestion is not correct. A reliquidation, for any reason, vacates and is substituted for the original liquidation. The surety would remain liable under the bond until the reliquidation became final.

Sincerely,

George C. Steuart
Chief
Drawback and Bonds Branch

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REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

213434

(T.D. 81-242)

Accelerated payment for same condition drawback

The Customs Service will allow persons who claim drawback under the recently enacted same condition drawback law, P.L. 96-609, 94 Stat.3555 (December 28, 1980), codified as 19 U.S.C. 1313(j), to obtain accelerated payment of drawback if certain conditions are met.

213434

In a ruling (file No. 212709) dated March 26, 1981, published as a legal determination, L.D. 81-0126, and which will be published in the Customs Bulletin as a C.S.D., the Customs Service noted that, by its very terms, the provisions of section 22.20a of the Customs Regulations applied to claims made under the manufacturing drawback law 19 U.S.C. 1313(a) and (b). At the time of the ruling, same condition drawback had existed for about three months, and no reason had been presented to warrant amendment of section 22.20a to expand the accelerated payment program.

The accelerated payment program was established to alleviate cash-flow problems associated with the liquidation of recurring, similar drawback claims. 37 F.R. 20951. Unlike rejected merchandise drawback under 19 U.S.C. 1313(c), and similar to manufacturing drawback under 19 U.S.C. 1313(a) and (b), same condition drawback is designed to stimulate claims for drawback on a recurring basis. This is evident from the Congressional expressions of intent contained in H. Rept. 96-1109, 17 (1980) and S. Rept. 96-999, 23 (1980). Same condition drawback was to supplement the procedures provided by the laws on temporary importations under bond, Customs bonded warehouses, and foreign-trade zones. The underlying intent of both manufacturing drawback and same condition drawback is to encourage United States business in export trade. That intent is accomplished in both instances by allowing a refund of duty if dutiable foreign merchandise is exported within specified time periods after importation.

In view of the similarities in processing claims under 19 U.S.C 1313(a) and (b) and 19 U.S.C. 1313(j) and the underlying purpose of those provisions, the Customs Service is persuaded that claimants of same condition drawback should be allowed to participate in an accelerated payment program. In order to expedite granting of this benefit the procedures set forth in section 22.20a will be used where possible. Any requirement in that section which is applicable to a claim under manufacturing drawback or same condition drawback is to be used. Requirements in section 22.20a which have relevance to claims for manufacturing drawback only are to be disregarded in processing same condition drawback claims. For example, the requirement that an applicant for accelerated payment secure its performance by posting an appropriate bond or bond rider is applicable to both types of drawback, as is the requirement for proving timely exportation. The requirement for proving that a manufacture or processing occurred applies

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only to a claim for manufacturing drawback. Further, if the Regional Commissioner of Customs determines that a claimant is delinquent or otherwise remiss in any transaction with Customs, the claimant is not eligible for accelerated payment of drawback.

Before accelerated payment for same condition drawback is approved, a claimant must satisfy the Regional Commissioner of Customs that the claimant's recordkeeping procedures will show that (1) the identity of the imported merchandise will be maintained on any merchandise which forms the basis of the claim, (2) any use of the merchandise will be recorded (for example, the recordkeeping procedures must be designed to record any movement of the merchandise in or out of storage), (3) any change in condition in the merchandise will be recorded, (4) the dates of importation, entry, and exportation of the merchandise will be recorded, and (5) the importer - exporter will satisfy the examination requirements of the importing and exporting Regions.

Unlike the situation in manufacturing drawback claims,there is no manufacturer's statement under claims for same condition drawback. In order to apply for accelerated payment under same condition drawback, a claimant must satisfy the Regional Commissioner of Customs that the claimant's recordkeeping procedures will meet the above five listed requirements. The Regional Commissioner will approve or deny the application for eligibility for accelerated payment of same condition drawback after reviewing the claimant's recordkeeping procedures. Until approval of the recordkeeping procedures is given, no claim for accelerated payment of same condition drawback can be accepted for processing in accordance with the procedure set forth in section 22.20a. With respect to each drawback claim thereafter, the Regional Commissioner of Customs must determine whether a claimant is delinquent or otherwise remiss in any transaction with Customs before approving that claim.

This procedure is to be applied to applications for permission to participate in the accelerated payment program for same condition drawback filed after the date of publication of this notice in the Customs Bulletin.

(DRA-1)
Dated: September 4, 1981
213434

/s/ George C. Steuart
for Marilyn G. Morrison
Director
Carriers, Drawback & Bonds Division

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Re: [redacted]

Dear [redacted]

We have considered the material which you sent to us with regard to the proposed standards of substitution. In addition, we have contacted various other technical sources, including the author of the book "Peanuts Production, Processing, Products." That author pointed out that the statement in the book is qualified by the very next sentence to the one on which you are relying. Further, it has been brought to our attention that the U.S. Department of Agriculture is extremely concerned about the standards because the Department administers a price-support program that could be undermined by our adoption of inadequate standards. Based on all of the information available to us, we cannot approve the proposed standards for substitution.

However, the following standards satisfy the requirement that substitution be done on a same kind and quality basis, and may be adopted by your client.

Imported merchandise or drawback products to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free, or domestic merchandise of the same kind and quality as that designated which will be used in the production of the exported products.
1. Peanuts certified as edible by the applicable Federal-State Inspection Certificate of the U.S. Department of Agriculture and imported under the authority of Presidential Proclamation 4807 December 14, 1981) during the period from December 4, 1980 to July 31, 1981.	1. Peanuts certified as edible by the applicable Federal-State Inspection Certificate of the U.S. Department of Agriculture.
2. Peanuts meeting the grade and wholesomeness standards in the outgoing quality regulations in the Marketing Agreements for Peanuts, No. 146 and substituted on the basis of equivalent screen sizes as shown by the applicable Federal-State Inspection Certificate of the U.S. Department of Agriculture.	2. Same as in left column.

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Upon receipt of the proper number of revised pages for insertion into the contract proposal, further consideration will be given to the drawback contract proposal.

Sincerely,

George C. Steuart
Chief
Drawback and Bonds Branch

[redacted]

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29 JAN 1986

Jim J. Marquez, Esq.
General Counsel
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Mr. Marquez:

This is in reference to your letter dated December 12, 1985, asking for a review of Customs rulings holding that foreign merchandise brought to a foreign-trade zone is imported (e.g., ORR Ruling 76-0067, C.S.D. 83-21). You refer to our letter dated September 4, 1985, file FOR-1-CO:R:CD:D 218229, regarding this matter. At issue is the Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98-547, 15 U.S.C. 2021 et seq.) (the Theft Act), under which no person, with certain exceptions, may import a motor vehicle subject thereto which fails to conform to the theft prevention standard promulgated thereunder (15 U.S.C. 2027, "Prohibited acts"). An association of direct importers, however, would like to place nonconforming foreign vehicles in foreign-trade zones in the United States and bring them into compliance there.

That foreign merchandise brought to a foreign-trade zone is imported is a fact routinely recognized by Congress in the legislative history underlying the Foreign-Trade Zones Act of 1934, as amended, 19 U.S.C. 81a-u (FTZA).

> "[A foreign-trade zone] aims to foster the dealing in foreign goods that are imported, not for domestic consumption, but for reexport to foreign markets and for conditioning, or for combining with domestic products previous to export" (emphasis added) (S. Rept. 905, 73d Cong., 2d Sess., 2, quoting the 1918 U.S. Tariff Commission report).

> "[A foreign-trade zone]...differs from adjacent territory in being exempt from the Customs laws as affecting goods destined for reexport. It means simply that, as regards Customs duties, there is freedom unless and until imported goods enter the domestic market" (emphasis added) (FOREIGN TRADE ZONES, REPORT OF A SUBCOMMITTEE OF THE COMMITTEE ON WAYS AND MEANS on H.R. 3657 and H.R. 9322 (later enacted as the FTZA) (House Committee Print), 73d Cong., 2d Sess., 1).

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Also see section 146.1(e)(2), Customs Regulations (19 CFR 146.1(e)(2)).

It should also be observed in this regard that Congress, pursuant to the Theft Act, has stated that "[a]ny (applicable) motor vehicle not in compliance will be refused admission into the United States" (H. Rept. 98-1087, U.S. Code Cong. & Admin. News 4628, 4644 ["Prohibited Acts"]). Merchandise whose admission into the United States is prohibited by law cannot be admitted into a foreign-trade zone (see 19 U.S.C. 81c; 19 CFR 146.11).

Sincerely,

(Signed) Edward B. Gable, Jr.
Edward B. Gable, Jr.
Director
Carriers, Drawback and Bonds Division

Enclosures

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

FEB 15 1985

REFER TO
FOR-1-CO:R:CD:D
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District Director of Customs
P.O. Box 9516
El Paso, Texas 79985

Dear Sir:

Re: Internal Advice Request 130/83

Enclosed is a copy of our ruling on the internal advice request 130/83 which we received from the Customs Information Exchange on December 22, 1984. You may send a copy to the private party concerned. The ruling will be published in the Customs Bulletin.

This case was sent to us via the C.I.E. Circular MAN-1-0:D:C of December 17, 1974, requires a report to the C.I.E. on internal advice cases involving a classification and value issue. However, cases involving drawback, foreign trade zones, bonded warehouses, temporary importations under TSUS Items 864.05 through 864.75, and bonds should be sent directly to this Division, attention Drawback and Bonds Branch.

If a case involving drawback, foreign trade zones, bonded warehouses, TIB, or bonds also appears to contain a classification and value issue (as possibly was true in this case), the fact should be mentioned in the transmittal.

Sincerely,

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

Enclosure

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DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON

REFER TO

FOR-1-CO:R:CD:D
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ISSUES:

1. Whether cutting nonprivileged foreign status fabric in rolls into the bow tie shape of a vacuum cleaner bag is a manufacture in a foreign-trade zone?

2. Whether cutting nonprivileged foreign status fabric in rolls is governed by 19 CFR 146.13?

3. Whether 19 CFR 146.48 sets the procedure for exportation of an article made in a foreign trade zone?

4. Whether the sixth proviso to section 3 of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81c) controls on the importation of an article made in a foreign trade zone from nonprivileged foreign status merchandise?

FACTS:

Foreign fabric on rolls is admitted in a zone as nonprivileged status merchandise. In the zone the fabric is cut into a bow tie shape about 38 inches in length, about 17 inches in width at the two ends, and about 14 inches in width in the middle. That article is exported from the zone to a foreign country for further processing into a vacuum cleaner bag. The finished bag will then be imported into the United States with a claim for an exemption under item 807.00, Tariff Schedules of the United States (TSUS).

LAW AND ANALYSIS:

In a decision published as C.S.D. 81-44 the Customs Service held that certain operations on pipe constituted a manufacture for drawback purposes and were a substantial transformation of the imported merchandise. The cutting of the fabric from a roll into a bow tie shape dedicates that shape to a particular use. The operation changed the fabric's use and character, if not its name. As such, the operation is a manufacture on the principles set in the case of U.S. v. International Paint Co., Inc., 35 CCPA 87, 93-95, CAD 376 (1948), and is a substantial transformation within the principles set in the case of Midwood Industries, Inc. v. U.S., 64 Cust. Ct. 499, 507, CD 4026 (1970).

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The reliance on 19 CFR 146.13 is misplaced. The statutory basis for the provision was the amendment to section 562 of the Tariff Act of 1930 by the Customs Administrative Act of 1938. Act of June 25, 1938, Pub. L. 75-679, section 25, 52 Stat. 1077, 1088. The purpose of the amendment was to give to the Secretary of the Treasury discretion to allow manipulations to be done elsewhere than in bonded warehouses. S. Rept. 2677, 75th Cong., 8 (1938); Congressional Record, Senate, page 6019 (April 1, 1938); and an undated memorandum entitled "Amendments To Be Proposed By Treasury to H.R. 8099, Pending Before The Senate Finance Committee;" page 2. The argument has two weaknesses. The provision relied on, 19 CFR 146.13, requires compliance with the statute, 19 U.S.C. 1562 and 19 CFR 19.11. The statute expressly proscribes manufacturing. It is inconsistent to argue that the operation is a manufacture for the purpose of item 807.00, TSUS, but is not a manufacture for the purpose of 19 CFR 1562. Further, by its very terms 19 CFR 146.13 requires compliance with 19 CFR 19.11. Paragraph (e) of 19 CFR 19.11 requires that in order for merchandise to be manipulated outside of a Customs bonded warehouse the merchandise must be entered for warehouse or for consumption.

Reliance on 19 CFR 146.48 is also misplaced. That provision regulates the entry of merchandise from a zone to the Customs territory and not merchandise that is to be exported from a zone to a foreign country. Exportation of merchandise from a zone is regulated by 19 CFR 146.44.

Because the proposed manufacture is to be done in a zone, the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a-u), controls. The sixth proviso to 19 U.S.C. 81c provides that an article produced in a zone and exported from the zone and then later imported into the Customs territory is subject to the import laws applicable to like articles manufactured in a foreign country. The proviso makes such articles dutiable and taxable as if manufactured in a foreign country. S. Rept. 1107, 81st. Cong. (1949). The purpose of the provision is to prevent the duty avoidance scheme proposed here.

HOLDINGS:

1. Cutting fabric in rolls into a bow tie shape that is to be made into a vacuum cleaner bag is a manufacture.

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2. The provisions of 19 CFR 146.13 have no application to nonprivileged foreign status merchandise that is manufactured into another article in a foreign trade zone.

3. The provisions of 19 CFR 146.48 have no application to articles made in a zone from nonprivileged foreign status merchandise when those articles are removed from a zone for exportation.

4. The sixth proviso of 19 U.S.C. 81c controls the subsequent duty treatment of articles that are made in a zone, exported, and then imported back into the Customs territory.

Edward B. Gable

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

216575

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23 AUG 1984

DRA-1-CO:R:CD:D
217238 L

217238

Dear [redacted]

Your letter of July 20, 1984, which asks the formalities and conditions to be observed in bringing a tennis trophy into the United States for exhibition at a press conference for a period of 3 or 4 days, was not received until August 17, 1984.

All articles imported into the customs territory of the United States from outside thereof are subject to duty unless specifically exempt.

If the trophy will accompany and is for the use of a nonresident of the United States who will conduct the press conference it may be admitted temporarily free of duty under bond under item 864.50, Tariff Schedules of the United States, as professional equipment. The article must not be imported for sale or sale on approval and must be exported within 1 year from the date of importation. The bond is taken in an amount equal to 110 percent of the estimated duty that would be due if the article were entered for consumption. The procedure is set out in section 10.31, Customs Regulations, copy enclosed.

Alternatively, you may wish to use an ATA carnet, which would be issued in Belgium. A brochure describing carnets is enclosed.

If the trophy is not accompanied by a nonresident, we are aware of no provision of law under which it could be admitted without entry and payment of duty. However, if the trophy is not altered or used in any way other than exhibition it may be eligible for same condition drawback, see (9) in the enclosed "Drawback" brochure, and section 191.141, Customs Regulations. Note that Customs at the place where the article is to be exported must be given the opportunity to examine it before exportation.

Sincerely,

THIS DOCUMENT MAY BE RELEASED TO THE PUBLIC _____

George C. Steuart

George C. Steuart
Chief
Drawback and Bonds Branch

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CODE AND DATE	[redacted]					
A[redacted]						
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DEPARTMENT OF THE TREASURY U. S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

06 MAY 1986

REFER TO
DRA-1-CO:R:CD:D
218533 K

218533

ISSUE:

The issue is whether soybean meal that meets the standard specifications of the rules published by the National Soybean Processors Association satisfies the fungibility requirements of the substitution same condition drawback law.

FACTS:

A manufacturer of domestic soybean meal proposes to substitute (domestic) 44% Protein Soybean Meal for imported duty-paid 44% Protein Soybean Meal and export the domestic merchandise for substitution same condition drawback. The manufacturer cites Rule 2 of the Trading Rules For The Purchase and Sale of Soybean Meal published by the National Soybean Processors Association (NSPA) and claims that substituted and imported protein soybean meal that meets either the Standard Specifications of Section 3A, 44% Protein Soybean Meal, or Section 3B, High Protein Soybean Meal, on a type for type basis, are fungible and identical for drawback purposes.

The Standard Specifications, Section 3A for 44% Protein Soybean Meal, are as follows:

Minimum Protein.....44.0%

Minimum Fat.....0.5%

Maximum Fiber.....7.0%

Maximum Moisture.....12.0%

The Standard Specifications, Section 3B for High Protein Soybean Meal, are as follows:

Minimum Protein.....47.5 to 49.0%*

Minimum Fat.....0.5%

Maximum Fiber.....3.3 to 3.5%*

Maximum Moisture.....12.0%

*(As determined by Buyer and Seller at time of sale)

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In addition, Section 3C provides that a non-nutritive, inert, non-toxic conditioning agent may be added not to exceed 0.5% or 10 bls. per ton by weight of the total meal product. The manufacturer also states that the substitution will be on the basis of conditioner for conditioner or no conditioner for no conditioner.

Section 5, Adjustments For Quality provides that within certain narrow ranges of variances of the specifications, a buyer must accept shipments without the right to rejections or the assessments of penalties. If the shipments exceed the variances, a buyer has various options such as negotiations, rejections or the assessments of penalties. The manufacturer further states that the substituted and designated soybean meal will not be subject to negotiations, rejections or the assessments of penalties but will fall within the accepted narrow ranges of variances.

LAW AND ANALYSIS:

For purposes of this decision, we presume that the manufacturer has met all requirements of law (19 U.S.C. 1313(j)(3)) and regulations (19 CFR 191.141(h)) for substitution same condition drawback except for the issue presented concerning fungibility.

In part, the law requires that the merchandise substituted for exportation must be fungible with the imported duty-paid merchandise and in the same condition as was the imported merchandise at the time of its importation. The term "fungible merchandise" is defined in the Customs Regulations (19 CFR 191.2(1)) as "merchandise which for commercial purposes is identical and interchangeable in all situations." See Customs Service Decision 85-52 for a full discussion concerning fungibility.

The manufacturer claims that two shipments of soybean meal that meet the specifications of the NSPA on a type for type basis, conditioner for conditioner basis, and are not subject to negotiations, rejections or penalties at the option of the buyer are for commercial purposes identical and interchangeable in all situations. The position of the manufacturer is supported by the NSPA which opined that the merchandise "is identical, totally interchangeable and fungible regardless of the origin of the raw soybean meal and is so recognized by traders and users throughout the world." The NSPA further opined that their "rules for soybean meal are the most widely used rules in domestic and international trade under which soybean meal is traded and are incorporated by reference in most transactions." We have no information that differs with the opinions of the NSPA.

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HOLDING:

Two shipments of soybean meal which meet the standard specifications of the National Soybean Processors Association on a type for type basis (i.e., 44% Protein Soybean Meal for 44% Protein Soybean Meal or High Protein Soybean Meal for High Protein Meal), on a conditioner for conditioner basis and are within the acceptable narrow variances of the rules of the Association are fungible for purposes of the substitution same condition drawback law.

Edward B. Gable, Jr.
Director, Carriers, Drawback
and Bonds Division

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07 MAY 1986

FOR-1-CO:R:CD:D
218752 L

218752

Mr. D. Morgan Hackman
Productos Alimenticios Morgan S.R.L.
Calle Guido 1551 - 7° piso
Buenos Aires 1016
Argentina

Dear Mr. Hackman:

You state that you wish to ship peanuts to a foreign trade zone (FTZ) in the United States to process into peanut butter for entry into the United States while awaiting quota. You ask if this is a permissible operation.

Peanuts provided for in items 145.20, 145.31, and 145.48, Tariff Schedules of the United States (TSUS), but not peanut butter, are subject to import restrictions under item 951.00, TSUS, whenever, in any 12 month period beginning August 1 in any year, the aggregate quantity of 1,709,000 pounds has been entered.

Peanuts admitted to a FTZ are imported into the United States but are not entered and are not subject to the import restrictions unless and until they are removed from the FTZ and entered for consumption.

Except as is prohibited by law, foreign and domestic merchandise of every description maybe brought into a FTZ and stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or be otherwise manipulated or manufactured, and be exported, destroyed, or sent into the customs territory of the United States. When sent into the customs territory of the United States it becomes subject to the laws and regulations affecting imported merchandise.

There is no prohibition against the manufacture of peanut butter from imported peanuts in a FTZ. However, you should be aware that the Foreign Trade Zones Board, pursuant to 19 U.S.C. 81o(c), may at any time order the exclusion from the FTZ of any goods or process of treatment that in its judgement is detrimental to the public interest, health, or safety.

If you intend to enter for consumption peanut butter made in a FTZ from over-quota peanuts imported into the FTZ, that action may be deemed to have the effect of circumventing a quota.

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Accordingly, it is strongly recommended that you obtain clearance for the proposed operation from the Executive Secretary, Foreign Trade Zones Board, U.S. Department of Commerce, Washington, D.C. 20230.

A copy of this letter is being sent to the Foreign Trade Zones Board. For your information, a brochure generally describing foreign trade zones is enclosed.

This is an information letter within the meaning of 19 CFR 177.1(d)(2).

Sincerely,

(Signed) William G. Rosoff

William G. Rosoff
Acting Chief
Drawback and Bonds Branch

Enclosure

[redacted]

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DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

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JUN 6 1972

DB 731.1 JL

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[redacted]

Mr. Fred R. Boyett
Regional Commissioner of Customs
New York, New York 10004

Dear Mr. Boyett:

T.D. 54109-C, as amended, and particularly as amended by T.D. 66-63-A, authorizing the allowance of drawback on, among other things, chemical products and chemical intermediates manufactured under section 1313(b), title 19, United States Code, by Merck & Company, Inc., Rahway, New Jersey, at its various factories with the use of various chemicals, is hereby further amended to cover DL Acetyl Aminonitrile (Virgin), D Acetyl Aminonitrile, DL-N Acetyl Aminonitrile (Racemate), and L Acetyl Aminonitrile, manufactured under section 1313(b), by the corporation at its various factories with the use of vanillin, acetic anhydride and acetic acid glacial USP.

There is enclosed, approved, a copy of the manufacturer's supplemental statement subscribed to on May 15, 1972, requesting the foregoing action and containing the manufacturer's proposals as to the procedures it will follow and the records it will keep. Such records shall include those prescribed in section 22.5(a)(1) through (6) of the Customs Regulations, The said records shall also show the quantity of vanillin, acetic anhydride, and acetic acid glacial USP, respectively, of the same kind and quality as that designated, which was used in the manufacture of the exported products, such quantity to be distributed to these products in accordance with their relative values at the time of separation. The time of separation shall be considered to be as set forth in the statement.

The quantity of imported merchandise, or of such merchandise manufactured under drawback regulations, of the required kind and quality, which may be designated as the basis for the allowance of drawback hereunder shall not exceed a quantity of each class of merchandise, respectively, equivalent to the quantity of such

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merchandise, of the same kind and quality as that designated which was used in the manufacture of the exported articles and is attributable thereto as determined in accordance with the provisions of the preceding paragraph, as shown by an abstract of the manufacturing records which shall be filed with the drawback entry.

This rate shall be considered to be, in effect, a "single lot" rate, in that it is intended to cover only those operations which begin August 2, 1971, and terminate October 30, 1971.

Drawback may be allowed hereunder, upon compliance with the law and regulations, on the articles covered hereby which are manufactured and exported on and after August 2, 1971. Exportation shall be made within 5 years after exportation of the imported merchandise.

There is enclosed an extra copy of the manufacturer's drawback statement and of this authorization, which may be furnished with the first drawback claim filed hereunder to the special agent in charge, pursuant to section 22.4(g) of the Customs Manual.

Sincerely yours,

(Signed) J. P. TEBEAU

J. P. TEBEAU
Director, Division of
Carriers, Drawback and Bonds

Enclosure 142250

[redacted]

[redacted]

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[redacted]

Manifest Discrepancy: Reporting Requirements
T Newsprint

LEGAL DETERMINATION 3135-01

OCT 17 1977

REFER TO

VES-B-01 R:E:E
304379 M

Dear

This is in reply to your letter of in behalf of , requesting that newsprint transported by that carrier from British Columbia to Honolulu be exempt from the manifest discrepancy reporting requirements set forth in section 4.12(a) of the Customs Regulations.

One of the main purposes of the Quantity Control Program instituted by T. D. 71-22, effective April 1, 1971, was to implement a uniform system for reporting and accounting for discrepancies in manifested and unladen quantities of merchandise. Prior to the institution of this program, this matter was a considerable problem for carriers, the importing public, and the Customs Service. After the program was ongoing for several years, it was recognized that the original 30 day time limitation for reporting manifest discrepancies was too restrictive and section 4.12(a) was amended by T. D. 76-81 (copy enclosed) to provide for the present time limitations of 60 days from the date of the entry of the vessel or 30 days after having been notified by Customs of the discrepancy.

We believe that the present time limitations are reasonable and can see no reason why newsprint should be exempt from the manifest discrepancy reporting requirements. For example, Customs imposes the quantity

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control requirements on a shipload of general cargo, which will consist of 45,000 to 60,000 pieces of cargo. A shipload of newsprint, on the other hand, will consist of only about 4,000 to 5,000 pieces which can easily be counted.

You suggest that newsprint might be considered bulk merchandise and thus exempt from the manifest discrepancy reporting requirements by section 4.12(b) of the Customs Regulations. Section 4.12(b) provides that "a correction in the manifest shall not be required in the case of bulk merchandise if the district director is satisfied that the difference between the manifested quantity and the quantity unladen, whether the difference constitutes an overage or shortage, is an ordinary and usual difference properly attributable to absorption of moisture, temperature, faulty weighing at the port of lading, or other similar reason."

Since the quantity of large rolls of newsprint can be readily ascertained and any difference between the manifested quantity of merchandise and the quantity unladen would not ordinarily be attributable to absorption of moisture, temperature, faulty weighing at the port of lading, or other similar reasons, it is our opinion that section 4.12(b) is not applicable to large rolls of newsprint. Consequently such newsprint would be subject to the manifest discrepancy reporting requirements of section 4.12 of the Customs Regulations.

Sincerely yours,

(Signed) Harvey B. Fox
Harvey B. Fox
Director, Entry Procedures
and Penalties Division

Enclosure

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R:CV:V BS
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Area Director of Customs
New York Seaport, New York

Director, Classification and Value Division

Request for Internal Advice #178-77; Dutiability of Commission paid to [redacted]

This is in reference to your memorandum of November 1, 1977, concerning the dutiability of an alleged commission paid by [redacted] to [redacted]

The record shows that [redacted] paid [redacted] a 5 percent "commission" based on the price invoiced to [redacted], allegedly, as stated in the Agency Agreement between the parties, for services rendered in connection with the placement of orders, inspection, shipments, and for preparing the necessary documents, etc. The Agreement provided that [redacted] "does not act as seller to [redacted] but acts as a buying agent for [redacted] . . . ." The manufacturer, [redacted], stated in a letter addressed to [redacted] that "our prices to customers remain the same with or without agents acting on behalf of the customers," and "Customers have the option of obtaining agents to follow up (on) necessary details."

Investigation in Hong Kong revealed that [redacted] owns 20 percent of [redacted] that all transactions between [redacted] and [redacted] were direct orders (from [redacted]; that [redacted] did not receive any rebate or commission from [redacted] and that [redacted] accepted the importer's purchase order prior to contracting with [redacted] for the manufacture of the merchandise.

Earlier shipments arriving at your port showed [redacted] as the seller on the SCI and commercial invoice. Recent shipments show [redacted] as the seller on the SCI and [redacted] as the seller on the commercial invoice.

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There is no evidence of any contract or purchase orders and/or confirmations running from [redacted] to [redacted].

To qualify as a bona fide buying agent, the evidence must establish that a principal-agent relationship exists between the purported agent and the United States importer and that the importer exercises control over its agent. (See B & W Wholesale Co. v. United States, C.A.D. 1010 (1971)). Services such as procuring merchandise, inspecting it, arranging for shipment, and paying for the account of the buyer are those generally performed by buying agents. (See United States v. Manhattan Novelty Corp., A.R.D. 263 (1969)). However, labels attached by the parties are irrelevant. What is important are the actual circumstances of the case. No single factor is determinative, as all factors are to be weighed and balanced so that each case will be governed by its own facts. (See Dorf International v. United States, 61 Customs Court 604, A.R.D. 245 (1968)). In this regard, a financial relationship between the alleged agent and the manufacturer invites close scrutiny as to the bona fides of a buying commission, but is not necessarily determinative of the issue. (See Tapetes Luxor, S.A., et. al. v. United States, C.A.D. 1104 (1973)).

That the merchandise was or could have been purchased without payment of the "commission" would lead to the conclusion that [redacted] had selected [redacted] and was directing the latter's actions. However, this does not accord with the evidence in this case. Thus, the record indicates that [redacted] only does business through [redacted] that [redacted] has appeared as a seller in previous transactions involving other importers, and that in some instances, the services of a different agent had been used when dealing with [redacted].

The importer claims that the invoice price from [redacted] (excluding the 5 percent payment) was higher than [redacted] price to [redacted] because of the purchase by the latter of quotas and that the cost was passed on to the United States company. This claim has not been substantiated and thus is a factor militating against the bona fides of the alleged agency, since the difference in price would appear to be an additional profit to [redacted]. Even if true, however, it would not aide the importer's cause since it would not establish that [redacted] was in fact controlled by the importer.

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In conclusion, aside from the Agency Agreement, there is little evidence in the file to support the importer's assertions that a bona fide buying agency existed. It appears that [redacted] looked to [redacted] for payment and not to [redacted] Neither does the evidence demonstrate that [redacted] exercised control over the activities of the purported agent. Rather, the weight of the evidence clearly establishes that the legal relationship between [redacted] and [redacted] was that of buyer and seller, that the 5 percent "commission" was profit to [redacted] and therefore should be treated as a dutiable element of value.

(S) Francis C. Smith Jr.
for Salvatore E. Caramagno

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DEPARTMENT OF THE TREASURY - U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

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DEC 27 1979

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542065

Mr. James Arnold
Assistant District Director
Classification and Value Division
U.S. Customs Service
Terminal Island, California 90731

Dear Mr. Arnold:

This is in reference to your letter of November 23, 1979, concerning the current status of Headquarters Cicular PRO-1-CV, dated June 19, 1972. The subject Circular involves requests for suspension of action on protests pending resolution of a test case before the Customs Court. In view of the Circular's age and its infrequent utilization by protestants, you ask if it is no longer in force.

It is our opinion that the Circular remains in effect and the guidelines contained therein are valid. We note that as per a telephone conversation between a member of my staff and Mr. Robert Kerstein of the Los Angeles Protest Section on December 13, 1979, Headquarters would be willing to consider any proposed revisions to the Circular which your office might care to submit.

Sincerely,

[signed] Irving W. Smith, Jr.

Salvatore E. Caramagno
Director
Classification and Value Division

[redacted]

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DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

APR 0 3 1981

CLA-2:RLCVLV
542267 MK
TAA # 22

542267

[redacted]

Dear [redacted]

This is in further reference to your letter of November 4, 1980, with enclosure, requesting a ruling as to whether a customhouse broker's fee can be deducted under a deductive value appraisement involving related parties.

Before addressing your question, we should point out that a transaction between related parties cannot be appraised under deductive value because section 402(d)(2)(B) provides, in pertinent part that:

> "(B) For purposes of subparagraph (A), the unit price at which merchandise is sold at the greatest aggregate quantity is the unit price at which such merchandise is sold to <u>unrelated</u> persons...(Emphasis added.)

However, since we assume that you wish us to rule generally on the status of a broker's fee under deductive value, our opinion is as follows.

Deductive value (section 402(d)) is the resale price in the United States, after importation of the goods, with certain deductions. The deductions relevant to your question are cited in section 402(d)(3)(A), which in pertinent part provides that the deductive value of the merchandise being appraised shall be reduced by an amount equal to-

> (i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind,...
>
> ***
>
> (iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

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We conclude that a customhouse broker's fee for entering imported merchandise should, as appropriate, be deducted either as a part of the addition usually made for general expenses, or as an associated cost of transportation from the place of importation to the place of delivery in the United States, if such cost is not included as a general expense.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director
Classification and Value Division

[redacted]

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DEPARTMENT OF THE TREASURY - U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

JUN 4 1981

CLA-2:CO:R:CV:V
542358 BLS

542358

District Director of Customs
Seattle, Washington 98174

Director, Classification and Value Division

Internal Advice No. 6/81; Dutiability of Commissions

The issues raised in the above-captioned matter are as follows:

(1) Where the bona fides of an agency relationship and the price actually paid or payable are established by appropriate documentation with respect to an agent and one manufacturer/seller, is it necessary to require similar documentation of each transaction involving the same agent when dealing with different manufacturers/sellers?

(2) Where a past practice existed of treating a commission as non-dutiable based on the existence of a bona fide buying agency agreement, would it be appropriate to continue this practice instead of requiring the manufacturer's/seller's invoices?

The concerned import specialist advises that under prior law, it was the practice to consider the commissions paid by the importer to the involved agent to be bona fide buying commissions and therefore non-dutiable. This non-dutiability was established solely on the basis of a buying agency agreement on file in your office.

Because of the new requirements established under the Trade Agreements Act of 1979 (TAA), the import specialist requested copies of the actual manufacturer's invoices for entries of merchandise exported after July 1, 1980. An invoice from one of the manufacturers has been submitted, and it establishes that the price actually paid to the seller does not include any amount for commissions. However, on the involved entry there are ten different actual manufacturers/sellers, and on another entry, apparently involving the same agent, eight additional manufacturers are involved. The import specialist believes that the evidence establishing the bona fides of the buying agency relationship between the agent, and the one manufacturer/seller should suffice to establish the non-dutiability of the other transactions although different manufacturers are involved.

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for commission, an invoice or other appropriate document from the manufacturer/seller is required for each manufacturer and agent involved, with the caveat as noted above as provided under Operating Instruction No. 4;

(2) The evidentiary requirements under (1) above, must still be satisfied even though there existed a past practice of treating a commission as non-dutiable based on the existence of a bona fide buying agency agreement.

Harvey B. Fox

[redacted]

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DEPARTMENT OF THE TREASURY · U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-15-73)

Further, he asks whether it would be appropriate to continue the past practice of treating a commission as non-dutiable based on the existence of a bona fide buying agency agreement instead of requiring the manufacturer's/seller's invoices. You note that in past years you have found that in certain transactions some commissionaires actually purchased for and on the order of the importers, while other commissionaires purchased and stocked the merchandise, becoming sellers when orders were received from importers.

Although you agree that the price paid or payable to the seller in the transaction under consideration is controlling, you believe that a requirement to secure the seller's invoices for each of the hundreds of separate transactions received in a series of entries in a matter of weeks would not be feasible in terms of workload and staffing.

Therefore, it is your opinion that if the invoice from the commissionaire shows the commission separately from the invoiced unit values, and if the commissionaire has previously been established as in the instant example as a buying agent for the importer in question, such qualifications spot checked periodically, the commission should not be part of dutiable value.

While our New York office agrees that the invoicing requirements under the TAA are burdensome in this regard, that office is of the opinion that verification of each agent's relationship is necessary in view of the fact that, as you note, an "agent" can wear two hats in two different transactions, i.e., as a commissionaire in one transaction and as a seller in another transaction.

There is no provision under the TAA for deducting a "buying commission" from the price paid or payable. Therefore, if such commission is part of the price paid or payable and no separate transaction is shown reflecting such separate charge, the buying commission would be dutiable.

Operating Instruction No. 4, dated August 13, 1980, essentially follows these requirements, but also provides that once it is established through appropriate documentation that the price paid or payable does not include an amount for commissions and the commissionaire is neither a seller nor controlled by, nor working for or on behalf of, a manufacturer or seller, Customs entries of this merchandise, from this seller to this buyer need not include the seller's invoice or order confirmation to re-establish the non-dutiability of the agent's fee or charge.

Under these circumstances, we conclude as follows:

(1) In order to establish, under the TAA, that a commission is bona fide and that the price actually paid or payable did not include an amount

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1/26/82

CLA-2 CO:R:CV:V
542666 TLL

TAA 45

District Director of Customs
Cleveland, Ohio 44114

Director, Classification and Value Division

Production of Diamond Needles by [redacted] I.A. 134/81

This is in reply to your memorandum dated July 9, 1981, concerning the subject importations. The file was forwarded to Headquarters on August 14, 1981. An additional submission was made by counsel for [redacted] on November 5, 1981.

The merchandise concerned is unfinished diamond needles purchased by [redacted] (importer) from [redacted] (exporter). The parties are unrelated to each other. The initial issue presented by the importer was whether any of the kinds of equipment or machinery identified in the incoming submission provided the exporter by the buyer constituted "tools, dies, molds and similar items used in the production of imported merchandise" or any other form of assist, as set forth in section 402(h)(1)(A) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). Our initial review of the contract disclosed that since cash payments were made according to the contract by the buyer to the seller which permitted the purchase of the machinery in question, the primary question which has to be answered under the TAA is whether this payment is part of the price "actually paid or payable" within the meaning of section 402(b)(4)(A) of the TAA. In this regard, section 402(b)(4)(A) provides:

> (A) The term 'price actually paid or payable' means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expensed incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Therefore, the question to be resolved became whether this payment was part of the "total payment... for imported merchandise...." within the meaning of the statute.

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Paragraph 1 of the contract between the importer and exporter provides:

> 1. [redacted] agrees to buy and [redacted] agrees to sell 995,000 natural diamond logs as described in paragraph 3 below and [redacted] agrees to buy and [redacted] agrees to sell 280,000 diamond video styli as described in paragraph 4 below during the period 1980 through January 1983 on the terms and conditions herein provided.

Paragraph 2 of the contract begins:

> 2. [redacted] acknowledges that [redacted] does not have sufficient facilities and tools necessary to supply the natural diamond logs and diamond video styli contemplated by this Agreement and, accordingly, agrees to advance to [redacted] up to 2,168,000 Dutch Guilder (Dfl.) to enable [redacted] to procure additional facilities and tools....

Paragraph (e) provides:

> E. All facilities and tools purchased shall be the property of [redacted] advances of money toward the purchase of facilities and tools are in the nature of advance payments for the natural diamond logs and and diamond video styli to be provided by [redacted] under this Agreement. The advance herein provided shall not be set off against the sales prices of schedules A and B hereof. However, [redacted] agrees that, since the facilities shall have been acquired at [redacted] expense specifically to produce natural diamond logs and diamond video styli under this Agreement, promptly after completion of the last delivery under this Agreement it should pay to [redacted] the then current value of these facilities and tools. The value of the manufacturing facility shall be the then current book value after deduction of any applicable subsidies paid to [redacted] depreciation to be calculated at the rate of three and one-third percent (3.33%) per year. The value of the tools and any movable personal property shall be the then current salvage value, but [redacted] shall have the right to direct disposition of the tools movable property in any way that would maximize the value or otherwise benefit [redacted]

Counsel in a letter dated November 5, 1981, explains that the May 1980 contract between [redacted] and [redacted] was the result of substantial negotiations between the parties. Based upon its reputed expertise in the field of diamond cutting, [redacted] was chosen by [redacted] to supply newly-developed types of diamond logs and styli for incorporation into the [redacted] Video Disco system. [redacted]

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initially rejected [redacted] proposal because it was not capable of handling such a long-term supply commitment at its then-current facilities and was not interested in expanding those facilities to support a totally unproven product. In short, [redacted] was unwilling to commit its resources to the facilitation necessary to produce a million logs for a product that had no consumer acceptance. If the product did not succeed, [redacted] did not want to be stuck with an investment in facilities it would be unable to use. Therefore, to induce [redacted] to agree to make a long-term commitment to produce the large quantities of logs and styli [redacted] agreed to fund [redacted] capital requirements for facilities and equipment expansion, to the extent necessary for such production, under the following terms:

1. [redacted] agreed to advance [redacted] up to a maximum of 2.168 million Dutch Guilders to acquire the equipment and facilities necessary for [redacted] to execute its obligations under the contract. The foregoing amount is specifically described in the contract as a maximum amount, and not a fixed obligation (paragraph 2.A. and C.). Furthermore, [redacted] was expected to use its best efforts to obtain Netherlands Government subsidies to finance its actual facilities and equipment costs, and was required to reimburse [redacted] promptly in the event, and to the extent, that facilities purchased with [redacted] advances are the subject of subsidies already received by [redacted]

2. [redacted] required [redacted] to agree that no part of the money advanced by [redacted] for [redacted] facilities and equipment costs be "... set off against the sales price of Schedules A and B ..." of the Contract (see paragraph 2.3. and Schedules A and B attached to the Contract). Schedules A and B outline all components of the sales prices of the natural diamond logs and styli to be manufactured by [redacted]. Facilities and equipment costs are not included in the Schedule A and Schedule B sales prices, nor are such costs "backed out" of the sales prices listed in those Schedules. Indeed, there is no mention in the Schedules of any reduction in the sales prices of diamond logs or styli in the event that no portion of the advance is repaid. Nor is there any provision for a price increase in the event that the facilities cost more than [redacted] maximum advance obligation.

3. [redacted] agreed (paragraph 2.E.) to repay to [redacted] promptly after completion of the last delivery under the Contract the then current value of the last acquired facilities and the current salvage value of the equipment acquired to perform its obligations under the Contract, computed in accordance with a fixed formula set forth in the foregoing paragraph.

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4. After fulfilling its production obligations under the Contract and reimbursing [redacted] for the respective current and salvage values of the actual facilities and equipment, [redacted] is required to retain those new facilities and equipment for a period of two (2) years, and to use that additional capacity to provide for [redacted] a priority treatment in fulfilling any subsequent orders that [redacted] might place for the same merchandise during that additional two-year period (Paragraph 2.G.).

Under these circumstances, our review of the submitted evidence discloses that because of the agreement by the exporter to pay the importer the current value of the facilities and tools obtained, with the money advanced, at the end of the production period, this cash advance has many of the attributes of a loan. This type of advance is not tied to the payment for the imported merchandise. In fact in the words of counsel, this advancement represents a "bonus consideration", that is, the advances were given by [redacted] to [redacted] as an inducement for [redacted] to enter into the contract as a whole. The money advanced enabled the latter to build the facilities and install the equipment necessary to produce styli for the importer. This clearly represents a separate undertaking or transaction from the payment for the imported merchandise.

Accordingly, this money is not part of the "price actually paid or payable for the imported merchandise...." This distinction is in accord with section 402(b)(4) of the TAA, which provides:

> (A) The term 'price actually paid or payable' means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Thus, in our opinion, payments relating to the imported merchandise would be part of the "price actually paid or payable" while payments unrelated to the imported merchandise would not be part of the "price actually paid or payable." This distinction has been alluded to in previous rulings. See for instance TAA No. 31, June 11, 1981, wherein we stated "interested payments made by the buyer to the seller that are arranged as part of the invoice transaction are part of the "total payment..."." In accord is TAA No. 43, dated December 17, 1981, wherein we stated, "...it appears to us that this type of separate financing arrangement, fully documented as being separate from the import transaction, is not part of the price actually paid or payable for the imported merchandise...."

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In short, the question of whether a financial arrangement between the buyer and seller is part of the "price actually paid or payable" is a question of fact which must be determined on the basis of evidence available with regard to that particular transaction. Under the facts of this case, we find that the payments in question were not "part of the price actually paid or payable," and, therefore, are not part of the transaction value of the merchandise.

(Signed) Paul G. Giguere

Harvey B. Fox

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SURNAME							

JUN 26 1985

CLA-2 CO:R:CV:V
543148 MK

543148

District Director of Customs
Savannah, Georgia 31401

Dear Sir:

Re: Application for Further Review of Protest No. 1703-3-000049, dated February 11, 1983

This protest was filed against your inclusion, under transaction value, of an alleged 3 percent buying commission paid on material for circuit board drills imported by Sanko Trading Co., Inc.

The only supporting document the protestant furnished is a credit dated October 26, 1982, from Sanko Ltd. in Japan to the importer for a 3 percent commission. Though the protest states that a copy of the buying agreement is attached, none is in the file.

A 1979 Importer's Premises Report (CF213) from Chicago indicates that the importer is a selling agent operating as the sales office for Sanko, Japan. The credit note supports the contention that the 3 percent commission is in fact a selling commission paid by Sanko, Japan to its agent, Sanko, U.S.A. There is no apparent reason for the importer to be paid a commission by Sanko, Japan unless it was acting on its behalf as a selling agent.

If Sanko, Japan was acting as a buying agent for Sanko, U.S.A., then no proof has been submitted to establish who was the actual manufacturer.

Pursuant to TAA #7, there is no authority for deducting the commission as a non-dutiable charge. Please deny the protest in full, and send the protestant a copy of this decision with your notice of action on the protest.

Sincerely,

[redacted]

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

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SURNAME						

22 MAY 1986

CLA-2 CO:R:CV:V
543746 CW

David L. Eaton, Esq.
Schulman, Silverman & Eaton, Ltd.
19 South LaSalle Street
Chicago, Illinois 60603-1498

Dear Mr. Eaton:

This is in reference to your letter of March 17, 1986, on behalf of Bloch Lumber Company, Inc., and your follow-up letter of April 29, 1986, in which you ask whether this office will accept as an internal advice request a letter which you submitted to the District Director of Customs, Detroit, Michigan, dated July 12, 1985. The issue concerns the proper valuation of certain shipments of waferboard imported by your client from Canada.

As we understand the facts involved in this case, your client, an Illinois corporation, purchases and imports waferboard products from various unrelated sources in Canada. The terms of the purchase generally are "F.O.B. mill" and, accordingly, your client takes title at the mill and is responsible for the shipment of the merchandise from the mill to various "staging yards" in Canada where the products are sorted and consolidated. Because of the length of time between your client's placement of orders for waferboard products and the ultimate consolidation of the products at the staging yards, your client frequently is able to obtain orders for the resale of the products to unrelated United States purchasers prior to the products' consolidation at the staging yards. Your client's Chicago office invoices the United States resale customers after the goods leave the staging yards.

You contend in your July 12, 1985, letter to the District Director, Detroit, that in those situations in which your client is able to resell the merchandise prior to its consolidation at the staging yards in Canada, transaction value clearly should be based upon the sale from the mills to your client. However, in a letter to you dated February 28, 1986, the Assistant District Director (Classification and Value) advised that the resale price from your client to its United States customers should be the basis for a determination of transaction value. Moreover, the Assistant District Director denied your request for internal advice regarding this issue for the reason that "this issue has been well established by Service Headquarters in Washington, D.C."

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We have enclosed for your information a copy of a ruling dated May 6, 1986 (543687), which this office recently issued concerning the appraisement of waferboard from Canada. We stated in that ruling (page 2) that:

> ... if sales for exportation to the United States actually occur from the border reload point (in Canada), and these sales are the sales that directly cause the merchandise to be exported from Canada, then transaction value would be based upon those sales.

Applying the above-quoted statement to the facts involved in your case, it is our opinion that the sales from your client to its United States customers are the sales which most directly cause the merchandise to be exported to the United States. Therefore, we agree with the view expressed by the Assistant District Director, in his letter to you of February 26, 1986, that transaction value should be based upon these sales rather than the sales from the Canadian mills to your client.

Sincerely,

(Signed) Harvey B. Fox

Harvey B. Fox
Director, Classification
and Value Division

[redacted]

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30 SEP 1986

CLA-2 CO:R:CV:V
543750 EGK

Area Director of Customs
Kennedy Airport Area
Jamaica, New York 11430

Dear Sir:

Re: Decision on Application for Further Review of Protest No. 1001-5-006753

The above-referenced protest was filed against your decision in the liquidation of various entries consisting of fabric imported by the Print Game Ltd., Rag International Inc., and Harbern Fabrics, Inc. (related companies, i.e., all owned by same person--hereinafter referred to as importer).

The importer contracted to purchase fabric from a foreign seller through the seller's subsidiary in the United States. A sales contract was entered into between the foreign seller and the importer, and a commercial invoice was issued by the subsidiary to the importer which showed the actual agreed-upon price. This amount was paid by the importer to the subsidiary under a domestic letter of credit. Due to free quota considerations, the foreign seller issued a commercial invoice which covered the same merchandise at a higher price. The invoice presented to Customs for entry purposes listed the "higher" of the two prices. No other invoice was submitted to Customs.

The higher price was paid by the subsidiary to the foreign parent corporation by letter of credit. Subsequent to this payment, the foreign parent corporation returned the difference between the higher and lower price to the subsidiary. This was done by an international money transfer. The importer was not involved in any way in these transactions between the foreign parent corporation and its domestic subsidiary.

All parties agree that the merchandise is to be appraised pursuant to transaction value under section 402(b), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA). However, the protestant is requesting that the entries be reliquidated and claims that the price actually paid by the importer for the merchandise represents its transaction value, rather than the higher price originally paid by the subsidiary.

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We agree with the protesting party that the price actually paid or payable for the imported merchandise is represented by the agreed-upon contract price, i.e., the price which was actually paid by the importer. The sales contract between the importer and the foreign seller is evidence of the price actually paid or payable for the merchandise. The subsequent transactions which took place between the foreign seller and its domestic subsidiary have no bearing on the issue to be resolved. These transactions are independent of the importation between the foreign seller and importer. The agreed-upon contract price between the seller and the importer is the amount which was paid by the importer.

It must be noted that as of May 5, 1986, Customs no longer accepts documents, such as visaed invoices, which contain false information, or information inconsistent with that contained in other documents. The entry documentation in these circumstances will be returned to the importer for correction (See T.D. 86-56). However, in this case, entry and liquidation occurred prior to implementation of the T.D. Therefore, the T.D. has no effect on this decision.

It is our conclusion that the actual agreed-upon contract price between the importer and the seller represents the price actually paid or payable under transaction value. Please grant the protest in full.

Sincerely,

For (Signed) J. T. Roth

Harvey B. Fox
Director, Classification
and Value Division

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JUL 17 1985

CLA-2 CO:R:CV:V
553723 EM

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District Director of Customs
U.S. Customs Service
120 S. Central Avenue, Rm. 408
St. Louis (Clayton), Missouri 63105

Dear Sir:

This ruling concerns your request for Internal Advice No. 19/84, on behalf of Chrysler Corporation, concerning the tariff status of certain automobile engine parts exported to Mexico for assembly into engines and returned to a foreign trade zone (FTZ) in the United States.

ISSUE:

The question raised concerns the applicability of item 807.00, Tariff Schedules of the United States (TSUS), to engines assembled in Mexico from component parts of United States origin and imported into a foreign trade zone for installation in finished automobiles.

FACTS:

Engine parts are exported to Mexico and assembled into automobile engines which are then imported into a Trade Zone as nonprivileged foreign merchandise and mounted in otherwise finished automobiles. The automobiles are then withdrawn from the zone and duty is paid on the engines at the prevailing lower rate applicable to automobiles rather than the higher rate for engines because of the claimed nonprivileged status of the imported engines. In addition, the importer claims an allowance for the assembled United States engines under item 807.00, TSUS.

Whether the engines were installed in finished automobiles or transferred into the Customs territory in the same condition as imported into the zone, the identity of the original imported engines was maintained in the inventory or production records of the zone.

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Assuming that the engines are installed in automobiles and transferred into the Customs territory at the lower rate of duty for automobiles, the district director's position is that the item 807.00 claim for the engines must have been made at the time of the first importation into the Customs jurisdiction of the United States or otherwise abandoned, since the exemption for item 807.00, TSUS, could only be preserved under a claim for privileged, and not nonprivileged, foreign status. The importer takes the position that articles having nonprivileged foreign status, upon being transferred from the zone for consumption, are subject to appraisement under the same classification that would apply if they were imported directly from a foreign country.

In this view, the engines would be eligible for item 807.00 tariff treatment when imported into the zone and would retain this tariff eligibility when withdrawn from the zone after having been installed in automobiles.

LAW AND ANALYSIS:

Section 146.1(c) of the Customs Regulations defines Customs territory as the territory of the United States in which the general tariff laws of the United States apply but which is not included in any zone. When work is performed on or material added to an imported article in a zone, which has effected a substantial transformation of the article into a new and different article of commerce, the article may no longer be considered an article of foreign origin when it is transferred to the Customs territory of the United States. In this respect, the United States becomes the country of origin of the automobiles upon their transfer from the zone for consumption.

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Generally, how merchandise is classified, appraised, and entered into the Customs territory depends on its zone status. An applicant for such status has several alternative choices for the status of goods. For example, the applicant may have his goods treated, for tariff purposes, in their condition either at the time the goods are admitted to the zone or at the time they are removed, whichever is more beneficial to him. He may even have his goods considered exported at the time of admission, allowing him to collect early drawback or timely close out a bond obligation. Or, he may preserve the non-dutiable status of domestic goods placed in the zone.

In this respect, the alternative choices for zone status create an exception to the general rule governing classification of entireties in accordance with General Headnote 10(h), TSUS. It is generally incorrect to constructively segregate imported merchandise for special treatment under different provisions of the tariff schedules. The further choice of an importer for classification of merchandise under item 807.00, TSUS, also creates an exception to the general rule governing entireties.

The choice for nonprivileged foreign merchandise, like the choice for item 807.00 tariff treatment, means that the merchandise is to be classified upon transfer from the zone to the Customs territory under the same provision of the tariff schedules that would apply if the merchandise was entered directly from a foreign country.

The imported engines were eligible for item 807.00 treatment upon entry into the zone but claims were not made therefor until the engines were installed in automobiles and subsequently transferred to the Customs territory. The identity of the engines was maintained separately on the

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inventory and production records of the zone, thus predisposing the engines to later claims under item 807.00, TSUS. Accordingly, any claims arising under item 807.00, TSUS, in the given circumstances, are not lost or abandoned by failure to claim privileged foreign status for the engines. Since item 807.00, TSUS, remains a choice for imported goods or a viable option to be exercised, it can only be lost by failure to observe the rules set out in the governing headnotes of Subpart B, Schedule 8, TSUS. Any other conclusion would unduly set further limitations on the applicability of item 807.00, TSUS, beyond those expressed in the headnote provisions.

Further, whether goods entering a zone are classified in a privileged or nonprivileged status, depending upon the importer's election, this choice should have no effect on limiting substantive claims under item 807.00, TSUS, so long as the requirements of the tariff provision and applicable regulations have been met. Reliance upon zone category status cannot foreclose reliance upon item 807.00, TSUS, since both remain distinct choices upon entry of goods into a zone and subsequent entry into the Customs territory. Certainly, reliance upon item 807.00, TSUS, for imported goods would not foreclose reliance upon an importer's alternative choices for the zone status of imported merchandise. The two choices are not mutually exclusive. To this extent, therefore, any conclusions reached in C.S.D. 81-102 which appear to be at variance with those expressed herein, are modified.

CONCLUSION:

On the basis of the foregoing, allowances may be made under item 807.00, TSUS, for U.S.-made components that were assembled in Mexico into

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an engine which was later installed in automobiles for subsequent entry into the Customs territory of the United States, upon compliance with the regulations.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

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[redacted]

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SURNAME							

[redacted]

MAY 20 1986

CLA-2 CO:R:CV:V
554112 EM

District Director of Customs
U.S. Customs Service
Mann Road & Santa Maria
Post Office Box 3130
Laredo, Texas 78041

Dear Sir:

This ruling concerns the request for Internal Advice No. 59/85, on behalf of
concerning the assembly of disposable hospital gowns and patients' drapes in Mexico.

It is stated that hospital disposable gowns and patient drapes, which are used for surgery, are made from precut paper, cotton, and textile components that are exported to Mexico for the assembly process. During assembly of the gowns, trapezoidal-shaped sleeve panel components are first sewn to the gown body component and then sewn along a seam, described in the submission as a feld (fell) seam to form the sleeve components, and finally sewing cuff components onto the opposite sleeve ends.

The main component forming the patient drapes is a large rectangular piece of reinforced paper, to which are added side components, called wings, presumably to cover a patient's arms. During the assembly process of adding the side wing components, two slits are made by a machine blade in the main component, parallel with the drape length. Tracks of glue are applied or laid along the sides where the drape is slit and the added side components are manually laid over the glue tracks to form the added wing components.

On the basis of the samples and information submitted, allowances may be made under item 807.00, TSUS, for all those components forming the hospital drapes and gowns. Slitting the drapes and feld seaming the sleeve components after first sewing them into the gown body components and attaching the cuff components, are all considered operations that are minor in nature and necessary to facilitate the assembly process. Seaming the sleeve components is considered minor in nature on a cost comparison

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basis in addition to other factors and, therefore, is incidental to assembly. The cost of seaming the sleeves is minimal when compared with its cost as a component.

Sincerely,

(Signed) RUSSELL ARNOLD

Russell Arnold
Chief, Value and Special
Classification Branch

554112

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10-4-77
WD

OCT 5 1977

ENF 4-02.4 R:E:P
608108 W

[redacted]

Dear [redacted]

This is in further reference to your recent correspondence concerning the seizure of your son's vehicle.

This liability was incurred under the provisions of title 19, United States Code, section 1595a(a), because your son used the vehicle to aid in and facilitate the illegal importation of a quantity of hashish. The seizure of the vehicle is a civil sanction, independent of any criminal proceeding which may be associated with the case. The fact that your son was not found guilty of any criminal charges is not a bar to the civil action.

In your correspondence, you stated that the value of the vehicle should have been appraised at $2,100 rather than $1,800 as stated in our letter of June 13, 1977. Following seizure, vehicles are placed in the custody of the district director of Customs, and are appraised according to the provisions of title 19, United States Code, section 1606. At the time of seizure, Customs used the National Automobile Dealers Association, Official Used Car Guide for the region where the automobile was seized to determine the appraised domestic value. At that time, the value which Customs was using was the retail value, listed in the said guide. Today, vehicles are appraised at the wholesale value. Accordingly, we find that the vehicle was properly appraised under the appropriate provisions of law.

This matter was fully considered on its merits by the Under Secretary of the Treasury and you were furnished a decision on June 13, 1977, advising that your son was entitled to a check in the amount of $893.30. Your son has now received a check in the amount of $893.30 and we consider this matter to be closed.

Sincerely yours,

/s/ Harvey B. Fox

Harvey B. Fox
Director, Entry Procedures
and Penalties Division

[redacted]

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ENF 4-02.7 R:E:M
608309 HDB

District Director of Customs
San Diego, California 92188

FEB 17 1978

Dear Sir:

Your letter of June 21, 1977, forwarded the penalty notices and seizure report for District Case No. 76-2504-01686. This case concerns the same events as those surrounding District Case No. 76-2504-01654 for which a decision dated June 10, 1977, was issued. While the petition submitted by counsel on behalf of [redacted], referred to Case No. 76-2504-01686, this case was not previously decided because the file was incompleted.

On March 26, 1976, merchandise domestically valued at $27,386.86 was seized pursuant to title 19, United States Code, section 1460 for violation of title 19, United States Code, section 1459, because petitioner failed to manifest the merchandise. A penalty in like amount was also assessed.

Petitioner does not deny this violation. It is claimed that a decision to close their Mexican plant led to strike. Work permits, which were good for one week, enabling San Diego based workers to close the plant, were issued. Petitioner, in essence, claims that the failure to manifest was the result of the necessary haste in this situation.

Merchandise domestically valued at $3,265 was seized because it was undervalued by petitioner, in violation of title 19, United States Code, section 1592. There is a loss of revenue of Petitioner claims that the statements with respect to value were made in haste, and that some of the merchandise has no value in that it is defective. Petitioner's claim that time was limited is substantiated by the record. The claim that the merchandise has no value is not substantiated.

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As noted above, the present case arose out of the same set of facts for which a decision was already issued. The findings here are therefore the same. We find that petitioner failed to manifest some merchandise, in violation of title 19, United States Code, section 1459, and that this failure was the result of ordinary negligence. The forfeiture of the merchandise is remitted and the penalty is mitigated to $274.

We further find that some of the merchandise was undervalued, in violation of title 19, United States Code, section 1592, and that this violation was the result of gross negligence, in that petitioner acted with actual knowledge of or wanton disregard for the relevant facts and with indifference or disregard for its obligations under the statute. The forfeiture is remitted upon the payment of $714, provided withheld duties are also deposited.

Please notify petitioner of this decision and forward a copy of this letter with your notification.

Sincerely yours,

(Signed) Harvey B. Fox
Leonard Lehman
Assistant Commissioner
Regulations and Rulings

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[redacted]

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MAR 3 1980

ENF 4-02.4 RRUEM
610237 JB

Richard J. Davis
Assistant Secretary
(Enforcement and Operations)

Commissioner of Customs (Signed) William T. [illegible]

Petition Submitted by [redacted], on Behalf of [redacted] and the [redacted], Requesting Relief From the Forfeiture of a 75-foot Shrimp Trawler [redacted], Domestically Valued at $175,000, Seized Under the Provisions of Title 19, United States Code, Section 1595a and Title 49, United States Code, Section 781 (District Case No. 79-1601-00027)

The liability was incurred when Customs patrol officers at 11:45 p.m. on April 24, 1979, spotted the vessel on the Ashepoo River in South Carolina. The vessel was forcibly brought under control by Customs boat crew. A large quantity of marihuana, 42,753 pounds, was discovered on board. The crew of eight Colombians was arrested. The vessel was seized under the provisions of title 19, United States Code, section 1595a and title 49, United States Code, section 781.

Interest in the case has been shown by the Department of State. Affidavits from the Acting Attorney General of the [redacted] and the President of the subsidiary corporation, [redacted], have been submitted in this case.

An analysis of petitioners' claims is given in detail in the attached memorandum.

The attached proposed decision remits the forfeiture without payment provided that certain equipment added to the vessel by the violators is removed. Pursuant to Departmental approval, the vessel has been released on these conditions.

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This decision is prepared for signature in the Department in accordance with Subdivision 1(h) of Treasury Department Order No. 165, Revised (T.D. 53654). It is recommended that you sign the proposed decision.

Attachments

cc: Commissioner file
Treasury file

610237

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MS 4400-02
11-18-80

Revision of the Three-Day Rule for
Issuing Seizure Notices

References: Fines, Penalties and Forfeitures Handbook (P&PM Handbook 3000-01), Pages 22 and 240 (Appendix G)

610896

1. PURPOSE

This Manual Supplement promulgates revised instructions concerning the time for issuing notices of seizure and information for claimants to seized property.

2. BACKGROUND

In October 1977 in an effort to avoid delays in the processing of seizure cases, the Customs Service established the policy that all notices of seizure and information for claimants to seized property were to be issued within three days (the so-called three-day rule). The guidelines are explicit and mandatory. The notice must be issued within three days.

Some few districts have been successful in meeting this requirement. Those which have have generally done so by having the seizing officer issue the notice at the time of the seizure. Other districts have been able to do so when the office issuing the notice (the fines, penalties and forfeitures office) receives the paperwork with information on the seizure in a timely fashion.

In most instances, however, for reasons of insufficient staffing, large numbers of seizures, and delays in receiving the supporting information concerning the seizure, the districts have not been able to issue the notices within the prescribed three days.

The rule was established to ensure that interested parties receive notice of the seizure promptly. Generally this purpose has been served. However, the inflexibility of the rule has caused Customs some administrative problems. It is apparent that the rule should be changed to add flexibility and to permit some discretion to the district director in the time he has to issue the notice.

3. ACTION

Notices of seizure and information for claimants shall be sent to all parties known to have an interest in the seized property within three working days. When circumstances make it impossible to issue the notice within this period of time, the notice shall be issued within a reasonable time thereafter.

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4. EXPIRATION

This Manual Supplement will expire upon incorporation into the Fines, Penalties and Forfeitures Handbook, P&PM Handbook 3000-01, March 1979.

File: RRUEM, 610896 JP

Director, Office of
Regulations and Rulings

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DEPARTMENT OF THE TREASURY U S CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 130 (11-15-73)

15 SEP 1983

ENF 4-02.5 CO:R:E:M
613097 JB

Dear Sir:

This is in reference to petitions filed by [redacted], requesting relief from numerous penalties incurred for failure to manifest marijuana in violation of the provisions of title 19, United States Code, section 1584. Penalties were also imposed against the various Masters and owners of vessels transporting the contraband. (District Case Nos. 81-4909-00039, 00061, 00073, 00078). Petitions were submitted by [redacted] on behalf of itself, the Masters and the owners.

The following is a list of the cases, the date of violation, the name of the vessel involved and the amount of each penalty:

Case No.	Date	Vessel	Penalty Amount
00039	Feb. 9, 1981	[redacted]	$98,800
00061	March 13, 1981	[redacted]	$1,895,200
00073	April 6, 1981	[redacted]	$148,800
00078	April 21, 1981	[redacted]	$207,200

Total aggregate liability is $2,350,000. Each penalty involves the failure to manifest a significant quantity of marijuana. All the marijuana was discovered in sealed containers.

Multiple penalties were assessed against [redacted] as vessel agent, [redacted], as vessel owner, and each Master. The provisions of section 1584 do not provide for assessment of multiple penalties for one violation. Any penalty incurred under said section may be imposed against the Master or the owner or the person responsible for the failure to manifest. Inasmuch as no evidence has been presented to implicate [redacted] or any individual Master, the penalties assessed against those parties are cancelled.

In each case, the evidence indicates that container seals were tampered with at the [redacted] facility at [redacted]. Petitioner admits that seals were changed, and insufficient documentation is presented which would explain the reason for such changes. Further, petitioner does not explain why control over the shipments was lost.

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Petitioner further states that it has taken numerous precautionary steps to avoid placement of marijuana on its vessels, but the problem is not one that is easily controlled. Evidence is presented to indicate that Jamaican port authorities were investigating the matter, and were attempting to assist [redacted] in the interdiction of marijuana.

However, presence of marijuana on [redacted] vessels is a recurring problem. The problem has not been confined to the San Juan district. The record reveals that [redacted], [redacted] agent at [redacted], has been assigned numerous seal numbers that cannot be accounted for. Further, a seal on a violative container in case no. 00073 was found to be one assigned to a [redacted] employee. Inasmuch as the seals were under the control of [redacted] agent, [redacted] must be held accountable for illegal substances found in the subject containers.

Petitioner [redacted] undoubtedly took some precautions to avoid the occurrence of this sort of violation. However, the subject violations occurred in a two and one-half month period. After the first violation, petitioner should have been alerted to the problem and satisfactory measures should have been taken. The frequency of the violations would indicate that the precautionary actions taken were inadequate. We find that petitioner was negligent in failing to detect and prevent the presence of marijuana on its vessels.

The penalties incurred in the subject cases are mitigated as follows: Case No. 00039, $988; Case No. 00051, $13,952; Case No. 00073, $1,468; and Case No. 00075, $2,072. Total aggregate liability is $23,500.

You may notify petitioners of this decision and include copies of this decision with those notifications.

Sincerely,

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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[redacted]

6 MAY 1981

ENF 4-02.2 CO:R:E:C
652591 LR

District Director of Customs
Laredo, Texas 78040

Dear Sir:

This is in reference to your memorandum of February 18, 1981, concerning Laredo District Penalty Case No. 79-2304-50502. This case involves a claim for monetary penalty for $32,700.88, assessed against [redacted] for an alleged violation of title 19, United States Code, section 1592, as amended by Public Law 95-410 (Customs Procedural Reform and Simplification Act of 1978). [redacted] has submitted a petition for relief requesting that the penalty be cancelled claiming that it did not violate the statute.

The penalty notice alleges that during the period of June 5, 1973, through June 29, 1978, [redacted] entered certain merchandise assembled in Mexico into the commerce of the United States pursuant to false entry documents. The documents were false in that they erroneously indicated that various components were products of the United States and entitled to entry under item 807.00, Tariff Schedules of the United States (TSUS), when in fact the components were either foreign-made or could not be confirmed to be American-made because commingling had occurred prior to assembly. Under item 807.00, TSUS, articles assembled abroad in whole or in part of fabricated components which are products of the United States are in appropriate circumstances dutiable at the full value of the imported article less the cost or value of the products of the United States. As a result of the alleged violation, there is a reported potential loss of revenue of $16,350.44. The claim for $32,700.88, representing two times the loss of revenue, was based on the preliminary determination that the violation was attributable to negligence.

The subject merchandise consists of transmissions purchased and imported by [redacted] from the assembler, [redacted] The components which were falsely claimed to be products of the United States are included in these transmissions.

In the petition for relief, [redacted] admits that some of the components which were claimed to be products of the United States were not, and that other such components could not be shown to be products of the United States because they had been commingled with foreign-made components prior to assembly. Nonetheless, [redacted] claims that the penalty should be cancelled because the falsities are not attributable to any negligence on its part. To the contrary, [redacted] claims that it made reasonable efforts to ensure the accuracy of the entry documents.

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[redacted] alleges that although the claims of duty-free entry of U.S. components were made on its behalf by [redacted], such information was solely within [redacted] knowledge. According to [redacted] it had no control over the sourcing or identification of the assembled parts because its relationship with [redacted] was arms-length and the latter company purchased its own component parts.

[redacted] further claims that at all times it did everything in its power to ensure that the components which were claimed to qualify for duty-free entry under item 807.00, TSUS, were actually of U.S. origin. In this regard, [redacted] notes that it was aware of the requirements for duty-free entry under this provision and that whenever it was requested by Laredo Customs to furnish information regarding the origin of parts, it did so. [redacted] also claims that it emphasized the nature and importance of complying with the requirements of item 807.00, TSUS, in its correspondence and discussions with [redacted] officials. According to [redacted] it had no reason to believe that [redacted] was handling the invoicing of claimed U.S. components incorrectly.

There is nothing in the file indicating that the transactions between [redacted] were other than arms-length. It also appears that [redacted] was in a better position to know and designate the appropriate components as of U.S. origin. We disagree with [redacted] allegation, however, that it did everything in its power to ensure the accuracy of the representations on the entry documents concerning the U.S. components.

The record reflects that during the penalty period, [redacted] wrote to [redacted] on three occasions concerning the subject importations. On July 16, 1974, it requested that [redacted] provide it with the name of the supplier and the country of origin of a particular part because Customs was questioning the claimed U.S. origin. On November 18, 1974, [redacted] requested [redacted] to provide an accurate list of U.S. components that are assembled into each transmission model. Finally, on September 22, 1975, it advised [redacted] to be sure that goods were accurately described because Customs agents were examining merchandise from Mexico where some of the component parts are of U.S. origin. Although importations continued until 1978, no further correspondence has been submitted.

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It is our view that these three letters and its responses to Laredo Customs do not demonstrate that [redacted] did everything possible to ensure the accuracy of the entry documents. There is no evidence that [redacted] advised [redacted] of the specific requirements of item 807.00, TSUS, or of the proper procedures to be followed (particularly as they relate to the commingling of goods). Although the last letter did emphasize the necessity of accurately characterizing the components, there is no evidence that [redacted] took any follow-up measures to ensure that [redacted] was complying with its instructions.

Section 10.24, Customs Regulations (19 CFR 10.24), pertains to the documentation required in connection with the entry of assembled articles claimed to be subject to the exemption under item 807.00, TSUS. Section 10.24(g) specifically states that subject to the civil and criminal sanctions provided by law for false or fraudulent entries, the importer has the ultimate responsibility for supplying all information needed by the Customs Service to process an entry, and for the completeness and truthfulness of such information.

In view of this responsibility, the fact that [redacted] is a knowledgeable and experienced importer, and the large number of importations involved we conclude that [redacted] was negligent in relying on the information provided by [redacted] concerning the U.S. components and in failing to take a more active role in ensuring the accuracy of the entry documents. In this regard, [redacted] should have advised [redacted] of the particular requirements for entry under item 807.00, TSUS, and monitored [redacted] adherence thereto (e.g. performing physical inspections of [redacted] operation; securing certificates of origin from the manufacturer of the component parts). We find that [redacted] failed to exercise reasonable care and competence to ensure that the statements made on the entry documents were accurate.

However, we believe that the circumstances of this case warrant mitigation. First, despite our finding that [redacted] as an experienced importer should have taken additional steps to ensure the accuracy of the entry documents, we recognize that [redacted] was in a better position to provide this information concerning the origin of the component parts and that it was the more culpable party. Second, [redacted] was extremely cooperative during the investigation. The record shows that it spent a considerable amount of time and effort in order to ascertain the true origin of the component parts and determine which were properly entitled to the benefits of item 807.00, TSUS. The

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figures presented by Ford were ultimately used to determine the loss of revenue in this case. Third, considering the great number of entries involved in the case and the domestic value of the imported merchandise ($90,548,747), the loss of revenue is rather small.

Based on the above determinations, the monetary claim for $32,700.88 is mitigated to $20,438.05. Please notify [redacted] of this decision and provide a copy of this letter therewith.

Sincerely,

(Signed) Anthony L. Piazza

Salvatore E. Caramagno
Director, Entry Procedures
and Penalties Division

[redacted]

[redacted]

EC

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653382

19 OCT 1983

ENF 4-02.2 CO:R:E:C
653382 LR

District Director of Custors
Houston, Texas 52790

Dear Sir:

Your office has forwarded two petitions submitted in connection with Houston District Case No. 83-5309-00154. The first was submitted by counsel on behalf of [redacted] requesting relief from a monetary penalty of $54,518, assessed against him for violation of title 19, United States Code, section 1592. The second was submitted by [redacted], requesting relief from a monetary penalty of $54,518, assessed against it for violating the same statute. The two penalty claims will be treated individually.

[redacted]

The liability was incurred because petitioner [redacted] attempted to enter a 1983 Porsche 930 Turbo automobile into the commerce of the United States by means of material and false documents. Although the DOT and EPA forms submitted with the entry stated that the vehicle was manufactured in compliance with import requirements and had the manufacturer's certification label affixed, no manufacturer's certification label was found on the vehicle. The manufacturer confirmed that the subject vehicle had not been manufactured to meet United States import specifications. The penalty notice further alleges that petitioner [redacted] filed an informal entry when in fact the vehicle was imported for resale or had previously been sold. The violations did not result in any loss of duties.

On February 14, 1983, the vehicle was seized pursuant to title 19, United States Code, section 1592(c)(3) in order to prevent the introduction of restricted merchandise into the Customs territory of the United States.

The claim for $54,518, representing the domestic value of the automobile, was based on your preliminary determination that the violation was attributable to fraud.

According to petitioner, he arranged for the purchase of the automobile from [redacted], [redacted] through [redacted] Although the imported vehicle is admittedly a European model which was not manufactured in accordance with United States import specifications, petitioner claims that the vehicle was modified to meet United States EPA and DOT requirements prior to shipment to the United States. The modifications were allegedly performed by the [redacted] from whom [redacted] purchased the automobile. For such modifications, petitioner indicates he paid [redacted] approximately $5,500.

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In support of the above allegations, the following documents have been submitted:

1. A copy of the letter of credit showing a transfer of $43,615.12 to [redacted] specifying thereon "U.S. certification" of the auto.

2. A declaration of [redacted] which states: we certify that we converted the Porsche 911 1/ Turbo Rg. Nr. [redacted] complete to a US-Model according to the [redacted]

3. The invoices of [redacted] listing the particular modifications performed.

4. An affidavit of [redacted] the Customhouse broker who handled the import transaction, which states in pertinent part: Further, [redacted] stated that he had paid for modifications to conform the car with U.S. safety and pollution regulations to be done in Germany. I noticed the price was extraordinarily high when he gave it to me. That is, his stated price of $43,615 compared to that of from $32,000 to $36,000 for similar automobiles in import transactions I had handled recently. It was from $7,000 to $11,000 higher. I seen (sic) very reasonable to me, therefore, that he had paid for the U.S. safety and pollution modifications as part of the purchase price (and still paid too much). Also, the information (telexes) we received from our German office to the effect that great difficulty has been experienced in getting the car to the airport because it had been "changed into U.S. regulation (U.S. made) and couldn't use German (leaded) gas," seemed to confirm that it was a U.S. conforming car.

The record further indicates that upon submission of the petition for relief, Import Specialist John Little and Special Agent James G. Kuester examined the seized automobile to determine whether the requisite modifications had in fact been performed. Both individuals are of the opinion that they had.

Based on a review of the above evidence, we conclude that petitioner did in fact arrange to have the subject vehicle brought into conformity with U.S. EPA and DOT requirements by a [redacted] before shipping and that he reasonably believed that the work had been performed.

Nonetheless, there is a violation in that petitioner falsely certified upon entry that the vehicle bears a certification label affixed by its original manufacturer. As petitioner readily admits, this statement is false and he knew it was false when he so certified. Although petitioner

1/A representative of a [redacted] sales force told Customs officials that the designations 911 Turbo and 930 Turbo are interchangeable terms and are both used for the same type and model Porsche (Report of Investigation, page 3).

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attributes this falsity to a misunderstanding on the part of his broker, petitioner is ultimately responsible for all statements made upon entry. A lot of confusion would have been avoided if petitioner initially told Customs that the vehicle, although not manufactured for the U.S. market, was subsequently brought into compliance.2/ We find that petitioner was negligent in failing to use due care to ensure that the statements made on the EPA/DOT forms, upon which Customs was to rely, were accurate.

In addition to the false certifications, the penalty notice alleges that petitioner improperly filed an informal entry. A formal entry was allegedly required due to the fact that the vehicle was imported for resale or had previously been sold. Although petitioner states that he had originally intended to assist a U.S. buyer in the purchase of the subject auto prior to its importation (and had so informed the broker), approximately two weeks before importation, the would be buyer, [redacted] refused to follow through with his intended purchase. Petitioner then decided to import the auto for his own use. He said nothing to his broker about the change in circumstances because he was not aware it was relevant to the entry documentation. Petitioner further states that his broker prepared an informal entry because of her mistaken understanding of the requirements for formal vs. informal entries. She mistakenly believed that an informal entry was appropriate for a conforming vehicle. Petitioner asserts that he did not instruct his broker which type of entry to file.

Although information developed by the seizing inspectors originally indicated that the seized vehicle was to be sold by [redacted] to a [redacted] prior to its arrival in the United States, attached to the petition is a statement of [redacted] disclaiming any interest in the seized vehicle. During an interview with Customs officials on May 19, 1983, [redacted] confirmed that he originally arranged for the purchase of a Porsche 930 through petitioner, but subsequently advised that he was no longer interested in it. According to [redacted], he never paid petitioner any money for the car. There is no evidence in the record refuting [redacted] statements.

Petitioner's claim with regard to his broker's misunderstanding concerning the filing of an informal entry is substantiated by the affidavit of [redacted] attached to the petition.

Upon review of the record, we believe that a penalty for the filing of an informal entry is inappropriate. First, the mere use of an informal entry rather than a formal entry does not in our view constitute either a false statement or a material omission within the meaning of title 19, United States Code, section 1592(a)(1)(A). Second, the evidence does not establish that the importation was commercial as the penalty notice alleges.

However, in light of our finding that petitioner violated the provisions of title 19, United States Code, section 1592 by negligently certifying that the automobile was covered by a manufacturer's certification label, a penalty

2/Customs investigation commenced upon learning from [redacted] that model 930 Turbo automobiles had not been manufactured by [redacted] to meet U.S. specifications since 1979.

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is warranted. Because no loss of revenue occurred and the violation is not considered to seriously affect enforcement, the penalty claim is mitigated to $250 and the seizure is remitted provided petitioner files a formal entry for the car, posts an EPA/DOT compliance bond, and pays the seizure costs. In lieu of posting the compliance bond, petitioner may export the vehicle under Customs supervision.

[redacted]

A separate claim for $54,518 was assessed against [redacted] for allegedly attempting to enter [redacted] 930 Porsche into the United States in a manner contrary to law. According to the penalty notice, [redacted] presented an informal entry for the release of the vehicle with full knowledge that the shipment was commercial in nature and that a formal entry was required by the Customs Regulations. The notice further states that the violation was the result of fraud.

Petitioner [redacted] claims that there was no attempt to fraudulently circumvent the law by filing an informal entry. The reason for filing an informal entry was its belief that this was the proper procedure for a conforming vehicle. Petitioner claims that it was unaware that a formal entry was required if the vehicle was pre-sold. Petitioner further points to the fact that it was extremely cooperative with Customs during the investigation, making its files readily available for inspection.

We do not believe that assessment of a penalty against [redacted] under title 19, United States Code, section 1592 is appropriate in the circumstance of this case. First, as indicated above, the mere use of an informal entry rather than a formal entry does not constitute either a false document or material omission within the meaning of title 19, United States Code, section 1592(a)(1)(A). Second, absent evidence of bad faith, a broker's misunderstanding concerning the proper type of entry to be filed does not warrant the imposition of a penalty. Finally, as indicated above, the evidence does not establish that this was a commercial importation as stated in the penalty notice. Accordingly, the $54,418 penalty claim against [redacted] is cancelled.

Please notify petitioners of these decisions, enclosing a copy of this letter therewith.

Sincerely,

[redacted]

/S/ DWL

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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18 MAY 1984

ENF 4-02.2 CO:R:E:C
653570 BLS

District Director of Customs
Chicago, Illinois 60607

Re: Chicago Seizure Cases 83-3901-00017, 83-3901-00018 and 83-3901-00019; [redacted]

Dear Sir:

This is in reference to the memorandum from the Acting District Director dated April 12, 1984, regarding the above-captioned matter. Three Mercedes Benz automobiles were seized under title 19, United States Code, section 1592 for the reason that false statements were made in connection with DOT and EPA certifications. The seizures were made to prevent the introduction of restricted merchandise into the United States.

While the submitted petition deals with all three vehicles, your office requests that we issue a decision only with respect to two of the vehicles (Nos. 00017 and 00018), since the owner of the third vehicle had not petitioned as of the date of the Acting District Director's letter. The remaining two vehicles are reported to have a domestic value of $40,000 and $50,000.

CASE NO. 83-3901-00017

The record shows that this vehicle had been modified in conformity with EPA and DOT standards prior to the date of seizure (May 13, 1982). Thus, appropriate certifications were obtained from those agencies on April 28 and April 29, 1982, releasing [redacted] from all obligations under its bond. Therefore, the seizure was improper as there was no violation with respect to this vehicle.

CASE NO. 83-3901-00018

In general, pursuant to title 19, United States Code, section 1592(b)(1), if the appropriate Customs officer has reasonable cause to believe that a violation has occurred, and that further proceedings are warranted, he shall issue a pre-penalty notice, as described therein, with opportunity for representations by the person concerned. A penalty claim shall be subsequently issued if the officer determines that a violation has occurred. (Section 1592(b)(2).) A notice of seizure must also be issued if merchandise has been seized pursuant to section 1592(c)(5).

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In the instant case, only a seizure notice was issued, and therefore [redacted] has not been accorded the rights to the procedures set forth under the statutory scheme. Under the circumstances, you should expeditiously issue a pre-penalty notice pursuant to section 1592(b)(1)(A). Since you have recommended a monetary penalty of $5,000, based upon a finding of negligence with mitigating factors, it appears that the proposed maximum monetary penalty should reflect that amount. The submitted response to the seizure notice, may, at [redacted] option, be used as the response to the pre-penalty notice, and to the penalty notice, if so issued.

The same procedures are applicable with respect to Case No. 83-3901-00019, if only a seizure notice was also issued with respect to that vehicle.

Sincerely,

/S/ Edward T. Rosse

Edward T. Rosse
Chief, Commercial Fraud and
Negligence Penalties Branch

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[redacted]

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653582

18 MAY 1984

ENF 4-02.2 CO:R:E:C
653582 SLG

[redacted]

Dear [redacted]

This is in response to your letter dated May 10, 1984, on behalf of [redacted] with regard to Baltimore District Case No. 83-1303-00017, which involves a monetary penalty in the amount of $27,500, and a seizure of one 1982 300 D Mercedes Benz vehicle. Please be advised that a decision by Customs Headquarters on your client's original petition, was forwarded to the District Director, Baltimore by letter dated May 3, 1984.

In case you have not received a copy of the above decision from the District Director, Baltimore, please be further advised that the penalty and seizure were remitted upon payment by your client of the amount of $14,850, plus storage charges. Your client may obtain release of the above vehicle at any time upon payment of the mitigated penalty.

In the Headquarters decision, you will note from the discussion concerning the seized vehicle's compliance with Environmental Protection Agency (EPA) standards, that the alleged false statement was not simply that the vehicle complied with the standards, but that the vehicle already was covered by a certificate of conformity issued by EPA. It was impossible for the vehicle to have been covered by an EPA certificate of conformity if it had not yet been tested. Hence, it is irrelevant to the false statements made by your client that the vehicle involved in the [redacted] case (Baltimore District Case No.83-1303-00023) passed the testing for compliance with EPA standards after it was released from Customs.

In addition to fact that your client now may obtain release of the vehicle upon payment of the mitigated penalty of $14,850, your client always could have elected not to proceed with an administrative disposition of the seizure of his vehicle by requesting a prompt referral of the matter to the Department of Justice for institution of judicial forfeiture proceedings. Your client, however, through counsel, waived immediate referral of the matter to the Department of Justice for institution of judicial forfeiture proceedings with specific request for a review of his petition in an administrative proceeding. In

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submitting the above waiver your client expressed an understanding that a request for referral of the matter for judicial forfeiture still could be made at any time thereafter. This waiver was submitted by your client, through counsel, as recently as October 5, 1983 (copy enclosed). Consequently, we do not believe that the Customs Service has violated [redacted] rights to due process of law by proceeding with a requested administrative disposition of the seizure, rather than immediate forfeiture proceedings.

If after reviewing this letter and the May 3, 1984 decision, [redacted] still wishes to make additional claims for relief from the penalty and seizure, you may file on its behalf, a supplemental petition for relief pursuant to title 19, Code of Federal Regulations, section 171.33.

Sincerely,

/S/Edward T. Rosse

Edward T. Rosse
Chief, Commercial Fraud
and Negligence Penalties Branch

Enclosure

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[redacted]

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05 JUN 1984

ENF 4-02.2 CO:R:E:C
653586 SLG

Area Director of Customs
Newark, New Jersey 07114

Dear Sir:

This is in reference to an informal inquiry received by our office from Inspector Robert E. Segall of your Fines, Penalties and Forfeiture Office, concerning possible violations of title 19, United States Code, section 1592. A report of investigation on [redacted], [redacted] dated January 25, 1984 (NK08FH32700), was forwarded for our review.

Inspector Segall has submitted that [redacted] actions described in the above report of investigation primarily present a classification issue, one not properly the basis for establishing a penalty claim under title 19, United States Code, section 1592. Based upon our review of the report of investigation (ROI) and attached exhibits forwarded therewith, we essentially agree with Inspector Segall's conclusion that the actions alleged to represent a violation of section 1592, presents a case of an incorrect classsification instead of a misdescription of the goods.

Under cover of 22 consumption entries, [redacted] is reported to have entered typewriters, duty-free, under item 676.05, Tariff Schedules of the United States (TSUS) as "electronic" typewriters, when in fact they were properly classifiable under item 676.07 (TSUS) as automatic typewriters, dutiable at the rate of 4.5 percent ad valorem. In addition, [redacted] allegedly failed to declare the auxiliary memory units on one of the models (51) imported. As a consequence of the incorrect classification there is a total loss of duties in the amount of $152,808.

Our review of the company brochures attached as Exhibit 3 to the report of investigation, reveals that the typewriters were described therein as "electronic". There, however, is no reported evidence that establishes that prior to the date of the Notice of Action (August 16,1982), [redacted] was aware that typewriters were classifiable under item 676.07 (TSUS), which itself merely refers to typewriters "other" than "nonautomatic with hand-operated keyboard". More important, in our view, is the fact that it appears that the commercial invoices presented with the shipments (three copies attached as Exhibit 5 to ROI) truthfully described the products by trade name, model and serial numbers, eg., [redacted] Top Tronic Office Typewriters, 9296, Madeleine 51/8K".

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In these circumstances, we believe that Customs cannot claim to have reasonably relied upon the descriptions in the commercial invoices in accepting, as correct, the importer's tariff classification of the typewriters. A request for information issued after the first or second entries, which were filed within two months of one another, most probably would have resulted in Customs determining the correct classification prior to suffering any unrecoverable loss of duties. Moreover, even without a response to a request for information, Customs could have ascertained from the invoices for some of the typewriters that they consisted of more than ordinary electric typewriters. As previously stated, for example, some of the invoices reflected the description of the name, "Madeleine 51/8K". We have been advised that the description, "8K", designates some type of memory capacity, which itself should have alerted Customs to the fact that they consisted of more than plain electric typewriters. Finally, the fact that the issue of the classification of typewriters under either item 676.05(TSUS) or item 676.07(TSUS), represents a legal classification determination, is demonstrated by the ORR Ruling 069065 attached as Exhibit 4 to the ROI, where Headquarters ruled on whether the Canon AP 400 and AP 500 electronic typewriters were classifiable under either item 676.07 (TSUS) or under item 676.05(TSUS). In that case, each model was ruled to be classifiable under a different tariff item because of the features asociated therewith.

Generally, unless 1) there is evidence of the importers actual knowledge of the correct tariff classification of the imported goods or 2) the description of the merchandise in the invoices is misleading although not completely false, Headquarters does not support the issuance of a section 1592 penalty claim based solely upon misclassification by the importer. This is in accordance with Customs longstanding position that while it is the importer's duty to describe merchandise accurately on the invoices presented to Customs, it is Customs duty to classify the imported merchandise.

With respect to the auxiliary memory units to the [redacted] Model 51 typewriters alleged to have not been declared, on one of the commercial invoices for this model, the following description appears after the listing of the Model 51 typewriters included in the shipment:

> "Options: 225 Units HX-10/040, Micro Floppy Disk Nos:....[list of numbers]."

If this was noted on all of the invoices for the Model 51 typewriters, then although no separate prices seemed to have been stated therefor, it hardly can be alleged that the auxiliary units on the Models 51 were "not declared".

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If, however, the above description was not presented on the invoices for all of the Model 51 typewriters imported, a material omission under section 1592 can be alleged for either the failure to file an entry for these goods in accordance with section 1484, or the failure to include these items in the description of the Model 51 typewriters in accordance with the requirement under section 1481(a)(3), to provide a "detailed description of the merchandise, including the name by which each item is known,....", eg., "Micro Floppy Disk". In this situation, the loss of revenue attributable to the auxiliary memory units could be recovered under section 1592(d). Section 1497, however, which is limited to failures to declare articles on baggage declarations, would not apply to these entries.

In sum, our views on this matter based on the facts submitted are as follows:

1) With the exception of the single entry filed by [redacted] after the Notice of Action was issued on August 16, 1982, we do not recommend that a penalty claim under section 1592 be issued for the incorrect tariff classification entered by Hermes for the subject typewriters.

2) We do not believe that any actual loss of revenue on the first 21 entries could be recovered under section 1592(d), inasmuch as no violation of section 1592 was committed.

3) It is not recommended that a penalty be issued under section 1592 for the auxiliary units on the basis of a material omission, unless the invoices for the remaining entries for the auxiliary units to the Model 51 typewriters do not present a description similar to that shown on the sample invoice for Model 51, attached to the ROI.

Sincerely,

/S/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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[redacted]

653586

E3

27 JUN 1984

653594

ENF-4-02.2 CO:R:E:C
653594 CR

District Director of Customs
Dallas, Forth Worth, Texas 75261

Dear Sir:

This is in response to your memorandum dated June 1, 1984, forwarding a petition dated October 6, 1983, submitted by [redacted] on behalf of [redacted] The petition seeks relief from a seizure and claim for a monetary penalty in the amount of $52,159 assessed against [redacted] for a violation of title 19, United States Code, section 1592, in your Dallas/Ft. Worth District Case No. 83-5501-00146.

A petition has also been filed by [redacted] on behalf of [redacted] claiming that the bank is the lienholder on the vehicle which is the merchandise the subject of this case, and holds a security interest in the vehicle. [redacted] requests the vehicle be released either to [redacted] or the bank so that the vehicle may be sold and funds applied to the debt of $65,000 owed by [redacted] to the bank. Documentation furnished by the bank substantiates its interest.

The penalty claim arose when [redacted] introduced into the commerce of the United States a 1983 Porsch 930, [redacted], on Informal Entry No. 23081882 on December 8, 1982, by means of false and material entry documents. The entry documents were false in that the vehicle was misdescribed as a Porsche 911 SC, and the declarations were false in that they stated that the vehicle conformed to EPA and DOT specifications when in fact it did not.

As we understand the facts, on December 8, 1982, [redacted] a friend of [redacted] entered the vehicle as importer of record on behalf of [redacted] to take advantage of a promotion offered by [redacted] A ticket holder on [redacted] would be allowed to import a vehicle at approximately 30 percent of the actual shipping cost. Because [redacted] was already importing another car for his own use pursuant to this promotion, [redacted] apparently was promised a free trip to Germany by [redacted] In return, [redacted] agreed to use his plane ticket to take advantage of the promotion with the understanding that the vehicle [redacted] imported belonged to [redacted] and was for [redacted] personal use.

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[redacted] informed Customs agents that [redacted] had all of the documents in Munich, West Germany completed in [redacted] name, and that [redacted] supplied the advice on how the EPA/DOT forms were to be completed by the importer. [redacted] stated that he did not complete the forms, but did sign then. The vehicle was released at the Dallas/Ft. Worth Airport after [redacted] signed the EPA/DOT compliance forms.

On August 11, 1983, Customs agents seized [redacted] 1983 Porsche 930 from the establishment of [redacted], where allegedly, it was undergoing EPA/DOT conversion.

Counsel for [redacted] presents a "compromise offer", dated October 6, 1983, which we do not consider to be a formal compromise of the government's claims pursuant to 19 U.S.C. 1617. Rather, we view this submission as a petition seeking relief from a seizure and claim for a monetary penalty pursuant to 19 U.S.C. 1618.

Counsel for petitioner recites generally the facts of this case and offers as evidence a [redacted] showing there is a lien on the vehicle held by [redacted] Counsel also submits a letter dated August 31, 1983, from [redacted] confirming that the vehicle was seized and estimating that the conversion work could be completed in approximately 10 days. Counsel also submits a letter dated September 1, 1983, from [redacted] who advises that the conversion work can be completed in approximately 10-15 working days.

Counsel for petitioner states, that petitioner was dilatory in having the vehicle in question converted to EPA/DOT standards, and indicates that part of the delay occurred when counsel, upon learning that there was an on-going investigation of petitioner, advised petitioner to take no action. After some period of delay, petitioner decided to have the EPA/DOT conversion work completed at [redacted], and the vehicle was seized there.

Counsel for petitioner suggests that in order to settle this matter, petitioner will agree to post a bond or letter of credit and agree to have the car completely converted to meet EPA/DOT standards within 60 days of the car being released. By letter dated November 28, 1983, counsel for petitioner advises that petitioner has obtained an Immediate Delivery and Consumption Entry Bond to expedite this matter.

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We consider the suggestions of counsel for petitioner for resolving this matter to be unsatisfactory. The petition fails to address the seriousness of this penalty claim.

The following documentary evidence filed with Informal Entry No. 23081882 on behalf of petitioner were false and material:

1. A commercial invoice describing the vehicle as a Porsche 911SC (a conforming vehicle made for the U.S. market as well as the German market) instead of a Porsche 930 Turbo (a non-conforming vehicle not made for the U.S. market);

2. An EPA Form 3520-1 declaring that the falsely described Porsche 911SC conformed to EPA clean air standards; and

3. A DOT Form 7 declaring that the falsely described Porsche 911SC conformed to U.S. safety standards.

We conclude that by introducing the Porsche 930 into the commerce of the United States by means of these material and false entry documents, petitioner, [redacted] violated title 19, United States Code, section 1592.

Evidence in the file clearly indicates that petitioner, [redacted] has extensive experience in importing foreign vehicles into the United States, and knows well the customs laws and regulations, and requirements necessary to conform a vehicle to EPA and DOT specifications. [redacted] had actual knowledge of the proper method of completing the entry documents, especially the DOT and EPA forms. [redacted] simply used [redacted] to commit the violation. [redacted] had actual knowledge that the vehicle did not conform to EPA and DOT requirements at the time of entry because he misdescribed the vehicle as another model which conforms to the U.S. market. [redacted] subsequently took the vehicle to [redacted] so that the conforming changes could be made.

We conclude that the weight of the evidence establishes in a clear and convincing manner that petitioner acted in a fraudulent manner, deliberately with intent to violate the laws regarding the admission of a nonconforming vehicle into the United States.

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For purposes of mitigation, we consider this to be a noncommercial importation. Petitioner offers no factors which can be taken into consideration to mitigate the penalty claim.

In light of the above discussion concerning the violation of title 19, United States Code, section 1592, the level of culpability of fraud, and our national guidelines applicable to this violation, we conclude the penalty claim be mitigated to $36,242. The vehicle is to be released only when this mitigated penalty amount is paid, and a bond is posted to ensure compliance with EPA and DOT requirements, and storage charges by Customs are paid.

Please notify petitioner, [redacted] that he has 30 days to comply with the above conditions. If [redacted] does comply, he must also execute a Hold Harmless Agreement with Customs prior to release of the vehicle. It will be necessary that you provide the bank advance notice of the date and time of release of the vehicle to [redacted]

[redacted] has a valid security interest in the vehicle. Therefore, if [redacted] fails to comply, please notify the Bank that it has 30 days to comply with the above conditions. If the bank does comply, it also must execute a Hold Harmless Agreement with Customs prior to release of the vehicle. It will be necessary that you provide similar notice to [redacted] of the release of the vehicle to the bank.

In the event the neither party complies with the decision, the matter should be referred to the Department of Justice for appropriate action.

Please notify both petitioners of this decision and enclose a copy of this letter with your notifications.

Sincerely,

(Signed) Edward T. Rosse

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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653594

13 JUL 1984

653614

ENF 4-02.2 CO:R:E:C
653614 SLG

[redacted]

Dear [redacted]

This is in response to your letter dated July 9, 1984, whereby you filed a supplemental petition on behalf of [redacted] ("petitioner"). Petitioner seeks total remission of the penalty assessed in the amount of $27,500, and the seizure of one 1982 300 D Mercedes Benz vehicle, incurred for violation of title 19, United States Code, section 1592 (Baltimore District Case No. 83-1303-00017).

The above penalty was assessed and seizure was made because petitioner, allegedly as a result of fraud, attempted to enter the above-described vehicle into the commerce of the United States on November 29, 1982, by means of the material false statements that the vehicle complied with all Department of Transportation (DOT) safety standards and that it was covered by a certification of conformity issued by the Environmental Protection Agency (EPA). Also allegedly resulting from fraud, petitioner falsely declared that the vehicle bore a DOT certification label affixed by its original manufacturer and that it bore an EPA certification label or tag.

By decision dated May 3, 1984, the foregoing penalty and seizure were remitted upon payment of the amount of $14,850, plus storage charges, with the proviso that the corrected DOT and EPA forms be completed if the vehicle is imported into the United States. The foregoing decison was based upon the following findings and facts and conclusions of law: 1) The statements made regarding the vehicle's compliance with the requirements of the Department of Transportation (DOT) and Environmental Protection Agency (EPA) were false; 2) The false statements were material in that they had the potential to alter the status of admission of the vehicle into the United States; and 3) The material false statements were made as a result of fraud in that petitioner acted with intent to import the vehicle into the United States without complying with EPA and DOT emission and safety standards.

While not addressing the merits of the fraudulent violation of section 1592 committed by petitioner, the sole contention on supplemental is that by not having referred the instant seizure

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for institution of judicial forfeiture proceedings, Customs has deprived petitioner of property without Fifth Amendment rights to due process of law.

We disagree with this contention and accordingly, deny your supplemental petition for further relief from the penalty and seizure. Moreover, we believe that support for our position that there was no unreasonable delay by Customs in the instant penalty/seizure case can be found in the recent decision by the Supreme Court in United States v. Eight Thousand Eight Hundred and Fifty Dollars, ___U.S.___, 103 S.Ct. 2005 (1983).

In United States v. Eight Thousand Eight Hundred and Fifty Dollars, supra, the Supreme Court held on facts presented, that the 18-month delay by the Government in filing a civil proceeding for forfeiture of seized currency, did not violate the claimant's right to due process of law. In noting that "unlike the situation where due process requires a prior hearing, there is no obvious bright line dictating when a post-seizure hearing must occur", the Supreme Court found that the following four factors should be weighed in determining whether the Government's delay was reasonable: 1) the length of the delay, 2) the reason for the delay [which can include a pending administrative petition], 3) the claimant's assertion of his right to a judicial hearing, and finally, 4) prejudice to the claimant caused by the delay, i.e., whether the delay affected the claimant's "ability to defend the propriety of the forfeiture on the merits." We believe that based upon the foregoing factors Customs delay was reasonable.

As we advised in our letter to you dated May 18, 1984, your client as late as October 5, 1983, waived immediate referral of this seizure for judicial forfeiture action, with the express understanding that the waiver could be withdrawn at any time. Had this waiver not been granted, Customs could have referred the matter to judicial forfeiture at least by that date. Moreover, although a petition for relief had been filed and was then pending, at no time prior to executing the waiver on October 5, 1984, nor at any time prior to your letter to us dated May 10, 1984 [after the date of the decision by Headquarters on this matter], did petitioner request that the seizure be referred for immediate judicial forfeiture proceedings. As was the case in Eight Thousand Eight Hundred and Fifty Dollars, supra, during the period that elapsed since the date of the seizure, petitioner made inquiry regarding the results of its petition for remission, rather than a request for referral of the matter to the Department of Justice for judicial forfeiture proceedings.

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In connection with the claim of an unreasonable delay by Customs, you submit that the continued seizure of the vehicle has prevented petitioner from showing that the modification work performed on the vehicle in Germany, in fact, did meet the EPA specifications. Apparently, there still is a misunderstanding of the nature of the violation committed by petitioner.

In our letter to you dated May 18, 1984, we explained that the fact that the vehicle ultimately complies with EPA standards after testing for such has been performed is no defense to the violation committed by petitioner. Petitioner's violation relating to the vehicle's compliance with EPA standards consisted of the false claims that upon importation, the vehicle already was covered by a certificate of conformity issued by EPA. This false claim had the potential of circumventing the Customs procedures for ensuring that the vehicle did comply with EPA standards, in that when such certification in fact has been granted by EPA before the vehicle is imported, there is no requirement to have the vehicle tested after importation. Petitioner has not claimed that the delay has prevented it from contesting the above. Hence, in our view, the continued seizure of the vehicle has not "hampered [petitioner] in presenting a defense on the merits". See Eight Thousand Eight Hundred and Fifty Dollars, supra.

In addition to the foregoing, petitioner was advised by seizure notice dated December 20, 1982, of the fact that it could have obtained immediate release of the vehicle upon payment of the penalty amount provided in the prepenalty notice. As was the Customs practice of which petitioner's then counsel most probably was aware, a letter of credit drawn in the amount of the penalty for an appropriate period, could have been deposited in lieu of actual cash. Instead, petitioner chose to await the conclusion of the administrative proceeding rather than deposit any amount to obtain release of the vehicle.

In accordance with the foregoing determinations, the supplemental petition is denied. We have advised the District Director to refer the instant case to the Department of

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Justice (through Regional Counsel, Northeast Region) for institution of judicial enforcement of the penalty claim, with the forfeiture of the subject vehicle as a requested remedy.

Sincerely,

(Signed) Edward T. Rossa

for Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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[redacted]

653614

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20 NOV 1984

ENF 4-02.2 CO:R:E:C
653687 SLG

653687

District Director of Customs
Houston, Texas 52790

Dear Sir:

This is in reply to your referral of the case involving a penalty assessed in the amount of $35,000, against [redacted] and the seizure of one 1980 Mercedes Benz vehicle for violation of title 19, United States Code, section 1592 (Houston District Case No. 84-5301-00086). Although no petition for relief from the penalty claim actually has been filed, you have advised counsel for [redacted] ("petitioner") that his prepenalty response would be treated as a formal petition for mitigation upon Customs receipt of a power of attorney and a waiver of the right to prompt referral of the seizure for judicial enforcement. Both an executed waiver form and a power of attorney subsequently were supplied by petitioner's counsel.

The penalty was assessed and the seizure was made because on May 9, 1984, petitioner, allegedly as a result of fraud, attempted to enter the 1980 Mercedes Benz vehicle duty free under item 812.30, Tariff Schedules of the United States (TSUS) by means of the false claims that this represented his first importation of a vehicle into the United States and that the value thereof was $8,000. It subsequently was discovered, however, that within the previous year, petitioner had filed two entries covering vehicles with the same claim that they were intended for his personal use. Upon being confronted with the foregoing, petitioner reportedly admitted to entering the two vehicles previously and to selling those vehicles. Petitioner also reportedly admitted at this time that the true value of the vehicle in this case was $17,000, instead of $8,000, as declared. Although not specified in the seizure notice, in view of petitioner's status as a nonresident with no place of business in the United States indicated on the entry documents, seizure of the vehicle was necessary to protect the revenue.

We, however, are unable to agree that there is a potential loss of revenue. Notwithstanding the false statements as to the value of the vehicle and the previous importations, there is insufficient evidence that petitioner was not importing the subject vehicle for his personal use. Petitioner, whom the records reflect was a citizen of Holland visiting the United States at the time of the violations, still would have been entitled to enter the subject vehicle under item 812.30 (TSUS)

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if this importation was being made for his personal use. Thus, in order for there to exist a potential loss of revenue in this case, there must be evidence that the present attempted importation did not qualify for entry under item 812.30 (TSUS). We find no such evidence in the facts presented.

With respect to the merits of the penalty claim, petitioner, through counsel, essentially claims as follows: 1) The false statements resulted from a misunderstanding of the language; petitioner misunderstood the term "imported" when he disclaimed having made any previous importations of vehicles; and the declared value of $8,000, represented the average price for the subject vehicle in Europe without the extras, which he declared in accordance with European practice. 2) Even assuming arguendo that the false statements were intentionally misleading, they were not "material" under section 1592, since the previous importations by petitioner would not have precluded his entry of the subject vehicle under item 812.30 (TSUS) and since, regardless of the value of the vehicle, the entry was duty-free under that tariff item.

We find that both of the false statements in this case were material under section 1592. Although there may not have existed sufficient facts to deny petitioner's claim to right of entry under item 812.30 (TSUS), had the true facts regarding petitioners previous importations been known to Customs at the time of the subject entry, Customs most probably would have required in connection with the subject entry, the filing of a formal entry and a bond to ensure petitioner's compliance with the conditions applicable to duty-free entries under item 812.30 (TSUS) as well as with the terms for exemption from the EPA and DOT requirements stated on the forms executed by petitioner. Moreover, the falsely declared value of the vehicle was material because of its potential to affect the appraisement of the vehicle. If the discovery of facts prior to importation had revealed that the vehicle was not intended for petitioner's personal use (eg., the discovery of an intended sales transaction), the falsely declared value could have been used as the basis of appraisement. In addition, even if the vehicle had been released under item 812.30 (TSUS), and subsequently sold within one-year, "the duty which would have been payable at the time of entry" would be required to be paid, and the falsely declared value most probably would have been used for determining the amount of duties in such instance. (See Part 2, Subpart A, Headnote to Schedule 8 (TSUS).)

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We also find no merit in petitioner's claims that the false statements regarding his previous importations, resulted from his misunderstanding of the term "imported". Petitioner repeatedly denied to Customs Officials any previous importations into the United States, although two importations had been made by him within the last year. It stands to reason that upon such repeated inquiry by Customs, petitioner himself, should have inquired as to what was meant by the questions regarding previous "importations" by him, before stating categorically to Customs orally and on the C.F. 3299 executed by him, that this was the first time that he imported a vehicle into the United States. Thus, we find that the false statement that he never before had imported vehicles into the United States, was made deliberately by petitioner with intent to violate the laws requiring that the true facts be provided to Customs.

With respect to the falsely declared value of $8,000, the question on the C.F. 3299, pertaining to such did not precisely request that the price paid for the vehicle be declared, but rather requested declaration of the "value or or costs of repairs." Although a value other than the price paid would be considered a false value, it is not clear that such false value was deliberately made under the circumstances in which this information was solicited on the C.F. 3299. Moreover, the circumstances of petitioner's admission to undervaluing the subject vehicle is not established sufficiently in the record for purposes of sustaining a finding that the false value resulted from either fraud or gross negligence. Hence, we find that the falsely declared value in this case resulted from petitioner's failure to exercise due care to ascertain his obligations under the laws with respect to reporting the value of the subject vehicle.

In accordance with the foregoing determinations, and the national guidelines applicable to noncommercial violations of section 1592, by arriving travellers, the instant penalty claim and seizure are remitted upon payment of the amount of $8,500. In light of petitioner's past importations of vehicles for personal use, which he reportedly admitted were sold, a formal entry and a bond should be required in the event petitioner elects to proceed with the attempted importation of the subject vehicle. An executed bond in the proper amount will provide some protection against any failure by petitioner to comply with the requirements for duty-free treatment under item 812.30 (TSUS) as well as the requirement stated on the EPA and DOT form, that the vehicle would be exported within a period of one year from the date of entry.

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Please advise petitoner, through counsel, of this decision and enclose a copy of this letter with your notification.

Sincerely,

/S/Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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[redacted]

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[redacted]

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21 DEC 1984

653760

ENF 4-02.2 CO:R:E:C
653760 RJP

Area Director of Customs
Newark, New Jersey 07114

Dear Sir:

The petition submitted by counsel on behalf of [redacted] (petitioner), requesting relief from a claim for monetary penalty of $41,701.80, assessed under title 19, United States Code, section 1592, has been considered (Newark Area Case No. 84-4601-00444.

The liability was incurred because petitioner entered or caused to be entered six Mercedes Benz automobiles into the commerce of the United States, by means of material false statements. On EPA/DOT forms accompanying Immediate Delivery Entries filed with Customs, the automobiles were described as being in conformity with EPA/DOT standards, when in fact they were not. Because the vehicles were non-conforming, and therefore considered prohibited or restricted merchandise, Customs seized the subject automobiles, and assessed the instant claim for monetary penalty. Subsequently, the cars were brought into compliance with EPA/DOT standards and were released from Customs custody. (It should be noted that because the appropriate duties were paid with respect to the subject automobiles, the penalty action before us is a non-revenue loss case.)

Petitioner maintains that the individuals involved in the purchase of the automobiles contracted for and paid a foreign concern to perform the necessary EPA/DOT conversion work. Further, petitioner states that the Customhouse broker responsible for handling the import transaction was instructed to enter the vehicles as non-conforming, inasmuch as the U.S. purchasers had not had an opportunity to view the automobiles to determine whether or not the conversion work had been adequately performed. Petitioner goes on to state that the broker entered the vehicles as conforming with EPA/DOT standards without the consent or knowledge of the U.S. purchasers. Consequently, petitioner contends that neither he nor any of the other U.S. purchasers intended or knew that the vehicles in question were entered as conforming to Government standards.

The record in this case establishes that the subject automobiles were presented for entry accompanied by documentation which indicated that the conversion work had been performed in West Germany, when in fact, only superficial work had been performed on the vehicles (i.e., insufficient to bring them into compliance with Government standards). Moreover, the investigative report contains evidence which contradicts petitioner's contention

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that the broker had been instructed to enter the vehicles as non-conforming. Also, the file indicates that petitioner arranged the purchase and importation of the subject automobiles, and that there was an attempt to make it appear that the vehicles had been sold while in transit to the United States rather than after the vehicles had been landed. The evidence of record contains two bills of sale for each vehicle. The first bill of sale for each car is dated June 10, 1984 (prior to the vehicle's arrival at the port of entry), and the second bill of sale for each automobile is dated June 18, 1984 (after the date of importation of the vehicles). Both bills of sale for each automobile indicate petitioner as the seller and the aforementioned U.S. parties as buyers (except in the case of petitioner's own automobile for which the bills of sale indicate that petitioner's attorney is the seller and petitioner is the buyer). The bills of sale dated prior to the date of importation support the conclusion that the petitioner attempted to relieve himself of liability for the non-conforming imported vehicles.

In view of the above, we find that the collective evidence in this case demonstrates that the false statements made upon entry of the subject automobiles constitute grossly negligent violations of title 19, United States Code, section 1592, in that petitioner acted with actual knowledge of or wanton disregard for the relevant facts and with indifference or disregard for his obligations under the statute. Therefore, in accordance with national mitigation guidelines involving this type of violation, the claim for monetary penalty will be remitted upon payment of $41,701.80 (which represents an amount equivalent to 40 percent of the dutiable value of the vehicles).

Please notify petitioner (through counsel) of this decision, enclosing a copy of this letter with your notification.

Sincerely,

/s/ Donald W. Lewis

Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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19 APR 1985

ENF 4-02.2 CO:R:E:C
653794 CR

653794

District Director of Customs
Houston, Texas 77052

Dear Sir:

This is in response to your memorandum dated January 17, 1985, forwarding a petition dated November 29, 1984, submitted by [redacted] on behalf of [redacted]. The petitioner seeks relief from a seizure and a claim for a monetary penalty in the amount of $26,400, assessed against petitioner for a violation of title 19, United States Code, section 1592, in your Houston District Case No. 85-5301-00011.

The penalty claim arose under section 1592 on the basis that petitioner attempted to introduce into the commerce of the United States a 1983 Mercedes Benz 300D, [redacted], by means of false and material entry documents. The entry documents were false because it was indicated therein that the Mercedes Benz 300D was being imported by a nonresident in connection with the arrival of the nonresident to be used in the United States only for the transportation of the nonresident and such incidental carriage of articles as may be appropriate to his personal use of the conveyance in accordance with item 812.30 and Schedule 8, Part 2, Subpart A, Headnote 1.(b), Tariff Schedules of the United States (TSUS), (19 U.S.C. 1202), whereas the vehicle was actually imported for commercial resale. The vehicle did not conform to Department of Transportation (DOT) nor Environmental Protection Agency (EPA) compliance standards. Furthermore, the entry documents were false because petitioner undervalued the vehicle by declaring the value to be $3,920, rather than the foreign value of $7,000. As a result, the Government suffered a loss of revenue of $189.

As we understand the facts, on October 25, 1984, petitioner presented entry documents for the release of the above-referenced Mercedes Benz. Specifically, petitioner presented documentation including:

1. Customs Form 3299, "Declaration for Free Entry of Unaccompanied Articles", which indicated that the vehicle was being imported by petitioner for personal use under item 812.30, TSUS.

2. EPA Form 3520-1, wherein block No. 5 was designated by petitioner declaring thereby that the importer or consignee is a nonresident of the United States

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importing such vehicle for personal use for not more than one year from the date of entry, and the vehicle will not be sold in the United States.

3. DOT Form, HS Form 7, wherein block No. 5 was designated by petitioner declaring thereby that he is a nonresident of the United States importing the merchandise for personal use for a period not to exceed one year from the date of entry and he will not sell it within the United States.

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It is reflected in the file that at the time of inspection, petitioner advised a Customs officer that he was a nonresident, was visiting the United States for about 6 months, and had brought the vehicle with him. Petitioner further stated that the vehicle had been badly damaged and had paid only 12,000 deutschmarks for it. The inspector specifically asked petitioner if he had ever previously imported a vehicle into the United States. The petitioner replied negatively. A Customs check revealed that petitioner did, in fact, import a car previously, and it had been sold.

An examination of documents in the possession of petitioner revealed a bill of sale for the previously imported vehicle, as well as several hand-written advertisements for the sale of the Mercedes Benz 300D. The Customs inspector examined the vehicle and observed that it did not comply with EPA/DOT standards, but was in excellent condition. The vehicle was seized pursuant to title 19, United States Code, section 1592, and title 18, United States Code, sections 542 and 545.

The Search/Arrest/Seizure Report, Customs Form 151, reflects that the 1983 Mercedes Benz 300D had a declared value of $3,920, a foreign value of $7,000, a domestic value of $26,400, and a loss of revenue of $189.

On November 8, 1984, a prepenalty notice was issued to petitioner in the amount of $26,400, the domestic value of the vehicle, with a tentative determination of fraud as the level of culpability. On November 29, 1984, petitioner filed a response. After considering that response, on January 17, 1984, a penalty notice was issued for $26,400 with a determination of fraud as the level of culpability. On January 28, 1985, Charles D. Ressin, a member of my staff, telephoned counsel for petitioner and advised him that petitioner had the right to make an additional submission in response to the penalty notice. Counsel was advised that in the absence of an additional submission, we would rely on the November 29, 1984, submission.

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By letter dated March 7, 1985, counsel advised that petitioner's valuation of the $3,920 value of the vehicle was based upon the sum of money that he actually paid for the vehicle. The purchase of the vehicle was "as is" in its damaged condition.

In a telephone conversation with Mr. Ressin, counsel requested an appointment to make an oral presentation. On April 4, 1984, counsel and Mr. Ressin met and discussed the case. Counsel also presented the following:

1) a picture of the damaged vehicle;

2) purchase contract reflecting a sales price of DM 4,000;

3) estimate of repair costs of DM 26,200.93; and

4) a translated letter dated March 8, 1985, of petitioner reflecting that he paid DM 4,000 for the vehicle, and he did the repair work which cost DM 7,000, and that the car cost a total of DM 11,000 or $3,920.

We note this March 8, 1985, letter contradicts the March 7, 1985, letter because the March 7, 1985, letter indicated that the $3,920 was the sum of money paid for the vehicle, whereas the March 8, 1985, letter stated that this amount was for the purchase price and cost of repairs.

Petitioner claims: his lack of understanding of the English language places doubt on the admissibility of any statement or admission made by him and runs counter to any intent to defraud; he did not intend to import any vehicle for the purpose of a sale and denies any knowledge of having made a false material statement; he is unaware that he made any statement relative to his having previously imported a vehicle; and he insists that the vehicle had suffered extensive damage to the right front area, thereby justifying the declared value of $3,920.

Petitioner requests that if a penalty is in order, consideration be given to the following facts: that his vacation was ruined; he spent five days in jail under a great deal of apprehension due to his lack of knowledge of the English language; he was forced to spend substantial sums of money; and he is of very ill health. Petitioner asserts that under no circumstances would he ever attempt to import a vehicle

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for any purpose. Petitioner advises that upon release of the vehicle from Customs custody, the vehicle will be returned to Germany.

Item 812.30, TSUS, provides in pertinent part for duty-free treatment of automobiles imported in connection with the arrival of a nonresident provided the automobile is to be used in the United States only for the transportation of such person and such incidental carriage of articles as may be appropriate to his personal use of the conveyance. Schedule 8, Part 2, Subpart A, Headnote 1(b) provides that if any article which has been exempted from duty under item 812.30, TSUS, is sold within 1 year after the date of importation, without prior payment to the United States of the duty which would have been payable at the time of entry if the article had been entered without the benefit of this item, such article, or its value (to be recovered from the importer), shall be subject to forfeiture. These statutory provisions have been added to the Customs Regulations as sections 148.45 and 148.46 (19 CFR 148.45, 148.46). Sections 12.73 and 12.80, Customs Regulations (19 CFR 12.73, 12.80), set forth requirements of EPA and DOT respectively relating to motor vehicle compliance standards.

Upon review of petitioner's submission and the entire file, we are unpersuaded by petitioner's claims. Concerning petitioner's claim that the vehicle was damaged, thereby justifying the lower value, we note that petitioner repaired the vehicle prior to exportation. The Customs officer examined the vehicle and found it be in excellent condition at the time of importation. Therefore, for Customs valuation purposes, we find that the appraised value of $7,000 is correct.

Petitioner states that he was unaware that he made any statement on October 25, 1984, relative to his having previously imported a vehicle. However, two Customs officers indicate that petitioner expressly stated he did not previously import a vehicle. Petitioner does concede that he did previously import a vehicle, but due to the financial hardship of his daughter, was forced to sell that vehicle. Petitioner contends that it was his understanding that his daughter and the new purchaser would report the sale. Nevertheless, Customs records indicate that petitioner had imported a vehicle into the United States and it had been sold.

Petitioner stated that he was visiting the United States for six months, entered the vehicle under item 812.30, TSUS, and denies any intent to import the Mercedes Benz 300D for the purpose of sale. However, it is reflected in the file that petitioner stated to a Customs officer that he planned

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to import a vehicle every six months to sell for a profit, take a vacation, and return home. Furthermore, several handwritten advertisements, found in the possession of the petitioner, states:

For Sale
Mercedes Benz 300D
Year: 1983
5 Cylinder
18,000 KM
Address:

Customs Form 58 "Vehicle/Vessel/Aircraft Inventory and Receipt", reflects the following data about the seized vehicle:

Mercedes Benz 300D
Year: 1983
5 Cylinder
18,176 KM

We believe that the weight of the evidence establishes in a clear and convincing manner that petitioner intended to sell the vehicle and, therefore, he acted in a fraudulent manner, deliberately with intent to violate the Customs laws and the laws regarding the admission of a non-conforming vehicle into the United States. (Furthermore, we believe petitioner negligently undervalued the vehicle by declaring the value at $3,920). Therefore, it is our decision that the filing of false and material entry documents constitute a fraudulent violation of title 19, United States Code, section 1592. There are no Customs mitigating factors offered by petitioner which can be taken into consideration to afford the petitioner additional relief. In accordance with our national guidelines concerning this violation and DOT/EPA requirements, we conclude that the penalty claim be mitigated to $7,000, an amount equal to the dutiable value of the Mercedes Benz 300D.

The vehicle shall not be released from seizure unless the mitigated penalty amount, the loss of revenue, and storage charges incurred by Customs are paid, and petitioner agrees to export the vehicle under Customs supervision.

Please notify petitioner, through counsel, of this decision and enclose a copy of this letter with your notification. If petitioner fails to make payment timely and comply with the

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conditions of this decision, summary forfeiture proceedings under title 19, United States Code, section 607, (as amended by Pub. L. 98-573, October 30, 1984), should be instituted.

Sincerely,

/s/ Edward T. Rosse

for Donald W. Lewis
Director, Entry Procedures
and Penalties Division

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[redacted]

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28 OCT 1985

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ENF 4-02.2 CO:R:E:C
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District Director of Customs
Tampa, Florida 33602

Re: Petition and Offer in Compromise of [redacted] Requesting Relief from a Monetary Penalty of $153,000, Assessed Under Title 19, United States Code, Section 1592; Petitions also Filed by [redacted] and [redacted] Claiming Security Interests in Several or All Five of the Seized Vehicles

Dear Sir:

This is in reference to your memorandum dated May 13, 1985, and subsequent correspondence, concerning the above-captioned matter. The penalty was assessed for the reason that petitioner [redacted] entered five (5) vehicles with the use of entry documents which were false. The submitted invoices reflected a purchase by [redacted] company), [redacted] or a member of his family, when in fact this petitioner was not the purchaser but rather the importer and consignee. Further, petitioner falsely certified on EPA and DOT forms that the vehicles would not be sold or offered for sale prior to proper compliance with DOT/EPA requirements. In fact, the automobiles were offered for sale prior to such compliance and satisfaction of the appropriate bond. The vehicles, two (2) Mercedes-Benz automobiles and three (3) Porsches, were seized as restricted merchandise. While the false declarations and certifications reflect violations of EPA and DOT requirements, there is also a reported loss of revenue of $954.37.

On May 6, 1985, [redacted] entered into a plea agreement with the United States Attorney's Office, Middle District of Florida in connection with a criminal proceeding involving importation of these five (5) vehicles. Pursuant to the Agreement, [redacted] pled guilty to one count of conspiracy to violate title 18, United States Code, section 545.

Under the stipulation of facts, [redacted] advised that in July of 1983, he and [redacted], a German national, agreed that they would cause to be imported certain automobiles, primarily Porsches and Mercedes', into the United States for the purpose of resale, the profits to be divided between them. During the next few months at least eight (8) vehicles were imported from Germany through southern Florida. In each instance, documents were filed reflecting that the automobiles

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were sold by a foreign party to persons related to the petitioner or sold to the petitioner's business. In fact, there were no actual sales between the described sellers and buyers. As stipulated, importation was effected in this manner to permit application to be made to the EPA for a once in a lifetime personal exemption allowing the importation of a foreign automobile for personal use and not for resale, without the necessity of incurring the expense of conforming the vehicles to EPA pollution standards.

[redacted] stated that this scheme was intended to facilitate the domestic sale of the vehicles. He indicated [redacted] had provided the false information to Customs and that he had instructed his agent to file information concerning the importations that would conform to the false information contained in the documents, including invoices, provided to Customs by [redacted] The latter also provided the financial resources necessary to acquire the vehicles. However, [redacted] did obtain a $60,000 loan from a bank in Pinellas County secured by two of the vehicles in order to cover the expenses of the importations.

OFFER IN COMPROMISE

In his letter of September 6, 1985, petitioner [redacted] characterizes himself as an innocent pawn in the scheme concocted by [redacted] and one [redacted] He claims that while the vehicles were offered for sale, he believed that they had been properly conformed to EPA/DOT requirements in Europe, although he began sending the cars to a domestic concern for appropriate modifications. Of the $60,000 borrowed from the [redacted], $20,000 was expended on readying the vehicles for sale and $40,000 was handed over to [redacted]

Petitioner advises that since the seizure, another case out of Miami relating to eight (8) additional automobiles has been initiated. In addition, he faces a lawsuit from the bondholder in Miami, and there is also a lawsuit pending against [redacted] by [redacted] That lawsuit has been initiated by [redacted] through [redacted]

Under the circumstances, a settlement is proposed as follows:

1. Petitioner will admit to negligence and petitioner or the proper party will be responsible for all storage costs on the five automobiles in the amount of $1.00 per day, the total of which (at this time) is approximately $1,800;

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2. [redacted] and/or the proper party will be responsible for and will pay scheduled penalties for the loss of revenue;

3. [redacted] and/or the proper party will be responsible for and will pay the revenue lost as a result of the violation; and

4. Customs will release to [redacted] and/or [redacted] the five (5) automobiles. These vehicles will be conformed to EPA/DOT requirements before being offered for sale.

Regardless of the above agreement [redacted] will continue to cooperate with Customs authorities.

While the record reflects that this petitioner may not have been the initiator of the scheme, it is apparent, based on the evidence and established by the criminal conviction and stipulation of facts, that petitioner was well aware that the entry documents submitted were false, and of the consequences of such action, i.e., to evade DOT and EPA requirements. The evidence clearly demonstrates that the violation was intentional, in order to avoid the substantial expense of conforming the vehicles to United States safety and clean air standards. In this regard, we note that even if certain work had been performed on the cars in Europe, in furtherance of EPA/DOT requirements, without additional certifications in the United States such work alone would not be sufficient to satisfy these standards.

Petition of [redacted]

This petitioner, a German national now residing in the United States, claims that in June and September of 1983 she gave [redacted] and [redacted] about $180,000 for the purchase of Mercedes and Porsche automobiles. The vehicles were to be conformed to United States standards and then shipped to Florida for sale. [redacted] was promised a substantial gain on her investment.

Petitioner claims she had nothing to do with the actual importations, and was unaware of any violation of Customs law or regulation. However, she subsequently became suspicious of [redacted] and [redacted] and hired a German attorney. His investigation disclosed that there was no company called [redacted] at the address reflected on the company documents, and that the sole owner and manager was [redacted]

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[redacted] initiated a civil suit in the German courts against [redacted] and came to the United States to pursue her case here. She claims an unrecorded purchase money security interest in all of the vehicles and requests that the automobiles be released.

Petition of [redacted]

This company claims that it has title to the five (5) vehicles and that title was never transferred to [redacted] that the same was admitted by [redacted] and that release of the vehicles, if made, should not be to [redacted] or [redacted] This petitioner acknowledges a certain degree of negligence in furnishing incorrect information on the entry documents, but places the primary blame for such violations upon [redacted] Further, this petitioner also claims that all of the automobiles were conformed to EPA and DOT standards in Europe. (A civil suit filed against [redacted] and [redacted] is pending in [redacted]

Petition of [redacted]

By letter dated August 20, 1985, petitioner [redacted] claims an interest in the two Porsches', as lien holder, based on promissory notes executed with security agreements dated November 4 and December 15, 1983, in the amounts of $38,529.12 and $38,582,40, respectively. This petitioner claims that petitioner [redacted] and [redacted] defaulted on the notes with remaining balances of $26,719.15, and $28,058.83.

Determination

While there is evidence that petitioner [redacted] through its agent or agents was intimately involved in the scheme to defraud the United States, we will not attempt in this forum to unscramble the legal and/or equitable rights of the parties to the vehicles. The only Customs violator of record is [redacted], and our decision regarding the penalty (and settlement offer) will only affect [redacted]

In this regard, the evidence clearly demonstrates that petitioner [redacted] was engaged in a fraudulent scheme the primary purpose of which was to evade EPA and DOT requirements. While there is a loss of revenue, we are treating the case as a non-revenue loss offense since the EPA/DOT violations were the primary reason for the scheme.

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In cases of fraud, and a non-revenue loss violation, normal disposition under our guidelines provides for a penalty of 50 to 80 percent of dutiable value. In this case normal disposition would be $75,312, based upon a dutiable value for the five (5) vehicles of $94,140. Since [redacted] offer falls far short of this amount, it is rejected.

Accordingly, the monetary penalty is mitigated to $75,312. The vehicles will be released to [redacted] upon payment of this sum, the loss of revenue, storage costs and other expenses of seizure, and certifications from EPA and DOT to the effect that the vehicles have been conformed to the requirements of these agencies. However, you should also notify the [redacted], and [redacted] of the date, time, and place of release so that these parties may pursue their legal remedies prior to release of the vehicles.

If [redacted] fails to comply with our decision, the matter should be forwarded without delay to the Department of Justice for judicial forfeiture proceedings. (In this regard, administrative forfeiture proceedings would not be in the best interests of the Government due to the various competing interests.) Similarly, all of the interested parties should be notified of this referral so that they may assert their interests in a judicial forum.

Please advise each of the petitioners of this decision and include a copy with your notice.

Sincerely,

/s/ Edward T. Rasse

for Donald W. Lewis
Director, Entry Procedures
and Penalties Division

[redacted]

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[redacted]

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